August 10, 2015

VIA EMAIL: consultation.pi/ip.consultation@bc-cb.gc.ca

Advocacy and Economic Analysis Directorate
Competition Bureau
50 Victoria Street
Gatineau, Quebec
K1A 0C9

RE: Joint Comments on Canadian Competition Bureau’s Draft Updated Intellectual Property Enforcement Guidelines

Dear Sir/Madam:

On behalf of the American Bar Association Sections of Antitrust Law, Intellectual Property Law, and International Law, we are pleased to submit the attached comments on the Bureau’s draft updated Intellectual Property Enforcement Guidelines.

Please note that these views are being presented only on behalf of the Sections of Antitrust Law and Intellectual Property Law. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and should not be construed as representing the policy of the American Bar Association.

If you have any questions after reviewing this report, we would be happy to provide further comments.

Sincerely,

Roxann E. Henry
Chair, Section of Antitrust Law

Theodore H. Davis, Jr.
Chair, Section of Intellectual Property Law

Attachment
The views stated in this submission are presented on behalf of the Sections of Antitrust Law, International Law and Intellectual Property Law only. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and therefore may not be construed as representing the policy of the American Bar Association.

The Sections of Antitrust Law, International Law, and Intellectual Property Law of the American Bar Association (“the Sections”) are pleased to submit comments on the Canadian Competition Bureau’s (the “Bureau”) draft stage 2 update of its Intellectual Property Enforcement Guidelines ("Draft Updated Guidelines"). The Sections’ comments reflect the expertise and experience of their members with issues at the intersection of antitrust and intellectual property law.

The Sections welcome the Bureau’s ongoing efforts to provide transparency through updating the Fall 2014 version of the updated Intellectual Property Enforcement Guidelines, and appreciate the opportunity to provide additional comments. In particular, the Section of Antitrust Law appreciates the Bureau’s willingness to consider its comments with respect to the Fall 2014 version of the IP Guidelines ("2014 Comments"), which encouraged additional guidance on the areas of patent assertion entities ("PAEs"), patent settlements, and standard-essential patents ("SEPs"). The Sections also appreciate the Bureau’s consideration of their joint comments submitted on March 31, 2015 (“White Paper Comments”) to the September 23, 2014 paper, “Patent Litigation Settlement Agreements: A Canadian Perspective” (“the White Paper”). The Sections append a copy of their White Paper Comments for ease of reference.

The following comments address four issues in the Draft Updated Guidelines: product switching in the context of pharmaceutical patents; treatment of PAEs; settlement of patent infringement litigation between competitors, commonly referred to as “reverse payment” settlements; and enforcement involving SEPs.

I. PRODUCT SWITCHING

Example 9 indicates that the Bureau will not view “product switching” – when a brand name manufacturer seeks to switch demand from a drug (Product A) with expiring

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patent protection to another drug (Product B) with a longer term of protection by withdrawing Product A from the market – as a “mere exercise of its patent right and thereby exempt under section 79(5).” The Bureau notes that it will accordingly apply a standard antitrust analysis, considering market definition and market power, competitive effects, and proffered business justifications. Although the Sections note that the treatment of product switching under the antitrust laws is not settled in the United States, the Bureau’s example and analysis appear to track the reasoning of a recent decision of the United States Court of Appeals for the Second Circuit.2 This decision addressed a “hard switch” where the Defendant, Actavis, publicly announced and notified the FDA that it would discontinue Product A, urged health care providers to discuss switching to Product B, and requested that the federal government remove Product A from the Medicare formulary list.3 The Court affirmed a preliminary injunction and held that the type of “hard switch” identified in this case may violate the Sherman Act by forcing patients to switch to the new product and impeding generic competition without a legitimate business justification.4

Although the Court did not specifically indicate what would be permissible product switching, it strongly suggested that a “soft switch” – for example, aggressively attempting to persuade patients and doctors to switch to Product B while Product A was on the market – would not violate the antitrust laws.5 It stated that, “As long as Defendants sought to persuade patients and their doctors to switch from [Product A] to [Product B] while both were on the market (the soft switch) and with generic IR drugs on the horizon, patients and doctors could evaluate the products and their generics on the merits in furtherance of competitive objectives.”6 This decision was the first by a U.S. court of appeals to address pharmaceutical product switching.

