

Congress of the United States
House of Representatives
Washington, DC 20515-0305

December 10, 2018

Via Electronic Filing

The Honorable David S. Johanson, Chairman
U.S. International Trade Commission
500 E Street, SW, Room 112-A
Washington, DC 20436

Re: *Certain Mobile Electronic Devices and Radio Frequency and Processing Components Thereof*, Inv. No. 337-TA-1065

Dear Chairman Johanson and Commissioners:

As a member of the U.S. House Committee on the Judiciary, I respectfully submit these comments in response to the Commission's Notice of Request for Statements on the Public Interest in the above-referenced matter (Inv. No. 337-TA-1065).

Although I express no view on the patent merits in this case, for the reasons stated below, I strongly recommend that the Commission endorse Administrative Law Judge Pender's well-reasoned analysis of the harms to the public interest that would result from an exclusion order.

Robust Competition in Cellular Technology Advances U.S. Economic Interests

The United States has an extraordinarily strong interest in remaining at the cutting edge of advanced cellular technologies, and is setting the pace internationally for cellular innovation. Those technologies are crucial today, but will be even more important when fifth generation or "5G" technologies are introduced over the next few years. 5G technologies will impact our lives in countless ways through new uses of cellular connectivity, including machine to machine communications, self-driving vehicles, artificial intelligence applications, and smart cities.

Issuing an exclusion order in this case will disrupt healthy competition between the only two cellular technology chipset champions headquartered in the United States—i.e., Intel Corporation and Qualcomm Incorporated. Intel has a major presence in my district, and the competition between the two companies is driving critical research and development, as well as the penetration of new world markets. The risks to the public interest of undermining this competition are serious.

We must maintain American leadership in the most advanced or premium “baseband chipsets” used for cellular processing because, as one of Qualcomm’s fact witnesses testified, these chipsets are “really where you introduce all the new features.” (Initial Determination at 129.) Today, premium chipsets are used in the most advanced smartphones and cellular tablets, including the ones supplied by the respondent in this case, Apple Inc. Tomorrow, such chipsets will be used in the 5G applications described above. We should not take any action that would imperil the U.S. advantage in this critical technology sector.

In addition, the United States has a compelling interest in creating good jobs in high-tech manufacturing—not destroying them. Intel has been investing heavily to develop manufacturing capacity in Arizona for advanced cellular chipsets, creating hundreds of jobs for U.S. workers.

The U.S. National Security Implications of 5G Are Significant

Although the increasing connectivity of 5G will enable great benefits, it will also bring significant risks. For example, if foreign governments control production of critical cellular components, they can engineer them with vulnerabilities that could be exploited to illicitly access U.S. citizens’ information, or even introduce computer viruses to undermine U.S. infrastructure.

I urge the Commission to heed ALJ Pender’s warning that “*if the Commission does issue an exclusion order as Qualcomm requests, it will do so with the near certainty there will be real harm to the United States on a potentially very broad basis.*” (Initial Determination at 195.) As with our economic interests, our national security interests also benefit from two U.S. baseband chipset suppliers engaged in the process of setting 5G standards and making trusted 5G chipsets.

The Impact of an Exclusion Order on Competition and 5G

As ALJ Pender described, Intel’s Chief Strategy Officer provided “*unrebutted, unequivocal, uniquely credible, and highly logical*” testimony that Intel was “*nearly certain*” to close its baseband chipset business if an exclusion order issued, depriving it of the opportunity to sell chipsets to Apple for use in the U.S. (Initial Determination at 191.) An exclusion order would create a monopoly in the open market for baseband chipsets just as 5G deployment begins, which would result in higher prices, less stable supply, and reduced innovation. The order also would risk the loss of the significant manufacturing jobs that Intel is creating in Arizona.

Further, it would be particularly inappropriate to eliminate competition in the advanced baseband chipset market just as the U.S. Federal Trade Commission is seeking to promote and protect competition in that very same market, through its ongoing case against Qualcomm.¹ When Congress amended Section 337 to add the public interest factors, it stated that the Commission should not issue an exclusion order in cases “where there is any evidence of price gouging or monopolistic practices in the domestic industry.”² An exclusion order here would reward such practices, and reinstate and cement Qualcomm’s monopoly—contrary to Congressional intent.

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¹ *Federal Trade Commission v. Qualcomm Incorporated*, Case 5:17-cv-00220 (U.S. Dist. Ct N.D. CA, filed 01/17/2017).

² S. Rep. 93-1298, 1974 U.S.C.C.A.N. 7186, 7330 (1974).

For all the reasons noted above, I strongly recommend that the Commission not issue an exclusion order in this case as the public interest harms would be too great. I am a strong supporter of the U.S. patent system and believe it fosters innovation. But to affirm ALJ Pender's decision would not deny Qualcomm any remedies for its patent rights, as it is litigating the same patents in federal district court where royalties are available.

Sincerely,



Andy Biggs
Member of Congress