



James C. Otteson
jim@agilityiplaw.com

January 16, 2014

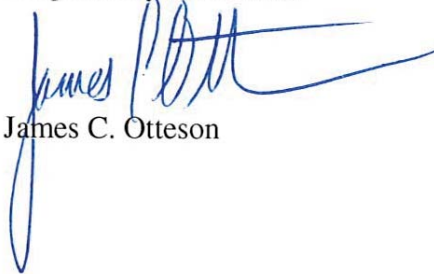
Lisa R. Barton
Acting Secretary
United States International Trade Commission
500 E Street, S.W.
Washington, DC 20436

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

Dear Secretary Barton:

Enclosed please find Complainants' Reply Submission on Commission Review of Initial Determination (**Public Version**) e-filed today in the above-referenced investigation.

Respectfully submitted,



James C. Otteson

Enclosures

**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' REPLY SUBMISSION ON
COMMISSION REVIEW OF INITIAL DETERMINATION

[REDACTED]

Table of Contents

| | |
|--|-----|
| Table of Contents | i |
| Table of Authorities | iv |
| Table of Abbreviations | vii |
| Introduction | 1 |
| Argument | 2 |
| I. RESPONDENTS’ AND THE OUII’S ARGUMENTS CONFIRM THE ACCUSED PRODUCTS SATISFY THE “ENTIRE OSCILLATOR” LIMITATION OF CLAIMS 6 AND 13..... | 2 |
| A. Respondents and the OUII Confirm that the Current-Starved Technology [REDACTED] [REDACTED] | 2 |
| B. While Respondents Mischaracterize Complainants’ Argument as “Hypothetical,” Respondents’ Own Evidence Shows that the Relevant Chips Generate a Clock Signal Without Relying on a Control Signal or an External Crystal/Clock Generator..... | 5 |
| C. It is <i>Respondents</i> who Posit an Unsupported Hypothetical: There Is No Evidence That the ICOs in the Actual PLLs are Ever “Turned Off” During Operation. | 6 |
| D. The ALJ’s Claim Construction Expressly Permits Other Components to Determine Oscillator Frequency..... | 8 |
| E. The Current Supplied to the Current-Starved Transistors in the Oscillator is an Expressly Claimed “Operational Parameter” Designed to Vary the Oscillation Frequency. | 9 |
| II. THE RECORD IS REPLETE WITH EVIDENCE OF COMPLAINANTS’ INVESTMENT IN THE ONGOING LICENSING PROGRAM. | 11 |
| III. COMPLAINANTS PROVIDED EVIDENCE SUFFICIENT TO ESTABLISH THEIR SIGNIFICANT INVESTMENTS UNDERLYING THEIR DOMESTIC INDUSTRY IN LICENSING THE ’336 PATENT..... | 12 |
| IV. THE ITC DID NOT REQUIRE PROOF OF ARTICLES THAT PRACTICE THE PATENT TO ESTABLISH A LICENSING-BASED DOMESTIC INDUSTRY UNTIL WELL AFTER THE INITIAL DETERMINATION ISSUED. | 14 |
| A. For 25 Years, the Commission Held That a Licensing-Based Domestic Industry Did <i>Not</i> Require Proof of Articles Protected by the Patent. | 14 |

| | | |
|----|--|----|
| B. | Complainants, the OUII, and the ALJ All Reasonably Relied Upon the Commission’s Existing Licensing-Based Domestic Industry Standard. | 16 |
| C. | Requiring A Technical Prong Rejects 25 Years Of Commission Precedent. | 17 |
| D. | Complainants Demonstrated that Remanding to the ALJ Would Result in a Finding of Domestic Industry. | 18 |
| V. | RESPONDENTS’ ARGUMENTS ON REMEDY AND BOND LACK MERIT. | 19 |
| A. | An Exclusion Order Should Not Contain Any Carve-Outs Or Exemptions..... | 19 |
| 1. | An Exclusion Order Should Include All Infringing Products Within the Scope of the Investigation..... | 19 |
| 2. | An Exclusion Order Should Not Be Limited to Products Containing Specific Chips. | 20 |
| 3. | There Is No Basis For Carving Out Specific ZTE and Huawei Products..... | 21 |
| 4. | EPROM Does Not Apply Because Respondents’ Accused Products Are Not “Downstream” Products..... | 22 |
| 5. | No Exemption for Warranty Repair or Replacement is Justified. | 23 |
| 6. | An Adjustment Period or a Certification Provision with Customs Is Unwarranted..... | 23 |
| B. | Cease And Desist Orders Against Certain Respondents Should Issue. | 24 |
| C. | Respondents Should Be Required To Post a Bond Equal to 100% of Entered Value of the Devices During the Presidential Review Period..... | 25 |
| | Conclusion | 25 |
| | APPENDIX OF EXHIBITS | 1 |
| | Attachment Addressing Respondents’ and Third Party Sprint’s Briefs on the Public Interest | 1 |
| A. | Respondents, Not Complainants, Have The Burden Of Proving Public Interest. | 1 |
| B. | Respondents Offer No Evidence That A Remedial Order Would Adversely Affect United States Consumers..... | 2 |
| 1. | Respondents’ recycled arguments should be rejected because Respondents fail to address Complainants’ rebuttal and legal authority from their post-hearing reply brief..... | 2 |



2. Respondents’ new request for the Commission to depart from its long-standing public interest analysis should be rejected. 3

C. Respondents Fail To Provide Evidence That a Remedial Order Would Adversely Affect Competitive Conditions..... 8

D. Respondents Offer No Evidence That a Remedial Order Would Harm the Public Health and Welfare. 13

Table of Authorities

Cases

| | |
|---|---------|
| <i>Apple, Inc. v. Samsung Electronics Co., Ltd.</i> , 909 F. Supp. 2d 1147 (N.D. Cal. 2012) | 5, 6, 7 |
| <i>Certain 3G Mobile Handsets & Components Thereof</i> , Inv. No. 337-TA-613, Order No. 42, Initial Determination (Mar. 10, 2009) | 16 |
| <i>Certain Baseband Processor Chips and Chipsets, Transmitter & Receiver (Radio) Chips, Power Control Chips, & Products Containing Same, Including Cellular Telephone Handsets</i> , Inv. No. 337-TA-543, Comm’n Op. (June 19, 2007) | 4, 6 |
| <i>Certain Baseband Processors</i> , Inv. No. 337-TA-543, 2007 ITC LEXIS 621 (June 19, 2007) | 22 |
| <i>Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same</i> , Inv. No. 337-TA-650, Comm’n Op. (Apr. 14, 2010) | 12 |
| <i>Certain Computers & Computer Peripheral Devices, & Components Thereof, & Prods. Containing Same</i> , Inv. 337-TA-841, Commission ND (Dec. 19, 2013) | 18 |
| <i>Certain Digital Satellite System (DSS) Receivers & Components Thereof</i> , Inv. No. 337-TA-392, Initial Determination (Oct. 20, 1997) | 16 |
| <i>Certain Doxorubicin & Preparations Containing Same</i> , ID, 1990 WL 710751 (Nov. 16, 1990) | 16 |
| <i>Certain Doxorubicin & Preparations Containing Same</i> , Inv. No. 337-TA-300, Views of the Comm’n (May 2, 1991) | 16 |
| <i>Certain Elec. Digital Media Devices</i> , Inv. No. 337-TA-796, Ltd. Excl. Order (Aug. 9, 2013) | 21 |
| <i>Certain Electronic Devices, Including Wireless Communication Devices, Portable Music & Data Processing Devices, and Tablet Computers</i> , Inv. 337-TA-794, Samsung’s Statement on the Public Interest (Oct. 22, 2012) | 2 |
| <i>Certain Electronic Digital Media Devices & Components Thereof</i> , Inv. No. 337-TA-796, RD (Nov. 7, 2012) | 25 |
| <i>Certain Foam Footwear</i> , Inv. No. 337-TA-567, Order No. 34, Initial Determination, 2006 WL 3775922 (Nov. 7, 2006) | 16 |

| | |
|---|--------|
| <i>Certain Hardware Logic Emulation Sys. & Components Thereof,</i> Inv. No. 337-TA-383, USITC Pub. 3089 (Apr. 1, 1998)..... | 21 |
| <i>Certain Ink Jet Print Cartridges & Components Thereof,</i> Inv. No. 337-TA-446, Comm’n Op. (May 8, 2002) | 2 |
| <i>Certain Light-Emitting Diodes & Products Containing Same,</i> Inv. No. 337-TA-512, 2005 WL 2178981, ID (May 10, 2005)..... | 13 |
| <i>Certain Light-Emitting Diodes and Prods. Containing the Same,</i> Inv. No. 337-TA-784, Rec. Determ., 2012 WL 3246531 (July 23, 2012) | 23 |
| <i>Certain MEMs Devices & Products Containing the Same,</i> Inv. No. 337-TA-700, Comm’n Op., 2011 WL 1867927 (Nov. 2011) | 22 |
| <i>Certain Mobile Devices, Associated Software, & Components Thereof,</i> Inv. No. 337-TA-744, Ltd. Excl. Order (2012) | 20, 21 |
| <i>Certain Multimedia Display & Navigation Devices and Systems, Components Thereof, & Products Containing Same,</i> Inv. No. 337-TA-694, Comm’n Op. (Aug. 8, 2011)..... | 17 |
| <i>Certain Personal Data & Mobile Communications Devices and Related Software,</i> Inv. No. 337-TA-710, Comm’n Op. (Dec. 29, 2011) | 4 |
| <i>Certain Products With Gremlins Character Depictions,</i> Comm’n Op., 1986 ITC LEXIS 313 (Mar. 1986) | 15 |
| <i>Certain Products with Gremlins Character Depictions,</i> Inv. No. 337-TA-201 (March 1986) | 15 |
| <i>Certain Semiconductor Chips with Minimized Chip Package Size & Products Containing Same,</i> Inv. No. 337-TA-432, Order No. 13, Initial Determination (Jan. 24, 2001) | 16, 17 |
| <i>Certain Semiconductor Chips with Minimized Chip Package Size & Products Containing Same,</i> Inv. No. 337-TA-605, ID (Feb. 9, 2009) | 16, 17 |
| <i>Certain Short-Wavelength Light Emitting Diodes, Laser Diodes & Products Containing Same,</i> Inv. No. 337-TA-640, Order No. 16, 2008 WL 2621356 (Jun. 18, 2008)..... | 17 |
| <i>Certain Systems for Detecting & Removing Viruses or Worms, Components Thereof, & Products Containing Same,</i> Inv. No. 337-TA-510, Comm’n Op. (Aug. 23, 2005)..... | 4 |

| | |
|--|----------|
| <i>Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof & Products Containing Same,</i> Inv. No. 337-TA-493, Initial Determination (Jun. 2, 2004) | 16 |
| <i>eBay Inc. v. MercExchange, L.L.C.,</i> 547 U.S. 388, 391 (2006)..... | 5, 7, 12 |
| <i>Fuji Photo Film CO., Ltd. v. Int’l Trade Comm’n,</i> 386 F.3d 1095 (Fed. Cir. 2004) | 24 |
| <i>In re Certain Self-Cleaning Litter Boxes & Components Thereof,</i> Inv. 337-TA-625, RD on Remedy and Bond (Dec. 1, 2008)..... | 24 |
| <i>InterDigital Commc’ns, LLC v. Int’l Trade Comm’n,</i> 690 F.3d 1318 (Fed. Cir. 2012) | 17 |
| <i>InterDigital Commc’ns, LLC v. Int’l Trade Comm’n,</i> 707 F.3d 1295 (Fed. Cir. 2013) | 19 |
| <i>John Mezzalingua Assocs., Inc. v. Int’l Trade Comm’n,</i> 660 F.3d 1322 (Fed. Cir. 2011) | 15 |
| <i>Monsanto Co. v. Geertson Seed Farms,</i> 130 S. Ct. 2743 (2010)..... | 7 |
| <i>Spanion, Inc. v. Int’l Trade Comm’n,</i> 629 F.3d 1331 (Fed. Cir. 2010) | 1, 6 |

