➢PUBLIC VERSION➣

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of CERTAIN AUDIOVISUAL COMPONENTS AND PRODUCTS CONTAINING THE SAME	Inv. No. 337-TA-837

COMPLAINANTS' STATEMENT REGARDING REMEDY, PUBLIC INTEREST AND BOND AND COMPLAINANTS' INITIAL RESPONSE TO THE COMMISSION'S OCTOBER 17, 2013 NOTICE ON REMEDY AND THE PUBLIC INTEREST

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STATEMENT ON THE ISSUES OF REMEDY, THE PUBLIC INTEREST, AND BONDING

I. REMEDY

A. The Commission Should Accept the ALJ's Recommendation to Issue a Limited Exclusion Order Cover All Infringing Products

1. Consistent with Its Standard Practice, the Commission Should Issue a Limited Exclusion Order Directed to Respondents' Infringing Articles

Section 337 provides that, upon a finding of violation, the Commission "shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States," unless it determines that such exclusion would not be in the public interest based on four enumerated statutory factors. 19 U.S.C. § 1337(d)(1); *see also Spansion, Inc. v. ITC*, 629 F.3d 1331, 1358 (Fed. Cir. 2010) ("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."). "[T]he central purpose of remedial orders is to ensure complete relief to the domestic industry." *Certain Hardware Logic Emulation Sys. & Components Thereof*, Inv. No. 337-TA-383, Comm'n Op., 1998 ITC LEXIS 138, at *32 (March 1998). Limited exclusion orders typically extend to "all models of infringing products that are imported at the time of the Commission's determination and to all such products that will be imported during the life of the remedial orders." *Id.*

Here, the ALJ recommended that the Commission issue a limited exclusion order covering accused products of any party found to infringe any asserted claim of the infringed patents-at-issue. (RD at 5.) Because, as discussed below, there are no cognizable public interest concerns that warrant forgoing or narrowing such relief, the Commission should follow its standard practice and adopt the ALJ's recommendation to issue such a limited exclusion order.

Included in Appendix A is a proposed limited exclusion order that prohibits importation of infringing devices "manufactured abroad by or on behalf of, or imported by or on behalf of Respondents, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns." (App. A at 2.) Complainants respectfully request that the Commission issue a limited exclusion order in the form of Complainants' proposed order. *See, e.g.*, *Certain Liquid Crystal Display Modules, Prods. Containing Same, & Methods for Using the Same*, Inv. No. 337-TA-634, LEO, 2009 ITC LEXIS 1964, at *4-5 (Nov. 9, 2009) ("The Commission has determined that the appropriate form of relief is both: 1) a limited exclusion order prohibiting the unlicensed entry of LCD devices, including display panels and modules, and products containing the same that infringe one or more of (i) claims 5-7 of the '364 patent; (ii) claims 1 and 4 of the '192 patent; (iii) claims 1-2, 6-8, 13-14, and 16-17 of the '703 patent; and (iv) claims 10, 17, and 20 of the '626 patent, where the infringing LCD devices are manufactured abroad by or on behalf of, or are imported by or on behalf of, Samsung, or any of its affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns…").

2. Respondents' Request that a Limited Exclusion Order Apply Only to Certain Products and Not Apply to Downstream Products Is Contrary to Commission Precedent

The ALJ properly rejected Respondents' assertion that an exclusion order should cover only specific models of accused Realtek Wi-Fi components. (RD at 5.) The ALJ also properly rejected Respondents' assertions that a limited exclusion order should not cover downstream products. (RD at 5-6.)

a. Limited Exclusion Orders Covering All Infringing Products, Regardless of Model Number, Are Appropriate

"Commission practice is to direct remedial orders to all products 'covered by' the asserted claims as to which a violation has been found, not to limit the orders to only those specific models selected for the infringement analysis." *Mobile Telephone Handsets, Wireless Communication Devices, and Components Thereof*, Inv. No. 337-TA-578, Final Initial and Recommended Determinations at 255-56, 2007 ITC LEXIS 1451, *386-87 (Dec. 12, 2007); *see Hardware Logic Emulation Systems and Components Thereof*, Inv. No. 337-TA-383, Comm'n Op. at 16, 1998 ITC LEXIS 138, *31-32 (Mar. 31, 1998).

"The Commission has always issued its orders in terms of 'infringing' products, and has always intended them, as in this case, to prohibit future importation or sale of products which were not specifically adjudged infringing in the violation proceeding, but do in fact infringe." *Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, And Processes For Making Such Memories*, Inv. No. 337-TA-276, 1991 ITC LEXIS 1331, *15 (Aug. 1, 1991). In the typical case, the exclusion order "define[s] the excluded merchandise in terms of the patent claims at issue, and [is] not limited to the specific articles adjudicated infringing by the Commission in its investigation." *Erasable Programmable Read Only Memories*, 1991 ITC LEXIS 1331 at *15-16; *see also e.g., Viscofan. S.A. v. U.S. International Trade Commission*, 787 F.2d 544, 548, (Fed. Cir. 1986); *Hyundai v. U.S. International Trade Commission*, 899 F.2d 1204 (Fed. Cir. 1990). "It is an *unusual case* in which the Commission makes specific determinations of infringement for all products which could be covered by its exclusion order." *Id*. (emphasis added). Indeed, the Commission has consistently held that exclusion orders should not be limited to specific models, because any such limitation "merely invites an unscrupulous respondent to change the model numbers to circumvent the order." *Certain Agricultural Vehicles and Components Thereof*., Inv. No. 337-TA-487, 2004 ITC LEXIS 247 (Jan. 13, 2004) (*citing Certain Cellular Radiotelephones and Subassemblies and Components Parts Thereof*, Inv. No. 337-TA-297, Comm'n Op. at 5 (Aug. 29, 1989)).

Respondents have not offered any evidence or compelling reasons to deviate from this long-standing practice, and a limited exclusion order covering all of Respondents' infringing products, regardless of model number, is appropriate. *Certain Agricultural Vehicles and Components Thereof*., Inv. No. 337-TA-487, 2004 ITC LEXIS 247 (Jan. 13, 2004).

b. A Limited Exclusion Order Covering Funai's Infringing Downstream Products is Appropriate

From January 2011 through October 2012, Funai imported into the United States, sold for importation into the United States, and sold after importation into the United States accused downstream products valued at [redacted].[1] Accordingly, an *EPROMs* analysis is not required in order for the Commission to issue relief covering downstream products of named respondents. Indeed, the Commission has issued numerous limited exclusion orders covering downstream products of named respondents post-*Kyocera* without performing an *EPROM*s analysis. *See Certain Semiconductor Chips Having Synchronous Dynamic Random Access Memory Controllers and Products Containing Same*, Inv. No. 337-TA-661, Comm'n Op. (Aug. 10, 2010) (no *EPROMs* analysis); *Certain Optoelectronic Devices, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-669, Comm'n Op. (July 26, 2010) (no *EPROMs* analysis); *Certain Cast Steel Railway Wheels, Processes for Manufacturing or Relating to Same and Certain Products Containing Same*, Inv. No. 337-TA-655, Comm'n Op. (Mar. 19, 2010) (no

[1] RX-0008C (Vander Veen WS) at 31, Q&A 120; JX-0030C (Sept. 26, 2012 [redacted] Dep.) at 80:20-95:14 and (Jan. 16, 2013 [redacted] Dep.) at 12:14-15:19, 18:6-23:6, 29:16-30:18, 44:8-93:2, and 96:8-124:25; JX-0037C (Sept. 26, 2012 [redacted] Dep.) at 18:23-25:15, and 36:10-45:10; RPX-0004C; RPX-0005C; RPX-0006C; RPX-0007C; RX-2463C at Responses to Interrogatory No. 1.

EPROMs analysis). The Commission should therefore issue a limited exclusion order covering Funai's infringing products. 19 U.S.C. § 1337(d)(1).

Although an *EPROM*s analysis is not required in light of *Kyocera*, the ALJ performed such an analysis and properly determined that the *EPROMs* factors favor a limited exclusion order that covers downstream products. The ALJ's analysis was correct except to the extent the ALJ recommended that a carve out allowing importation for warranty and repair *may be* appropriate, as discussed in Section II.G.2, *infra*. (RD at 8.)

***EPROM* Factor 1:** When analyzing the first factor, the Commission considers the quantitative value and the functional or qualitative importance of the infringing articles to the downstream products. *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets* ("*Baseband Processors*"), Inv. No. 337-TA-543, Comm'n Op. on Remedy, the Public Interest, and Bonding at 36-37 (June 19, 2007). Based upon their analysis, the Commission may decline to adopt one of these methodologies to the extent it is unhelpful under the circumstances. *Id*.

Qualitative Basis: The RD correctly finds that the asserted patents are of "great value." (RD at 6.) As the RD notes, and Complainants' technical experts testified, the asserted '958, '867 and '663 patents are standards-essential patents that are required in order for the accused downstream products to perform the 802.11 IEEE WiFi standard and H.264 ITU-T standard, respectively. CX-1643C (Negus Rebuttal Witness Statement) at 4, Q&A 7, 10, Q&A 51; CX-1597C (Reinman Direct Witness Statement) at 77, Q&A 221. With respect to the '087 patent, Dr. Acton, testified that using the technology described in the '087 patent simplifies video decoder systems, thus reducing the total memory needed for and cost of such systems in multimedia devices, such as Funai's Blu-Ray disc players. CX-1594C (Acton Statement) at 9, Q&A 50-51.

Relying on these technical expert opinions and market research, Dr. Kerr concluded that the chips are critical to the core functionality of the downstream consumer electronics products and thus essential to the competitiveness of these electronics products. *See* CX 1595C (Kerr Statement) at 12, 107-111, Q&As 53, 418, 421, 424-26; CX-1642C (Kerr Rebuttal Statement) at 4-13, Q&As 18-39. Accordingly, as set forth at trial and in the RD, the value of the accused chips and chipsets to the downstream products is qualitatively significant. (RD at 6); CX 1595C (Kerr Statement) at 109, Q&A 427.

Quantitative Basis: The RD correctly found that the quantitative value of the infringing chip compared to the downstream product is significant. (RD at 6-7.) As noted in the RD, it is well settled that there is no minimum percentage value at which an accused product's value becomes "significant" relative to the downstream product. *See Baseband Processors* at 37. At trial, through the use of a rejected exhibit (RX-1867C), that the value of the component compared to the retail value of Funai's downstream products range from [redacted] for the accused WiFi products, [redacted] for the accused decoder products, and [redacted] for the accused systems-on-chip products. RX-0008C (Vander Veen Witness Statement) at 17 Q&A 75. Even assuming the values proposed by Respondents are accurate, the quantitative value of the infringing chip to the downstream product is significant. (RD at 7.)

As an initial matter, Respondents' expert Vander Veen's analysis is unreliable and should not be considered because he bases his entire quantitative analysis on a rejected exhibit (RX-1867C), and incomparable pricing information (e.g., price of a mass produced chip compared to the sales price of an end user consumer electronics product). When Vander Veen's reliance on rejected exhibit RX-1867C is taken out of the equation, Funai does not and cannot offer any credible quantitative analysis because Funai has no evidence establishing the cost of the infringing chips. Moreover, even if there was any admitted evidence relating to the value of chip, which there is not, Vander Veen's opinion lacks credibility because the economic value of a complex product is not measured by the cost of a mass-produced chip to the retail sales price of a downstream product. CX 1642C (Kerr Rebuttal Statement) at 7 Q&A 15. Comparing the price of the accused chip to the sales price a downstream consumer pays for the electronic audiovisual product that contains it (such as a DVD player), essentially compares apples to oranges. This is because the cost of parts and components are based on many things, unrelated to either the price or value of the end-user product. CX 1595C (Kerr Statement) at 106, Q&A 422. As Dr. Kerr explains in his initial witness statement, "[f]or example, competitive conditions in the input market can lead to higher prices for scarce but trivial parts that contribute little to the ultimate value of the product or they could lead to lower prices on very significant parts. The economic price and value of a consumer device is affected by competitive conditions in its own market, and is based on the relative performance and profitability of the product in the market, not the sum of the cost of its parts." *Id*.

In any event, even under Dr. Vander Veen's flawed and improper analysis, which is based in large part on a rejected exhibit (RX-1867C), [redacted] of the value of the downstream sales price is quantitatively significant. *See Certain Electrical Connectors and Products Containing Same*, Inv. No. 337-TA-374, USITC Pub. No. 2981, Comm'n Op. on Remedy, the Public Interest and Bonding, 1996 WL 1056313, at *8-12 (July 1996) (issuing downstream exclusion order where infringing component comprised 2-3% of downstream product).

Accordingly, as the RD correctly found, based on the qualitative and quantitative significance of the infringing component to Funai's downstream products, EPROM Factor 1 weighs in favor of excluding downstream products made by or for Funai. (RD at 6-7.)

***EPROM* Factor 2:** Funai admits that [redacted]. (RD at 7; RPHB at 575.) Accordingly, as the RD correctly found, because [redacted], this factor weighs in favor of excluding downstream products. *See Kyocera Wireless Corp. v ITC*, 545 F.3d 1340 (Fed. Cir. 2008); *Certain Microprocessors, Components Thereof, and Products Containing Same*, Inv. 337-TA-781, ID at 377 (Jan. 16, 2013).

***EPROM* Factor 3:** The RD correctly found that "[w]ith respect to the third *EPROMs* factor (incremental value), the record shows that it strongly favors the inclusion of downstream products." (RD at 7.) Indeed, in order for Complainants to receive any value from relief issued in this Investigation, an LEO that covers infringing downstream products is necessary. *See* CX 1595C (Kerr Statement) at 12, 107, Q&As 53, 418). This is because the accused semiconductor chips are not imported in any significant amount except as a component in Funai's consumer electronic products. CX 1595C (Kerr Statement) at 105, Q&A 418. Indeed, Funai's expert Mr. Vander Veen testified that, from January 2011 through October 2013, Funai has imported and sold in the United States [redacted] accused downstream products. RX-0008C (Vander Veen Statement) at 29, Q&A 120. There is no evidence whatsoever as to the volume of components Funai has imported, if any. *See* RX-0008C (Vander Veen Statement) at 26, Q&A 103 (admitting that "[redacted]").