Several U.S. district courts have addressed pharmaceutical product switches. Most recently, in Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Co.,7 the U.S. District Court for the Eastern District of Pennsylvania held that a switch in which generic versions of the branded product were available if detailed and prescribed did not constitute anticompetitive conduct.8 The FTC submitted an amicus brief here

3 Id. at *19-21.
4 Id. at *50.
5 Id. at *38.
6 Id. at *37.
noting that the “potential for anticompetitive product redesign is particularly acute in the pharmaceutical industry” and arguing that the plaintiffs’ allegations were sufficient to state a plausible claim for monopolization. These allegations included discontinuing the sale of the prior version of the drug, asking major customers to return inventory, and otherwise making the old version of the drug less available. While the brand claimed that generics sought to free ride on its promotional activities, the FTC’s amicus brief argued that “[w]hatever ‘free-riding’ occurs is the intended result of the legislative framework of the Hatch-Waxman Act and the state substitution laws.”

The Mylan court rejected this approach by focusing on the risks posed by broad theories of product switching liability, including “slowing or even stopping pharmaceutical innovation,” and under Mylan, product switching is essentially lawful per se. The decision is on appeal to the Third Circuit.

The Sections commend to the Bureau the insight from the experience of U.S. courts that caution is needed in analyzing product reformulations in innovation intensive markets, and respectfully submit that the Bureau’s approach to product switching also must account for potential differences between the applicable statutory and regulatory regimes in the U.S. and Canada.

II. PATENT ASSERTION ENTITIES

The Sections commend the Bureau for including some guidance and an example of PAE conduct that might violate the Competition Act (the “Act”), as we suggested in our 2014 Comments. In this regard, Example 10 of the Draft Updated Guidelines

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10 Id.
11 Id. at 7.
12 Id.
13 Outside the Hatch-Waxman context, U.S. appellate courts have advised caution in approaching product design allegations under the antitrust laws, but some courts have found antitrust violations based on product design decisions. In Allied Orthopedic Appliances, Inc. v. Tyco Health Care Group LP, 592 F.3d 991, 1000 (9th Cir. 2010), the U.S. Court of Appeals for the Ninth Circuit held that “weigh[ing] the benefits of an improved product design against the resulting injuries to competitors is not just unwise, it is unadministrable. There are no criteria that courts can use to calculate the ‘right’ amount of innovation, which would maximize social gains and minimize competitive injury.” In contrast, in its en banc decision in United States v. Microsoft, 253 F.3d 34, 65 (D.C. Cir. 2001), the D.C. Circuit Court of Appeals noted that “courts are properly very skeptical about claims that competition has been harmed by a dominant firm’s product design changes,” but nevertheless held that two design changes by Microsoft to its software violated the Sherman Act because they had no “procompetitive justification,” and served no purpose “other than protecting [Microsoft’s] operating system monopoly.” Id. at 59, 66-67.
14 In addition, given the Bureau’s recognition that it would consider as part of its analysis the ability of generic firms to market generic products directly to physicians, the Sections also recommend that the last sentence in the second paragraph under Example 9 (“As a result, the success of GENERIC’s entry…”) be deleted.
provides that infringement notices may violate section 74.01(1)(a) of the Act if they contain materially false or misleading representations to the public in support of a business interest or section 52(1) of the Act if the false or misleading representation is made knowingly or recklessly.

The 2014 Comments noted that in addition to potential antitrust-based theories, PAE activity could violate U.S. consumer protection laws.\(^\text{15}\) However, the Act does not have a provision directly equivalent to section 5 of the FTC Act prohibiting deceptive conduct, under which the U.S. Federal Trade Commission (“FTC”) recently has focused its attention on possible deceptive conduct by PAEs.\(^\text{16}\)

The Sections offer two observations for consideration. First, although the debate surrounding PAE conduct remains vigorous in the United States and includes numerous legislative and enforcement proposals and a major ongoing study by the FTC,\(^\text{17}\) the discussion has stayed away from imposing criminal antitrust liability. Second, recognizing that Canadian law differs from U.S. law with respect to possible imposition of either civil or criminal liability for misleading representations, guidance is required regarding precisely the type of PAE conduct that the Bureau would consider false or misleading under section 74.01(1)(a) of the Act and what type of conduct would attract review by the Bureau under section 52(1). The Sections encourage the Bureau to provide examples with facts that contrast in detail the criminal and civil enforcement tracks.

