



Jed Phillips  
jed@agilityiplaw.com  
Bus: 650-227-4800  
Fax: 650-318-3483

October 17, 2013

Lisa R. Barton  
Acting Secretary  
U.S. International Trade Commission  
500 E Street, S.W.  
Washington, DC 20436

**Re: *Certain Wireless Consumer Electronics Devices and Components Thereof,*  
Inv. No. 337-TA-853**

Dear Secretary Barton:

Enclosed please find **Complainants' Statement of Public Interest** for filing in the above-referenced investigation.

Respectfully submitted,

AGILITY IP LAW  
Limited Liability Partnership

Jed Phillips

Enclosure

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN WIRELESS CONSUMER  
ELECTRONICS DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-853**

**COMPLAINANTS' STATEMENT OF PUBLIC INTEREST**

Complainants Technology Properties Limited, LLC (“TPL”), Patriot Scientific Corporation (“PTSC”) and Phoenix Digital Solutions LLC (“PDS”) respectfully submit this Statement of Public Interest, pursuant to Commission Rule 210.50(a)(4).

**A. Legal Standard**

In balancing the patent holder’s rights versus any adverse impact a remedy may have on the public interest, the Commission “must take into account the strong public interest in enforcing intellectual property” and must avoid improperly imposing an injury requirement. *Certain Baseband Processor Chips and Chipsets, Transmitter, and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Comm'n Op. at 136-137 (U.S.I.T.C., June 19, 2007). Rarely do statutory public interest factors override the established public interest in protecting U.S. intellectual property rights. *See, e.g., Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, Comm'n Op. at 36 (Sept. 1996) (Commission has found overriding public interest concerns in only a few situations). Here, the interest in protecting Complainants’ intellectual property rights through remedial orders clearly outweighs any potential adverse public interest impact that would occur if an exclusion order is entered in this Investigation.

**B. The Articles Potentially Subject to the Requested Remedial Orders.**

The articles potentially subject to an exclusion order and cease and desist orders in this matter include notebooks, tablets, smartphones, e-readers, data cards, handheld game consoles

and other consumer electronic devices with wireless capabilities. *See* Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond. These Accused Products have incorporated technologies protected by U.S. Patent No. 5,809,336 (“the ’336 Patent”). They are imported into and sold in the United States by or on behalf of the Respondents.

**C. There are No Public Health, Safety, or Welfare Concerns.**

The issuance of exclusion and cease and desist orders in this matter would not adversely affect the public health, safety, or welfare in the United States. Indeed, Respondents have not identified any adverse health or welfare issues. *See* Initial Determination on Violation of Section 337 and Recommended Remedy and Bond (“ID”) at 326. Historically, the public interest factors outweigh the need for injunctive relief only if there are exceptional circumstances relevant to critical health or welfare issues: energy efficient automobiles, basic scientific research, or hospital equipment. *Spansion, Inc. v. Int’l Trade Comm’n*, 629 F.3d 1331, 1360 (Fed. Cir. 2010) (only three investigations where public interest considerations outweighed need for injunctive relief).

The Accused Products are not the type of products that have raised concerns by the Commission about public health, safety, or welfare. *See, e.g., Certain Toothbrushes and the Packaging Thereof*, Inv. No. 337-TA-391, Comm’n Op., 1997 WL 803475 at \*2 (Oct. 15, 1997) (toothbrushes do not raise public interest concerns); *Certain Hardware Logic Emulation Systems and Components Thereof*, Inv. No. 337-TA-383, Comm’n Op., 1996 WL 1056217 at \*4 (Oct. 15, 1996) (hardware logic emulators do not raise public interest concerns); *Certain Asian-Style Kamaboko Fish Cakes*, Inv. No. 337-TA-378, Comm’n Op., 1996 WL 1056211 at \*3 (Sept. 24, 1996) (kamaboko fish cakes not type of product to raise public interest concerns); *but see Certain Fluidized Supporting Apparatus and Components Thereof*, Inv. No. 337-TA-182/188, ID, 1984 WL 273788 at \*60 (Jun. 16, 1984) (denying temporary exclusion order of hospital beds for burn patients because exclusion would result in dangerous shortage for domestic health care).