At trial, Funai improperly suggests that Complainants and their [redacted] licensees will not benefit at all from an exclusion order because (a) Complainants [redacted]

[redacted]; and (b) only a few of Complainants' licensees [redacted]. (RPHB at 575-577.) The RD properly rejected Respondents' proposition, both because it is factually wrong and because it ignores established Commission precedent. (RD at 7); *see also Certain Baseband Processors,* Inv. No. 337-TA-543, Comm'n Op. at 63 ("First, to engage in such an analysis would be tantamount to reintroducing the injury requirement that Congress removed from the statute for patent infringement cases in 1988. Second, the right to exclude has a value which is not considered in this analysis. The right is given in order to spur innovation.")

Nonetheless, even if the Commission determines to ignore the RD, deviate from Congressional intent and established precedent, the record clearly shows that Complainants and their licensees will directly and indirectly benefit from an exclusion order that covers downstream products. As Vander Veen and Kerr testified, Complainants licensees would expect an increase in sales of their licensed products if an exclusion order covering Funai's infringing downstream products is issued. CX-1595C (Kerr Statement) at 109-110, Q&A 429; CX-1642C (Kerr Rebuttal Statement) at 14, Q&A 41; RX-0008C (Vander Veen Statement) at 28, Q&As 116-117 (Vander Veen acknowledging that at least licensee [redacted] could expect an increase in sales of licensed products). In fact, as Vander Veen notes, at least one licensee that competes with Funai [redacted]. *Id.*

Respondents' contention also fails because they do not dispute that Complainants' domestic licensing practice would also benefit from a finding of violation and issuance of remedial orders covering downstream relief. CX-1645C (Waskiewicz Rebuttal Statement) at 14-16, Q&As 56-63. As explained at the hearing, Complainants are seeking to license the asserted patents to other companies in the same market (*e.g.*, [redacted]

[redacted]), and a finding of infringement and relief against Respondents' downstream products would benefit Complainants' domestic licensing industry. *Id.* Accordingly, *EPROM* Factor 3 weighs heavily in favor of a downstream exclusion order. (RD at 7.)

***EPROM* Factor 4:** In considering *EPROMs* Factor 4, the Commission must "distinguish between detriment related to a respondent's sales of infringing articles and its sales of non-infringing articles." *Certain Baseband Processors*, 337-TA-543, Comm'n Op. at 69. The Commission generally gives "little if any weight" to detriment occurring as to respondents' sales of infringing articles, absent unusual circumstance. *Certain Baseband Processors*, 337-TA-543, Comm'n Op. at 69. The RD recognizes this, and recommends that, based on a full review of the *EPROMs* analysis, an exclusion order covering infringing downstream products is appropriate.

Funai suggests that a downstream exclusion order covering infringing products would be detrimental because (a) it *might* disrupt sales of [redacted]; and (b) it *might* prevent Funai from honoring *warranties*. (RPHB at 577-78.) These assertions fail for numerous reasons. First, as the RD correctly noted, there is no evidence whatsoever of (1) [redacted], (2) whether such products are imported under the same HTSUS number as the downstream products such that there might be confusion at the border; or (3) that Funai has imported any products or components for warranty purposes. (RD at 8.) Second, any potential harm to Funai can be lessened by the inclusion in the exclusion order of a certification provision requiring Funai to certify to Customs that its consumer electronics products [redacted] coming into the United States do not contain infringing semiconductor chips. *See Electrical Connectors* at 14-15; *Certain Microsphere Adhesives*, Inv. No. 337-TA-366, Comm'n Op. (Jan. 16, 1996).

***EPROM* Factor 5:** Funai suggests that an LEO excluding its downstream electronic products would harm U.S. consumers who own such products because Funai would be prevented from honoring their warranties. (RPHB at 578-9.) Absent presenting copies of its Owner Manuals, there is absolutely *no evidence* that any customer has asked for or received replacement parts/products, or that Funai has imported any products or parts for warranty purposes. Moreover, as explained below, [redacted]. Thus, [redacted].

Accordingly for the foregoing reasons and as set out in Complainants' Post-Hearing Briefs, this factor weighs in favor of extending an exclusion order to cover Funai's downstream consumer electronics products.

***EPROM* Factor** 6: It is not disputed, and the RD correctly noted, that there are numerous available non-infringing substitutes for Funai's electronics products, including those manufactured and/or imported by third party licensees of Complainants. (RD at 8; RPHB at 579); CX-1642C (Kerr Rebuttal Statement) at 16-19, Q&As 47-60; RX-0008C (Vander Veen Statement) at 34, Q&A 146. Because alternatives to Funai's downstream consumer electronics products do exist, Funai's downstream products can be safely excluded without harming third parties. This factor weighs heavily in favor of extending the LEO to cover Funai's downstream products. (RD at 8.)

***EPROM* Factor 7**: Contrary to Funai's assertions otherwise (RPHB at 580), the likelihood of Funai's downstream consumer electronics products containing infringing chips is very high and there is little, if any, risk that legitimate third party products or Funai products other than the infringing downstream products would be excluded. This is because Funai admits that [redacted] the downstream products at issue in this investigation. (RD at 8; RPHB at

575); JX-0030C (Sept. 26, 2012 [redacted] Dep.) at 51:10-16 ("… [redacted]")[2]; CX 1595C (Kerr Statement) at 11, Q&A 428. Thus, Funai can easily certify to Customs which of its consumer electronics products contain non-infringing chips, if any. Accordingly, this factor too weighs in favor of extending the LEO to include downstream products. (RD at 8.)

***EPROM* Factor 8:** The parties agree that virtually all of the infringing semiconductor chips are imported only after being incorporated into Funai's downstream consumer electronic products. (RPHB at 581.) Pursuant to *Baseband Processor Chips*, in cases such as this, Factor 8 is inapplicable and, if any weight is to be given to this factor, it should be in favor of issuing an exclusion order that covers all of the Funai Respondents' infringing products. (RD at 9.)

***EPROM* Factor 9:** At trial, Funai suggested that Customs would be burdened by a limited exclusion order covering all of Funai's infringing downstream consumer electronic products, but this position lacks merit and fails to consider a certification process. As Funai admits (RPHB at 575), [redacted] the accused downstream products. Accordingly, as the RD correctly held, Funai knows and can readily identify which of its products contain the accused chips and can provide a list of those model numbers to Customs. (RD at 9.) Accordingly, with a certification provision in place, Funai can certify which of its products do not contain the infringing chips so that Customs will have certainty in enforcing the LEO. (RD at 9.)

[2] In this section, Funai attempts to contradict the testimony of its corporate representative [redacted] and its prior admission (RPHB at 575) that Funai [redacted] the accused downstream products. Funai attempts to do so through the testimony of its paid expert Vander Veen. Vander Veen, however, lacks any foundation to contradict [redacted] testimony and, in any event, the ambiguity concerning [redacted] Funai's products could and should have been cleared up by Funai at the hearing through corporate testimony or documents. Funai failed to do so.

For all of the reasons set forth above, in the Recommended Determination, and in Complainants' Post-Hearing Brief, the Commission should issue permanent limited exclusion orders that exclude not only the infringing chips, but also Funai's downstream consumer electronics products that contain infringing chips as well. There is virtually no risk to legitimate trade, and only an order excluding Funai's downstream products will provide full and effective relief to Complainants from Respondents' infringing activities.

B. The Commission Should Issue a Cease and Desist Order Against Funai

The ALJ incorrectly determined that the Commission should not issue a cease and desist order against Funai. The ALJ acknowledged that Funai maintains an inventory of Accused Products in at least the following states: [redacted]. (RD at 11.) Complainants presented sworn deposition testimony of Funai corporate representatives establishing that Funai Corporation stores [redacted] of imported accused downstream products [redacted]; and that P&F USA, Inc. stores between [redacted] of imported accused downstream products [redacted]. (RD at 10 (citing JX-0030C (Jan. 16,2013 [redacted] Dep.) at 41-42; JX-0037C (Jan. 18, 2013 [redacted] Dep.) at 39-41)). Notwithstanding the sworn testimony of Funai's corporate representatives, the ALJ stated that if the amounts of inventories alleged by Complainants could be established, it would be found that the inventories could be used to undercut a limited exclusion order. (RD at 12.) However, ignoring the sworn testimony of Funai's witnesses and other evidence, the ALJ erroneously concluded that the evidence relied upon by Complainants does not establish those amounts.

As an initial matter, no specific quantity or volume of inventory need be shown for a cease and desist order to issue. Cease and desist orders are appropriate where the complainant establishes that respondents maintain significant inventories of infringing products in the United States. *See Certain Hardware Logic Emulation Sys. and Components Thereof*, Inv. No. 337-TA-383, USITC Pub. 2089, Comm'n Op. at 26 (Mar. 1998). It is well settled that a single infringing product may constitute "sufficient inventory" for purposes of a cease and desist order. *Id.* Moreover, "Commission precedent does not require a precise accounting of inventories to justify issuance of a [cease and desist order]." *Certain Electronic Digital Media Devices and Components Thereof, Inv. No. 337-TA-796, Comm'n Op. at 108 (2013).* The ALJ acknowledged that Funai maintains substantial inventories of accused products in at least [redacted] states.

Even if the amounts alleged by Complainants must be proven to demonstrate sufficient inventory, there was no basis for the ALJ to disregard the uncontroverted testimony that did, in fact, demonstrate a commercially significant inventory of accused products in the United States. The ALJ ignored the sworn testimonies of [redacted], Funai's corporate representatives, regarding Funai's inventory of accused products in the United States. JX-0030C (Jan. 16, 2013 [redacted] Depo.) at 41:11-42:24; and JX-0037C (Jan. 18, 2013 [redacted] Depo.) at 35:3-42:4. Each corporate representative testified that, [redacted], Funai stores [redacted] of imported accused downstream products [redacted]. [redacted] testified as follows:

> Q Mr. Kanazawa, before we turn to the next exhibit, when we were talking through the various warehouses that Funai Corporation utilizes, approximately how many units of product does Funai Corporation maintain in its warehouses at any given time?
>
> [. . .]
>
> THE WITNESS: [redacted]

[redacted]

JX-0030C (Jan. 16, 2013 [redacted] Depo) at 41:11-42:24 (emphasis added). Likewise, [redacted] testified that P&F USA, Inc. stores [redacted] of imported accused downstream products [redacted]. JX-0037C (Jan. 18, 2013 [redacted] Depo.) at 39:23-41:17.

Funai's witnesses unambiguously testified that Funai maintains an inventory of [redacted] worth of accused products in the United States. The ALJ stated that "if the amounts of inventories alleged by Complainants could be established ([redacted] in the case of Funai Corporation, Inc., and [redacted] in the case of P&F USA, Inc.), it would be found that the inventories could be used to undercut a limited exclusion order." (RD at 12.) Complainants' allegations are fully supported by the record and the ALJ provided no justification for ignoring Complainants' evidence. Accordingly, the Commission should issue a cease and desist order covering Funai's accused products.

II. PUBLIC INTEREST

As part of its public interest submission, LSI respectfully submits its initial responses to the public interest questions (nos. 1 – 6) posed by the Commission in its October 17, 2013 Notice.

A. Question No. 1: LSI's Commitments to Standard-Setting Bodies

Please discuss and cite any record evidence of the allegedly RAND-encumbered nature of the declared standard essential '663, '958, and '867 patents. With regard to the '958 patent and the '867 patent, what specific contract rights and/or obligations exist between the patentee and the applicable standard-setting *organization, i.e., the Institute of Electrical and Electronic Engineers, Inc. (IEEE)? With regard to the '663 patent, what specific contract rights and/or obligations exist between the patentee and the applicable standard-setting organization, i.e., the International Telecommunication Union (ITU)?*

Response:

The ‘958 patent, the ‘867 patent, and the ‘663 patent have been declared to be standard-essential patents (“SEPs”).[3] The ‘958 and ‘867 patents are subject to LSI’s commitments, as made by LSI’s predecessors-in-interest, to the IEEE in which LSI agreed to negotiate in good faith with potential licensees. LSI’s commitments with respect to the IEEE are set forth in its Letters of Assurance to the IEEE. *See* CX-1257C (Lucent-IEEE Letter, Apr. 29, 1998) (Complainants’ predecessor Lucent would license 802.11b SEPs on fair and nondiscriminatory terms); CX-1261C (Agere-IEEE Letter, Jan. 24, 2003) (Agere “is prepared to grant a license to an unrestricted number of applicants on a worldwide, nondiscriminatory basis and on reasonable terms and conditions to comply with the [proposed] IEEE [802.11g] Standard”); CX-1267C (Agere-IEEE Letter, Sep. 13, 2004) (same for proposed 802.11n Standard); *Wireless Commc’n Devices*, Comm’n Op. at 52 (citing *North Star Steel Co. v. United States*, 477 F.3d 1324, 1332 (Fed. Cir. 2007)) (obligation to grant licenses on terms to be established in the future, *i.e.,* “agreement to agree,” imposes obligation to negotiate in good faith).

The ‘663 patent is subject to LSI’s commitment, as made by LSI’s predecessor-in-interest, to the ITU-T in which LSI agreed to negotiate in good faith with potential licensees.

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[3] The term standard-essential patent is used throughout this Statement to describe a patent containing one or more claims that are essential to an industry standard, *i.e.,* claims that are infringed by compliance with an industry standard. Such standard-essential patents may also contain claims that are not essential to the practice of an industry standard and not subject to RAND obligations. The subsequent discussion regarding standard-essential patents is focused on addressing obligations related to claims that are essential to an industry standard.