Statutes and Rules


| | |
|-----------------------------|----|
| 19 U.S.C. § 1337..... | 17 |
| Commission Rule. 210.2..... | 18 |

Other Authorities

| | |
|--|----|
| 132 Cong. Rec. 7119 (Apr. 10, 1986)..... | 15 |
| Adam Mossoff, <i>The History of Patent Licensing and Secondary Markets in Patents: An Antidote to False Rhetoric</i> , George Mason University School of Law (December 9, 2013)... | 11 |
| H.R. Rep. No. 100-40 | 15 |
| H.R. Rep. No. 99-581 (1986)..... | 15 |
| Lamoreaux, Sokoloff, and Sutthiphisal, <i>Patent Alchemy: The Market for Technology in US History</i> , Business History Review 87, 3-38 (2013) | 11 |

Table of Abbreviations

| | |
|------------------|--|
| '336 patent | U.S. Patent No. 5,809,336, admitted as JXM-1 |
| Accused Products | Products listed in the Amended List of Accused Products in Exhibit M, attached hereto |
| Complainants | Technology Properties Limited LLC, Phoenix Digital Solutions LLC and Patriot Scientific Corporation |
| HT | Hearing Transcript for the evidentiary hearing held in this Investigation from June 3, 2013 through June 11, 2013 |
| Notice | Notice of Commission Determination to Review in Part a Final Initial Determination Finding No Violation of Section 337; Extension of Target Date, filed November 25, 2013 |
| Patriot | Complainant Patriot Scientific Corporation |
| PDS | Complainant Phoenix Digital Solutions |
| Respondents | The Respondents remaining in this Investigation, including: Barnes & Noble, Inc., Garmin Ltd., Garmin International, Inc., Garmin USA, Inc., HTC Corporation, HTC America, Huawei Technologies Co., Ltd., , Huawei Device Co., Ltd., Huawei Device USA Inc., Futurewei Technologies, Inc. d/b/a Huawei Technologies (USA), LG Electronics, Inc., LG Electronics U.S.A., Inc., Nintendo Co., Ltd., Nintendo of America, Inc., Novatel Wireless, Inc., Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., ZTE Corporation, and ZTE (USA) Inc. |
| OUII | Office of Unfair Import Investigation |
| Staff | OUII |
| TPL | Complainant Technology Properties Limited |
| C.C.PHB | Complainants' Corrected Pre-Hearing Brief (served on all parties on June 2, 2013, and hand-delivered to Judge Gildea on June 3, 2013.) |
| C.PHB | Complainants' Initial Post-Hearing Brief (EDIS Doc. ID 512345) |
| R.PHB | Respondents' Initial Post-Hearing Brief (EDIS Doc. ID 512325) |
| S.PHB | Staff's Initial Post-Hearing Brief (EDIS Doc. ID 512324) |
| C.PHR | Complainants' Post-Hearing Reply (EDIS Doc. ID 513145) |
| R.PHR | Respondents' Post-Hearing Reply (EDIS Doc. ID 513125) |



| | |
|------------|---|
| ID | Initial Determination on Violation (EDIS Doc. ID 517759) |
| RD | Recommended Determination on Remedy and Bond (EDIS Doc. ID 517759) |
| C.Br. | Complainants' Opening Brief on Commission Review of Initial Determination, filed December 23, 2013 (EDIS Doc. ID 524759) |
| R.Br. | Respondents' Joint Submission in Response to the Commission's Notice of Partial Review, filed December 23, 2013 (EDIS Doc. ID 524734) |
| R.PI.Br. | Respondents' Joint Brief on Remedy, Bonding, and the Public Interest, filed December 23, 2013 (EDIS Doc. ID 524735) |
| S.Br. | Staff's Brief on Issues Under Review and Remedy, filed December 23, 2013 (EDIS Doc. ID 524747) |
| Sprint.Br. | Third Party Sprint Spectrum, L.P.'s Statement Regarding the Public Interest, filed December 23, 2013 (EDIS Doc. ID 524720) |

All emphasis in this brief is added, unless otherwise noted.

Introduction

Complainants respectfully ask the Commission to find a violation of Section 337 by all Respondents, and to enter appropriate remedial orders. Complainants provide this reply submission pursuant to the Commission's Notices dated November 25 and December 19, 2013.

Regarding Question No. 1, all parties agree that [REDACTED] a "current-starved" current controlled oscillator ("ICO"). Respondents' own technical documents and expert testimony also confirm that [REDACTED] the Accused Products satisfy the "entire oscillator" limitation, even as incorrectly construed by the ALJ. Indeed, the evidence shows that the [REDACTED] in the relevant chips all generate a clock signal without relying on a control signal and/or an external crystal, despite Respondents' mischaracterization of the evidence. Moreover, even the ALJ's incorrect claim construction recognizes that [REDACTED] [REDACTED] can be included scope of "entire oscillator."

Respondents' contention that there is insufficient evidence to establish Complainants' license-based domestic industry is incorrect. The evidence shows that Complainants invested millions of dollars in their ongoing licensing program for the MMP portfolio (including the '336 patent) – and that does *not* include several million dollars of patent prosecution and litigation-related expenses. Respondents' arguments about the transfer of licensing rights for the MMP portfolio between Complainants are likewise baseless. It is undisputed that a Complainant had the right to license the asserted patent at the time the Complaint was filed and throughout the Investigation. Further, TPL's Chapter 11 filing had no effect on its previous investments in the licensing program. Thus, the ALJ correctly found an economic prong for domestic industry.

As to Question No. 4, under the ITC standard as it existed until mid-December, 2013, whether Complainants or their licensees practiced the patent-in-suit simply *was not at issue*, because no technical prong was required. Complainants, Staff, and the ALJ *each* reasonably relied upon the then-existing ITC standard. Still, Complainants introduced evidence that their licensees include "major manufacturers of wireless devices," whose products incorporate the

[REDACTED]

inventions of the '336 patent. In *InterDigital*, the Federal Circuit found a licensing-based domestic industry based on less. However, should the Commission conclude the new standard requires additional evidence, Complainants have shown that sufficient evidence to establish a technical prong could be obtained. Thus, Complainants respectfully ask the ITC to reopen the record and remand the case to allow for discovery and an evidentiary finding regarding the technical prong, if the Commission does not return to the prior (correct) standard.

Regarding remedy, bonding, and the public interest, Respondents largely cut and paste portions of their post-hearing briefs. Worse, Respondents do not devote a single sentence to addressing *any* of the arguments or authority in Complainants' Post-Hearing Reply. Repetition has made Respondents' arguments no stronger, as detailed below.

Argument

I. RESPONDENTS' AND THE OUII'S ARGUMENTS CONFIRM THE ACCUSED PRODUCTS SATISFY THE "ENTIRE OSCILLATOR" LIMITATION OF CLAIMS 6 AND 13.

As discussed in Complainants' Opening Brief, [REDACTED] that satisfies the "entire oscillator" limitation. While Respondents confirm that [REDACTED] use "current-starved" technology to [REDACTED]s, they attempt to mislead the Commission about the operation of their Accused Products. But their own evidence confirms that all of the Accused Products have the claimed oscillator because the oscillator in each Accused Product generates a clock signal without reliance on a "control signal" or "an external crystal/clock generator."

A. Respondents and the OUII Confirm that the Current-Starved Technology

[REDACTED]

Consistent with Complainants' Opening Brief, both Respondents and OUII confirm that [REDACTED]

[REDACTED]

[REDACTED].¹ For example, Respondents state:

[REDACTED]

R.Br. at 12. Respondents then confirm that [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 8 [REDACTED]

[REDACTED] citing HT 1159:8-17 (Subramanian)). This confirms Complainants' position: [REDACTED]

[REDACTED]” C.Br. at 3; *see also* Ex. M (Am. List of Accused Products).

OUII agreed, and compared the current flow in current-starved technology to water controlled by a faucet, which “set[s] the delay” of the ICO components to achieve oscillation “at the desired *frequency*.” S.Br. at 7, citing HT 1958:19-24; 385:17-386:22 (Complainants’ expert, Dr. Oklobdzija). The Staff explained: “the PLL thus *controls clock frequency* by current-starving the delay elements.” *Id.* (citing HT 386:14-22). The Staff also confirmed that [REDACTED]

[REDACTED] *Id.* at 8. Thus, all parties agree that “current-starving” applies

¹ Attached Exhibit M includes an Amended List of Accused Products, which corrects Table 1 in Complainants’ Opening Brief by removing certain [REDACTED] products [REDACTED] which are not accused of infringing claims 6 and 13, and thus were incorrectly included. *See* C.PHB, Ex. B at B-20; *cf.* C.Br. at 5-7 (Table 1). OUII’s brief includes a table of Accused Products that use current-starved technology, but that table omits certain products and contains some minor errors, such as incorrectly omitting the [REDACTED], which contains an [REDACTED] chip that is relevant to Commission review. *See* S.Br. at 8; C.Br. at 5, n.4 (citing CX-409C at [REDACTED]; *cf.* RDX-4.19C (incorrectly listing [REDACTED])). Complainants submit that the table in Exhibit M, attached hereto, contains a more accurate listing of the Accused Products that remain at issue.

[REDACTED]

to [REDACTED]

[REDACTED]. See C.Br. at 3.

Importantly, “current-starved” technology is used to *control frequency* – a concept distinct from *generating* of a clock signal – even under the ALJ’s incorrect construction of “entire oscillator.” Indeed, this is clear from the ALJ’s own claim construction analysis, in which he rejected OUII’s proposed construction for “entire oscillator,” as discussed below in Section I.D. Thus, Respondents’ and OUII’s equating of current-starving with frequency control does *not* lead to a determination of noninfringement. See, e.g., R.Br. at 8 [REDACTED]

[REDACTED]

B. While Respondents Mischaracterize Complainants' Argument as "Hypothetical," Respondents' Own Evidence Shows that the Relevant Chips Generate a Clock Signal Without Relying on a Control Signal or an External Crystal/Clock Generator.

In their brief, Respondents seek to mislead the Commission about the operation of their Accused Products. First, Respondents attempt to denigrate Complainants' argument, as follows:

According to Complainants, if a ring oscillator can run with a power supply alone, then it does not rely on an external crystal/clock generator or a control signal to generate a clock signal. . . to extend this conjecture, Complainants suggest that all ring oscillators have the same structure that would result in oscillation in the presence of a power supply. . .

This argument fails because it is directed to a simplified hypothetical version of a ring oscillator which is divorced from a PLL and unconnected to any tangible product, much less to any of the accused products. Most significantly, **the argument ignores the accused PLLs' actual structure** . . . and, as a result, disregards a critically important flaw in Complainants' argument: For the PLLs whose structures are known, the ring oscillator used in the VCO or ICO [REDACTED]

R.Br. at 6-7. The suggestion that Complainants' description of the operation of ring oscillators is "directed to a simplified hypothetical version of a ring oscillator" is a knowingly false characterization by Respondents of their own evidence. Respondents' own technical documents and the admissions of their expert amply show that [REDACTED]

[REDACTED]

[REDACTED] For example, Dr. Subramanian [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

Respondents compound their deception with the following argument (R.Br. at 9):

² Respondents also admitted that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

R.Br. at 9. However, Respondents' own documents, slides and expert testimony show this argument to be false. As explained at pp. 28-32 of Complainants' Opening Brief, Respondents' expert testified that slide RDX-4.129C showed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thus, Respondents' own evidence – in which they argue that RDX-4.129C [REDACTED]

[REDACTED]

[REDACTED]. In short, all of the Accused Products infringe – even under the ALJ's incorrect claim construction.

