DOJ's Stance On Antitrust And Patent Law Reflects Balance

By **Nicholas Cheolas and Corey Weinstein** (May 4, 2026, 4:17 PM EDT)

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Over the past year, the U.S. Department of Justice Antitrust Division has delivered consistent messaging about the relationship between antitrust law and intellectual property rights: Strong patent rights and competition policy are complementary, not in conflict.

Recent statements of interest filed in federal patent litigation and a March 25 **policy speech** by Dina Kallay, deputy assistant attorney general, underscore this point.

Through these statements, the DOJ has argued the following points:

- Patents do not automatically confer market power;
- Antitrust law should not be used to police ordinary patent disputes or licensing negotiations; and
- Preserving meaningful patent remedies, including injunctive relief, is critical to innovation.

Together, these pronouncements provide important guidance for IP practitioners and businesses navigating patent enforcement, standard-setting and licensing in the U.S.

Injunctions as a Critical Tool in Patent Systems

On Feb. 27, the DOJ Antitrust Division and the U.S. Patent and Trademark Office jointly filed a **statement of interest** in Collision Communications Inc. v. Samsung Electronics Co. the U.S. District Court for the Eastern District of Texas addressing whether a nonpracticing patent owner may obtain a permanent injunction after prevailing at trial. The statement did not take a position on the outcome of the underlying case, but clarified how courts should apply the U.S. Supreme Court's four-factor equitable test for injunctions in the 2006 eBay Inc. v. MercExchange LLC decision.

The DOJ argued the following four points:

1. Nonpracticing entities are not categorically barred from injunctive relief;

2. Patents are unique assets that can be difficult to value, making damages an imperfect substitute for exclusion;

3. A prior damages award does not preclude a finding of irreparable harm for future infringement; and

4. Injunctions should be tailored and not punitive, but should preserve the patentee's constitutional right to exclude.

The DOJ emphasized that unduly limiting access to injunctions undermines incentives to innovate and risks encouraging efficient infringement.

For IP practitioners, the statement signals support for injunctions as a meaningful remedy, even for patent owners focused on licensing. For businesses, it underscores increased litigation risk where infringement is found, particularly if future damages are difficult to calculate or design-around options are limited.

Incorporating a Patent Into a Standard and the Limits of Market Power

In the U.S. District Court for the District of Delaware on April 7, the DOJ filed another **statement of interest** in Samsung Electronics Co. v. Netlist Inc. adding context and referring the court to a 2025 statement of interest in Disney Enterprises Inc. v. Interdigital Inc., also in the District of Delaware, addressing "how courts should apply antitrust laws to standards-development activity and legal principles regarding establishing market power and exclusionary conduct in that context."

While the DOJ declined to weigh in on the merits of both cases and motions — across both statements — the DOJ addressed core antitrust principles affecting disputes over standard-essential patents and reasonable and nondiscriminatory or fair, reasonable and nondiscriminatory licensing commitments.

In both matters, the DOJ stressed that inclusion of a patent in a technical standard does not create a presumption of market power. Courts must instead examine market realities, including the existence of alternative technologies and the effect of contractual RAND commitments.

Importantly, the DOJ drew a sharp distinction between contract disputes and antitrust violations: a breach of a RAND obligation, or the charging of high royalties, does not by

itself constitute exclusionary conduct under the Sherman Act.

The statements also reaffirmed that enforcing patent rights through litigation is generally protected petitioning activity under the Noerr-Pennington doctrine's limited exemptions from antitrust liability.

Absent sham litigation or fraud on a standard-setting body, patent enforcement — including seeking injunctive relief — should not give rise to antitrust liability.

For IP practitioners, the statements provide guidance to defend against antitrust claims tied to enforcement of standard-essential patents, as well as licensing negotiations. For businesses implementing standards, it reinforces that antitrust exposure requires more than allegations of aggressive licensing or post-standard conduct; competitive foreclosure must be plausibly alleged.

The Complementary Elements of Antitrust and IP Law

The DOJ has not only demonstrated a consistent focus on the intersection of antitrust and IP law in its statements, but also in speeches by Antitrust Division officials. In her March speech, at the Center for Strategic and International Studies, Kallay placed these on positions in a broader policy framework. She emphasized that antitrust and IP law share a common goal: promoting dynamic competition and innovation.

Kallay rejected the notion that patents inherently create market power, reiterating that traditional antitrust analysis applies to IP just as it does to other forms of property. She highlighted standard-essential patents as a recurring source of confusion, stressing that standard-essential patent status alone does not establish dominance and that RAND commitments often constrain, rather than enhance, market power.

The speech also underscored the importance of protecting the right to enforce patents in court. Kallay warned that expanding antitrust liability to ordinary patent litigation or licensing disputes would chill innovation and discourage participation in standards-development organizations.

Reflections of a Consistent, Measured Approach to Antitrust And IP

Taken together, the DOJ's recent statements of interest and Kallay's speech reflect both consistent focus and a measured enforcement philosophy: Antitrust law should not be

used to weaken patent rights or to convert contract and infringement disputes into competition cases.

For IP practitioners, these developments could strengthen arguments for injunctions, reinforce defenses to antitrust claims based on standard-essential patents and clarify the limits of antitrust exposure in patent enforcement.

For businesses, they highlight the continued importance of careful licensing practices, compliance with standards commitments and realistic assessments of litigation risk in a policy environment that favors strong innovation incentives.

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