In light of the ongoing uncertainty about the law surrounding PAEs and the potential procompetitive benefits of clearly defined patent rights, the Sections caution that taking too broad of an approach to the application of sections 74.01(1)(a) and 52(1) to conduct involving PAEs at the present time could chill legitimate enforcement of patent rights.

The U.S. historically has reviewed patent enforcement conduct under a civil liability standard, even in cases of deception or misrepresentation.\(^\text{18}\) This is in part because strong patent rights, including the right to exclude, are needed to promote competition. As FTC Chairwoman Ramirez recently stated, “[s]trong IP rights bolster the competitive process by discouraging firms from misappropriating the value of patented patents relevant to a standard during the standard-setting process and then sought to enforce its patents on standards adopters); U.S. Dep’t of Justice & Fed. Trade Comm’n, Antitrust Guidelines for the Licensing of Intellectual Property (1995) at § 6 (describing U.S. approach to enforcement of invalid intellectual property rights and describing key cases).
technologies. Without strong IP protection, firms that invest to create new technologies could see their inventions quickly copied by rivals and other implementers without recourse, depressing the incentives to innovate that drive dynamically competitive markets.”

Second, further guidance is required with regard to precisely the type of conduct by PAEs the Bureau would consider to be false or misleading under section 74.01(1)(a) of the Act as opposed to the sending of legitimate demand letters related to potential patent infringement and what type of conduct would attract review by the Bureau under section 52(1).

The Sections respectfully suggest that it may be appropriate to use an example of misrepresentation other than a claim that the recipient of a demand has infringed a patent. The fact scenario appears to turn on whether Firm A had sufficient proof of patent infringement to determine whether a violation of the Act has occurred. However, proof of patent infringement is a highly complex factual determination. Absent evidence that the sender knew that the recipient did not infringe (e.g. because the sender did not in fact own the patent or because it knew the recipient did not practice the patent), we do not believe that a claim of infringement is the type of factual claim that would usually be an appropriate subject for review under the Act.

In addition, further explanation in Example 10 would be helpful as to the type of conduct by PAEs that the Bureau would pursue enforcement action against so as not to thwart the legitimate exercise of IP rights. The FTC’s case against MPHJ Technology Investments, LLC (“MPHJ”) appears to be the inspiration behind Example 10.

In MPHJ, the defendant PAE allegedly sent more than 9,000 notices to small businesses and consumers telling them they were likely infringing patents on computer scanning technology and should buy a license from MPHJ. MPHJ also claimed that substantial numbers of companies had already agreed to pay thousands of dollars for licenses. Further, MPHJ’s law firm allegedly authorized thousands of letters to be sent on the firm letterhead to small businesses attaching a draft complaint and stating that MPHJ would file a patent infringement lawsuit against the recipient within two weeks if it had not responded to the licensing offer.

In fact, according to the FTC, MPHJ had no intention of suing recipients, had made no preparations for litigation, and no infringement claims were filed. The FTC’s concerns appear to have been focused mainly on false and/or unsubstantiated statements

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21 MPHJ Complaint at ¶¶ 39, 43.
in the defendants’ letters to consumers and small businesses that (1) the patents had been licensed in substantial numbers or at particular rates, and (2) a lawsuit would be initiated imminently against the recipient if a license was not taken. We would note, however, that the FTC did not claim that MPHJ’s claims that the recipient of its letters infringed MPHJ’s patents violated Section 5 of the FTC Act and the Commission’s settlement of that case did not bar MPHJ from making allegations of infringement in the future or even require substantiation of infringement claims.

The Sections respectfully suggest that the Draft Updated Guidelines similarly offer further examples as to what specific conduct could attract potential liability under both the civil track and the criminal track. A greater level of detail could also help provide a clearer balance between the right of patent holders to warn of potential patent infringement and pursue patent licensing and the need for consumers and businesses to act on non-misleading and truthful information by carefully distinguishing the conduct that will be considered false or misleading under the Act.

III. PATENT LITIGATION SETTLEMENTS

The Sections commend the Bureau for deemphasizing potential criminal prosecution of patent litigation settlements as initially outlined in the White Paper. Section 7.2.3 of the Draft Updated Guidelines articulates the “limited circumstances” in which the Bureau may consider criminal prosecution and offers fact patterns of potentially referable conduct in Examples 13A and 13B.