C. **It is *Respondents* who Posit an Unsupported Hypothetical: There Is No Evidence That the ICOs in the Actual PLLs are Ever “Turned Off” During Operation.**

Respondents attempt to argue that the [REDACTED]

[REDACTED]. *See, e.g.*, R.Br. at 4-5. As discussed above, the evidence reveals this argument to be false. Rather, overwhelming evidence shows that [REDACTED] In an attempt to avoid infringement, Respondents have invented a hypothetical PLL operation that does not exist in any of the Accused Products, and is contradicted by the evidence. Specifically, Respondents argue that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

However, no evidence supports Respondents' concocted theory. Indeed, they fail to cite a single shred of evidence that [REDACTED]

[REDACTED]. The best Respondents can muster is testimony from their paid expert about what would happen *if* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Tellingly, neither Dr. Subramanian nor Respondents

cite any evidence that [REDACTED].³ Indeed,

Dr. Subramanian admitted that [REDACTED]

[REDACTED]

[REDACTED].

The fact that Dr. Subramanian cited no specific document to support this hypothetical is not surprising, given that the documents directly contradict this scenario. For example, RX-621C indicates that the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dr. Subramanian was

forced to agree: "[REDACTED]"

[REDACTED]

[REDACTED]

[REDACTED] See C.Br. at 29 (citing HT 1445:14-

³ When presented Respondents' hypothetical scenario of [REDACTED] However, he also failed to identify a single document to show that such a situation would ever occur during operation. See HT 204:20-205:1.

[REDACTED]

1446:24; 1447:9-25; RDX-4.129C). These documents and Dr. Subramanian’s concessions show that Respondents’ and Dr. Subramanian’s hypothetical is just that: a hypothetical that has nothing to do with the actual operation of any of the circuits used in the Accused Products.

D. The ALJ’s Claim Construction Expressly Permits Other Components to Determine Oscillator Frequency.

During claim construction, the ALJ adopted Respondents’ proposed construction of the phrase “entire oscillator,” and – significantly – rejected OUII’s proposed construction of the same term.⁴ See Order No. 31 at 40-41. The Staff’s construction sought to limit the “entire oscillator” in a way that requires “all components that *determine oscillator frequency*” to be “located on the same semiconductor substrate as the CPU. See S.Br. at 11. But the ALJ specifically rejected the Staff’s construction as addressing the alleged disavowal or disclaimer during prosecution “too broadly with the words ‘all components that *determine clock frequency*.’” Order No. 31 at 40. In other words, the ALJ found during claim construction that there is a significant difference between excluding oscillators that “rely on an external crystal/clock generator to generate a clock signal,” and oscillators that may use other components to “*determine oscillator frequency*.” While he excluded the former, he expressly permitted the latter. Thus, oscillators that use other components – like the components that [REDACTED] of the Accused Products [REDACTED] [REDACTED] are expressly permitted under the ALJ’s construction. See Order No. 31 at 40-41.

Accordingly, [REDACTED]
[REDACTED]
[REDACTED] is explicitly included within the scope of “entire oscillator,” as the ALJ construed that term. See R.Br. at 8-9; Order No. 31 at 40-41. Likewise, a PLL that

⁴ Although Complainants argue here with respect to the ALJ’s adopted claim construction, they nonetheless maintain that this construction is incorrect and should be reversed (for the reasons stated in their Petition). See C.Br. at 23.

[REDACTED]

controls the clock frequency by current-starving the delay elements,” as the Staff describes the current-starved technology in the Accused Products, is also explicitly within the scope of “entire oscillator,” as the ALJ construed that term. *See* S.Br. at 7; Order No. 31 at 40-41. This is because, as the ALJ held, excluding “all components that determine [*i.e.*, control] clock frequency” would be too broad of an exclusion. Order No. 31 at 40-41. Accordingly, despite Respondents’ best efforts, the current-starved technology in the Accused Products is expressly within the scope of the ALJ’s construction of “entire oscillator.”

OUII appears to recognize the tension between the current-starved technology in the Accused Products and the ALJ’s construction that excludes oscillators that “rely on a control signal or an external crystal/clock generator to generate a clock signal” – but does **not** exclude those that use other “components that **determine oscillator frequency**.” Thus, OUII consistently (and improperly) conflates clock generation and frequency control in its Opening Brief. *See* S.Br. at 7 (“these delay elements are controlled by PLLs based on external references using a comparator to set the delay so as to generate a clock signal **at the desired frequency**.”); *id.* at 8 (“all of the remaining accused products use current-starved technology so as to generate a clock signal **at the desired frequency**.”) However, as the ALJ held, using other components (even if they are not located on the same chip) “that **determine oscillator frequency**” is permissible, and should not be excluded from the scope of the ALJ’s construction of “entire oscillator.”

E. The Current Supplied to the Current-Starved Transistors in the Oscillator is an Expressly Claimed “Operational Parameter” Designed to Vary the Oscillation Frequency.

As explained in Complainants’ Opening Brief, bias current is an operational parameter that varies the clock rate (frequency) of the oscillator and the processing frequency of the CPU together. *See* C.Br. at 19-22. Claims 6 and 13 require clock rate and CPU processing frequency to vary in the same way as a function of an operational parameter and/or a fabrication parameter:

an entire oscillator . . . connected to said [CPU], said oscillator clocking said [CPU] at a clock rate . . . thus varying the processing frequency of [the CPU] and the clock rate of [the entire oscillator] in the same way as a function of parameter variation in one or more fabrication **or operational parameters**. . . .

[REDACTED]

The parties' experts confirmed that a [REDACTED]
[REDACTED] See HT (Oklobdzija) 385:17-386:5 [REDACTED]
[REDACTED], 386:15-19 [REDACTED]
[REDACTED] 383:17-384:7
(dimmer switch analogy); HT (Subramanian) 1385:23-1386:21 (confirming dimmer analogy),
1451:22-1453:9, 1454:10-22 (re: CX-621C.17; [REDACTED]). The documents in
evidence also confirm this. RX-621C.14 (last ¶) [REDACTED]
[REDACTED] RX-621C.27.

Likewise, the parties' experts confirmed that the [REDACTED]
[REDACTED]. See HT
(Oklobdzija) 370:24-371:10 [REDACTED]
[REDACTED]
[REDACTED] 364:1-365:2 ([REDACTED]
[REDACTED]
[REDACTED]; HT (Subramanian) 1388:1-7 [REDACTED]
[REDACTED] *Markman* Tr. (Subramanian) at 49:13-24, 51:17-21
("the PLL is going *to drive* some CPU unit"; "CO" or "controlled oscillator" [e.g., ICO] outputs
clock signal from PLL to CPU). Similarly, the documents and Respondents' demonstratives
show [REDACTED]
[REDACTED]. See C.Br. at 21 (reproducing RDXM 1-21). In other words, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] in the Accused Products, as required by claims 6 and 13.⁵

⁵ Respondents may argue that the focus at trial was on the supply voltage to the ICO, and not the bias current. That argument does not change the fact that the bias current is an operational parameter within the meaning of claims 6 and 13. See HT 1154:18-1155 (voltage converted to current to control oscillation). Unlike other claims that were pending at trial, claims

[REDACTED]

II. THE RECORD IS REPLETE WITH EVIDENCE OF COMPLAINANTS' INVESTMENT IN THE ONGOING LICENSING PROGRAM.

In response to Commission Question No. 2 regarding the ongoing nature of the licensing program and Complainants' investments, Respondents argue that Complainants did not present sufficient evidence at the hearing to establish the economic prong of their license-based domestic industry. Respondents are mistaken. As detailed in Complainants' Opening Brief, there is ample evidence of Complainants' continuing investment in the ongoing licensing program.

Specifically, the evidence establishes that [REDACTED]

[REDACTED], Complainants continued to license the portfolio (including the '336 patent) well after the Complaint was filed. CX-708C; CX-1332C; HT 120:21-121:15. Additionally, in the days immediately prior to and after the filing of the Complaint, [REDACTED]

[REDACTED] JX-0253C. Accordingly, the evidence shows that Complainants' licensing program is ongoing. *See also* HT 131:8-14, 1568:25-1569:4 (testimony by D. E. Leckrone and D. M. Leckrone that Complainants' licensing program is continuing). As to the ongoing nature of the revenue stream, [REDACTED]

[REDACTED]. CX-1332C at pp. 5, 10, 14.

[REDACTED]

[REDACTED]

6 and 13 focus on the clock rate of the oscillator varying in the same way as the CPU processing frequency, as opposed to the processing frequency *capability* of the CPU (*cf.* claims 1 and 11). Thus, any parameter change that varies the clock rate of the oscillator – which necessarily changes the CPU processing frequency – is sufficient to show infringement. During trial, Respondents attempted to establish that changing the various operational and fabrication (or processing) parameters, including processing, voltage, and temperature (“PVT”) would only affect the “process capability” or “performance capability,” but not the actual speed at which the device runs. *See* HT 1214:7-19. In particular, Respondents admitted that voltage is converted to current and changes the current supplied to the ICOs, which changes the frequency of the ICOs. This contradicts their repeated arguments that changes in PVT will not change the actual speed of the ICO. *See id.* HT 1213:15-20; 1253:5-16; 1271:9-1273:17; 1294:22-1295:24.

[REDACTED]

Complainants also presented evidence of their significant and ongoing investment in the licensing program. *See, e.g.* CX-1332C; CX-0705C; JX-0253C; HT 133:7-10, 1617:17-24, 1623:6-1627:6, 1751:24-1752, 1753:23-1757:2. The evidence also shows that [REDACTED]

[REDACTED]

[REDACTED]. HT 135:6-11, 1568:25-1569:4, 1576:7-20, 1577:22-25.

[REDACTED]

[REDACTED]. R.Br. at 15. [REDACTED]

[REDACTED]

[REDACTED]. HT 131:1-5. There is no dispute that a Complainant had the right to license the '336 patent when the Complaint was filed and throughout the Investigation.

[REDACTED]

[REDACTED] (HT 144:16-145:1). [REDACTED]

[REDACTED]. HT 92:12-16; 93:14-20.

Respondents also note that, in March 2013, TPL filed Chapter 11 petition. R.Br. at 15.

[REDACTED]

[REDACTED]. HT 135:1-11. Thus, the evidence shows that Complainants made significant investments in the ongoing licensing program.

III. COMPLAINANTS PROVIDED EVIDENCE SUFFICIENT TO ESTABLISH THEIR SIGNIFICANT INVESTMENTS UNDERLYING THEIR DOMESTIC INDUSTRY IN LICENSING THE '336 PATENT.

Respondents argue at length that Complainants' patent prosecution and litigation-related expenses should not be considered as support for Complainants' domestic industry. As confirmed in their Opening Brief, Complainants do not rely on those expenses to establish a domestic industry. *See* C.Br. at 35. The licensing-related expenses upon which Complainants do rely, however, are more than sufficient to establish Complainants' domestic industry.

[REDACTED]

At trial, Complainants provided both documentary and testimonial evidence of licensing-related expenses. *See, e.g.* CX-1332C; CX-0705C; JX-0253C; HT 133:7-10, 1617:17-24, 1623:6-1627:6, 1751:24-1752, 1753:23-1757:2. Respondents, however, contend that the evidence is inadequate because it consists primarily of “high level summaries and self-serving statements[.]” R.Br. at 20. But summary documents and testimony are routinely used to support claims of a domestic industry. For example, in *Certain Light-Emitting Diodes & Products Containing Same*, Inv. No. 337-TA-512, 2005 WL 2178981, ID (May 10, 2005), respondent argued that the evidence offered for the economic prong of complainant’s domestic industry was inadequate because it consisted only of testimony and summary documents, while the underlying reports supporting the documents were not admitted into evidence. *Id.* at *69. Respondent’s challenge to the reliability of the documentary and testimonial evidence was based on attorney argument and, was thus “unpersuasive, inadequate, and [was] rejected.” *Id.* The evidence was sufficient to establish the economic prong. *Id.* at *72. Thus, Complainants are not required to submit the underlying timesheets or other supporting documents in support of their domestic industry. Further, Respondents have failed to provide evidence sufficient to impugn the accuracy of Complainants’ evidence of domestic industry. Respondents’ baseless assertion that the evidence presented by Complainants was somehow inadequate should thus be rejected.

