

# United States Senate

WASHINGTON, DC 20510-0805

January 14, 2015

The Honorable Eric Holder  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable William J. Baer  
Assistant Attorney General, Antitrust Division  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Holder and Assistant Attorney General Baer:

It has come to my attention that the Department of Justice is considering a request from the Institute of Electrical and Electronics Engineers Standards Association (IEEE-SA) for a business review letter ("BRL") stating a lack of enforcement intention in connection with proposed changes to the organization's patent policies. I am writing to express serious concerns about these proposed policy changes, which represent an unprecedented move by an international standards body to weaken the value and enforceability of patented technology. Because these patent policy changes could impact the competitiveness of American innovators and the U.S. economy, I encourage DOJ to consider the broader impact of such policies when crafting a BRL. Such consideration should involve consultation with other U.S. agencies (including USTR and NIST) before issuing a BRL, particularly a BRL that might be misconstrued by our global trading partners as a U.S. government endorsement of IEEE-SA's policy changes.

As you are aware, the proposed policy changes are opposed by IEEE-USA, which includes leading American contributors to wireless standards. The proposed policy changes would impose new conditions on American patent owners, suppressing returns on R&D investment and restricting a patent owner's right to exclude even when an infringing party is entirely unwilling to engage in any negotiations of "reasonable and non-discriminatory" (RAND) licensing terms. My concern is that, without further consultation with trade and IP-related agencies, the time is not right for DOJ to give encouragement to policies that could undermine the rights and competitiveness of U.S. inventors.

A favorable BRL could pave the way for policy changes that will weaken incentives for both large companies and small inventors to invest in the research that will lead to tomorrow's most innovative technologies. I therefore urge DOJ to consider carefully the impact of any BRL on the U.S. government's trade policy of promoting strong intellectual property protection worldwide, including for standardized technologies.

Sincerely,



U.S. Senator Christopher A. Coons