The Sections respectfully request that the Bureau consider further clarifying and restricting circumstances in which criminal prosecution might be undertaken. Offering such additional guidance would be consistent with the Bureau’s intent to focus its enforcement resources on “naked restraints” as opposed to legitimate business collaborations. For the reasons noted in greater detail in the Sections’ White Paper Comments, criminal sanctions are not favored in the United States. Further, as the

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22 Id.; see also In re MPHJ, Analysis to Aid Public Comment, FTC File No. 142-3003 (Nov. 6, 2014), available at https://www.ftc.gov/system/files/documents/cases/141106mphjanalysis.pdf. In addition, the New York State Attorney General sued MPHJ but focused on slightly different aspects of the PAE’s conduct – including its use of numerous subsidiaries with cryptic names and its failure to offer any details about its infringement claims in the notices. See Jonathan Stempel, New York Bears Down on Patent Trolls, Settles with Delaware Firm, Reuters, Jan. 13, 2014. The Attorney General of the State of New York settled its claims and entered an “Assurance of Discontinuance” that provides rules for MPHJ’s conduct going forward. The PAE may now assert its patents only in certain circumstances: for instance, where it has either an objectively reasonable belief of validity and infringement; or, where the PAE has a good faith basis for its notice based on reasonable efforts to evaluate the scope of the patent and identify the specific accused product, system or method. The document sets out additional rules and different treatment for PAE inquiries about a party’s products and possible infringement. See Assurance of Discontinuance No. 14-015, at 12-13 (Jan. 13, 2014), available at http://www.ag.ny.gov/ pdfs/FINALAODMPHJ.pdf.

23 See Competition Bureau, Competitor Collaboration Guidelines, at § 1.3 (Dec. 23, 2009).

24 See White Paper Comments, at 6; 2014 Comments, at 3-7 (discussing developments in reverse payment settlement litigation); see also FTC v. Actavis, Inc., 133 S.Ct. 2223, 2237-38 (2013) (holding that the rule of reason should apply to reverse payment settlements).
Sections observed in those comments, “[t]he DOJ has never pursued criminal enforcement action based upon a pharmaceutical patent settlement agreement. This suggests that the DOJ has yet to identify any situation where a patent settlement was used to conceal true hard core conduct. It is also notable that the FTC, which has been at the forefront in aggressively challenging allegedly anticompetitive patent settlements, has never suggested that criminal enforcement would be appropriate.”

The Draft Updated Guidelines make it clear that Section 45 would only be used when the intention was to fix prices, allocate markets or restrict output. However, that provides limited guidance with respect to a situation in which a reduction in output is the foreseeable, and therefore intended, effect of an agreement, but the agreement was also legitimately intended to resolve a patent dispute. The Sections submit that it may be clearer to state that Section 45 would be employed only when the purported settlement of patent rights and the actual intent of the parties was not to address the patent protected rights, but rather to engage in conduct contrary to Section 45, and the patent settlement is merely a “sham” to disguise an otherwise naked conspiracy.

To the extent the Bureau includes additional references to potentially criminal conduct, the Sections suggest more detailed guidance about the specific circumstances that might trigger criminal, as opposed to civil, prosecution. The Sections are concerned that the lack of clear guidance could deter settlements that create procompetitive efficiencies in a rapidly evolving area of law.

For instance, Example 13A indicates that any agreement in which a generic receives a payment in return for an agreement not to enter a market until a date beyond the expiry of the relevant patents likely would constitute criminal market allocation. The Bureau indicates that arguments regarding ancillary restraints “would not be successful, as the restraint is not reasonably necessary for giving effect to the broader settlement….” Although the Sections agree that it is difficult to discern a procompetitive benefit of such a transaction, Example 13A gives the unintended impression that all settlements in which generic entry is delayed beyond the term of the patent are likely to be referred for criminal prosecution, even if other procompetitive benefits or extenuating circumstances exist. Although reverse payment agreements that extend beyond the scope of the patent had long been treated as facially (civilly) unlawful in the United States, because the Supreme Court decided in FTC v. Actavis that a more nuanced rule of reason analysis is appropriate for complex reverse payment settlements, the Sections believe that any guidance should acknowledge the potential for legitimate business or regulatory justifications. Such guidance could clarify how, for instance, stakeholders should approach a situation in which patent expiry is imminent but the generic requires additional time to clear regulatory hurdles before coming on the market and would therefore be giving up little by agreeing not to enter the market.