Respondents also take issue with Complainants’ apportionment of litigation-related expenses. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. HT 1768:19-1769:17, 1783:2-6.

[REDACTED]

[REDACTED]. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. HT 1548:3-1550:23, 1552:7-1553:13. [REDACTED]

[REDACTED]

[REDACTED]. See, e.g., HT 1776:10-13, 1787:13-1788:7. [REDACTED]

[REDACTED]. Accordingly, Complainants have provided evidence of non-litigation-related expenses sufficient to establish a domestic industry.

IV. THE ITC DID NOT REQUIRE PROOF OF ARTICLES THAT PRACTICE THE PATENT TO ESTABLISH A LICENSING-BASED DOMESTIC INDUSTRY UNTIL WELL AFTER THE INITIAL DETERMINATION ISSUED.

Respondents assert that, “when addressing the technical prong issue, Complainants have *flatly claimed* no such requirement exists for licensing-based domestic industries.” R.Br. at 25. To be clear, no technical prong requirement existed for licensing-based domestic industries when the Initial Determination issued. Complainants, Staff, and the ALJ *each* accurately cited the ITC standard as it existed until mid-December 2013. In other words, Complainants, along with the Staff and ALJ, did not “flatly claim” but rather *reasonably relied* upon extensive ITC and Federal Circuit precedent. To suggest that Complainants should have known about the ITC’s reversal of precedent before it occurred is a fiction.

A. For 25 Years, the Commission Held That a Licensing-Based Domestic Industry Did Not Require Proof of Articles Protected by the Patent.

Congress amended Section 337 in 1998 to broaden its scope and *reverse* Commission decisions that had narrowly defined the scope and nature of domestic industry, such as the

Commission's decision in *Certain Products with Gremlins Character Depictions*, Inv. No. 337-TA-201 (March 1986). See H.R. Rep. No. 99-581, at 112 (1986) (“[T]he [ITC] ha[d] interpreted the domestic industry requirement in an inconsistent and unduly narrow manner.”); see also, 132 Cong. Rec. 7119 (Apr. 10, 1986) (amendments necessary to avoid results in recent ITC decisions).⁷

Specifically, Congress amended section 337 to **enable** “complainants in [IP] rights cases [] to demonstrate that an industry in the United States relating to the articles **or IP right** concerned ‘exists or is in the process of being established.’” H.R. Rep. No. 100-40, at 154-55. Thus, in amending section 337 Congress **explicitly** contemplated that a complainant could prove domestic industry based **either** on the production of articles **or** based on the exploitation of its IP rights. The amendments “allow[] [the domestic industry requirement] to be satisfied by proof of **nonmanufacturing activity**, such as licensing and research.” *John Mezzalingua Assocs., Inc. v. Int’l Trade Comm’n*, 660 F.3d 1322, 1327 (Fed. Cir. 2011), *cert. denied*, S. Ct. No. 11-1427 (Oct. 9, 2012).

For 25 years a licensing-based domestic industry determination **did not** require a separate technical prong (*i.e.*, the complainant need not show that it or one of its licensees practices the patents-in-suit.)⁸ Instead, the Commission recognized that “[a] complainant in a patent-based

⁷ In *Gremlins*, the ITC found that a complainant’s licensing activities, though significant, did not amount to a domestic industry under section 337 “[b]ecause these activities relate solely to the servicing of the intellectual property rights in question and are not the type of activities that Congress intended to protect by section 337.” Comm’n Op., 1986 ITC LEXIS 313, at *171 (Mar. 1986).

⁸ See *e.g.*, *Certain Semiconductor Chips with Minimized Chip Package Size & Products Containing Same*, Inv. No. 337-TA-605, ID at 112 (Feb. 9, 2009) (unreviewed in relevant part); see also, *Certain Digital Satellite System (DSS) Receivers & Components Thereof*, Inv. No. 337-TA-392, Initial Determination (Oct. 20, 1997) (complainant satisfied the domestic industry requirement solely through investment of money in a patent licensing program); *Certain Semiconductor Chips with Minimized Chip Package Size & Products Containing Same*, Inv. No. 337-TA-432, Order No. 13, Initial Determination (Jan. 24, 2001) (summary determination granted in favor of complainant on the existence of domestic industry based solely on activities related to licensing); *Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof & Products Containing Same*, Inv. No. 337-TA-493, Initial Determination (Jun. 2, 2004) (U.S. investment in

section 337 investigation must demonstrate that it is practicing *or* exploiting the patents at issue.” *Certain Foam Footwear*, Inv. No. 337-TA-567, Order No. 34, Initial Determination, 2006 WL 3775922, at *2 (Nov. 7, 2006); *see also Certain Doxorubicin & Preparations Containing Same*, Inv. No. 337-TA-300 (“*Doxorubicin*”), Views of the Comm’n at 21 (May 2, 1991) (“a threshold issue in determining whether a domestic industry exists or is in the process of being established is whether the complainant is exploiting the claimed invention.”)

Indeed, the Commission stated that “[prong (C)] cannot apply to ‘articles,’ as do the first two factors, because ‘its,’ as a possessive pronoun, cannot logically refer to ‘articles.’ ‘[I]ts must refer to ‘the patent. . . concerned.’” *Doxorubicin*, ID, 1990 WL 710751, at *64 (Nov. 16, 1990) (unreviewed in relevant part). The Commission also recognized that “[prong (C)] lists ‘licensing’ as an activity that could support the finding of a domestic industry, and in this context, it seems more appropriate to refer to the licensing of a ‘patent,’ rather than ‘articles.’” *Id.*

In *affirming* the Commission’s finding of a licensing-based domestic industry *without* conducting a technical-prong analysis, the Federal Circuit noted the Commission’s historic interpretation *would be entitled to deference* under *Chevron*. *See InterDigital Commc’ns, LLC v. Int’l Trade Comm’n*, 690 F.3d 1318, 1330 (Fed. Cir. 2012) *on reh’g*, 707 F.3d 1295 (Fed. Cir. 2013) and *cert. denied*, 134 S. Ct. 469 (U.S. 2013).

B. Complainants, the OUII, and the ALJ All Reasonably Relied Upon the Commission’s Existing Licensing-Based Domestic Industry Standard.

Complainants, Staff, and the ALJ all reasonably relied on the Commission’s established precedent that complainants may establish a licensing-based domestic industry without proof of articles that practice the patent. Together, Complainants, Staff, and the ALJ cited and relied

exploitation of patent through licensing alone satisfied Subsection 337(a)(3)(C) for domestic industry); *Certain 3G Mobile Handsets & Components Thereof*, Inv. No. 337-TA-613, Order No. 42, Initial Determination (Mar. 10, 2009) (grant of summary determination of domestic industry based on licensing activities alone).

[REDACTED]

upon ITC precedent from four separate investigations spanning more than a decade: Inv. 337-TA-432 (2001); Inv. 337-TA-605 (2009); Inv. 337-TA-640 (2008); and Inv. 337-TA-694 (2011).

Complainants noted that “when relying on licensing to show a domestic industry, a complainant does not have to establish the technical prong; the economic prong is sufficient to establish a domestic industry.” C.PHB, 180 (citing *Certain Short-Wavelength Light Emitting Diodes, Laser Diodes & Products Containing Same*, Inv. No. 337-TA-640, Order No. 16, 2008 WL 2621356, fn. 3 (Jun. 18, 2008) (unreviewed)). OUII noted that “a complainant is not required to show that it or one of its licensees practices a patent-in-suit in order to meet the technical prong of the domestic industry requirement pursuant to the portions of 19 U.S.C. § 1337(a)(3)(C) pertaining to licensing.” S.PHB, 30 (citing *Certain Multimedia Display & Navigation Devices and Systems, Components Thereof, & Products Containing Same*, Inv. No. 337-TA-694, Comm’n Op. at 7-8 (Aug. 8, 2011); *Certain Semiconductor Chips with Minimized Chip Package Size & Products Containing Same*, Inv. No. 337-TA-432, Order No. 13, at 11 (Jan. 24, 2001) (unreviewed ID)). Finally, the ALJ held that under the Commission standard in this Investigation, “where a complainant is relying on licensing activities, the domestic industry determination does not require a separate technical prong analysis and the complainant need not show that it or one of its licensees practices the patents-in-suit.” ID at 296 (citing *Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, Inv. No. 337-TA-605, ID at 112 (Feb. 9, 2009) (unreviewed in relevant part)).

C. Requiring A Technical Prong Rejects 25 Years Of Commission Precedent.

Well after the Initial Determination issued, on December 19, 2013, the Commission announced a sea-change in its licensing-based domestic industry standard to require proof of an “article” protected by the patent, although the “article” apparently need not be produced in the U.S. See *Certain Computers & Computer Peripheral Devices, & Components Thereof, & Prods. Containing Same*, Inv. 337-TA-841, Commission ND, p. 3 (Dec. 19, 2013). As discussed in Complainants’ Opening Brief, the Federal Circuit’s recent *InterDigital* and *Microsoft* decisions affirmed the existing standard and did not compel this change. C.Br. at 36-42. Additionally, if

[REDACTED]

the “article” must be present but need not be made in this country, the ITC’s requirement that Complainants provide proof of “articles” *necessarily* introduces into section 337 both a foreign production and an importation requirement. Both requirements are antithetical to the very concept of a “domestic industry.”

Complainants respectfully submit that the Commission’s decision in the 841 Investigation is incorrect, introduces irreconcilable foreign production and importation requirements to section 337, and goes against 25 years of ITC and Federal Circuit precedent.

D. Complainants Demonstrated that Remanding to the ALJ Would Result in a Finding of Domestic Industry.

Had the Commission’s standard required, Complainants would have provided significantly more analysis and evidence showing that their licensees’ products practice the asserted patent. However, the ALJ applied the Commission’s then-existing standard and did not take evidence on the existence of “articles protected by the patent.” ID at 296. Because no technical prong was required, Complainants did not waste Commission time and resources proving a then irrelevant set of facts, in compliance with the Commission’s rules instructing all parties to act expeditiously and avoid unnecessary delay. *See e.g.*, Rule. 210.2. Rather, Complainants briefly noted that their licensees’ products [REDACTED] practiced the ’336 patent. HT 733:2-736:7; CDX-12C; CDX-1163C. Even this digression drew inquiry from the ALJ as to why Complainants were discussing licensee products. HT 734:10-13 (“For my information, why are we delving into an [REDACTED] product?”). Complainants’ digression, however, shows that the record contains evidence of articles protected by the patent.

Indeed, in *Interdigital* the Federal Circuit affirmed the existence of a licensing-based domestic industry based on less evidence. *See Interdigital*, 707 F.3d at1299. There, the Federal Circuit supported its decision based in part on the fact that InterDigital had revenue-producing licenses with “*major manufacturers* of wireless devices, including Samsung, LG, Matsushita, Apple, and RIM.” *Id.* Here, it is undisputed that Complainants have license agreements with “major manufacturers of wireless devices,” including [REDACTED]

[REDACTED]

[REDACTED] Further, while InterDigital offered no evidence of articles protected by the patent, Complainants in this case provided expert testimony that [REDACTED]

[REDACTED]. HT 733:13-736:7; CDX-1163C. Accordingly, as in *InterDigital*, the record contains sufficient evidence to support a conclusion that “the patents in suit protect the technology that is, according to [Complainants’] theory of the case, found in the products that it has licensed and that it is attempting to exclude.” *Interdigital*, 707 F.3d at 1299.