Moreover, the public interest favors protection of intellectual property rights in the United States by excluding infringing imports. *Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof*, Inv. No. 337-TA-422, Comm'n Op. at 9 (Jun. 19, 2000); *Certain Hardware Logic Emulation Systems and Components Thereof*, Inv. No. 337-TA-383, Comm'n Op., 1996 WL 1056217 at \*4 (Oct. 15, 1996).

**D. The Proposed Remedies Would not Negatively Affect Competitive Conditions.**

No adverse impact on the competitive conditions of the U.S. economy would arise from the proposed remedies because Complainants' licensees are capable of supplying consumers with devices with the same or similar functionality as those offered by Respondents. Many leading electronics companies have purchased licenses to the '336 patent, including, for example, Sony, HP, Fujitsu, Motorola, Pantech, Toshiba, Philips and others that design and sell consumer electronic devices similar to the Accused Products. Without the requested remedial orders, these licensees will be adversely impacted. They have already paid for a license, and will be at a competitive disadvantage if they must compete with Respondents' unlicensed products. Complainants' licensees could replace the infringing consumer electronic devices if the infringing devices were to be excluded. Examples of licensed products include, but are not limited to, mobile telephones, tablets, hotspots, GPS devices, etc. Moreover, other manufacturers can purchase a license to the '336 patent, as Complainants have shown their willingness to negotiate fair, reasonable and nondiscriminatory licenses to the technology.

Respondents will argue that exclusion and cease and desist orders would negatively impact competitive conditions by reducing product availability in the market, allegedly resulting in less choice and higher prices for consumers. Respondents have provided no evidence to support their argument. Furthermore, the Commission has held that an increase in prices for retailers and consumers does not outweigh the interest in protecting intellectual property rights. *See Certain Digital Television Products and Certain Products Containing Same and Methods of Using Same*, Inv. No. 337-TA-617, Comm'n Op. at 16 (U.S.I.T.C., Apr. 23, 2009) ("the Commission has consistently held that the benefit of lower prices to consumers

does not outweigh the benefit of providing complainants with an effective remedy for an intellectual property-based section 337 violation”); *Certain Cigarettes and Packaging Thereof*, Inv. No. 337-TA-424, Comm’n Op. at 20 (U.S.I.T.C., Nov. 7, 2000) (finding that while eliminating competition from lower-priced reimported cigarettes would cause consumers to have fewer choices and pay higher prices and may put some distributors out of business, those effects did not warrant denying a remedy).

**E. Complainants’ Licensees Have the Capacity to Replace the Volume of the Accused Products.**

Complainants’ licensees have the capacity to replace consumer electronic devices subject to an exclusion order in a commercially reasonable time in the United States. *See Certain EPROM, EEPROM, Flash Memory and Flash Microcontroller Semiconductor Devices and Products Containing Same*, Inv. No. 337-TA-395, Comm’n Op. at 132-133 (U.S.I.T.C., Oct. 16, 2000) (“EPROMs”) (finding that no public interest considerations preclude issuance of a limited exclusion order considering the numerous designs of non-infringing products and the presence of many domestic manufacturers assuring continued competition and adequate supply of products); *Certain Chemiluminescent Compositions, Components Thereof and Methods of Using, and Products Incorporating Same*, Inv. No. 337-TA-285, U.S.I.T.C. Pub. No. 2370 at 29-30 (U.S.I.T.C., March 1991) (rejecting argument for denial of remedy based solely on the fact that a supplier would be shut out of the market by an exclusion order where there was no evidence that complainant could not supply the entire U.S. market).