Similarly, in Example 13B, the Bureau indicates that it will refer sham settlements for criminal prosecution. This example more clearly sets out a market allocation scheme, but could offer additional guidance about the specific facts that make this conduct criminal. As noted in the White Paper Comments, in the United States a criminal
violation requires that the prosecution establish beyond a reasonable doubt all the elements of the alleged offense, including intent.25 As also noted in the White Paper Comments, after the Supreme Court’s decision in FTC v. Actavis that reverse payment settlements are not presumptively unlawful, criminal intent here likely requires proof of specific intent to restrain trade.26 It is unclear what level of intent the parties had in this example and whether it would meet the Canadian thresholds for criminal liability.

The Sections respectfully suggest that it would help stakeholders if the Bureau offered examples of conduct that more obviously met the criminal requirements in Canada and set out, for each example, the elements for each alleged criminal act.

IV. STANDARD ESSENTIAL PATENTS

Although the Sections commend the Bureau for providing specific examples of the type of conduct involving SEPs that might attract scrutiny and setting out its enforcement approach in considerable detail, the Sections respectfully recommend that the Bureau offer additional clarification to Section 7.3. The Sections offer some general comments on Section 7.3 and some specific comments on Examples 14 to 18 therein.

The Sections respectfully recommend that the Bureau consider revising section 7.3 to acknowledge the procompetitive benefits of standards developing organizations (“SDOs”). Both the FTC and DOJ have emphasized the “need to account properly for the pro-competitive benefits of patent rights in antitrust analysis and enforcement policy.”27 They have noted that, “Industry standards are widely acknowledged to be one of the engines of the modern economy.”28 Expressly acknowledging these procompetitive benefits would give comfort to SDO participants that “collective discussion among IP holders” on “licensing terms” are often permissible (and are certainly never criminal) if the procompetitive benefits are preserved. For example, a collective discussion about licensing terms might be permissible where IP owners are competing to have their technology included in a standard. The Sections believe it would also be helpful to stakeholders if the Bureau were to similarly discuss the benefits of SDOs and offer examples of non-problematic conduct.

In addition, the Sections recommend separating the analysis for “patent ambush” and “patent hold up” into distinct sections for clarity and consider moving much of this discussion to the footnotes or an Appendix. Most readers of the Draft Updated Guidelines

25 See White Paper Comments, at 6.
26 See id.
will understand of these foundational concepts, as well as concepts like FRAND. As discussed in the 2014 Comments, U.S. courts and agencies view these as two distinct categories of conduct, with antitrust agencies and courts applying different analyses when a patent holder deceptively fails to disclose patents essential to a standard as compared with when it breaches a voluntary commitment to license on FRAND terms to implementers of the standard.29

The Sections commend the Bureau for clearly setting out its view on the applicability of section 79(5) and section 32 of the Act. The Bureau’s view on the applicability of these sections is central to the application of Canada’s competition laws to conduct involving SEPs and should be prominently stated.

With the exception of Example 14, the remaining examples in Section 7.2 are examples of conduct involving SEPs that the Bureau would review under section 79 of the Act. The Sections submit that the Draft Updated Guidelines may offer greater clarity if they provided a single general description of the Bureau’s analytical approach to section 79, with subsequent reference to the Enforcement Guidelines on the Abuse of Dominance Provisions similar to the way that Example 14 has been drafted to reference the process outlined in the Competitor Collaboration Guidelines. Such an approach would permit the Bureau to focus on the critical points in each Example.

In that regard, the Sections offer the following specific comments on Examples 14 to 18:

Although Example 14 is succinct, given that SDOs offer significant procompetitive benefits, it would be helpful if the Bureau would provide examples of the factual circumstances that would raise concerns when an SDO arrangement is reviewed under the Act.