At the very least, the record shows that more information relevant to technical prong could be obtained. Because Complainants’ licensee products also incorporate ARM processors and are feature-competitive with Respondents’ products, such an analysis would likely result in the same conclusions as those Dr. Oklobdzija reached regarding Respondents’ products with respect to infringement. *See e.g.*, CDX-12C; CDX-1163C. Thus, should the Commission conclude that it requires more evidence regarding articles protected by the patent, Complainants respectfully request that the Commission reopen the record and remand the case to the ALJ to allow for discovery and an evidentiary determination regarding the technical prong.

V. RESPONDENTS’ ARGUMENTS ON REMEDY AND BOND LACK MERIT.

A. An Exclusion Order Should Not Contain Any Carve-Outs Or Exemptions.

1. An Exclusion Order Should Include All Infringing Products Within the Scope of the Investigation.

Respondents cut and paste their argument that any exclusion order should be limited only to certain accused product categories. *Compare* R.PI.Br. at 3-4 (Section II.A) *with* R.PHB at 176-77 (Section VI.A). In their post-trial reply brief, Complainants noted that this argument is contrary to Commission precedent and cited to *Certain Flash Memory & Prods. Containing*

[REDACTED]

Same, Inv. No. 337-TA-685 (Feb. 28, 2011). *See* C.PHR at 85-86 (Section VII.B.1).

Respondents failed to address this precedent or explain why the Commission should deviate it.⁹

Respondents also renew their argument that “[a]ny remedy should be limited *only* to products containing semiconductor chips for which Complainants offered infringement evidence.” *Compare* R.PI.Br. at 4 *with* R.PHB at 177-78. Respondents wholly ignore Complainants’ argument that the Commission typically issues limited exclusion orders as defined by the notice of investigation *regardless* of whether the particular models were specifically addressed in the Commission’s infringement analysis. C.PHR at 88. Respondents also ignore Complainants’ cited case, *Certain Mobile Devices, Associated Software, & Components Thereof*, Inv. No. 337-TA-744, Ltd. Excl. Order at 1, 2 (2012). Finally, Respondents fail to address any of the arguments Complainants raised regarding each of Respondents’ cited cases. C.PHR at 88-89.¹⁰

2. An Exclusion Order Should Not Be Limited to Products Containing Specific Chips.

Respondents also renew their argument that any exclusion order should “carve out” accused products that use certain semiconductor chips. *Compare* R.PI.Br. (Section II.B.2) *with* R.PHB (Section VI.B). In their post-trial reply brief, Complainants noted that the Commission’s remedial orders encompass *all* articles within the scope of the notice of investigation. *See* C.PHR at 86 (Section VII.B.2). In support, Complainants cite to the Commission’s opinion in

⁹ Complainants submit, as Exhibit N to this brief, a proposed amended limited exclusion order that removes the Nintendo Respondents because Complainants did not assert Claims 6 and 13 (or their dependent claims) against Nintendo.

¹⁰ Respondents also cite to the U.S. Intellectual Property Enforcement Coordinator’s 2013 Joint Strategic Plan on Intellectual Property Enforcement (the “Plan”) to suggest that the Commission should specifically enumerate and exempt from a remedial order products found to be noninfringing. R.PI.Br. at 6. But the Plan does not suggest any such enumeration. Plan at 17, <http://goo.gl/iZhys>. Respondents have shown no evidence that CBP would have difficulty determining whether a product to be imported is subject to the proposed exclusion orders or that Complainants would misuse a remedial order to cover chips and products which were never at issue or which were already deemed to be noninfringing. Therefore, as the ALJ has found, “there is no justification for the deviations proposed by Respondents from the Commission’s standard practice with respect to the issuance of a limited exclusion order.” RD at 7.

[REDACTED]

Certain Hardware Logic Emulation Sys. & Components Thereof, Inv. No. 337-TA-383, USITC Pub. 3089 at 16, 31-32 (Apr. 1, 1998). Respondents fail to rebut this precedent and argument.

The only new authority that Respondents identify is *Certain Elec. Digital Media Devices & Components Thereof*, where a limited exclusion order carved out specific design-arounds found to be noninfringing by the ALJ. *See Certain Elec. Digital Media Devices*, Inv. No. 337-TA-796, Ltd. Excl. Order at ¶ 4 (Aug. 9, 2013). However, the Respondents here are not requesting a carve-out for design-arounds, but instead to exclude specific Qualcomm chips within some of the Accused Products (“any remedial order should expressly carve [the chips], and *any product containing these chips*, out of the scope of any exclusion order”). This request goes too far. An otherwise infringing accused product (using an infringing chip) should not be carved out merely because it also contains one of the Qualcomm chips that was determined to be non-infringing.

3. There Is No Basis For Carving Out Specific ZTE and Huawei Products.

Respondents also renew their request that certain ZTE and Huawei products should be carved out. *Compare* R.PI.Br. at 8-9 (Section II.B.3) *with* R.PHB at 178-79 (Section VI.B). Complainants noted previously that in Order 54, the ALJ specifically denied Huawei and ZTE’s request for a carve-out, relying on authority that the Commission does not normally identify or exclude specific products. *See* C.PHR at 87 (Section VII.B.2) (*citing Certain Mobile Devices, Associated Software, & Components Thereof*, Inv. No. 337-TA-744, Ltd. Excl. Order at 1, 2 (2012)). Respondents fail to address either Order 54 or *Certain Mobile Devices* in their brief.

Instead, Respondents recycle the same defective cases they relied on in their post-trial brief, including the *dissenting* and non-binding views of several Commissioners in *Certain Baseband Processors*, Inv. No. 337-TA-543, 2007 ITC LEXIS 621, at *286 (June 19, 2007). In their post-hearing reply brief, Complainants identified a recent Commission opinion that distinguishes the *exact* cases Respondents rely upon and rejects a carve-out from the exclusion order. *See* C.PHR at 86 (Section VII.B.2) (*citing Certain MEMs Devices & Products Containing*

[REDACTED]

the Same, Inv. No. 337-TA-700, Comm’n Op., 2011 WL 1867927, at *15 (Nov. 2011)).

Respondents simply ignore *Certain MEMs Devices* and Complainants’ corresponding arguments.

4. EPROM Does Not Apply Because Respondents’ Accused Products Are Not “Downstream” Products.

Respondents devote a significant number of pages regurgitating their detailed analysis under the EPROMs factors. *Compare* R.PI.Br. at 9-15 (Section II.C) *with* R.PHB at 181-187 (Section VI.D). However, this lengthy analysis is wholly irrelevant because Respondents’ Accused Products simply are not downstream products. Complainants accuse Respondents’ finished goods, including smartphones, tablets, and GPS receivers, of infringing the ’336 patent, not the individual CPUs within those products. Moreover, Complainants’ infringement allegations are *not* “entirely based upon the use of semiconductor chips incorporated into Respondents’ products” (R.PI.Br. at 9), but instead require, among other things, an “off-chip external memory bus” and an “off-chip external clock.” *See* C.PHR at 89-90 (Section B.4). Once again, Respondents fail to acknowledge or address any of Complainants’ arguments or legal authority from Complainants’ post-hearing reply in their current brief.

Instead, Respondents attempt to manufacture a new argument that criticizes the ALJ’s “conclusory” finding that the Accused Products are not downstream products. R.PI.Br. at 15. Not so. The ALJ’s finding did not warrant “further explanation” because it was obvious that the Accused Products are just that: Accused Products. [REDACTED]

[REDACTED] Complainants do not, and have not, requested that such downstream products (such as automobiles, airplanes, and boats) be covered in an exclusion order.

Respondents also attempt to manufacture another new argument that different ALJs have divergent views in applying EPROMs. R.PI.Br. at 16. Respondents grossly mischaracterize the ALJ’s determination in Inv. 337-TA-784. In that case, Respondent LG manufactured the accused products, which were LEDs, and LG also manufactured downstream products that were not accused, but which used LG LEDs, including LG’s televisions, monitors, and other lighting

[REDACTED]

products. *See Certain Light-Emitting Diodes and Prods. Containing the Same*, Inv. No. 337-TA-784, Rec. Determin., 2012 WL 3246531 at *2 (July 23, 2012). While both the accused products and downstream products were made by LG, there was no confusion as to what the accused products were (LEDs) and what the downstream products were (*e.g.* televisions). Under no proper interpretation of this case did the ALJ suggest that the LEDs themselves were downstream products, which is what Respondents attempt to argue here.

5. No Exemption for Warranty Repair or Replacement is Justified.

Respondents repeat, verbatim, their argument for an exclusion order exemption for warranty repair or replacement. *Compare* R.PI.Br. at 16-17 (Section II.D) *with* R.PHR at 187-88 (Section VI.E). Yet again, Respondents made no attempt to respond to Complainants' prior arguments, namely that Respondents' expert Dr. Vander Veen failed to provide any evidence of a single repair, replacement, or warranty claim, or why Respondents could not simply issue a refund pursuant to their own warranty policies. *See* C.PHR at 90 (Section B.5).

6. An Adjustment Period or a Certification Provision with Customs Is Unwarranted.

Aside from a cite to the Fichter declaration, Respondents recycle, verbatim, their old argument that any exclusion order should include a certification provision with Customs and an adjustment period. *Compare* R.PI.Br. at 17-18 (Section II.E) *with* R.PHR at 188-89 (Section VI.F). Respondents once again ignore Complainants' post-hearing reply detailing the complete absence of any evidence that (1) Respondents can or will redesign their products; (2) excluding Respondents' infringing products will disrupt the domestic supply; (3) an adjustment period would serve any purpose aside from permitting Respondents' continued infringement; and (4) Respondents import non-infringing wireless consumer electronics devices. *See* C.PHR at 91.

Notably, the new Fichter declaration should not be considered by the Commission. The evidentiary record is closed in this investigation, and Respondents chose not to bring Mr. Fichter to the hearing to testify. Moreover, the Fichter declaration only applies to HTC, and not the

[REDACTED]

remaining Respondents. Finally, Respondents fail to indicate what a “reasonable adjustment period” should be.

B. Cease And Desist Orders Against Certain Respondents Should Issue.

Respondents first repeat their old argument that neither Complainants nor OUII explained why the [REDACTED] inventory snapshot is commercially significant. *Compare* R.PI.Br. at 19 (Section III.A) *with* R.PHR at 90-91 (Section VII.B). However, Respondents already conceded this argument in their prior briefing where they only disputed cease and desist orders directed to ZTE, Huawei, Kyocera, LG, Novatel, and Samsung. *See* R.PHB at 189-90. Complainants also cited evidence from the [REDACTED] stipulation regarding [REDACTED] [REDACTED] [REDACTED] [REDACTED] along with Commission authority holding that [REDACTED] was commercially significant. *See* C.Br. at 45 (*citing In re Certain Self-Cleaning Litter Boxes & Components Thereof*, Inv. 337-TA-625, RD on Remedy and Bond (Dec. 1, 2008)). Respondents’ reliance on *Fuji Photo Film* is entirely misplaced because that case provides no guidance as to how the Commission found that no inventory was maintained. *Fuji Photo Film CO., Ltd. v. Int’l Trade Comm’n*, 386 F.3d 1095, 1106 (Fed. Cir. 2004). Nor does *Fuji Photo Film* stand for the proposition that a snapshot is insufficient to establish a commercially significant inventory.