**F. The Requested Remedial Orders would Not Negatively Impact Consumers.**

There is no evidence that the requested remedial orders would adversely affect U.S. customers. As stated above, Complainants’ licensees are capable of supplying consumers with devices with the same or similar functionality as those offered by Respondents. Respondents will argue that a remedial order would adversely affect existing U.S. costumers by precluding Respondents from meeting their repair or replacement warranties. However, Respondents can fulfill their obligations by issuing a refund, as those warranties expressly offer. Furthermore,

Respondents have not provided any quantitative analysis regarding the potential adverse impact exclusion orders would have on consumers in this regard.

Dated: October 7, 2013

Respectfully Submitted,

/s/ Jed Phillips

James C. Otteson  
Thomas T. Carmack  
Philip W. Marsh  
AGILITY IP LAW, LLP  
149 Commonwealth Drive  
Menlo Park, CA 94025  
Telephone: (650) 227-4800

Counsel for Complainants  
TECHNOLOGY PROPERTIES LIMITED LLC  
PHOENIX DIGITAL SOLUTIONS LLC

Charles T. Hoge  
KIRBY NOONAN LANCE & HOGE LLP  
350 Tenth Avenue, Suite 1300  
San Diego, CA 92101  
Telephone: (619) 231-8666

Counsel for Complainant  
PATRIOT SCIENTIFIC CORPORATION

**UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, D.C.**

Before the Honorable E. James Gildea  
Administrative Law Judge

**In the Matter of**

**CERTAIN WIRELESS CONSUMER  
ELECTRONICS DEVICES AND  
COMPONENTS THEREOF**

**Investigation No. 337-TA-853**

**CERTIFICATE OF SERVICE**

I, Sherri Mills, hereby certify that on October 17, 2013, a copy of the foregoing document was served upon the following parties or their counsel in the manner indicated:

**COMPLAINANTS' STATEMENT OF PUBLIC INTEREST**

<b><i>Acting Secretary</i></b>	
The Honorable Lisa R. Barton Acting Secretary U.S. International Trade Commission 500 E Street, S.W., Room 112A Washington, D.C. 20436	<input checked="" type="checkbox"/> Via EDIS <input checked="" type="checkbox"/> Via Overnight Courier <i>Eight Copies</i>
<b><i>Administrative Law Judge</i></b>	
The Honorable E. James Gildea U.S. International Trade Commission 500 E Street, S.W., Room 317 Washington, D.C. 20436	<input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Overnight Courier <i>Two Copies</i>
<b><i>Administrative Law Judge Attorney Advisors</i></b>	
Ken Schopfer Sarah Zimmerman Attorney Advisors 500 E Street, S.W., Room 317 Washington, DC 20436 <a href="mailto:kenneth.schopfer@usitc.gov">kenneth.schopfer@usitc.gov</a> <a href="mailto:sarah.zimmerman@usitc.gov">sarah.zimmerman@usitc.gov</a>	<input checked="" type="checkbox"/> Via Email (PDF copy)

**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

<b><i>Office of Unfair Import Investigation</i></b>	
Whitney Winston Investigative Attorney Office of Unfair Import Investigation U.S. International Trade Commission 500 E Street, S.W., Suite 401 Washington, D.C. 20436 Telephone: (202) 205-2221 <a href="mailto:Whitney.Winston@usitc.gov">Whitney.Winston@usitc.gov</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Complainant Patriot Scientific Corporation</i></b>	
Charles T. Hoge KIRBY NOONAN LANCE & HOGE, LLP 350 Tenth Avenue, Suite 1300 San Diego, California 92101 Telephone: (619) 231-8666 <a href="mailto:choge@knlh.com">choge@knlh.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondents Acer Inc. and Acer America Corporation</i></b>	
Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 Facsimile: (202) 778-9100 <a href="mailto:AcerAmazonNovatel_ITC853@klgates.com">AcerAmazonNovatel_ITC853@klgates.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondent Amazon.com, Inc.</i></b>	
Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 Facsimile: (202) 778-9100 <a href="mailto:AcerAmazonNovatel_ITC853@klgates.com">AcerAmazonNovatel_ITC853@klgates.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondent Barnes &amp; Noble, Inc.</i></b>	
Paul F. Brinkman QUINN EMANUEL URQUHART & SULLIVAN, LLP 1299 Pennsylvania Avenue NW, Suite 825 Washington, DC 20004 Tel.: (202) 538-8000 Fax: (202) 538-8100 <a href="mailto:BN-853@quinnemanuel.com">BN-853@quinnemanuel.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)