With respect to Example 15, the Sections submit it would be helpful for the Bureau to provide greater clarity and further guidance on how it intends to define the relevant market for the purposes of applying section 79 of the Act. The Draft Updated Guidelines state that “the Bureau would define relevant markets that include Firm A’s patented technologies that it failed to disclose to the SDO as well as gizmos and any other products that used the standard.” It is not clear from Example 15 whether the Bureau would consider the relevant market to be the standardized product, products into which the standardized product is incorporated, both, or some alternative definition related to the “patented technologies” of Firm A.30

29 See 2014 Comments, at 4-5.

30 For example, the FTC in 1996 settled a case against Dell Computer Corporation with a similar fact pattern: Dell failed to disclose its patented technology for a computer bus design for transferring instructions within a computer during the SDO process and then sought royalties from computer manufacturers adopting the standard. See In re Dell Computer Corp., 161 F.T.C. 616, 624-25 (1996). Although not clearly articulating a separate relevant market, the FTC noted that it had “reason to believe that once [the] standard had become widely accepted, the standard effectively conferred market power upon Dell as the patent holder.” Id. at 624 n.2. Dell therefore appeared to have market power in the market for
With respect to Example 16, aspects of the analysis appear to focus heavily on the excessive nature of the pricing being sought by the SEP holder. The Sections respectfully request that the Bureau clarify whether its concern lies primarily with potentially deceptive conduct by a patent holder on which SDO members relied to adopt a standard, as opposed to the particular price sought by the SEP holder after the standard was adopted. As noted in the 2014 Comment, U.S. courts have held that deceptive conduct at SDOs may constitute an antitrust violation.\(^\text{31}\) We would note, however, the U.S. law rejects the notion that charging a “high” price for a patent license constitutes independent anticompetitive conduct, because, as the U.S. Supreme Court has held, “[a] patent empowers the owner to extract royalties as high as he can negotiate with the leverage of that monopoly.”\(^\text{32}\)

With respect to Examples 17 and 18, the Sections are of the view that the examples are helpful to stakeholders, although the Bureau may consider modifying them to reduce the explanatory background information and make the section 79 analysis more concise by reference to the Enforcement Guidelines on the Abuse of Dominance Provisions. However, the Sections note that SDO policies and rules can play a central role in controlling conduct by standard-essential patent holders. Therefore, the Draft Updated Guidelines would benefit from further guidance on how SDOs’ policies on injunctions, for example, or commitments made to SDOs by patent holders with regard to post-transfer licensing commitments might affect the Bureau’s analysis.\(^\text{33}\)

The treatment of SDO policies regarding injunctions has generated debate in the United States, including with respect to the DOJ’s review of a recent change in policies by a leading SDO. See, e.g., Renata Hesse, Acting Ass’t Atty. Gen., U.S. Dep’t of Justice, Letter to Michael A. Lindsay regarding the Institute of Electrical and Electronics Engineers, Inc., Feb. 2, 2015, available at http://www.justice.gov/atr/public/busreview/311470.htm (viewing limitations of injunctive relief for SEP holders as not creating immediate antitrust concerns); but see Joanna Tsai and Joshua D. Wright, Standard Setting, Intellectual Property Rights, and the Role of Antitrust in Regulating Incomplete Contracts, 80 ANTITRUST L.J. 1 (2015) (forthcoming) (arguing that SDO members should be able to engage in efficient breach without risk of antitrust liability and that incomplete contracts offer value to the innovation process).

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31 See 2014 Comments, at 4 (discussing relevant deception cases).
33 The treatment of SDO policies regarding injunctions has generated debate in the United States, including with respect to the DOJ’s review of a recent change in policies by a leading SDO. See, e.g., Renata Hesse, Acting Ass’t Atty. Gen., U.S. Dep’t of Justice, Letter to Michael A. Lindsay regarding the Institute of Electrical and Electronics Engineers, Inc., Feb. 2, 2015, available at http://www.justice.gov/atr/public/busreview/311470.htm (viewing limitations of injunctive relief for SEP holders as not creating immediate antitrust concerns); but see Joanna Tsai and Joshua D. Wright, Standard Setting, Intellectual Property Rights, and the Role of Antitrust in Regulating Incomplete Contracts, 80 ANTITRUST L.J. 1 (2015) (forthcoming) (arguing that SDO members should be able to engage in efficient breach without risk of antitrust liability and that incomplete contracts offer value to the innovation process).
CONCLUSION

The Sections appreciate the opportunity to comment on the Draft Updated Guidelines. We would be pleased to respond to any questions the Bureau may have regarding these comments, or to provide additional comments or information that may assist the Bureau in developing its revised Guidelines.

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