Next, Respondents largely copy and paste their prior arguments that ZTE, LG, Huawei and Samsung do not maintain commercially significant inventory. *Compare* R.PI.Br. at 20-22 (Section III.B) *with* R.PHB at 189-90 (Section VI.G). Complainants have dropped their request with respect to ZTE and LG. As to [REDACTED] Respondents state that “in its Pre-Hearing brief and Post-Hearing briefs, TPL failed to assert that a cease and desist order should be issued as to [REDACTED].” R.PI.Br. at 21. This is demonstrably false. In both their pre-hearing and post-hearing briefs, Complainants stated that “cease and desist orders should be directed to all Respondents, including [REDACTED] C.C.PHB at 224-25; C.PHB at 191 (identical language). Finally, Complainants noted that [REDACTED] to having a commercially significant

[REDACTED]

inventory. *See* C.Br. at 46 & fn. 14 (citing *Certain Electronic Digital Media Devices & Components Thereof*, Inv. No. 337-TA-796, RD (Nov. 7, 2012)).

C. Respondents Should Be Required To Post a Bond Equal to 100% of Entered Value of the Devices During the Presidential Review Period.

Respondents again largely recycle their post-hearing brief and reply. *Compare* R.PI.Br. at 22-24 (Section IV) *with* R.PHB at 190-91 (Section VI.H) *and* R.PHR at 91-92 (Section VII.C). For this reason, they ignore the evidence that Complainants' ability to enforce their IP rights is critical to protecting their licensing-based domestic industry. *See* C.PHR at 92. Respondents also ignore the fact that the Commission protects Complainants' licensing-based domestic industry to the same extent it protects a manufacturing-based domestic industry. *See id.* at 93, fn. 52. Moreover, Respondents' cited authority is factually distinguishable because in those cases, complainant failed to offer evidence to justify a bond. Here, in contrast, Complainants have furnished the Commission with ample evidence from the record showing that the Accused Products vary significantly in terms of function, features, and prices. *See* C.Br. at 48. Complainants have also provided evidence to show that their licensee products likewise differ in type of product and price. *See id.* Accordingly, given the impossibility to calculate a clear price differential, a bond equal to 100% of the selling price of the Accused Products should be entered. *See generally* C.PHR at 92-94 (Section VII.D); C.Br. at 47-49 (Section VI.A.3).

Conclusion

For the foregoing reasons, Complainants respectfully ask the Commission to find that Respondents have violated Section 337, and enter appropriate remedies.

Dated: January 6, 2014

Respectfully submitted,

By: /s/ James C. Otteson

James C. Otteson

Thomas T. Carmack

Philip W. Marsh

Agility IP Law, LLP

149 Commonwealth Drive

Menlo Park, California 94025

Telephone: (650) 227-4800

TPL853@agilityiplaw.com

Counsel for Complainant

Technology Properties Limited LLC and

Phoenix Digital Solutions LLC

/s/ Charles T. Hoge

Charles T. Hoge

KIRBY NOONAN LANCE & HOGE, LLP

350 Tenth Avenue, Suite 1300

San Diego, California 92101

Telephone: (619) 231-8666

choge@knlh.com

Counsel for Complainant Patriot Scientific
Corporation



APPENDIX OF EXHIBITS

| | |
|-------|--|
| | Attachment Addressing Public Interest Briefs |
| Ex. M | Amended List of Accused Products |
| Ex. N | Proposed Amended Limited Exclusion Order |

**Attachment Addressing Respondents' and
Third Party Sprint's Briefs on the Public Interest**

A. Respondents, Not Complainants, Have The Burden Of Proving Public Interest.

As a threshold matter, even though the burden of proof lies with them, Respondents nevertheless continue to complain that Complainants have not furnished evidence of public interest:

- Complainants have failed to demonstrate that their licensees have the capacity to [replace the subject articles]. R.PI.Br. at 26, 30.
- There is still no evidence that these licensees' products are interchangeable, or that they have the infrastructure or the capacity to fill the void... *Id.* at 26-27, 30-31.
- Complainants have also failed to show that their licensees can increase production within a commercially reasonable time... *Id.* at 27, 31.
- Nor have Complainants provided evidence that their licensees' products are comparable to the products that would be subject to an exclusion order. *Id.*
- Complainants did not produce sufficient evidence that their licensees produce like or directly competitive products in the United States. *Id.* at 34.
- There is also no evidence in the record as to where these licensees actually manufacture their products, so there is no evidence that U.S. production of these products would be affected should Respondents' products be subject to an exclusion order or cease and desist orders. *Id.*

As discussed in Complainants' Opening Brief, the statute unmistakably mandates that the Commission *shall* issue an exclusion order *unless* the public interest dictates otherwise. 19

U.S.C. § 1337(d)(1). The Federal Circuit has confirmed this:

By statute, the Commission is **required** to issue an exclusion order upon the finding of a Section 337 violation absent a finding that the effects of one of the statutorily-enumerated public interest factors counsel otherwise.

Spanion, Inc. v. Int'l Trade Comm'n, 629 F.3d 1331, 1358 (Fed. Cir. 2010). Here, Respondents have failed to proffer evidence sufficient to show that the public interest dictates that no exclusion order issue.

[REDACTED]

B. Respondents Offer No Evidence That A Remedial Order Would Adversely Affect United States Consumers.

1. Respondents' recycled arguments should be rejected because Respondents fail to address Complainants' rebuttal and legal authority from their post-hearing reply brief.

Respondents first recycle their old argument that a remedial order would deprive U.S. consumers of Respondents' goods and services, speculating that this would lead to a reduction in supply and higher prices. *Compare* R.PI.Br. at 26-27 *with* R.PHB at 192-93. However, Respondents fail to address any of Complainants' arguments from Complainants' post-hearing reply brief:

- Complainants' licensees, [REDACTED] are capable of supplying U.S. consumers with devices with the same or similar functionality as Respondents'.
- Respondent Samsung acknowledges that its products are directly competitive with, and provide the same or similar functionality as, products manufactured by [REDACTED]. *See Certain Electronic Devices, Including Wireless Communication Devices, Portable Music & Data Processing Devices, and Tablet Computers*, Inv. 337-TA-794, Samsung's Statement on the Public Interest at 5 (Oct. 22, 2012).
- Respondents' expert, Dr. Vander Veen, conceded that if U.S. consumers were not able to purchase Respondents' Accused Products due to an exclusion order, they could purchase a non-infringing alternative from one of Complainants' licensees. HT 1863:3-12.
- Respondents cite no evidence to suggest an increase in prices, or by how much prices might increase. In any event, unidentified price increases do not outweigh the public interest in protecting intellectual property rights. *Certain Ink Jet Print Cartridges & Components Thereof*, Inv. No. 337-TA-446, Comm'n Op. at 14 (May 8, 2002) (increase in prices for retailers and consumers does not outweigh interest in protecting intellectual property rights).

See C.PHR at 95-96 (Section VIII.A). Accordingly, Respondents have implicitly conceded that they have no response to Complainants' arguments and cited legal authority.

Respondents also rely on the conclusory testimony of their expert, Dr. Vander Veen, who simply speculates on a hypothetical impact with no data or analysis supporting his claims. HT

[REDACTED]

1844:-8-18; 1846:16-22. Instead, Dr. Vander Veen merely states that he read some market-share information but he fails to link Respondents' market share with any perceived impact on supply or prices. HT 1846:9-15; 1848:24-1849:8.

Respondents also insert a new sentence in their otherwise recycled material requesting, for the first time, a transition period for any exclusion order. R.P.I.Br. at 26. Respondents' untimely request should be deemed waived. *See* Administrative Law Judge Gildea's Ground Rule 10.1. Moreover, Respondents fail to specify the exact transition period requested, either in their brief or in the supporting declaration of Martin Fichter. Finally, the Fichter declaration is an improper attempt to introduce evidence after the record in this investigation has already closed and, in any event, only applies to HTC and none of the other Respondents.

Unlike Respondents, third party Sprint Spectrum, L.P. requests a twelve-month transition period. Sprint.Br. at 4-7. However, Sprint furnishes no evidence that justifies or explains such a twelve month transition. Sprint's attempt to analogize the investigation in 337-TA-710 related to T-Mobile and HTC is simply inapposite because, unlike here, HTC and T-Mobile requested a four month period to help prepare design-around products. Respondents have not suggested that they intend to design-around the Accused Products nor would such a plan be feasible given the core functionalities of the infringing microprocessor chip and clocks used in each Accused Product.

2. Respondents' new request for the Commission to depart from its long-standing public interest analysis should be rejected.

Respondents request, for the first time, that the Commission consider as part of its public interest analysis whether the patented component of an accused product is too minor to qualify for an exclusion order. R.P.I.Br. at 27-30. Sprint joins in this request. Sprint.Br. at 1-3. Respondents admit that they are requesting the Commission to make new law. R.P.I.Br. at 28 ("Respondents respectfully submit that the Commission's current statutory mandate . . . *should* include [this new] analysis...") (emphasis added). Sprint likewise recognizes that the actual law is different from what it requests. Sprint.Br. at 3 (citing as support mere *recommendations* by

[REDACTED]

the FTC and the policy *goals* of the President). However, there is no legal or factual basis for such an extraordinary departure from well-settled Commission law.

The Commission has always recognized that its “analysis of the public interest factors under the statute is properly limited to the public interests enumerated in the statute.” *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 153 (June 19, 2007); 19 U.S.C. §§ 1337(d) and (f) (enumerating the four public interest factors that the Commission can consider). In its history, the Commission has *never* considered the importance of an infringing component within the accused product as part of the public interest analysis.

In *Certain Baseband Processor Chips and Chipsets*, the complainant sought exclusion and cease and desist orders covering entire wireless devices (including cell phones) containing the infringing chip components. Inv. No. 337-TA-543, Comm’n Op. at 1. The Commission held that the issuance of such orders did not raise public interest concerns. *Id.* at 154. In doing so, the Commission did not consider the relative importance of the infringing chips to the cell phones themselves, but instead took great care to limit its public interest considerations to the four statutory factors. *Id.* at 153. Here, the Commission should follow its own precedent in *Certain Baseband Processor Chips and Chipsets* and, for that matter, an entire line of cases limiting the public interest analysis to the enumerated four statutory factors. *See, e.g., Certain Personal Data & Mobile Communications Devices and Related Software*, Inv. No. 337-TA-710, Comm’n Op. at 4, 6, 67-83 (Dec. 29, 2011) (omitting analysis of the relative importance of the infringing structures within the accused smartphones to automatically highlight information (*e.g.*, a telephone number) in a document to enable certain linked actions (*e.g.*, calling that telephone number)); *Certain Systems for Detecting & Removing Viruses or Worms, Components Thereof, & Products Containing Same*, Inv. No. 337-TA-510, Comm’n Op. at 4, 6, 7 (Aug. 23, 2005) (omitting analysis of the relative importance of the infringing software module within the accused systems, including hardware components, for detecting and removing viruses or worms).

[REDACTED]

Respondents’ cited Commission cases are not relevant to the public interest analysis, and Respondents admit as much. *See* R.P.I.Br. at 28-29 (“Indeed, *at least in other contexts*, the Commission has “consider[ed] the importance of the component when comparing the value of the infringing articles to the value of the downstream products in which they are incorporated.”). Those “other contexts” simply have no bearing on the Commission’s statutory test for public interest, nor are Respondents’ wireless consumer devices “downstream products.”

Bereft of any controlling Commission precedent, Respondents instead misapply the public interest inquiry in the context of a permanent injunction in a federal district court. R.P.I.Br. at 28 (*citing Apple, Inc. v. Samsung Electronics Co., Ltd.*, 909 F. Supp. 2d 1147, 1155 (N.D. Cal. 2012), *remanded by* 735 F.3d 1352, 1372-73 (Fed. Cir. 2013)). Sprint relies on the same authority and arguments. Sprint.Br. at 2 and fn. 6. But Respondents and Sprint cannot fit a square peg into a round hole. The statutory public interest factors that the Commission is mandated to consider before providing a remedy for a violation of section 337 are entirely different from the inquiry that a district court undertakes before granting an injunction. *Compare* 19 U.S.C. § 1337(d) (evaluating four public interest factors prior to granting an exclusion order) *with eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006) (evaluating four factors—irreparable injury, inadequacy of monetary damages, balance of hardships, and public interest—before granting a permanent injunction). Unlike the Commission’s statutory factors, the *eBay* public interest factor considers “the cost to the judiciary as well as to the parties of administering an injunction.” *See Apple*, 909 F. Supp. 2d at 1162.