LSI's commitment with respect to the ITU-T is set forth in its JVT Patent Disclosure Form. *See* RX-0740 (Winger – Putting a Reasonable) at 6-8 (Complainants' predecessor VideoLocus, Inc. stated it "is prepared to grant . . . a license to an unrestricted number of applicants on a worldwide, non-discriminatory basis and on reasonable terms and conditions to . . . implementations of the above [H.264] Recommendation | Standard"); RX-1142 (IPR in ITU Recommendations) (ITU-T Intellectual Property Rights database entry confirming VideoLocus's licensing declaration); *Wireless Commc'n Devices*, Comm'n Op. at 52 (obligation to grant licenses on terms to be established in the future imposes obligation to negotiate in good faith).

There are no contractual limits in LSI's Letters of Assurance that prevent a patent holder from seeking injunctive relief. For example, the IEEE only requires that a patentee *make available a license*, not that it do so before seeking injunctive relief. *See e.g.*, CX-1261C (Agere-IEEE Letter, Jan. 24, 2003) (Agere "is prepared to grant a license to an unrestricted number of applicants on a worldwide, nondiscriminatory basis and on reasonable terms and conditions to comply with the [proposed] IEEE [802.11g] Standard"). Indisputably, the IEEE places no restrictions on the timing and manner of license offers or negotiations. Nothing in the evidentiary record demonstrates that Complainants' RAND commitments include an obligation to make a license offer prior to bringing an infringement suit. The IEEE does not impose any restrictions on a patent holder's rights to redress infringement of its patents, including the right to seek an exclusion order from the Commission. *See, e.g.*, RX-0047 (IEEE Operations Manual—1997) at 27.

Likewise, there are no contractual terms or obligations in LSI's JVT Patent Disclosure Form that prevent it from seeking injunctive relief. The JVT Patent Disclosure Form makes no promise to relinquish the right to injunctive relief, nor does it place any restriction on the timing and manner of license offers or negotiations. *See* RX-0740 (Winger – Putting a Reasonable) at 7. The patentee simply declared that it was willing to "grant…a license to an unrestricted number of applicants," and the ITU-T explicitly contemplated that disputes over patent rights and negotiation of licenses would be "left to the parties concerned." *See* RX-1142 (IPR in ITU Recommendations) ("Negotiations of licenses are left to the parties concerned and are performed outside the ITU-T | ISO/IEC."); RX-1141 (Guidelines for Implementation of ITU-T Patent Policy) at 2 ("settlement of disputes on patent rights (licensing, royalties, etc.) [is left] to the parties concerned"). The ITU-T does not impose any restrictions on a patent holder's right to redress infringement of its patents, including the right to seek an exclusion order from the Commission. *See, e.g.*, RX-1141 (Guidelines for Implementation of ITU-T Patent Policy).

Hence, with respect to the IEEE and the ITU-T, the only "RAND encumbrances" imposed on LSI in relation to its SEPs arise from the Letters of Assurance or the JVT Patent Disclosure Form, respectively, agreed to by LSI's predecessors-in-interest. Specifically, in each instance, the requirements flowing from these encumbrances are to make available to an unrestricted number of applicants on a worldwide, nondiscriminatory basis and on reasonable terms and conditions licenses to the SEPs. LSI has honored these obligations -- as reflected in the dozens of licenses it has entered into with respect to the patents-in-suit -- and will continue to do so.

B. Question No. 2: History of Negotiations with Respondents

Please summarize the history to date of negotiations between LSI and Funai and between LSI and Realtek concerning any potential license to the '663, the '958, and the '867 patents, either alone, in conjunction with each other and/or the '087 patent, and/or in conjunction with non-asserted patents. Please provide copies of, or cite to their location in the record evidence, all offers and communications *related to the negotiations including any offer or counteroffer made by Funai and Realtek.*

Response

LSI and Agere (as LSI's predecessor-in-interest) have sought to negotiate [redacted] licenses with both Funai and Realtek that would encompass the '663, the '958 and the '867 patents. The history of these respective negotiations is set forth below.

1. LSI's Negotiations with Funai

LSI negotiated extensively with Funai over the course of [redacted], beginning with [redacted] and continuing through [redacted], in an attempt to license Funai to [redacted] the '663, '958, and '867 patents. On multiple occasions, Funai [redacted] Notwithstanding all of Funai's misdirection, LSI persisted in good faith, meeting with Funai [redacted]. It was only after those extensive efforts proved futile that LSI filed suit against Funai and certain of its chip suppliers, including Realtek. Further details of the parties' meetings and exchanges follow.

a. LSI Seeks to Negotiate With Funai [redacted]

On [redacted], LSI [redacted]

b. The Parties Hold Technical Discussions Regarding [redacted]

The parties met in-person for the first time on [redacted], at which meeting LSI [redacted].[4] *See* Bell Decl. Ex. 8 ([redacted]); CX-1145C ([redacted]). Between [redacted], the parties held [redacted] more meetings regarding LSI's [redacted], at which meetings the parties had further technical discussions regarding the '663 patent ([redacted]). *See* Bell Decl. Ex. 31 ([redacted]); Bell Decl. Ex. 9 ([redacted]); Bell Decl. Ex. 19 ([redacted]); Bell Decl. Ex. 10 ([redacted]); Bell Decl. Ex. 20 ([redacted]); CX-1146C ([redacted]); Bell Decl. Ex. 32 ([redacted]); Bell Decl. Ex. 11 ([redacted]); CX-1147C ([redacted]); Bell Decl. Ex. 46 ([redacted]).

On [redacted], LSI [redacted] Bell Decl. Ex. 5 ([redacted]). The parties held another meeting [redacted]

[4] LSI's [redacted] presentation also included [redacted], including both the '087 and '663 patents. CX-1145C ([redacted]) at 15.

[redacted][5] *See* Bell Decl. Ex. 12 ([redacted]); Bell Decl. Ex. 33 ([redacted]); CX-1190C ([redacted]). The parties also continued their technical discussions regarding [redacted]. *See* Bell Decl. Ex. 12 ([redacted]); Bell Decl. Ex. 34 ([redacted]); Bell Decl. Ex. 21 ([redacted]).

c. LSI Attempts to Engage Funai in Business Discussions Regarding the Terms of a Potential License [redacted]

On [redacted], the parties held yet another meeting at which LSI presented its first business proposal regarding the terms of a potential license between the parties. *See* CX-0331C ([redacted]). The terms of LSI's proposed licensing framework were as follows:

- [redacted]

CX-0331C ([redacted]). Funai [redacted]. *See* CX-

[5] The '663 patent [redacted] were already part of the parties' technical discussions [redacted]. LSI's [redacted] presentation also included [redacted], including both the '087 and '663 patents. CX-1190C ([redacted]) at 30.

0341C ([redacted]) at 11. The parties also continued their technical discussions at this meeting [redacted]. *See* Bell Decl. Ex. 13 ([redacted]); Bell Decl. Ex. 23 ([redacted]); Bell Decl. Ex. 22 ([redacted]).

On [redacted], the parties held another meeting at which Funai [redacted]. *See* CX-0341C ([redacted]) at 11. The parties also continued their technical discussions [redacted]. *See* Bell Decl. Ex. 14 ([redacted]); CX-1148C ([redacted]); CX-0333C ([redacted]); Bell Decl. Ex. 24 ([redacted]); Bell Decl. Ex. 25 ([redacted]).

On [redacted], the parties held a conference call at which LSI [redacted]. *See* Bell Decl. Ex. 35 ([redacted]). These proposed rates were as follows:[6]

- [redacted]

[6] The [redacted] rates listed here were LSI's proposed rates [redacted]. LSI also proposed [redacted]. Bell Decl. Ex. 35 ([redacted]) at 6, 8.

Bell Decl. Ex. 35 ([redacted]) at 8, 13. Funai agreed [redacted]. *See* CX-0341C ([redacted]) at 12.

Despite this agreement, on [redacted], Funai [redacted]. *See* CX-0341C ([redacted]) at 13. In particular, Funai did not provide a licensing counter-offer [redacted]. *See id.*

On [redacted], the parties held a meeting at which LSI presented further technical analysis as well as an updated business proposal. Bell Decl. Ex. 15 ([redacted]); Bell Decl. Ex. 39 ([redacted]); Bell Decl. Ex. 37 ([redacted]); Bell Decl. Ex. 36 ([redacted]); Bell Decl. Ex. 38 ([redacted]). The updated business proposal included [redacted] royalty rates as LSI's original [redacted] proposal, and also included calculations proposing [redacted]. Bell Decl. Ex. 38 ([redacted]). Again, Funai provided no business response. Nor did Funai present any additional technical analysis, [redacted]. *See* CX-0341C ([redacted]) at 14. Subsequent correspondence between the parties resulted [redacted]. *See id.*

On [redacted], the parties held another meeting at which Funai's [redacted]

[redacted] Bell Decl. Ex. 26 ([redacted]); *see also* Bell Decl. Ex. 16 ([redacted]). LSI addressed Funai's first issue in real time at that meeting, assuring Funai that [redacted]. *See* CX-0341C ([redacted]) at 16; Bell Decl. Ex. 38 ([redacted]) at LSIAgere837-00747387. LSI agreed to address the other two issues at the parties' next meeting. *See* CX-0341C ([redacted]) at 16.

Accordingly, on [redacted], the parties held a meeting at which LSI provided a final technical presentation, [redacted], and an updated business proposal that specifically addressed the issues raised by Funai at the parties' previous meeting. *See* Bell Decl. Ex. 41 ([redacted]); Bell Decl. Ex. 45 ([redacted]); Bell Decl. Ex. 40 ([redacted]); Bell Decl. Ex. 42 ([redacted]); Bell Decl. Ex. 43 ([redacted]); Bell Decl. Ex. 44 ([redacted]); CX-0341C ([redacted]).

In particular, the [redacted] updated business proposal included [redacted] royalty rates as LSI's previous proposals. CX-0341C ([redacted]) at 35, 50. With respect to [redacted], LSI proposed [redacted]

[redacted]. CX-0341C ([redacted]) at 40, 62. Moreover, in response to a request from Funai that [redacted], LSI offered [redacted]. *Id.* at 40, 63. LSI also offered to [redacted]. *See id.* at 22, 66.

With respect to the issue Funai had raised at the parties' previous meeting regarding Funai products [redacted], LSI reiterated that it would [redacted] *Id.* at 36. With respect to the two issues Funai had raised regarding [redacted], LSI explained that [redacted]. *See id.* at 35, 37-38. LSI's updated business proposal also included a review of its previously proposed terms, pointing out [redacted] in order for the negotiation to move forward. *See id.* at 17-68.

d. LSI and Funai Discuss Potential Licensing Terms [redacted] but Cannot Reach Agreement

Following the parties' meeting in [redacted], Funai provided a counter-offer for a license at a royalty rate of [redacted], as well as a counter-offer regarding the appropriate royalty rate for [redacted] products, which the parties discussed at a meeting on [redacted]. *See* Bell Decl. Ex. 17 ([redacted]); Bell Decl. Ex. 47 ([redacted]); Bell Decl. Ex. 27 ([redacted]). Funai suggested that the parties should continue their technical discussions. *See* Bell Decl. Ex. 27 ([redacted]). LSI requested clarification of Funai's counter-offers, and following the [redacted] meeting, Funai provided a more detailed counter-offer [redacted]. Bell Decl. Ex. 47 ([redacted]) at LSIAgere837-00747691-92, 98-99; Bell Decl. Ex. 3 ([redacted]). Funai's [redacted] proposed [redacted], with a royalty rate of [redacted]. *Id.* at 3. Funai also indicated [redacted]. *Id.* at 4.

LSI sent Funai a counter-proposal for [redacted], proposing a royalty rate of [redacted]. *See* Bell Decl. Ex. 28 ([redacted]) at 5, 12. The parties held another meeting on [redacted], at which Funai responded to LSI's [redacted] counter-proposal with a new offer of [redacted] for a license [redacted]. *See* Bell Decl. Ex. 18 ([redacted]); Bell Decl. Ex. 28 ([redacted]) at 13. Pursuant to the parties' [redacted] discussion, Funai sent a revised offer [redacted], proposing a royalty rate of [redacted]. Bell Decl. Ex. 4 ([redacted]). LSI responded to Funai's [redacted] letter on [redacted], proposing a royalty rate of [redacted]. Bell Decl. Ex. 6 ([redacted]). The parties held another meeting on [redacted]. Neither party provided additional or revised proposed licensing terms or counter-offers at this meeting, although Funai briefly presented a new technical argument. *See* Bell Decl. Ex. 48 ([redacted]); Bell Decl. Ex. 29 ([redacted]).

LSI provided a revised license proposal on [redacted], proposing [redacted]. *See* Bell Decl. Ex. 2 ([redacted]). Funai provided a counter-offer on [redacted], proposing [redacted]. *See* Bell Decl. Ex. 30 ([redacted]).

In response to Funai's request for [redacted], LSI sent Funai its standard WLAN RAND proposal on [redacted]. CX-0348C ([redacted]). Consistent with its RAND declarations to the IEEE and with its opening WLAN license proposals to other potential licensees, LSI proposed licensing terms [redacted] products with WLAN functionality, [redacted]. *Id.* at 2-3. [redacted] *Id.* at 2.

Specifically, LSI proposed [redacted] products with WLAN functionality. *Id.* at 3. The parties then held a meeting on [redacted], at which LSI reiterated its WLAN RAND proposal and explained how a WLAN license [redacted] license the parties had been discussing. *See* CX-0349C ([redacted]) at 13-26.

Following the [redacted] meeting, the parties [redacted], but essentially no progress was made.

On [redacted], representatives from LSI met with representatives from Funai in Tokyo, Japan to discuss [redacted], Funai made no new offer to resolve the dispute. [redacted], in an effort to move the negotiations forward.

2. LSI's Negotiations with Realtek

LSI's negotiation history with Realtek is comprised of two segments: (1) a [redacted]; and (2) the period [redacted]. Despite LSI's diligent efforts during both periods, Realtek has yet to engage in serious licensing negotiations. Indeed, the ALJ specifically found that Realtek has twice refused to engage in licensing negotiations. ID at 356 ("[T]he evidence shows that Realtek has twice refused to negotiate with Complainants, i.e., first [redacted], and again [redacted].").

