

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

In the Matter of

**CERTAIN MOBILE ELECTRONIC
DEVICES AND RADIO FREQUENCY
AND PROCESSING COMPONENTS
THEREOF**

Docket No. 337-TA- 3235

COMPLAINANT'S REPLY TO SUBMISSIONS ON THE PUBLIC INTEREST

Pursuant to Commission Rule 210.8(c)(2), Complainant Qualcomm Incorporated (“Qualcomm”) submits this reply to the public interest submissions filed by Proposed Respondent Apple Inc. (“Apple”) and non-parties the Court-appointed interim class counsel for Plaintiffs in *In re Qualcomm Antitrust Litigation* (“Class Plaintiffs”), the App Association (“ACT”), the Computer & Communications Industry Association (“CCIA”), and Intel Corporation (“Intel”) (collectively “Response Submissions”).¹ The Response Submissions appear to be a coordinated effort aimed at misdirecting the Commission, all but ignoring the statutory public interest factors, as well as the purpose of the patent laws and Section 337—*i.e.*, to protect against infringement and thereby support innovation. The submissions instead rely on false and/or irrelevant allegations, while mischaracterizing the nature and scope of the instant action. There is simply no basis for the Commission to take the unwarranted step of declining to institute Qualcomm’s well-pleaded complaint, nor for delegating public interest issues to the Administrative Law Judge (“ALJ”) for discovery.

I. QUALCOMM IS ENTITLED TO PROTECT ITS INTELLECTUAL RIGHTS AGAINST APPLE’S INFRINGEMENT

The Commission has long recognized a strong public interest in protecting intellectual property rights. Qualcomm filed the instant action to protect and enforce its intellectual property rights and the billions of dollars in research and development it invested in the United States to obtain them. The Response Submissions claim, however, that Qualcomm should be prevented from utilizing Section 337 to protect its intellectual property rights. This position is hypocritical, as both Apple and Intel have filed numerous Section 337 investigations,² as have at least five CCIA members.

This case was not filed to stifle competition—it was filed to halt Apple’s unauthorized use of Qualcomm’s technology and to prevent infringement of Qualcomm’s patents through unfairly traded imports—the very purpose of the patent laws and Section 337. From the time of the launch of the original Apple iPhones, they have been authorized to use much of Qualcomm’s patented technology through a license agreement between Apple’s contract manufacturers and Qualcomm.

¹ Qualcomm addresses the largely-overlapping Response Submissions collectively herein.

² Apple filed Section 337 complaints against all of its major competitors, including Samsung, Motorola and HTC, purportedly to protect and enforce its own intellectual property rights. Although Qualcomm takes no position on the validity of Apple’s previous claims, it is important to note that Apple, for its part, recognizes the legitimacy of asserting patents before the ITC and seeking exclusion orders when those assertions serve its own interests.

Until earlier this year, the contract manufacturers paid royalties due under those agreements. But then Apple forced the contract manufacturers to stop paying Qualcomm any royalties on iPhones. Apple has launched a worldwide attack on Qualcomm's business and on its intellectual property rights. That is what led to this case.

Apple became the largest and most profitable company in the world in large part by utilizing Qualcomm's technology, which enables and improves numerous important features on the iPhone. For nearly a decade, Apple recognized the significant value brought by that technology and reimbursed its contract manufacturers for the license fees due for the iPhones sold by Apple that were licensed to Qualcomm's technologies. More recently, Apple began filing and/or initiating numerous lawsuits in the United States and around the world to avoid payment for Qualcomm's patented technologies. Rather than let the courts decide the merits of those claims, Apple has, as part of its worldwide campaign against Qualcomm, unilaterally decided to force its manufacturers to stop paying the agreed license fees. Although the patents asserted in this action largely fall outside the scope of the contract manufacturers' licenses in any event, Apple's tortious interference with Qualcomm's third party patent license fees should be considered as part of the public interest inquiry to the extent the Commission widens its inquiry into the other claims Apple has already filed against Qualcomm in other jurisdictions.

II. THE RESPONSE SUBMISSIONS' FOCUS ON OTHER PENDING LITIGATION AND SEPs IS MISPLACED

The Response Submissions attempt to distract the Commission from the statutory factors by improperly focusing, under the guise of public interest, on claims against Qualcomm currently pending in district court. The Commission's role, however, is not to adjudicate these other claims in parallel, but to determine whether there is a violation of Section 337. If the Commission determines there is a violation, it must then fashion a remedy that does not harm the public interest as defined by the statute. Although "competitive conditions" is an issue related to remedy, the issue is not whether Qualcomm is engaged in anticompetitive conduct (which it is not), but whether the remedy imposed by the Commission would negatively impact competition. Therefore, to the extent the Commission chooses to delegate the issue of public interest to the presiding ALJ, it should do so in a narrowly circumscribed manner that focuses on the impact of any potential remedy in this investigation.

The Response Submissions also attempt to discredit and attack Qualcomm's licensing practices with respect to standard-essential patents ("SEPs"). *See, e.g.*, Apple Br. at 1-3; Intel Br.

at 1-3, Class Plaintiffs Br. at 1-4; CCIA Br. at 4; ACT Br. at 3. Although Qualcomm disputes these claims, they are also not relevant to any issue in this investigation. As explained in Qualcomm's initial public interest submission and in its Complaint, the patents-at-issue are non-standard-essential patents ("NSEPs") that cover a wide range of technologies for use in mobile applications. Accordingly, issues that may arise in the context of SEPs have no relevance to this investigation at all, much less any bearing on the public interest factors in this investigation.