In fact, the Federal Circuit has specifically held that the *eBay* factors should *not* be applied by the Commission in Section 337 actions:

Given the different statutory underpinnings for relief before the Commission in Section 337 actions and before the district courts in suits for patent infringement, **this court holds that *eBay* does not apply to Commission remedy determinations under Section 337.** The Commission is not required to apply the traditional four-factor test for injunctive relief used by district courts when deciding whether to issue the equitable remedy of a permanent injunction. Unlike the equitable concerns at issue in *eBay*, the Commission's issuance of an exclusion order is based on the statutory criteria set forth in

[REDACTED]

Section 337. Spansion's argument that the term “public welfare” is so “broad and inclusive” that Congress must have intended it to include the traditional equitable principles reflected in the *eBay* standard is unpersuasive when viewed in the context of Section 337. **The scope of the public interest factors recited in Section 337 is a matter of statutory interpretation not necessarily informed by the same principles of equity relevant to the grant of permanent injunctive relief under 35 U.S.C. § 283.**

Spansion, Inc. v. Int'l Trade Comm'n, 629 F.3d 1331, 1359 (Fed. Cir. 2010). In short, the position that Respondents and Sprint advocate directly contravenes the Federal Circuit’s holding in *Spansion*. This is not surprising because the federal courts and ITC are not designed to provide overlapping remedies. *See id.* (“The difference between exclusion orders granted under Section 337 and injunctions granted under the Patent Act, 35 U.S.C. § 283, follows ‘the long-standing principle that importation is treated differently than domestic activity.’”) (*citing Certain Baseband Processor Chips and Chipsets*, Inv. No. 337-TA-543, Comm’n Op., n. 230 at 63).

The public interest analysis is different because the options for remedy are different. In the ITC, monetary damages do not exist, so the *sole* and *normal* remedy is an exclusion order and/or cease and desist order. *See Spansion*, 629 F.3d at 1358-59 (holding that “Congress intended injunctive relief to be the normal remedy for a Section 337 violation” because it eliminated the monetary remedy, removed the requirement of proof of injury, and made it unnecessary to show irreparable harm). In contrast, a federal court will only consider awarding a permanent injunction when monetary damages are inadequate to compensate for the injury. *See Apple, Inc. v. Samsung Electronics Co., Ltd.*, 735 F.3d at 1359. Accordingly, while an exclusion order is routinely granted in the ITC for infringing activity¹¹, a permanent injunction in federal

¹¹ “[T]he statute requires relief for an aggrieved patent holder, except in those limited circumstances in which the statutory public interest concerns are so great as to trump the public interest in enforcement of intellectual property rights.” *Certain Baseband Processor Chips and Chipsets*, Inv. No. 337-TA-543, Comm’n Op. at 153-54; *Certain Hardware Logic Emulation Systems and Components Thereof*, Inv. No. 337-TA-383, 1998 WL 307240 at 19 (March 1, 1998) (citing S. Rep. 1298, 93rd Cong., 2d Sess. 197 (1974)). In fact, the Commission “has found that public interest considerations outweigh the need for protection of the intellectual property rights at issue in only three investigations.” *Certain Baseband Processor Chips and Chipsets*, Inv. No. 337-TA-543, Comm’n Op. at 137.

[REDACTED]

court is “a drastic and extraordinary remedy, which should not be granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743, 2761 (2010). Finally, unlike the ITC, where the burden is on the *infringing party* to prove overriding public interest factors that trump the accepted public interest in patent enforcement, a federal court requires the *patent owner* to prove that public interest would not be disserved by a permanent injunction. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. at 391. For the above reasons, the Commission should reject Respondents’ invitation to misapply the public interest standards of a permanent injunction analysis to the Commission’s own analysis of the statutory public interest factors in the context of section 337 remedial orders.

Even if the Commission were inclined to conflate the *eBay* factors with its own public interest analysis (which would contravene explicit Federal Circuit authority), remedial orders would still be appropriate here. Unlike in *Apple*, where the court found that the “tap-to-zoom” claimed feature was not “necessary for the product to function, or a core technology of the product,” *Apple*, 909 F. Supp. 2d at 1155, the infringing components in this investigation are microprocessors and clocks, which are critical to running virtually every single function in the Accused Products. Both Complainants’ expert, Dr. Oklobdzija, and Respondents’ expert, Dr. Subramanian, testified that to achieve the high frequency necessary for the operation of modern wireless products, the oscillator that generates the clock signal for the CPU *must* be integrated on the chip as claimed by the ’336 patent. *See* HT 262:7-11, 378:7-379:13, 414:15-415:1 (Oklobdzija testimony); HT 1378:24-1379:3, 1379:10-1380:13 (Subramanian testimony).

Indeed, notwithstanding Respondents’ attorney arguments to the contrary, the Accused Products *require* high-speed microprocessors to perform virtually all functions, including running music players, digital cameras, and personal digital assistant features. In fact, Respondents’ infringing activities include using off-chip external clocks that are connected to


monopoly granted by the Patent Clause of the U.S. Constitution should be supplanted so that they can negotiate a better license rate.

See C.Br. (Attachment Addressing Public Interest) at 3; C.PHR at 94 and fn. 54.

In fact, the only new argument presented in this section is the final paragraph, where Respondents argue that replacing large portions of the cell phone market is lengthy and difficult. R.PI.Br. at 31-32. Unfortunately, Respondents attempt to import new evidence in the form of links to news articles as well as the Fichter declaration. In addition to the impropriety of attempting to introduce evidence after the hearing, the news articles themselves also contain multiple hearsay and other evidentiary problems. Accordingly, the Commission should not consider any of these articles or the declaration.

Section V.B.3 and V.B.4 of Respondents' Joint Brief is essentially a repackaged version of its earlier brief. *Compare* R.PI.Br. at 32-34 *with* R.PHB at 194-95. With little to offer substantively, Respondents instead resort to name calling. Indeed, Respondents pepper their entire section on public interest with repeated and tiresome attacks:

- Complainants are patent assertion entities. R.PI.Br. at 32.
- Complainants are non-practicing entities. *Id.* at 34.
- ...as patent assertion entities whose business model does nothing to encourage innovation... *Id.*
- ... group of patent assertion entities that produce no product. *Id.* at 25.
- ... patent assertion entities whose sole business is to extract revenues from existing electronics producers. *Id.*
- ... their business model focuses on extracting payments from companies... *Id.* at 32.
- Complainants' own business model seeks solely to monetize patents. *Id.* at 33.
- Complainants purchased the asserted patent solely to assert it against established industry participants. *Id.* at 32.
- They do not encourage the adoption of technology. *Id.*

- 
- They conduct no research, make no products and sell no services. *Id.*
 - Complainants have no products... *Id.* at 33.
 - Because Complainants make no products... *Id.*
 - ... they make no product... *Id.* at 34.
 - They do not produce anything... *Id.*
 - ...the asserting party produces no products... *Id.*

Enough is enough. As an initial matter, Complainants are not patent assertion entities.

Moreover, Complainants vigorously dispute the notion that they do not encourage innovation, or provide a benefit to the public. Nor should the Commission deviate from the four corners of its statutory analysis of public interest and create the new law that Respondents stunningly propose: that *by definition*, the “[public] interest simply does not extend to granting patent assertion entities like these Complainants the right to . . . obtain[sic] an exclusion order at the Commission.” *Id.* at 33.

First, Respondents are wrong that Complainants make no products. Daniel Leckrone, chairman of Complainant TPL, testified that he founded TPL in 1988, and that TPL had both *product development* and licensing arms. HT 100:24-101:1; 120:1-4. Indeed, the design for the ShBoom chip (which embodies the ‘336 patent) was conceptualized and laid out with design tools in the OKI design center in August 1989, and the chip went into fabrication. HT 110:18-112:23. In addition, TPL also had operational demo boards to showcase its pioneering chip. HT 113:16-21.

Second, even though Complainants no longer make these chips, they nevertheless provide a crucial benefit to the public, including American inventors. It is well-known that patent enforcement is incredibly time consuming and costly. History is replete with examples of famous patent inventors who chose to forego creating their own businesses and products and instead licensed or assigned the rights to their patents to other companies. Thomas Edison

[REDACTED]

“depended heavily on assignments to finance the early stages of his career” and “transferred at least partial rights to twenty of [his] patents.”¹³ Charles Goodyear, who patented the process for vulcanized rubber in 1844, never manufactured or sold rubber products¹⁴ but instead sold his patent rights to other individuals and firms.¹⁵ Elias Howe, Jr., who invented the lockstitch in 1843, “su[ed] the infringers of his patent for royalties” as his “main occupation” for “several years.”¹⁶ The list of early nineteenth century patent inventors who chose the patent licensing business model goes on: William Woodworth (planing machine), Thomas Blanchard (lathe), and Obed Hussey and Cyrus McCormick (mechanical reaper).¹⁷ Furthermore, even in those early years, markets in patents existed to facilitate the secondary sale, licensing, or other uses of patented innovation. *Id.*

An inventor is not necessarily a business person; he or she is an idea guru who may have no interest in manufacturing. The patent system was designed to promote the discovery and disclosure of new ideas, not to encourage the founding of businesses to make products. *See* U.S. Constitution, Article I, Section 8, Clause 8 (“The Congress shall have power to ... promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries...”) (emphasis added).

The inventor who has no interest in, or no talent in, forming a company nevertheless has contributed a societal benefit through invention and the public disclosure of the same via the

¹³ Lamoreaux, Sokoloff, and Sutthiphisal, *Patent Alchemy: The Market for Technology in US History*, Business History Review 87, 3-38 (2013), <http://tinyurl.com/n2pme4q>.

¹⁴ The Goodyear Tire & Rubber Company, which was formed in 1898 almost four decades after Goodyear’s death, was merely named after the famous inventor.

¹⁵ Adam Mossoff, *The History of Patent Licensing and Secondary Markets in Patents: An Antidote to False Rhetoric*, George Mason University School of Law (December 9, 2013), <http://cpip.gmu.edu/tag/non-practicing-entity/>.

¹⁶ *Id.* (quoting Ruth Brandon, *A capitalist romance: Singer and the sewing machine* (1977)).

¹⁷ *Id.*

patent system. Charles Moore, an American inventor, held up his end of the patent bargain, and—with the assistance of Complainants—the public (including Respondents) should now hold up their end.

Third, Respondents’ proposed carve-out of non-practicing entities to the “legitimate interest in protecting intellectual property rights” should be summarily dismissed. The Commission has never taken the position that a non-practicing entity is, by definition, not entitled to have its patents enforced; such a sweeping ruling would have significant repercussions for inventors who assign their patent rights to such companies. Nor is the Commission or the court system the proper forum to adjudicate a legislative issue best left to Congress.¹⁸

Finally, Respondents argue that only manufacturing or “licensing directed to *bringing products to market*” should be protected. R.PI.Br. at 33. But Respondents’ authority—*Certain Coaxial Cable Connectors*, Inv. No. 337-TA-650—actually states the opposite:

[T]he plain language of the statute does not limit the types of licensing activities that the Commission can consider. . . . [I]n ordinary usage, the term “exploitation” would cover licensing activities that “put [the patent] to a productive use”, i.e., bring a patented technology to market, **as well as licensing activities that “take advantage of” the patent, i.e., solely derive revenue.** Congress’s use of the term “licensing” therefore also covers **both types** of licensing activities. Accordingly, in assessing whether the domestic industry requirement has been met, we will also consider licensing activities for which **the sole purpose is to derive revenue from existing production.**

Certain Coaxial Cable Connectors and Components Thereof and Products Containing Same, Inv. No. 337-TA-650, Comm’n Op. at 49-50 (Apr. 14, 2010) (*discussing* S. Rep. No. 100-71, at 129 (1987); H.R. Rep. No. 100-40, at 157 (1987)). Accordingly, the Commission has definitively held that the statute was designed to protect companies whose sole purpose is to derive revenue via licensing from existing production.