In fact, only recently on October 7, 2013, at a settlement conference in a case pending in the Northern District of California, did Realtek finally make a counter-offer. Before then, Realtek had steadfastly refused to provide any counter-offer or proposal in response to LSI's repeated licensing overtures.

a. LSI's Predecessor Agere Systems Inc. Seeks to Negotiate With Realtek [redacted]

In [redacted], Agere sent Realtek a series of letters seeking to enter into a business relationship and offering Realtek a license to essential claims of Agere patents for implementing the 802.11b standard. On [redacted], Agere sent an initial letter to Realtek stating that Agere was willing to offer Realtek a license for those Agere patents that are essential to practice the IEEE 802.11b standard. *See* CX-1007C (Letter from Agere Systems to Realtek Semiconductor, [redacted]) at 1. An attachment to the letter [redacted]. *Id.* at 2. For such a license, Agere proposed [redacted]. *Id.* at 1.

The [redacted] letter requested that Realtek provide a response by [redacted]. *Id.* Realtek provided no response. So Agere sent a follow-up letter to Realtek [redacted]. *See* CX-1077C (Letter from Agere to Realtek, [redacted]). The letter referenced Realtek's failure to respond to Agere's initial letter and reconfirmed that Agere was willing to offer Realtek a license for those Agere patents that are essential to practicing the IEEE 802.11b standard at a royalty rate [redacted]. *Id.* Realtek finally responded on [redacted]. Specifically, [redacted] of Realtek sent a letter to [redacted] of Agere, dated [redacted]. CX-0414C (Letters from Agere Systems and Realtek Semiconductor, [redacted]) at 2. In the letter, Realtek [redacted] letter sent by Agere to Realtek. Realtek requested [redacted].

Id. In response, on [redacted] of Agere sent [redacted] of Realtek another letter, which [redacted]. *Id.* at 3-7.

On [redacted], in a letter from [redacted], Realtek stated that it was [redacted] those Agere patents that are essential to the IEEE 802.11b standard. CX-0415C (Letter from Realtek Semiconductor to Agere Systems, [redacted]) at 1. Realtek requested that Agere [redacted]. *Id.* On [redacted] sent another letter to [redacted]. CX-1075C (Letter from Agere to Realtek, [redacted]). This letter offered to arrange a conference call to discuss the patent claims Agere believed were relevant to the IEEE 802.11b standard. *Id.* Realtek never responded to the request for a conference call. Having not received a response, [redacted] faxed a letter, dated [redacted] in which Agere inquired as to the status [redacted] and further requested a response to Agere's offer to license essential claims of its patents relating to the IEEE 802.11b standard. Once again, Realtek failed to respond to the letter.

In summary, from [redacted], Agere wrote multiple letters to Realtek offering a license to the essential claims of Agere's patents relevant to the IEEE 802.11b standard. After [redacted], yet then proceeded to ignore Agere's two subsequent letters. At no time did Realtek provide a substantive response to Agere's licensing overtures. In view of Realtek's continued refusal to engage in licensing negotiations during [redacted], Realtek cannot be considered a "willing licensee."

b. LSI's Continues Attempts to Negotiate With Realtek [redacted]

On [redacted], LSI sent another letter to Realtek [redacted] the van Nee '987 patent, the Diepstraten '867 patent, and the Winger '663 patent. CX-0151C (Letter from LSI to Realtek, [redacted]) at 1. The letter explained that [redacted] LSI believed were infringing LSI's patents. As an example, the letter [redacted]. *See id.*

On [redacted], Realtek responded to LSI's [redacted], letter. Specifically, [redacted] requested on Realtek's behalf that Agere provide reasonable and non-discriminatory ("RAND") license terms for Agere's SEPs, including the van Nee '987 patent and the Diepstraten '867 patent. CX-1058C (Letter from ReedSmith to Agere, [redacted]) at 1. In response to Realtek's request, LSI presented Realtek with its standard initial RAND WLAN proposal, which includes a proposed license to the van Nee '987 patent and the Diepstraten '867 patent. CX-1599C (Direct Witness Statement of Warren Waskiewicz) at 52. Q&A 211-212. LSI provided this RAND proposal to Realtek on [redacted] CX-1006C (LSI Presentation to Realtek, [redacted]).

More specifically, the [redacted] Proposal consists of LSI's standard opening proposal [redacted] prior to Realtek. CX-1599C (Direct Witness Statement of Warren Waskiewicz) at 28-38, 57-58, Q&A 112-114, 224-228; CX-1642C at 24, 25, 40, 41, Q&A 68-70, 117-118, 121, 122; CX-0348C ([redacted]) at 2-3; CX-0349C ([redacted]) at

14-16; CX-1078C ([redacted]) at 19; CX-1006C ([redacted]) at 13. Both the van Nee '987 and Diepstraten '867 patents are part of the LSI's WLAN portfolio referenced in the [redacted] [redacted] Proposal. CX-1599C (Direct Witness Statement of Warren Waskiewicz) at 51-52, Q&A 213-214. Furthermore, both pages 8 and 11 of the [redacted] [redacted] Proposal refer to [redacted]. CX-1006C (LSI Presentation to Realtek, [redacted]) at 8, 11.

Overall, the [redacted] [redacted] Proposal sets forth terms for a proposed license, including [redacted]. CX-1599C (Direct Witness Statement of Warren Waskiewicz) at 52-53, Q&A 217. The [redacted] royalty rate [redacted]. *Id.* [redacted] CX-1599C (Direct Witness Statement of Warren Waskiewicz) at 53-54, Q&A 218. In operation, therefore, [redacted]. LSI's [redacted] [redacted] Proposal to Realtek [redacted]. CX-1599C (Direct Witness Statement of Warren Waskiewicz) at 56-57, Q&A 225-226.

Realtek never responded to LSI's [redacted] Proposal. CX-1599C (Direct Witness Statement of Warren Waskiewicz) at 59-60, Q&A 235-237. Instead, [redacted] after receiving the [redacted] Proposal, and without any attempt to discuss the proposal, Realtek sued LSI for breach of contract in the United States District Court for the Northern District of California. *Id*. The same day, Realtek filed a second lawsuit against Complainants in the same venue, alleging infringement of two of its patents. *See Realtek Semiconductor Corp. v. LSI Corp.*, Case No. 12-cv-3437 (N.D. Cal. June 29, 2012). [redacted] later, after LSI made another settlement overture, Realtek filed a third action against Complainants, this time in the International Trade Commission, alleging infringement of two patents. *In re Certain Integrated Circuit Chips and Prods. Containing Same*, Inv. No. 337-TA-859 (September 19, 2012). Later, instead of responding in good faith to further attempts by LSI to engage in licensing discussions, Realtek filed yet another patent infringement suit, this time in China. In other words, instead of negotiating in good faith (or even negotiating at all), Realtek filed four lawsuits against LSI/Agere during the ten month period leading up to the April 2013 hearing before ALJ Shaw. Indeed, not once during that ten month period did Realtek ever formally respond to Complainants' [redacted] license proposal, provide comments or feedback to that proposal, make any form of counter proposal, or respond in any way whatsoever that would have advanced the negotiation of a license to the LSI/Agere patents.[7]

On October 7, 2013, LSI and Realtek conducted a court-ordered mediation with Magistrate Judge Paul Grewal in the Northern District of California. *See* Declaration of Warren K. Waskiewicz ("Waskiewicz Decl.") at ¶¶ 3-5. During the conference, Realtek, for the first

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[7] On [redacted] LSI stood by its [redacted] Proposal and asked for a counter proposal or some constructive engagement from Realtek. None occurred.

time, provided an oral license offer to LSI (via the magistrate judge): [redacted] *Id.* at ¶ 8. In other words, [redacted] seeking to enforce its patents before the International Trade Commission following Realtek's refusal to engage in licensing negotiations.[8] *Id.* After receiving this implausible counteroffer from Realtek, LSI made the following legitimate counteroffer: [redacted]. *Id.* at ¶ 9.

C. Question No. 3: Summary of LSI's Licenses to Patents In Suit

Please summarize all licenses to the '663, the '958, and the '867 patents granted by LSI to any entity including evidence of the value of each patent if such patent was licensed as part of a patent portfolio. Please provide copies of, or cite to their location in the record evidence, all agreements wherein LSI grants any entity a license to these patents. Please also provide a comparison of the offers made to Funai and/or Realtek with offers made to these other entities.

[8] Considering that LSI [redacted] royalties from dozens of companies that have licensed these and its other WLAN patents over the years, Realtek's [redacted] Realtek obtaining license rights to LSI's patents was not a serious proposal. Yet, to date, this is the only counterproposal ever provided by Realtek to LSI's offers to license the patents-in-suit. *Id.* at ¶ 10.

Response:

Attached hereto as Appendix B is a summary of all licenses to the ‘663, the ‘958 and the ‘867 patents granted by LSI (or its predecessors) to any entity, including, where applicable, the location in the record where of each of these licenses can be found.[9]

In this investigation, each of the approximately [redacted] licenses involving the patents-in-suit [redacted]. In most instances, the licenses [redacted] relevant to this Investigation and other LSI [redacted] that are not relevant. Moreover, there is some variance in [redacted], based on the negotiations with the relevant parties. The consideration associated with the licenses also varies amongst the licenses, [redacted], depending on the preferences and circumstances of the licensees. Additionally, many of the licenses [redacted]. The Appendix B summary of licenses, however, presents a high-level overview of the relevant licenses. Specific details of each may be found within the text of the license.

1. Value Considerations for All Three Patents

Because LSI and Agere are successors-in-interest to the famed Bell Laboratories and possess a robust patent portfolio of more than 13,000 patents, prospective licensees [redacted]. Rather, virtually all prospective licensees prefer to secure [redacted]

[9] After the close of discovery, LSI executed [redacted] additional licenses to the ‘663, the ‘958 or the ‘867 patents. LSI will supplement its Appendix B and provide copies of these licenses once LSI is permitted to do so under its confidentiality obligations to these [redacted] licensees.

[redacted]. As such, Complainants rarely are asked to license [redacted], thus making it difficult here to point to any one particular transaction or series of transactions that would isolate or benchmark the value of the patents asserted in this investigation. Notwithstanding this challenge, the value associated with the asserted SEP patents is substantial, and has been described by Dr. Negus (see below with respect to the WiFi '958 and '867 patents) and Dr. Iain Richardson and Dr. Glenn Reinman (see below with respect to the video compression '663 patent).

As a general indicator of value, it is useful and informative to note the number of instances that these three patents have been [redacted] LSI during the course of its licensing negotiations. Notwithstanding the fact that LSI's licensing discussions [redacted], these three asserted patents [redacted] of particular value and interest to the prospective licensee. In other words, through technical presentations and analysis of claim scope coverage, these three patents are [redacted] providing particularly high value such that the payment of substantial license fees is justified. Complainants have assembled a table identifying [redacted] LSI during licensing negotiations as noteworthy and of particular value to the prospective licensee. LSI's expert witness on the issue of domestic industry, William Kerr, testified on this issue extensively, including presenting the table. CX-1595C (Kerr Direct Witness Statement) at 77, 83-85; Q&A 334, 353-357; CDX-1008C. This serves to illustrate the importance and value ascribed to these three asserted patents by LSI and ultimately recognized by licensees who have taken licenses to LSI's patent [redacted].

2. Value Considerations for the ‘958 and ‘867 Patents.

Although apportioning an individual value for the ‘958 and ‘867 patents is difficult in the context of [redacted], there is no question that a license to the patents holds tremendous value, whether licensed separately or as part of Complainants’ extensive WiFi portfolio of patents. As set forth in the accompanying Declaration of Dr. Kevin Negus, Complainants’ expert on wireless networking and an industry veteran, the ‘867 patent describes and claims a highly valuable technological advancement for the MAC layer within any product that is compliant with any of the IEEE802.11 family of standards. *See* Declaration of Dr. Kevin Negus (“Negus Decl.”) at ¶ 5. The ‘867 patent describes and claims transmitters and receivers, and methods of their operation, which are fundamental to the core timing synchronization functions required in the IEEE802.11 MAC standard. Specifically, satisfying a strong need for accurate timing synchronization within the framework of a CSMA protocol was a pivotal achievement of the 802.11 MAC layer development team that saved 802.11 from failure as a standards organization. Negus Decl. at ¶ 72. The innovations described and claimed in the ‘867 patents allowed WLAN products to have, for the first time ever, the efficiency and flexibility for sharing resources that the CSMA protocol provides, while simultaneously supporting applications and devices that require accurate timing synchronization, all within a single unified MAC layer standard. Negus Decl. at ¶ 72.

Dr. Negus further states that he is “unaware of any U.S. patent, other than the ‘867 Patent, that describes and claims WLAN products specific to the 802.11 MAC layer timing synchronization function.” Negus Decl. at ¶ 73. Thus, the value of the ‘867 Patent is directly linked to the significant value of achieving accurate MAC layer timing synchronization in a CSMA protocol. Negus Decl. at ¶ 73. Since the 802.11 MAC layer was first adopted in 1997, there have been at least two major revisions (802.11e and 802.11n) to the 802.11 MAC layer, but the timing synchronization function has remained largely unchanged. Negus Decl. at ¶ 73. Therefore, it is Dr. Negus's conclusion that the "'867 patent is amongst the very few most valuable patents infringed by most, if not all, products that interoperate with 802.11 standards." Negus Decl. at ¶ 75.

The '958 patent describes and claims a highly valuable technological advancement for the PHY layer within any product that is compliant with any of the IEEE 802.11b, 802.11g, or 802.11n standards. Negus Decl. at ¶ 6. More specifically, the '958 Patent describes and claims modulators and demodulators, and methods of their operation, which are fundamental to products that comply with the 11 Mb/s CCK mode of operation required in any of the IEEE 802.11b, 802.11g, or 802.11n PHY standards. Negus Decl. at ¶ 6.