**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

<b><i>Counsel for Respondents Garmin Ltd., Garmin International, Inc. and Garmin USA, Inc.</i></b>	
Louis S. Mastriani ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P. 1133 Connecticut Avenue, N.W., 12th Floor Washington, DC 20036 Telephone: (202) 467-6300 Facsimile: (202) 466-4006 <a href="mailto:Garmin-853@adduci.com">Garmin-853@adduci.com</a> <a href="mailto:Garmin_853@eriseIP.com">Garmin_853@eriseIP.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondents HTC Corporation and HTC America</i></b>	
Stephen R. Smith COOLEY LLP 11951 Freedom Drive Reston, VA 20190 Telephone: (703) 456-8000 Facsimile: (703) 456-8100 <a href="mailto:HTC-TPL@cooley.com">HTC-TPL@cooley.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondent Huawei Technologies Co., Ltd. , Huawei Device Co., Ltd., Huawei Device USA Inc., and Futurewei Technologies, Inc.</i></b>	
Timothy C. Bickham STEPTOE & JOHNSON LLP 1330 Connecticut Avenue, N.W. Washington, D.C. 20036 Telephone: (202) 429-3000 Facsimile: (202) 429-3902 <a href="mailto:Huawei853@steptoe.com">Huawei853@steptoe.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondents Kyocera Corporation and Kyocera Communications, Inc.</i></b>	
M. Andrew Woodmansee MORRISON & FOERSTER LLP 12531 High Bluff Drive San Diego, CA 92130 Telephone: (858) 720-5100 Facsimile: (858) 720-5125 <a href="mailto:Kyocera-TPL-ITC@mofo.com">Kyocera-TPL-ITC@mofo.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)

**CERTAIN WIRELESS CONSUMER ELECTRONICS  
DEVICES AND COMPONENTS THEREOF**

**Inv. No. 337-TA-853**

<b><i>Counsel for Respondents LG Electronics, Inc. and Electronics U.S.A., Inc.</i></b>	
Scott A. Elengold FISH & RICHARDSON P.C. 1425 K Street, N.W. 11 <sup>th</sup> Floor Washington, DC 20005 Telephone: (202) 783-5070 Facsimile: (202) 783-2331 <a href="mailto:LG-TPLITCService@fr.com">LG-TPLITCService@fr.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondents Nintendo Co., Ltd. and Nintendo of America, Inc.</i></b>	
Stephen R. Smith COOLEY LLP 11951 Freedom Drive Reston, VA 20190 Telephone: (703) 456-8000 Facsimile: (703) 456-8100 <a href="mailto:Nintendo-TPL@cooley.com">Nintendo-TPL@cooley.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondent Novatel Wireless, Inc.</i></b>	
Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 <a href="mailto:AcerAmazonNovatel_ITC853@klgates.com">AcerAmazonNovatel_ITC853@klgates.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Attorneys for Respondents Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i></b>	
Aaron Wainscoat DLA PIPER LLP 2000 University Avenue East Palo Alto, CA 94303-2214 Telephone: (650) 833-2442 <a href="mailto:853-DLA-Samsung-Team@dlapiper.com">853-DLA-Samsung-Team@dlapiper.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)
<b><i>Counsel for Respondents ZTE Corporation &amp; ZTE (USA) Inc.</i></b>	
Jay H. Reiziss BRINKS HOFER GILSON & LIONE 1775 Pennsylvania Avenue, NW Washington, D.C. 20006 Telephone: (202) 296-8700 <a href="mailto:Brinks-853-ZTE@brinkshofer.com">Brinks-853-ZTE@brinkshofer.com</a>	<input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Email (PDF copy)

/s/ Sherri Mills

Sherri Mills