¹⁸ Sprint makes a similar argument suggesting that “an exclusion order is likely to harm the public interest” when the complainant is an NPE. Sprint.Br. at 1-2. However, Sprint’s argument is defective because it relies on the same misapplication of *eBay* and other federal court decisions discussed *supra* in Section B.2. *Id.* at 3.

[REDACTED]

D. Respondents Offer No Evidence That a Remedial Order Would Harm the Public Health and Welfare.

Respondents argue that unspecified smartphones, tablets, and e-readers are important to the public health and welfare in the United States. R.P.I.Br. at 34-35. However, Respondents rely solely on attorney argument and cite no supporting evidence in the record. Nor do Respondents identify the specific Accused Products that purport to “manage health” or the particular Respondents who manufacture such products. Garmin, for example, does not offer smartphones, tablets, or e-readers in its product line. Accordingly, such unsupported and vague arguments should be rejected.

As the Federal Circuit has observed, Respondents’ hurdle in overcoming the presumptive public interest in patent enforcement is incredibly high and has rarely been accomplished in Commission history:

[T]he Commission has found public interest considerations to outweigh the need for injunctive relief in protecting intellectual property rights found to have been violated under Section 337 in only three investigations... Moreover, in those three cases, the exclusion order was denied because inadequate supply within the United States—by both the patentee and domestic licensees—meant that an exclusion order would deprive the public of products necessary for some important health or welfare need: energy efficient automobiles, basic scientific research, or hospital equipment.

Spanion, 629 F.3d 1331, 1360. Respondents have not come close to providing evidence that would make them the fourth case, and first in over 25 years, to demonstrate such extraordinary and exigent public interest.

Accordingly, Complainants respectfully request that the Commission issue the proposed amended limited exclusion order attached to this brief, as well as the accompanying cease and desist orders attached to Complainants’ Opening Brief.

**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 January 6, 2014 a copy of the foregoing document was served upon the following parties or their counsel in the manner indicated:

**COMPLAINANTS' REPLY SUBMISSION ON COMMISSION REVIEW
OF INITIAL DETERMINATION (CONFIDENTIAL VERSION)**

| <i>Acting Secretary</i> | |
|--|--|
| 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> |
| <i>Administrative Law Judge</i> | |
| 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> |
| <i>Administrative Law Judge Attorney Advisors</i> | |
| Ken Schopfer Sarah Zimmerman Attorney Advisors 500 E Street, S.W., Room 317 Washington, DC 20436 kenneth.schopfer@usitc.gov sarah.zimmerman@usitc.gov | <input checked="" type="checkbox"/> Via Email (PDF copy) |

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

Inv. No. 337-TA-853

| | |
|---|---|
| <i>Office of Unfair Import Investigation</i> | |
| 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 Whitney.Winston@usitc.gov | <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) |
| <i>Counsel for Complainant Patriot Scientific Corporation</i> | |
| Charles T. Hoge KIRBY NOONAN LANCE & HOGE, LLP 350 Tenth Avenue, Suite 1300 San Diego, California 92101 Telephone: (619) 231-8666 choge@knlh.com | <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) |
| <i>Counsel for Respondents Acer Inc. and Acer America Corporation</i> | |
| Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 Facsimile: (202) 778-9100 AcerAmazonNovatel_ITC853@klgates.com | <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) |
| <i>Counsel for Respondent Amazon.com, Inc.</i> | |
| Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 Facsimile: (202) 778-9100 AcerAmazonNovatel_ITC853@klgates.com | <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) |
| <i>Counsel for Respondent Barnes & Noble, Inc.</i> | |
| 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 BN-853@quinnemanuel.com | <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

| | |
|---|---|
| <i>Counsel for Respondents Garmin Ltd., Garmin International, Inc. and Garmin USA, Inc.</i> | |
| 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 Garmin-853@adduci.com Garmin_853@eriselP.com | <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) |
| <i>Counsel for Respondents HTC Corporation and HTC America</i> | |
| Stephen R. Smith COOLEY LLP 11951 Freedom Drive Reston, VA 20190 Telephone: (703) 456-8000 Facsimile: (703) 456-8100 HTC-TPL@cooley.com | <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) |
| <i>Counsel for Respondent Huawei Technologies Co., Ltd. , Huawei Device Co., Ltd., Huawei Device USA Inc., and Futurewei Technologies, Inc.</i> | |
| Timothy C. Bickham STEPTOE & JOHNSON LLP 1330 Connecticut Avenue, N.W. Washington, D.C. 20036 Telephone: (202) 429-3000 Facsimile: (202) 429-3902 Huawei853@steptoe.com | <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) |
| <i>Counsel for Respondents Kyocera Corporation and Kyocera Communications, Inc.</i> | |
| M. Andrew Woodmansee MORRISON & FOERSTER LLP 12531 High Bluff Drive San Diego, CA 92130 Telephone: (858) 720-5100 Facsimile: (858) 720-5125 Kyocera-TPL-ITC@mofo.com | <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

| | |
|---|---|
| <i>Counsel for Respondents LG Electronics, Inc. and Electronics U.S.A., Inc.</i> | |
| Scott A. Elengold FISH & RICHARDSON P.C. 1425 K Street, N.W. 11 th Floor Washington, DC 20005 Telephone: (202) 783-5070 Facsimile: (202) 783-2331 LG-TPLITCService@fr.com | <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) |
| <i>Counsel for Respondents Nintendo Co., Ltd. and Nintendo of America, Inc.</i> | |
| Stephen R. Smith COOLEY LLP 11951 Freedom Drive Reston, VA 20190 Telephone: (703) 456-8000 Facsimile: (703) 456-8100 Nintendo-TPL@cooley.com | <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) |
| <i>Counsel for Respondent Novatel Wireless, Inc.</i> | |
| Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 AcerAmazonNovatel ITC853@klgates.com | <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) |
| <i>Attorneys for Respondents Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> | |
| Aaron Wainscoat DLA PIPER LLP 2000 University Avenue East Palo Alto, CA 94303-2214 Telephone: (650) 833-2442 853-DLA-Samsung-Team@dlapiper.com | <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) |
| <i>Counsel for Respondents ZTE Corporation & ZTE (USA) Inc.</i> | |
| Jay H. Reiziss BRINKS HOFER GILSON & LIONE 1775 Pennsylvania Avenue, NW Washington, D.C. 20006 Telephone: (202) 296-8700 Brinks-853-ZTE@brinkshofer.com | <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

**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, Tracey Nero, hereby certify that on January 16, 2014, a copy of the foregoing document was served upon each of the following parties or their counsel in the manner indicated:

1. Complainants' Reply Submission on Commission Review of Initial Determination (Public Version)

| <i>Acting Secretary</i> | |
|--|---|
| 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>Two Copies</i> |
| <i>Administrative Law Judge</i> | |
| 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 Double-Sided Copies</i> |
| <i>Administrative Law Judge Attorney Advisors</i> | |
| Ken Schopfer Primary Attorney Advisor 500 E Street, S.W., Room 317 Washington, DC 20436 kenneth.schopfer@usitc.gov | <input checked="" type="checkbox"/> Via Email (PDF copy) <i>Excluding Attachments</i> |
| Sarah Zimmerman Attorney Advisor 500 E Street, S.W., Room 317 Washington, DC 20436 sarah.zimmerman@usitc.gov | <input checked="" type="checkbox"/> Via Email (PDF copy) <i>Excluding Attachments</i> |

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

Inv. No. 337-TA-853

| | |
|---|---|
| <i>Office of Unfair Import Investigation</i> | |
| R. 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 Whitney.Winston@usitc.gov | <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) |
| <i>Counsel for Complainant Patriot Scientific Corporation</i> | |
| Charles T. Hoge KIRBY NOONAN LANCE & HOGE, LLP 350 Tenth Avenue, Suite 1300 San Diego, California 92101 Telephone: (619) 231-8666 choge@knlh.com | <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) |
| <i>Counsel for Respondents Acer Inc. and Acer America Corporation</i> | |
| Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 Facsimile: (202) 778-9100 AcerAmazonNovatel_ITC853@klgates.com | <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) |
| <i>Counsel for Respondent Amazon.com, Inc.</i> | |
| Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 Facsimile: (202) 778-9100 AcerAmazonNovatel_ITC853@klgates.com | <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) |
| <i>Counsel for Respondent Barnes & Noble, Inc.</i> | |
| 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 BN-853@quinnemanuel.com | <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

| | |
|--|---|
| <i>Counsel for Respondents Garmin Ltd., Garmin International, Inc. and Garmin USA, Inc.</i> | |
| 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 Garmin-853@adduci.com Garmin-853@eriseIP.com | <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) |
| <i>Counsel for Respondents HTC Corporation and HTC America</i> | |
| Stephen R. Smith COOLEY LLP 11951 Freedom Drive Reston, VA 20190 Telephone: (703) 456-8000 Facsimile: (703) 456-8100 HTC-TPL@cooley.com | <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) |
| <i>Counsel for Respondent Huawei Technologies Co., Ltd., Huawei Device Co., Ltd., Huawei Device USA Inc., and Futurewei Technologies, Inc.</i> | |
| Timothy C. Bickham STEPTOE & JOHNSON LLP 1330 Connecticut Avenue, N.W. Washington, D.C. 20036 Telephone: (202) 429-3000 Facsimile: (202) 429-3902 Huawei853@steptoe.com | <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) |
| <i>Counsel for Respondents Kyocera Corporation and Kyocera Communications, Inc.</i> | |
| M. Andrew Woodmansee MORRISON & FOERSTER LLP 12531 High Bluff Drive San Diego, CA 92130 Telephone: (858) 720-5100 Facsimile: (858) 720-5125 Kyocera-TPL-ITC@mofo.com | <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

| | |
|--|---|
| <i>Counsel for Respondents LG Electronics, Inc. and LG Electronics U.S.A., Inc.</i> | |
| Scott A. Elengold FISH & RICHARDSON P.C. 1425 K Street, N.W. 11 th Floor Washington, DC 20005 Telephone: (202) 783-5070 Facsimile: (202) 783-2331 LG-TPLITCSERVICE@fr.com | <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) |
| <i>Counsel for Respondents Nintendo Co., Ltd. and Nintendo of America Inc.</i> | |
| Stephen R. Smith COOLEY LLP 11951 Freedom Drive Reston, VA 20190 Telephone: (703) 456-8000 Facsimile: (703) 456-8100 Nintendo-TPL@cooley.com | <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) |
| <i>Counsel for Respondent Novatel Wireless, Inc.</i> | |
| Eric C. Rusnak K&L GATES LLP 1601 K Street, NW Washington, DC 20006-1600 Telephone: (202) 778-9000 Facsimile: (202) 778-9100 AcerAmazonNovatel_ITC853@klgates.com | <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) |
| <i>Attorneys for Respondents Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.</i> | |
| Aaron Wainscoat DLA PIPER LLP 2000 University Avenue East Palo Alto, CA 94303-2214 Telephone: (650) 833-2442 Facsimile: (650) 687-1135 853-DLA-Samsung-Team@dlapiper.com | <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) |
| <i>Counsel for Respondents ZTE Corporation and ZTE (USA) Inc.</i> | |
| Jay H. Reiziss BRINKS HOFER GILSON & LIONE 1775 Pennsylvania Avenue, NW, Suite 900 Washington, D.C. 20006 Telephone: (202) 296-6940 Facsimile: (202) 296-8701 Brinks-853-ZTE@brinkshofer.com | <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/ Tracey Nero
Tracey Nero