The '958 patent provides great value because the CCK mode of operation for WLAN products is not found in any other U.S. patent. Negus Decl. at ¶ 55. The CCK mode allowed LSI's predecessor in interest, Lucent Technologies, and third-party Harris Corporation to reach a compromise proposal presented to the IEEE working group. Negus Decl. at ¶¶ 49-50. The compromise proposal relied heavily on the CCK mode, and met the working group goals for solving problems related to multipath, among others. Negus Decl. at ¶¶ 50-51. Solving the multipath problem, along with meeting all of the other criteria set out by the IEEE working group, led to the adoption of the Harris/Lucent proposal as part of the 802.11b standard. Negus Decl. at ¶¶ 51, 53. Third-party Carl Andren of Harris Corporation, who testified at the hearing on the merits, testified that no one at his company had the idea of using CCK before it was proposed by Lucent, that the proposal was accepted by the Working Group and became part of the 802.11b standard, and that testing of the technology after its proposal by Lucent demonstrated that it did not suffer from at least one serious deficiency that plagued Harris' proposal. *See* Andren, Tr. 887, 891-92, 894-5, 915-19.

Dr. Negus explains that "WLAN products with transmitters and receivers compatible with the 802.11b standard exhibited dramatically improved performance compared to original 802.11 standard compatible products." Negus Decl. at ¶ 54. "This caused exponential growth in sales of "WiFi" compatible products and by 2001, 802.11b had such a dominant market share that HomeRF disbanded even though it had succeeded in changing the FCC 15.247 rules and building 10 Mb/s products." Negus Decl. at ¶ 54. As such, Dr. Negus concludes that "the '958 Patent is amongst the very few most valuable patents infringed by most, if not all, products that interoperate with 802.11 standards." Negus Decl. at ¶ 58.

3. Value Considerations for the '663 Patent

Similarly, with respect to the '663 patent, a license to use the technology claimed in that patent holds tremendous value, whether licensed alone or as part of Complainants' portfolio. The technology described in the '663 patent was presented to the H.264 Standard Committee in a proposal by inventor Lowell Winger at a meeting held May 6-10, 2002. CX-1644C (Richardson WS) at Q&A 186. The H.264 Standard Committee accepted Dr. Winger's proposal, and the disclosure of the '663 patent – in particular the process of UEGk binarization and its reverse process – was adopted into the H.264 Standard. *See id*; CX-0463 (Sullivan Article, May 6, 2002) at 38, 46 (illustrated in CDX-1166 (Richardson 017)).

Consequently, Section 9.3.2.3 of H.264 Standard now describes a process for constructing various types of binary codewords from index values, also called "syntax elements," utilizing Dr. Winger's UEGk binarization. CX-1597C (Reinman WS) at Q&A 169; CX-0642 (H.264 Standard, Jan. 2012) at 270-71, § 9.3.2.3. With respect to the reverse process, Section 9.3.3 of the H.264 Standard describes the decoding of index values, again also called "syntax elements," encoded using UEGk binarization. CX-1597C (Reinman WS) at Q&A 169; CX-0642 (H.264 Standard, Jan. 2012) at 274-75, § 9.3.3.

Due this this inclusion of the disclosure of the '663 patent in the H.264 Standard, there is no commercially feasible way to practice the H.264 Standard without practicing the asserted claims of the '663 patent. CX-1597C (Reinman WS) at Q&A 221-255. As such, practicing the asserted claims of the '663 patent is critical to nearly all HD-video products, including such consumer mainstays as Blu-ray disc players and "smart" televisions that stream high-definition video. CX-1644C (Richardson WS) at Q&A 499-500. Therefore, any of the companies that have licensed [redacted] '663 patent – including technology market leaders such as [redacted] – unquestionably place premium value on the license to the '663 Patent.

4. LSI's Initial Offers to Entities Currently Licensed

Attached hereto as Appendix C is a summary of LSI's (or its predecessors') initial offers to entities currently licensed to the '663, '867, and/or '958 patents, and a comparison of those offers to Complainants' initial offers to Funai and Realtek.

As can be seen in Appendix C, [redacted] proposed royalty rates for LSI's [redacted] presented to Funai [redacted], *see* CX-0331C ([redacted]), were also proposed to at least [redacted] other optical and/or DTV manufacturers [redacted], and each of these other entities has successfully negotiated one or more licenses that includes the '663 patent. *See* Bell Decl. Ex. 55 ([redacted]) at 5; Bell Decl. Ex. 56 ([redacted]) at 32-33; Bell Decl. Ex. 57 ([redacted]) at LSIAgere837-00514682, 90. Likewise, [redacted] proposed WLAN royalty rates and [redacted] presented to Funai [redacted], *see* CX-0349C ([redacted]), were also presented to at least [redacted] other entities [redacted], and each of those entities has successfully negotiated one or more licenses that includes the '867 and '958 patents. *See* Bell Decl. Ex. 59 ([redacted]) at LSIAgere837-00476947-52; CX-1084C ([redacted]) at 86-88.

Similarly, [redacted] proposed royalty rate for IEEE 802.11-essential patents that Agere offered to Realtek [redacted], *see* CX-1007C ([redacted]), was also offered to at least [redacted] other entities [redacted], each of which has taken a license that includes the '867 and '958 patents. *See* Bell Decl. Ex. 52 ([redacted]); Bell Decl. Ex. 53 ([redacted]); CX-1508C ([redacted]) at 8; CX-1078C ([redacted]) at 19. Likewise, [redacted] WLAN royalty rates and [redacted] were proposed to Realtek [redacted], *see* CX-1006C ([redacted]), were also presented to at least [redacted] other entities [redacted], and each of those entities has successfully negotiated one or more licenses that includes the '867 and '958 patents. *See* Bell Decl. Ex. 59 ([redacted]) at LSIAgere837-00476947-52; CX-1084C ([redacted]) at 86-88.

Appendix C reflects the fact that LSI [redacted].[10] This has been a conscious, intentional practice designed to give all prospective licensees [redacted], consistent with LSI's RAND obligation to provide non-discriminatory license terms to its SEPs. CX-1599C (Waskiewicz

[10] LSI has also made [redacted] offer to many other potential licensees with whom license negotiations are ongoing, and thus are not reflected in Appendix C. *See, e.g.*, Bell Decl., Ex. 60 ([redacted]) ([redacted]); CX-1209C ([redacted]) ([redacted]); Bell Decl., Ex. 61 ([redacted]) ([redacted]).

Direct Witness Statement) at 27-28, Q&A 115-116. Through the give-and-take of negotiation, as the needs of the prospective licensee are made clear, the shape of the license will develop and take form. As reflected in the Appendix B, the final terms inevitably will vary from license to license, reflecting the individual needs and circumstances of each licensee. [redacted] LSI believes it is able to maintain a fairness and consistency in its licensing program and, importantly, a faithful adherence to the principle of non-discrimination that is embodied in the RAND commitment.

D. Question No. 4: Industry Practice for Licensing

If applicable, please discuss the industry practice for licensing patents involving technologies similar to the technologies in the '663, the '958, and the '867 patents individually or as part of a patent portfolio.

Response:

There are no uniform or universally established industry practices for forming licenses involving MPEG technology (as covered by the '663 patent) or WLAN technology (as covered by the '958 and the '867 patents).[11] Although these patents were deemed by LSI's predecessors-in-interest as potentially SEPs, neither relevant standard organization – that is, the ITU-T for the H.264 MPEG standard and the IEEE for the 802.11(b)(g) and (n) standard -- has established standard RAND rates or procedures. Each of those organizations, and most other standards setting bodies, has eschewed the adoption or promulgation of any specific rules, regulations or even general guidelines for the formation of RAND license agreements. Instead, the organizations have relied on the common sense of their members and those adhering to their standards to arrive at mutually-satisfactory, negotiated agreements. To promote such outcomes,

[11] Licensing patent pools for MPEG and WLAN technology may have procedures for both determining whether a contributed patent is standard-essential and for licensing the pool portfolio, but such practices do not represent the industry at large.

each organization has simply required that the owners of SEPs be willing to offer and negotiate licenses that are reasonable and non-discriminatory.

In the absence of any express requirements or defined characteristics for a RAND license or the negotiation of a RAND license (other than "RAND" itself , this is, "reasonable and non-discriminatory"), common practices and principles have arisen which typically have informed and shaped the formation of such agreements. Briefly, we set forth some of those practices and principles below. As appropriate, we also refer to LSI's own experience, which has involved the licensing of technology in these and other technology areas for several decades and the formation of licenses valued [redacted].

1. RAND Necessarily Involves A Negotiation Process: Multiple Discussions Are Almost Universal

A fundamental principle of RAND licensing, perhaps its cornerstone, is that licenses are arrived at through a process of negotiation. Almost by definition, the owner of a SEP has something that a prospective licensee needs – technology essential to practice under an industry standard. If the owner of the SEP technology simply announces terms and a price that must be accepted by all without any further dialog, then the prospect of a RAND outcome is severely diminished; given the spectrum of technology adopters and their various roles in the particular technology ecosystem, a one-size-fits-all take-it-or-leave-it approach is typically unworkable. Similarly, the prospective licensee must be willing to make its specific needs and business constraints known, and constructively engage with the SEP owner to find a common ground. Very recently, as courts have been called upon to interpret RAND obligations, they have uniformly recognized that the practice of RAND licensing contemplates a give-and-take negotiation between the patent holder and potential licensee. *See, e.g.,Microsoft Corp. v. Motorola, Inc.*, No. C10-1823, 2012 WL 2030098, at *11 (W.D. Wash. June 6, 2012) ("[T]he language of Motorola's agreements with the IEEE . . . envisions a negotiation between the parties towards a resulting RAND license."); *see also In re Innovatio IP Ventures, LLC*, MDL Docket No. 2303, Case No. 11-CV-9308, 2013 U.S. Dist. LEXIS 144061, 56 (N.D. Ill. Sept. 27, 2013).

Complainants' experience is consistent with the principle that RAND licenses result from negotiation and open dialog between the licensee and licensor. Complainants presently own more than 13,000 issued patents worldwide. Complainants and their predecessors-in-interest (*e.g.,* AT&T Bell Labs, Lucent Technologies, Agere Systems Inc.) have entered into [redacted] patent license agreements over decades. Complainants' extensive history has shown that negotiation is almost always essential to establishing fair and reasonable license agreements, as the needs and desires of each party are unique and specific to the time that the licenses are sought. Focusing only on the approximately [redacted] licenses implicated in this investigation involving these three SEPS, each license typically took [redacted], and in some cases [redacted], to negotiate to an amicable resolution. (CX-1599C (Waskiewicz Direct Witness Statement) at 9-23, 28-46, 52-58; CX-1642C (Kerr Rebuttal Witness Statement) at 27, 34-35; CX-1598C ([redacted] Direct Witness Statement) at 20-35, 40-88; *e.g.*, CX-0035C ([redacted] PLA); CX-0028C ([redacted] PLA).) As a matter of its own implementation of the "non-discriminatory" facet of its RAND obligations in this area, LSI has [redacted] initial offer. The terms of that initial offer consider the broadest possible needs of a potential licensee in that technology area, with the intention of providing appropriate rights for a licensee to operate over a potentially long period of time. From that common, reasonable, and non-discriminatory starting point, the path to the execution of a license has diverged in many directions due to the unique circumstances surrounding the licensee and its business. The common thread of the process, however, involves give-and-take negotiation, point and counter point, eventually leading to a mutually satisfactory (or in some cases, arguably, mutually unsatisfactory) license agreements. RAND licensing requires bilateral negotiation because one size cannot fit all.

2. Licensing Typically Occurs Across A Portfolio and Is Not Limited to Single Patent

One of the first issues addressed by the parties during a licensing negotiation is determining the scope of intellectual property to be licensed. Typically, a licensor prefers to execute a single license covering the patent holder's portfolio in the subject technology as opposed to a series of single patent licenses; the larger the patent portfolio involved, the more the simple efficiencies around expenses and time drive this preference. A portfolio license is also more attractive to a patent holder because it typically requires less time to negotiate than serial license agreements with the same company involving the same technology and can command an overall higher value.[12] Such licenses also reduce the risk of patent stacking, which may result if a licensee seeks multiple licenses for patents covering the same or similar technologies. Portfolio licenses have administrative advantages as well in terms of limiting transaction and administration costs, and generally are easier to audit.

A portfolio license typically also is more attractive to a potential licensee because it provides the potential licensee with the freedom to operate its business without worry of serial licensing negotiations and/or lawsuits from a particular patent owner. No executive wants to report to his board the good news that the company has secured a license to one or even a handful of important patents from a licensor (or prospective plaintiff), while delivering the bad

[12] Value, from the perspective of the licensor, can have many forms including, but not limited to, cross licenses to the licensee's patents, money, or an almost endless array of other non-monetary compensation terms (*e.g.* business deals on products or product development, joint ventures, technology transfer, exclusive licenses, supply agreements, etc.).

news that the licensor has 1,000 additional patents in the same technology area that could be asserted against the company for which no license has been secured. Only through a portfolio license can true "freedom to operate" be achieved by the licensee from a particular licensor.

For example, [redacted]. CX-1078C ([redacted]). [redacted] That inquiry led to further discussions and, ultimately, [redacted] and Agere negotiated a reasonable and non-discriminatory license agreement [redacted], including the '958 and '867 patents. This is not an unusual experience, as evidenced by the fact that of the approximately [redacted] license agreements involving the three LSI SEPs in this investigation, [redacted].

3. Licensors Typically Prefer to License At the System Level, Not At the Level of Individual Components

Another common subject of licensing negotiations, especially licenses that cover MPEG and/or WLAN technology, is whether the license will cover components, end-products, or both. This simply reflects that patent portfolios can and often do span more than what is provided by an individual integrated circuit ("IC") inside of a complex consumer-oriented device. For example, in the real world, particular functionality may extend from the chip-level to the system-level or beyond, and may include operation between completed consumer-ready devices. Most licensors, [redacted], therefore prefer to focus on licensing at the end-consumer product. Such an approach is reasonable and manageable because it limits the collection of royalties to a single point in the commerce stream. In light of the varying number of component suppliers involved in producing an end product, and the changing relationship between suppliers and end product manufacturers over time, licensing the final product provides efficiency for all parties. Depending on its needs, a potential licensee may prefer a license that covers every level of functionality, *e.g.*, at the component, module, system or consumer level, or it may simply desire to cover its contribution to the final product, leaving companies further downstream to negotiate on their own.