III. THE RESPONSE SUBMISSIONS MISSTATE THE NATURE AND SCOPE OF QUALCOMM'S COMPLAINT AND INCORRECTLY CLAIM A TWO-COMPETITOR MARKET TO PRESS THEIR BASELESS ARGUMENTS ABOUT COMPETITION

In an effort to manufacture competition issues and to paint Qualcomm in a negative light, the Response Submissions construct a fictional two-player market for "premium LTE baseband chipsets" where only Qualcomm and Intel compete. *See, e.g.*, Apple Br. at 1-4; Intel Br. at 1-4. They then suggest that, if certain Apple products are excluded, Intel will not be able to sell baseband processors in the United States, thus leaving Qualcomm with a monopoly. This argument fails for several reasons.

First, Qualcomm's patents (which here are not SEPs) entitle it to prevent others from infringing. Apple can import iPhones (regardless of who supplies the modems) that do not infringe the patents asserted in this action, but Apple has no inherent right to infringe Qualcomm's NSEPs through the sale of its iPhones. Preventing such infringement, and thereby rewarding innovation, is the very purpose for which the patent system was designed. Qualcomm's enforcement of its intellectual property rights is consistent with this purpose, and the Response Submissions' claim that it would result in a purportedly improper monopoly is legally unsupportable and factually incorrect.

Second, this case is not about Intel or its baseband modems. The accused products are the Apple mobile electronic devices that infringe Qualcomm's proprietary NSEPs for technologies relating to the design, structure, and operation of products with envelope tracking technology, voltage shifter circuitry, flashless boot, power management circuitry, enhanced carrier aggregation, and graphics processing units. *See* Compl. ¶¶ 26, 39-41, 45, 49, 53, 57, 61, 65. These patents reflect the breadth of Qualcomm's dedication and investment in domestic research and development relating to wireless technology and optimizing mobile electronic devices that go well beyond the modems in the accused Apple products.

Third, contrary to the Response Submissions, there are now multiple sources of LTE baseband processors that compete with Qualcomm; the competition for LTE baseband processors is robust. Companies like MediaTek, Samsung, Marvell, Leadcore, Spreadtrum, and HiSilicon (a Huawei company) provide LTE baseband processors for use in mobile electronic devices, and their global sales of these products far surpass Intel’s sales of similar products. Indeed, Intel was not even among the top five suppliers in the global baseband processor market in 2016.³

Fourth, Intel’s suggestion that Qualcomm’s requested remedial relief would “effectively exclude[] all Intel modems from the United States” is demonstrably false. Intel Br. at 5. Intel has always been free to sell and offer for sale its modems to any LTE mobile device manufacturers, including Apple’s competitors. An exclusion order entered in this investigation would have no impact on Intel’s ability to sell to these manufacturers in the future. An exclusion order would only prevent the importation of certain iPhones that practice Qualcomm patents to which neither Apple nor its relevant contract manufacturers are licensed.

IV. THE RESPONSE SUBMISSIONS LARGELY FAIL TO ADDRESS THE PUBLIC INTEREST FACTORS

Stripped of their self-serving rhetoric and false allegations about Qualcomm’s licensing practices, the Response Submissions largely fail to address the four statutory public interest factors and do not articulate any legitimate public interest concerns. Apple does not allege, much less establish, that the exclusion of certain of its products would negatively impact the public health or welfare. Nor does it seriously contend that Qualcomm’s requested remedial orders would have a negative impact on competitive conditions or U.S. consumers with respect *to mobile electronic devices*. At most, Apple (and Intel) suggest that the requested relief would limit competition for the sale of certain modems to Apple. *See* Apple Br. at 4-5. However, even this suggestion is false because Apple can purchase and utilize any LTE modem it chooses so long as it does not infringe Qualcomm’s asserted patents. Notably, Apple stops short of stating that an exclusion order would prevent Apple from selling iPhones or iPads,⁴ and fails to acknowledge that there are numerous smartphones and tablets in the market that can potentially compete with Apple’s products. As discussed in Qualcomm’s initial public interest submission, the Commission has routinely found

³ *See* <https://www.electronicweekly.com/news/business/2016-baseband-processor-market-grew-5-22-6bn-2017-06/>.

⁴ Apple states—without evidence or support—that Qualcomm’s requested remedy would “result in shortages and price spikes ...” Apple Br. at 5.

that exclusion of mobile electronic devices does not raise public interest concerns given the robust competition in the market. *See* Qualcomm Br. at 1-3.

The non-parties' briefs are similarly devoid of any evidence that Qualcomm's requested remedy would negatively impact the public interest factors. Intel does not even address the first factor. With respect to the remaining factors, Intel's brief is premised on the erroneous argument that it is Qualcomm's only competitor. *See* Intel Br. at 4-5; *see* Section III, *supra*.⁵ In fact, as noted above, numerous other manufacturers offer baseband processors, including large companies such as Samsung, MediaTek, Marvell, Leadcore, Spreadtrum, and HiSilicon (a Huawei company).

V. CONCLUSION

For the foregoing reasons, and for the reasons detailed in Qualcomm's initial public interest submission, this investigation does not present any special public interest issues, and the requested relief will support the strong public interest in protecting intellectual property rights held by innovative American companies like Qualcomm. Accordingly, this investigation should be instituted, and the issue of public interest need not be delegated to the presiding ALJ. If the issue is delegated, it should be narrowly circumscribed to focus solely on the statutorily enumerated public interest factors.

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Respectfully submitted,

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⁵ The other non-parties' briefs generally track the arguments set forth by Apple and Intel and fall short for the same reasons.

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