Although [redacted], the SEPs at issue in this investigation have been licensed to [redacted]. In the context of RAND negotiations, "reasonableness" on the part of the licensor connotes taking into consideration the licensee's competitive needs relative to the question of whether the license is limited to an individual component or extends to the complete system in which the component is used (*i.e.* a consumer end-product operating in conjunction with other devices).

LSI's experience in this area is exemplified by its negotiations with [redacted] and with [redacted] CX-0028C ([redacted] PLA) at 6-7 and CX-0035C ([redacted] PLA) at 3 and 18. [redacted] This desire reflected where in the commerce stream [redacted] desired to do – and already had been doing – business, [redacted]. [redacted] on the other hand, [redacted]

[redacted] Working with each company, Agere was able to provide the required license on reasonable and non-discriminatory terms, in each case starting from [redacted] initial RAND proposal.

4. The Duration of Licenses May Be For a Fixed Term or the Life of the Licensed Patents, Depending on the Needs and Preferences of the Parties

Another aspect of a standard license negotiation is determining the duration of the license. Some licensees simply want the peace of mind that comes with a lifetime-of-the-portfolio license. Obviously, this could be more expensive than a term license which is subject to renewal, but a licensee taking a long term view may want to put to rest the issue of infringement with respect to a particular portfolio. More commonly, both parties prefer the flexibility of a term license, for example, of only a five year duration. A limited term license potentially costs the licensee less than a lifetime license , and a limited term license allows the parties to adjust future licensing terms to account for changes in the business climate for the particular licensed technology. What is considered indispensable technology today, could be obsolete five years later. With such uncertainty, a licensee could prefer to move forward incrementally with term licenses. Ultimately, the license duration choice reflects the unique risk-management approach employed by the parties during the negotiations.

5. Form of Payment: Royalty, Fixed Amount, or a Mixture of Both

There is no RAND standard or established practice for a particular method or form of payment in a RAND license context. Nonetheless, although there are an infinite number of ways to effectuate payment in the patent license context, most payment arrangements fall into one of three buckets: a running royalty, a lump sum payment, or some combination of each. [redacted]

[redacted], but LSI's experience is that [redacted] licensees prefer negotiating a fixed amount, which could be a lump sum payment or a series of predetermined payments made over time. The virtues of a fixed amount payment for the licensee are many: certainty of expense, certainty of timing of cost incurred, lack of need for accounting or recordkeeping, and avoidance of further contact with the licensor. As shown in Appendix B, [redacted] LSI's negotiated licenses covering the asserted SEPs [redacted].

6. Allocation of Value: How Determine the Amount of Royalties?

A final area of interest in the context of RAND licensing is the method by which the parties determine the amount of royalties to be paid to use the patented technology. One common method to determine an appropriate royalty rate is to base payment on an assessment of the value of the technology in a component relative to the overall cost of the product in which the component is used. This is called the "entire market value rule" and it "recognizes that the economic value of a patent may be greater than the value of the sales of the patented part alone." *See King Instruments Corp. v. Perego*, 65 F.3d 941, 951 n.5 (Fed. Cir. 1995). "The entire market value rule allows a patentee to assess damages based on the entire market value of the accused product [if] the patented feature creates the 'basis for customer demand' or 'substantially create[s] the value of the component parts.'" *Uniloc USA, Inc. v. Microsoft Corp.*, 632 F.3d 1292, 1318 (Fed. Cir. 2011). A corollary of the entire market value rule is that where the component using the technology is not the driver of sales for the product, it is neither fair nor appropriate to base a royalty payment on the full value of the product.

[redacted] the challenges presented by the entire market value rule and its corollary [redacted]

[redacted]

See CX-1642C (Kerr Rebuttal Statement) at Q. 141. By this approach, LSI establishes [redacted] reflects the contribution of the patented technology to the accused product. This approach provides a more accurate valuation of the patented technology in an end product than an approach that blindly represents the strength and breadth of the patent portfolio for all types of products.

E. Question No. 5: Determination of RAND Rate and Licensing Terms

Please identify the forums in which you have sought and/or obtained a determination of a RAND rate for the '663, the '958, and the '867 patents. LSI, Funai and Realtek are each requested to submit specific licensing terms for the '663, the '958, and the '867 patents that each believes are reasonable and non-discriminatory.

Response:

LSI has never sought or obtained in any forum a determination of a RAND rate for any of the '663, the '958, or the '867 patents. On June 29, 2012, [redacted] after receiving LSI's [redacted] Proposal, Realtek filed a lawsuit in the United States District Court for the Northern District of California in which it seeks determination of a RAND rate for the '958 and the 867 patents. That case is presently scheduled for trial on February 10, 2014. To date, a RAND rate for the '958 and the '867 patent has not been determined.

Per the Commission's request, LSI's specific licensing terms for Funai and Realtek are attached hereto as Appendices D and E. LSI's term sheets reflect LSI's reasonable and non-discriminatory offers to license Respondents to LSI's relevant patent portfolios that cover the '958, the '867, and the '663 patents. As discussed in detail in Question 4, licensing entities to single patents is inefficient and difficult, particularly for a licensor such as LSI who has thousands of patents that may cover a licensee's products.

Appendix D, which includes terms for a WLAN license to Realtek, [redacted].[13] While it is still reasonable and non-discriminatory, the proposal in Appendix D is responsive to difficulties that Realtek has indicated, in litigation and mediation, that arise for it in administration of a license [redacted] a component manufacturer. Although [redacted] is part of LSI's standard RAND license proposal, LSI has attempted to form reasonable and nondiscriminatory terms for a license suited more specifically to Realtek's stated position in the marketplace as an IC manufacturer. [redacted] licensing chip or component manufacturers to WLAN technology. Accordingly, LSI has [redacted] as a basis for a revised RAND license proposal to Realtek because [redacted] terms that may be more suited for administration by Realtek.

[13] LSI provided its standard RAND proposal to Realtek in the [redacted] [redacted] Proposal, but Realtek rejected this proposal, and to date no reasonable counteroffer has been made to LSI's [redacted] [redacted] Proposal.

F. Question No. 6: Constructive Refusal to Negotiate a License

Please discuss and cite any record evidence of any party attempting to gain undue leverage, or constructively refusing to negotiate a license, with respect to the '663, the '958, and the '867 patents. Please specify how that evidence is relevant to whether section 337 remedies with respect to such patents would be detrimental to competitive conditions in the U.S. economy and any other statutory public interest factor.

Response:

LSI incorporates by reference its response to Question 2 regarding the negotiation history between LSI, and its predecessors, and Funai and Realtek. The history of negotiation set forth above reflects the fact that Funai constructively has refused to negotiate a license to Complainants' SEPs by dragging out the parties' discussions [redacted]. LSI provided Funai with its first business proposal in [redacted]. Yet despite [redacted], Funai did not provide any counter-proposal until after the parties' meeting in [redacted]. By that time, LSI had already provided [redacted] updates to its initial license proposal in response to specific questions and concerns voiced by Funai. And LSI continued to be responsive to Funai's ever-shifting license requests, [redacted]. All in all, LSI met with Funai [redacted], yet could not elicit a reasonable proposal from Funai. Funai's continued delay was plainly an attempt to evade its obligation to fairly compensate LSI for use of its patent rights and constitutes a constructive refusal to negotiate.

As for Realtek, the record reflects that it has consistently and deliberately refused to engage in licensing negotiations and, instead, opted to file multiple lawsuits as a means of attempting to secure undue leverage. As described above, Realtek's evasive, stonewalling tactics commenced [redacted] when Agere offered it a license on RAND terms for certain SEPs, including the patents-at- issue.[14] After claiming [redacted], Realtek did not respond. And when Agere again asked for a response and sought to elicit engagement, Realtek again did not respond.

In [redacted], Realtek requested that LSI provide another RAND offer. But in [redacted], when LSI provided such an offer, Realtek again did not respond to the offer or engage in negotiations. Instead, it filed suit. In the ten months [redacted], Realtek filed a total of four lawsuits, yet during the same period did not make a single counter proposal or attempt to engage in discussions regarding the terms of a RAND license. Given that LSI has made [redacted] licensing proposal involving the same patents to [redacted] parties, and given that [redacted] rejected by Realtek was the first step in the successful negotiation of [redacted] licenses involving these same SEPs, it is clear that the problem is not LSI's proposal; the problem is Realtek and its refusal to engage in good faith negotiations, as found by the ALJ based on all the evidence.

In the Northern District of California breach of contract action commenced by Realtek, LSI repeatedly sought to elicit from Realtek an answer to the question whether Realtek would accept a RAND license if terms were declared by the court. Realtek refused to respond until

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[14] *See* CX-1007C (Letter from Agere Systems to Realtek Semiconductor, [redacted]) at 1-2. At the time of the letter, [redacted].

forced by a request for admission propounded under Fed. R. Civ. P. 36 (as to which failure to respond would be deemed an admission). While Realtek finally agreed that it would accept license terms, it did so subject to noteworthy conditions:

> "[redacted]"

Realtek Amended Response to Defendants' Request for Admission No. 1, *Realtek Semiconductor Corp. v. LSI Corp.*, Case No. 5:12-cv-03451 RMW (Served, March 21, 2013).

Thus, Realtek professed itself a "[redacted]" in the district court, [redacted]. In other words, Realtek is not willing to negotiate anything; Realtek is only willing to enter a license after litigation, a position that is completely antithetical to the purpose of standard bodies in erecting the RAND framework. This attitude of recalcitrance is precisely why LSI's efforts, and the efforts of its subsidiary Agere [redacted], have proven utterly futile. Realtek has refused to negotiate a license and unabashedly has chosen to file lawsuits seeking to threaten and coerce LSI.

The foregoing evidence is relevant to whether section 337 remedies with respect to such patents would be detrimental to competitive conditions in the U.S. economy because the evidence underscores the threat that "patent hold out" presents to effective standards-based licensing programs like the IEEE's 802.11 standard and ITU-T's H.264 standard. While the legal (and public sentiment) pendulum currently is swinging strongly in favor of diminishing the rights of patent holders, the fact is that companies like Realtek, who are prospective licensees, pose a threat to the patent system. Claiming harm from "patent hold up" and "patent stacking," but with no evidence of either, Realtek would have the Commission create a rule that exclusion orders could never be available in cases involving SEPs. This would be a fine rule for entities that create no intellectual property or that "innovate" by copying the inventions of others. As Realtek is attempting here, such companies would be able to reject whatever RAND proposal they receive, file suit claiming a RAND violation, and tie up the prospective licensor for several years, all the while using the licensor's patented technology.

But the Commission's statutory scheme and purpose for existence runs counter to such a regime. Exclusion orders and injunctive relief are available in Investigations, such as this one, to protect patent rights, including standard-essential patent rights. At a minimum, injunctive relief must be available for SEPs where an infringer refuses to take a license. *See, e.g.*, *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2012 WL 5993202, at *7 (W.D. Wash. Nov. 30, 2012). Even in federal courts trending toward a narrowing of patent rights, it has been acknowledged that there is no categorical ban on injunctive relief for holders of SEPs. *See, e.g.*, *In re Innovatio IP Ventures, LLC Patent Litig.*, 921 F. Supp. 2d 903, 916 (N.D. Ill. 2013) (noting that the question of whether a RAND obligation precludes an injunction is "muddled" and "the subject of substantial, often contradictory, academic commentary.") (citing articles); *Apple, Inc. v. Motorola, Inc.*, 869 F. Supp. 2d 901, 914-15 (N.D. Ill. 2012) ("I don't see how, given FRAND, I would be justified in enjoining Apple from infringing the '898 *unless Apple refuses to pay a royalty that meets the FRAND requirement*") (emphasis added). As the *Microsoft* court noted, "the IEEE . . . agreements anticipate that the parties will negotiate towards a RAND license." *Microsoft Corp. v. Motorola, Inc.*, 864 F. Supp. 2d 1023, 1038 (W.D. Wash. 2012).

As described above and evidenced in testimony and documents presented to the ALJ, Realtek has refused to negotiate toward a RAND license, and Funai effectively has failed to do so. Under existing law, and for sound reasons of public policy, an exclusion order remains a form of relief available to patent holders, especially given the facts of this case. The Commission is authorized to enforce the patent rights of *all* patent holders, and holders of SEPs are no exception. None of the statutory public interest factors overcomes the strong showing that an exclusion order is the only appropriate remedy in this Investigation.

G. Complainants' Statement Regarding Public Interest

The Commission is required to issue an exclusion order upon the finding of a Section 337 violation "unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds such articles should not be excluded from entry." 19 U.S.C. § 1337(d)(1); *see also Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1358-60 (Fed. Cir. 2010). "The legislative history of the amendments to Section 337 indicates that Congress intended injunctive relief to be the normal remedy for a Section 337 violation . . . ." *Id.* at 1358. The Commission has found public interest considerations to outweigh the statutorily mandated exclusion order only three times before, and all in cases prior to the 1988 legislative amendment removing the requirement that a patentee show irreparable harm. *Id.* at 1359-60. Thus, an exclusion order is the usual remedy upon a finding of violation of Section 337.

There are no public interest considerations that would preclude entry of remedial orders in this Investigation. No party has argued that there will be an impact on public health, safety, and welfare. Nor is the availability of the accused products a concern, because Complainants' many licensees could easily meet U.S. consumer demand. There is no evidence of any statutory public interest factor here, especially given the large number of licensees of Complainants' technology.

Funai, Realtek, and non-party Koninklijke Philips N.V. ("Philips") have each submitted statements asserting that public interest concerns outweigh the need for an exclusion order. However, none of these submissions demonstrates that the Commission should deviate from its practice of issuing exclusion orders when a violation is found.

1. The Fact that Three of the Four Asserted Patents Are Standard-Essential Does Not Preclude an Exclusion Order

Realtek and Funai assert that exclusion orders and injunctive relief are categorically barred in Investigations, such as this one, involving SEPs.[15] But this is not true. While Funai asserts that "it appears well settled that SEP holders cannot ordinarily obtain injunctive relief in federal court with respect to their SEPs" (Funai Submission at 2), the very case that Funai cites for this proposition states the opposite: "I don't see how, given FRAND, I would be justified in enjoining Apple from infringing the '898 *unless Apple refuses to pay a royalty that meets the FRAND requirement*." *Apple, Inc. v. Motorola, Inc.*, 869 F. Supp. 2d 901, 914-15 (N.D. Ill. 2012) (emphasis added). Other courts have similarly recognized that injunctive relief is available for SEPs where an infringer refuses to take a license. *See, e.g.*, *Microsoft Corp. v. Motorola, Inc.*, No. C10-1823JLR, 2012 WL 5993202, at *7 (W.D. Wash. Nov. 30, 2012). Still other decisions have acknowledged that there is no categorical ban on injunctive relief for holders of SEPs. *See, e.g.*, *In re Innovatio IP Ventures, LLC Patent Litig.*, 921 F. Supp. 2d 903, 916 (N.D. Ill. 2013) (noting that the question of whether a RAND obligation precludes an

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[15] It is important to note that one of the asserted patents in this Investigation, the '087 patent, is neither an SEP nor subject to any RAND commitment. Accordingly, no RAND policy concerns are applicable to the Commission's consideration of the public interest as it relates to an exclusion order based on infringement of the '087 patent. The '087 patent has been licensed by Complainants to [redacted] major companies, and as such there are no public interest or anti-competitive concerns relating to products covered by the '087 patent. The products covered by the '087 patent do not relate to any public health or welfare concerns. In the unlikely event that exclusion could result in a minor restriction on choice or increase in price, this possibility does not outweigh the benefit of providing Complainants with an effective remedy for Funai's Section 337 violations. *See Certain Personal Data & Mobile Commc'ns Devices & Related Software*, USITC Inv. No. 337-TA-710, Comm'n Op. at 69 (Dec. 29, 2011); *Certain Ink Jet Print Cartridges & Components Thereof*, USITC Inv. No. 337-TA-446, Comm'n Op. at 14 (May 8, 2002).

injunction is "muddled" and "the subject of substantial, often contradictory, academic commentary.") (citing articles). Injunctive relief thus remains part of the bundle of rights afforded to patent holders in U.S. district court, including for SEPs where infringers refuse to accept licenses. Like federal courts, the Commission is authorized to enforce the patent rights of *all* patent holders, and SEPs are no exception.

Funai cites the United States Trade Representative's disapproval of the Commission's exclusion order in Inv. No. 337-TA-794, *Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers.* (Funai Submission at 2.) As an initial matter, this was the first executive disapproval of a Commission exclusion order on policy grounds since 1987, and thus the disapproval was a rare occurrence that should not affect Commission practice. Further, there is nothing in the U.S. Trade Representative's letter indicating that *every* exclusion order in an Investigation involving SEPs will be vetoed. In fact, the letter explicitly leaves in place the availability of exclusion orders for SEPs.

After affirming the importance of intellectual property rights and the role of the Commission in protecting and enforcing those rights, the USTR letter makes clear that the Commission retains its authority to issue exclusion orders concerning SEPs, *provided that the public interest is protected*. (Letter from Michael B.G. Froman, U.S. Trade Rep., to Irving A. Williamson, U.S.I.T.C. Chair, at 3 (Aug. 3, 2013).) The USTR letter emphasized that "[t]he Commission is well-position to consider these issues in its public interest determinations." *Id.* If the U.S. Trade Representative had been taking the position that the public interest bars an exclusion order in any Investigation involving SEPs, he would not have included these statements.

Nor does the "Policy Statement" referred to in the U.S. Trade Representative's letter and in Funai's Submission support a blanket prohibition on exclusion orders for SEPs. Funai cites a passage from the Policy Statement speculating that an injunction or exclusion order *may* be inconsistent with the public interest in certain cases involving SEPs. But the basis for this statement makes clear that this concern does not apply here. In particular, the Policy Statement states:

> A decision maker could conclude that the holder of a F/RAND-encumbered, standards-essential patent had attempted to use an exclusion order to pressure an implementer of a standard to accept more onerous licensing terms than the patent holder would be entitled to receive consistent with the F/RAND commitment—in essence concluding that the patent holder had sought to reclaim some of its enhanced market power . . . .

("Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments" issued on January 8, 2013, by the U.S. Department of Justice and U.S. Patent & Trademark Office at 8.) But this speculative statement relates to hypothetical situations *that have already occurred*. The Policy Statement's concern that a patent holder *may* pressure a licensee to accept unreasonable licensing terms does not indicate that LSI *will* do so here. As the ALJ recognized in the Initial Determination, Complainants have abided by their RAND obligations and will continue to do so.[16]

Funai then cites Congressional testimony by a lobbyist with the American Antitrust Institute who spoke out not only against exclusion orders for SEPs, but against *all* Commission exclusion orders: "We support the Supreme Court's approach to injunctions and urge that its principles be applied by the ITC *such that exclusionary injunctions would no longer be so automatic a remedy*." (Funai Submission at 4 (quoting International Trade Commission and Patent Disputes: Hearing Before the Subcomm on Intellectual Property, Competition, and the

[16] The ALJ rejected all of Respondents' defenses that were premised on Complainants' alleged breach of their RAND obligations. (ID at 351-59.)

Internet of the H. Comm. on the Judiciary, 112th Cong. 47 (2012) (testimony of Albert A. Foer) at 48 (emphasis added).) In essence, Mr. Foer was advocating the same equitable approach to exclusion orders that the Federal Circuit rejected in *Spansion*. In *Spansion*, the court explicitly held that "[g]iven the different statutory underpinnings for relief before the Commission in Section 337 actions and before the district courts in suits for patent infringement . . . *eBay* does not apply to Commission remedy determinations under Section 337." *Spansion*, 629 F.3d at 1359.

Thus, under prevailing statutory law and Commission precedent, it is the standard practice for the Commission to issue an exclusion order to protect United States companies from violations of their intellectual property rights. Unless and until Congress changes the law in this regard, the testimony of a single lobbyist should not change the Commission's practice.

Further, other testimony at that same hearing favored of the Commission's power to exclude articles that infringe SEPs. Bernard J. Cassidy, Executive Vice President & General Counsel of Tessera Technologies, Inc., testified as follows:

> A blanket a priori rule prohibiting or limiting the availability of exclusion orders to holders of patents that may be standard-essential patents would tip the balance in favor of infringers, to the detriment of innovation and, ultimately, consumers. Such proposals would essentially create a compulsory licensing regime and are contrary to the intent of SSO policies that encourage good-faith bilateral negotiations. One must consider whether innovators would have any incentive to participate in an SSO if their patents were effectively made unenforceable. That would result in technologically inferior standards and reduce investments in research and development, postponing innovation and competition that are the drivers of U.S. economic growth.

(International Trade Commission and Patent Disputes: Hearing Before the Subcomm on Intellectual Property, Competition, and the Internet of the H. Comm. on the Judiciary, 112th Cong. 47 (2012) (testimony of Bernard J. Cassidy) at 36.) Mr. Cassidy further testified that a "no-exclusion-order/no-injunction policy" would discourage negotiations between patent holders and implementers because an implementer would be able to proceed with litigation and avoid paying royalties until the litigation was over. (*Id.* at 45-46.) "The result would be more and longer litigation, with the inefficiency that litigation entails, and an unjustified shift in bargaining power from patent holders to implementers that would destroy the balance which currently exists." (*Id.* at 46.) Such a rule would also create the "perverse incentive" that "innovators who participate in SSOs (and give FRAND commitments) would have fewer rights than innovators that do not participate," leading to decreased participation in SSOs. (*Id.*)

These sentiments have been echoed in other Congressional hearings. For example, on July 30, 2013, Donald J. Rosenberg, the General Counsel of Qualcomm Corporation, testified as follows:

> Congress should refrain from adopting any laws or policies that will have the unintended, but real, consequence of devaluing American patents and American technology, including by foreign regulators. Qualcomm believes that balanced hearings of the type now being conducted by the Committee provide a helpful forum to discuss these important issues, ***especially because so many uninformed and unsubstantiated claims of patent abuse have been raised***, but caution is warranted to avoid chilling and disincentivizing innovation. ***Given the success of the cellular industry, SSOs and courts should be left to appropriately address, as they have, the relevant issues, without legislation.***

(Standard Essential Patent Disputes and Antitrust Law: Hearing Before the Antitrust, Competition Policy and Consumer Rights Subcomm of the S. Comm. on the Judiciary, 113th Cong. (2013) (testimony of Donald J. Rosenberg) at 18 (emphasis added).)[17] Mr. Rosenberg additionally testified that prohibiting injunctive relief for SEPs would devalue patents, increase litigation, and hinder investments in innovative technologies:

> A "waiver of injunctions" rule also would not make sense as a matter of public policy. Altering the backdrop availability of ordinary patent remedies against "unwilling licensees" (*e.g.*, entities that have refused to commit to take a license that has already been adjudicated to be FRAND) would devalue SEPs by encouraging infringement and obstinate refusals to pay royalties by making

[17] Available at http://www.judiciary.senate.gov/pdf/7-30-13RosenbergTestimony.pdf.

> litigation preferable to privately negotiated licenses. This not only would lead to more, not less, litigation, but also would discourage investment in technologies related to standardization.

(*Id.* at 16.) Thus, while some commentators have argued for draconian restrictions on exclusion orders and injunctive relief for SEPs, other commentators have recognized that the current system, in which the Commission is able to protect patent rights to their fullest extent, optimally promotes U.S. industry and innovation.

Likewise, Funai's vague references to testimony by David Kappos of the USPTO and two letters from Senator Mike Lee have no bearing on the Commission's practices or statutory authority. In the testimony by Mr. Kappos that Funai cites, Mr. Kappos, like Mr. Cassidy, testified that stripping SEP holders of their enforcement rights would disadvantage patentees and stifle licensing negotiations:

> I think there is also a fair point to be made that a FRAND commitment does not stand for licensing under any terms and conditions, and you cannot wind up in a situation where FRAND means no opportunity to enforce a patent because what that will create is a situation where nobody will have any incentive to take a license.

(Oversight of the U.S. Patent and Trademark Office: Implementation of the Leahy–Smith America Invents Act and International Harmonization Efforts: Hearing Before the S. Comm. on the Judiciary, 112th Cong. 20 (2012) (testimony of David J. Kappos) at 7.) Accordingly, Funai has cited nothing that would support a blanket prohibition on exclusion orders for SEPs.[18]

The Commission is empowered by Congress to protect United States intellectual property rights by excluding from importation products that violate those rights. The only statutory remedy available to the Commission to protect these rights is an exclusion order. As is evident from the fact that the Commission routinely issues exclusion orders when a violation is found,

[18] Realtek makes similar arguments concerning the Policy Statement and the USTR letter. (Realtek's Submission at 1-3.) These arguments are invalid for similar reasons.

the fact that only two exclusion orders have been disapproved by the U.S. Trade Representative on policy grounds in the last 26 years, and the fact that only three exclusion orders have been rescinded on public policy grounds (all under a prior statutory framework), the Commission's exclusionary power is critical in protecting intellectual property rights. The concerns of some government officials that *some* SEP holders *may* exercise undue leverage if exclusion orders are available do not justify the Commission limiting its own power to enforce the rights of U.S. companies.

The facts of this Investigation, not the policy concerns of a few government officials and lobbyists, should control the outcome here. Complainants have always abided by their RAND commitments and will continue to do so. Respondents' unchecked infringement of Complainants' patents is causing serious harm not only to Complainants but also to Complainants' licensees, who must compete with Respondents' infringing products. *None* of the statutory public interest factors overcomes the strong showing that an exclusion order is the only appropriate remedy in this Investigation.

2. There Is No Basis to Carve Out an Exception for "Repair and Replacement"

Funai asserts, without any evidence, that "it would be in the public interest for the Commission to craft a repair and replacement exception to any limited exclusion or cease and desist order ." (Funai's Submission at 5.) However, Funai has presented no evidence whatsoever as to the volume of infringing products it imports for repair or replacement purposes. Instead of offering any evidence showing that at least some amount of infringing products have been imported for warranty purposes, Funai refers to the speculation of its expert concerning the *potential* for a need to replace and repair existing Funai products. Moreover, even if Funai had presented any evidence relating to its "repair / replacement" theory, a repair exception in a remedial order is unnecessary, because Funai does not need to import products to satisfy its warranty obligations. [redacted] *See* RX-0008C (Vander Veen Witness Statement) at 32, Q&A 134-139 ("[redacted]"). Thus, no carve-out is necessary.

3. Realtek's RAND Arguments Should Be Rejected

The ALJ properly determined that none of Respondents' defenses based on Complainants' RAND obligations precluded relief. Nonetheless, Realtek repeats its allegations that Complainants have violated their RAND obligations. (Realtek Submission at 3-5.) Realtek's assertions should be rejected.

Realtek asserts that Complainants breached their RAND obligations by (1) failing to offer a license to Realtek before filing their Complaint with the Commission and (2) subsequently offering a license on allegedly unreasonable terms. (*Id.*) Realtek's assertions are factually incorrect, and even if they were true, would not demonstrate a breach of RAND obligations that would preclude relief before the Commission.

Regarding Realtek's first point, Complainants did (repeatedly) offer Realtek a license to its WLAN patents [redacted]. *See, e.g.*, CX-1257C (Lucent-IEEE Letter, Apr. 29, 1998); CX-1261C (Agere-IEEE Letter, Jan. 24, 2003). Realtek's citation to a summary judgment ruling in a separate litigation involving Complainants and Realtek neither establishes the truth of Realtek's assertions nor the legal principle that an SEP holder *must* make a license offer prior to seeking an ITC exclusion order. A full trial in the Northern District of California action is scheduled in February, and the district court's summary judgment ruling will be the subject of an appeal before the Ninth Circuit.[19]

As to Realtek's second point, the ALJ properly recognized that an *initial* offer[20] need not satisfy RAND obligations:

> There is no authority for the argument that a patent holder must make an initial offer for a specific fair and reasonable royalty rate. *Wireless Communications Devices*, Comm'n Op. at 60. Indeed, the limited precedent on the issue appears to indicate that an initial offer need not be the terms of a final FRAND license because SSOs intend the final license to be accomplished through negotiation. *Id.* (citing *Microsoft v. Motorola*, 864 F. Supp. 2d 1023, 1038 (W.D. Wash. 2012) (because SSOs contemplated that RAND terms be determined through negotiation "it logically does not follow that initial offers must be on RAND terms")).

(*Id.* at 352.) The ALJ further noted that "Respondents did not introduce any evidence as to what would constitute a RAND license or RAND royalty rates," and that the April 25, 2013 decision in *Microsoft Corp. v. Motorola, Inc.*[21] relied upon by Realtek was fact-specific, factually distinguishable, and completely inapplicable to this Investigation. (*Id.* at 351-52.)

Accordingly, Realtek's allegations concerning Complainants' RAND commitments do not bar an exclusion order, either as a matter of equity or public interest. As with Respondents' allegations regarding SEPs in general, these allegations should be disregarded.

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[19] The district court's summary judgment order included a preliminary injunction, and thus Complainants took an interlocutory appeal of the order.

[20] Although legally an initial offer need not satisfy RAND obligations, LSI believes that its initial RAND proposals are reasonable and nondiscriminatory. Additionally, by using such proposals as a starting point in negotiations, it helps LSI insure nondiscriminatory treatment of all potential licensees.

[21] No. C10-1823JLR, 2013 WL 2111217, at *4 (W.D. Wash. Apr. 25, 2013).

4. Philip's False Factual Allegations Should Be Disregarded

Finally, Philips wrongly asserts that Complainants' participation in the MPEG LA standard obligate Complainants to make licenses to the '663 Patent available at specified royalty rates.[22] Philip's allegations are legally and factually incorrect and should be rejected.

As an initial matter, Philips asserts that LSI failed, in this investigation, to "fully disclose its obligations to license its H.264-essential patents to its fellow patent pool licensees," and that "the record is incomplete." (Philips Submission at 2.) It is unclear how, as a non-party to this Investigation, Philips knows what LSI did and did not disclose. Nonetheless, Complainants produced numerous documents to Respondents during discovery that fully disclosed LSI's prior relationship with the MPEG LA AVC patent pool.[23]

Philips asserts that, in the MPEG LA body, "[p]atent pool licensees agree to grant reciprocal licenses under their H.264-essential patents to licensors and fellow licensees *at the same per-patent rate that licensors receive for their essential patents* either by (a) directly granting such licenses to licensees, or (b) joining the patent pool as a licensor." (Philips Submission at 2 (emphasis added).) But while certain reciprocal licensing obligations may exist in the MPEG LA AVC patent pool, there is no requirement that patents be licensed at the "same per-patent rate." Rather, the operative MPEG-LA agreement only imposes general RAND commitments, which LSI has always honored as recognized by the ALJ.

Philips appears to rely upon [redacted]. (Bell Decl. Ex. 7.)

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[22] It is worth noting that Respondents did not raise this issue as an affirmative defense or otherwise before the Administrative Law Judge.

[23] *See, e.g.*, Bell Decl. Ex. 49 at 60-61; Bell Decl. Ex. 51 at 28; Bell Decl. Ex. 50 at 93. Several other relevant documents were produced in discovery but not marked as Hearing exhibits.

[redacted] (*Id.*) [redacted] Philips has not disputed this. Thus, only one agreement remains to be discussed today.

The [redacted] includes several relevant provisions. First, the license provides:

[redacted]

(Bell Decl. Ex. 1 ([redacted]) § 1.7.)

Section 8.3 of the [redacted] reads:

[redacted]

(*Id.* § 8.3 (emphasis added)) In other words, the per-patent royalties set forth in [redacted] – what Philips refers to as "the same per-patent rate that licensors receive for their essential patents" – [redacted]. It does not follow that this "per-patent rate" is the *only* RAND-compliant rate. Another per-patent rate can be negotiated, and as Complainants have demonstrated extensively throughout this Investigation, the particular RAND rate for a particular infringer will depend on the facts of each negotiation.

In sum, to the extent that the '663 Patent is [redacted] which Philips has not proven, LSI's obligations with respect to the MPEG-LA body is to make its SEPs available on RAND terms. There is absolutely no requirement, contractual or otherwise, that LSI must make license available at any particular rate. Philip's argument that this obligation exists should be disregarded.

Thus, there are no public interest concerns that would bar an exclusion order in this Investigation. The Commission should abide by its usual practice and enter an exclusion order and cease and desist order to remedy Respondents' ongoing infringement of Complainants' patents.

III. BOND

The Commission should adopt the ALJ's recommendation that the bond for any importation or sale in the United States after importation of infringing products during the Presidential review period should be [redacted] of the entered value of the article. Respondents have requested that no bond issue, a proposition that lacks merit. Contrary to Respondents' assertion, Complainants have presented volumes of evidence showing Complainants' negotiations with Companies to reach a reasonable royalty to license the asserted patents. Each executed license, however, is different and, accordingly, a bond based on a standard royalty rate is not possible. Likewise, Respondents cannot rely on Complainants' license agreements (or a recent district court decision) that involves other parties, facts and issues to blindly assert that a standard reasonable rate is known. Indeed, at least with respect to Complainants' licenses, such assertions are, at best, disingenuous because each such license was a result of Complainants and their licensees' good faith negotiations. Respondents, on the other hand, have rejected or ignored Complainants' efforts to negotiate a reasonable royalty rate that covers the asserted patents. Accordingly, it is appropriate for the Commission to set the bond at [redacted] of entered value of the product, or such other reasonable rate as may be established.

IV. ADDITIONAL REQUESTED INFORMATION

In response to the Commission Notice, Complainants' provide the following additional information:

U.S. Patent No. 6,707,867 expires on February 23, 2014.

U.S. Patent No. 6,452,958 expires on July 30, 2016.

U.S. Patent No. 5,870,087 expires on November 13, 2016.

U.S. Patent No. 6,982,663 expires on July 10, 2022.

The HTSUS numbers under which the accused products are imported include the following headings and subheadings: 8521; 8517; 8525; 8527; 8528; 8542; 8528.72.7250, 8528.72.6400, 8528.71.4000, 8527.91.6040, 8521.90.0000, and 8517.62.0050.

V. CONCLUSION

For the foregoing reasons, Complainants submit that the appropriate remedy in this Investigation is a limited exclusion order directed to all accused products of the named Respondents. In addition, the Commission should issue cease and desist orders directed to Funai's inventory. No public interest factors weigh against the appropriate remedy, and a bond of [redacted] should be entered during the period of Presidential Review.

Dated: November 1, 2013

Respectfully submitted,

s/ David E. Sipiora

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Counsel for Complainants
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CERTIFICATE OF SERVICE

I, Stephannie Stover, hereby certify that a copy of the foregoing **COMPLAINANTS' STATEMENT REGARDING REMEDY, PUBLIC INTEREST AND BOND AND COMPLAINANTS' INITIAL RESPONSE TO THE COMMISSION'S OCTOBER 17, 2013 NOTICE ON REMEDY AND THE PUBLIC INTEREST** was served by e-mail, or as otherwise indicated, to the parties listed below, this 1st day of November 2013:

Lisa R. Barton Acting Secretary U.S. International Trade Commission 500 E Street, SW, Room 112A Washington, DC 20436 **Via EDIS**	Cathy Chen Attorney-Advisor Office of the General Counsel U.S. International Trade Commission 500 E Street SW Washington, DC 20436 Email: cathy.chen@usitc.gov **Via E-Mail**
The Honorable David P. Shaw Administrative Law Judge U.S. International Trade Commission 500 E Street, SW, Room 317-O Washington, DC 20436 **Via Hand Delivery (2 copies)**	Patricia Chow Attorney-Advisor U.S. International Trade Commission 500 E Street, SW Washington, DC 20436 Email: patricia.chow@usitc.gov **Via E-Mail**
Paul Devinsky McDermott Will & Emery LLP 500 North Capital Street, NW Washington, DC 20001 Email: FunaiLSIITC@mwe.com QEFunai-837@quinnemanuel.com **Via E-Mail** *Counsel for Respondents Funai Electric Company, Ltd., Funai Corporation, Inc., P&F USA, Inc., and Funai Service Corporation*	Elizabeth A. Niemeyer Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue, NW Washington, DC 20001 T: 202-408-4000 Email: Realtek-837@finnegan.com rszz-Realtek-837@ReedSmith.com **Via E-Mail** *Counsel for Respondent Realtek Semiconductor Corporation*

s/ Stephannie Stover

APPENDIX A

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN AUDIOVISUAL COMPONENTS AND PRODUCTS CONTAINING THE SAME**	**Investigation No. 337-TA-837**

[PROPOSED] ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED THAT Respondents Funai Electric Company, Ltd., Funai Corporation, Inc., P&F USA, Inc., and Funai Service Corporation (collectively "Funai") cease and desist from conducting any of the following activities in the United States: importing, testing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, audiovisual components and products containing the same that infringe one or more of claims 1, 5, 7, 8, 9, 10, 11, and 16 of U.S. Patent No. 5,870,087 ("the '087 Patent"); claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11 of U.S. Patent No. 6,982,663 ("the '663 Patent"); claims 22, 23, 24, 25, 26, 29, 32, and 35 of U.S. Patent No. 6,452,958 ("the '958 Patent"); and claims 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 47, 49, 50, 21, 52, 53, 54, 55, 56, 58, 59, 60, and 61 of U.S. Patent No. 6,707,867 ("the '867 Patent"), in violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337.

I.

Definitions

As used in this Order:

(A) "Commission" shall mean the United States International Trade Commission.

(B) “Complainants” shall mean. LSI Corporation, 1621 Barber Lane, Milpitas, California 95305, and Agere Systems, LLC., 1110 American Parkway NE, Allentown, Pennsylvania 18109.

(C) “Respondent” means, collectively, Funai Electric Company, Ltd. 7-7-1 Nakagaito, Daito City, Osaka 574-0013, Japan; Funai Corporation, Inc. 201 Route 17 North, Rutherford, New Jersey 07070; P&F USA, Inc., 3015 Windward Plaza, Windward Fairways Ⅱ - Suite 100, Alpharetta, Georgia 30005; and Funai Service Corporation 2200 Spiegel Drive, Groveport, Ohio 43125.

(D) “Person” shall mean an individual, or any non-governmental partnership, firm, association, corporation, or other legal or business entity other than Respondent or its majority owned or controlled subsidiaries, successors, or assigns.

(E) “United States” shall mean the fifty States, the District of Columbia, and Puerto Rico.

(F) The terms “import” and “importation” refer to importation for entry for consumption under the Customs laws of the United States.

(G) The term “covered products” shall mean audiovisual components and products containing the same that infringe one or more of claims 1, 5, 7, 8, 9, 10, 11, and 16 of U.S. Patent No. 5,870,087 (“the ‘087 Patent”); claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11 of U.S. Patent No. 6,982,663 (“the ‘663 Patent”); claims 22, 23, 24, 25, 26, 29, 32, and 35 of U.S. Patent No. 6,452,958 (“the ‘958 Patent”); and claims 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 47, 49, 50, 21, 52, 53, 54, 55, 56, 58, 59, 60, and 61 of U.S. Patent No. 6,707,867 (“the ‘867 Patent”).

II.

Applicability

The provisions of this Cease and Desist Order shall apply to Respondent and to any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and majority-owned business entities, successors, and assigns, and to each of them, insofar as they are engaging in conduct prohibited by Section III, infra, for, with or otherwise on behalf of Respondent.

III.

Conduct Prohibited

The following conduct of Respondent in the United States is prohibited by the Order. For the remaining term of the respective patents, Respondent shall not:

(A) import or sell for importation into the United States covered products;

(B) market, test, distribute, offer for sale, sell, or otherwise transfer (except for exportation), in the United States imported covered products;

(C) advertise imported covered products in the United States;

(D) solicit U.S. agents or distributors for imported covered products; or

(E) aid or abet other entities in the importation, sale for importation, sale after importation, transfer, or distribution of covered products.

IV.

Conduct Permitted

Notwithstanding any other provision of this Order, specific conduct otherwise prohibited by the terms of this Order shall be permitted if, in a written instrument, the owner of U.S. Patent Nos. 5,870,087; 6,982,663; 6,452,958; and 6,707,867 licenses or authorizes such specific conduct, or such specific conduct, or such specific conduct is related to the importation or sale of covered products by or for the United States.

V.

Reporting

For purposes of this reporting requirement, the reporting periods shall commence on July 1 of each year and shall end on the subsequent June 30. However, the first report required under this section shall cover the period from the date of issuance of this Order through June 30, 2014. This reporting requirement shall continue in force until such time as Respondent will have truthfully reported, in two consecutive timely filed reports, that it has no inventory of covered products in the United States.

Within thirty (30) days of the last day of the reporting period, Respondent shall report to the Commission the quantity in units and the value in dollars of covered products that Respondent have imported or sold in the United States after importation during the reporting period and the quantity in units and value in dollars of reported covered products that remain in inventory in the United States at the end of the reporting period.

VI.

Record-keeping and Inspection

(A) For the purpose of securing compliance with this Order, Respondent shall retain any and all records relating to the exportation to and importation into the United States and the sale, offer for sale, marketing, or distribution in the United States of covered products, made and received in the usual and ordinary course of business, whether in detail or in summary form, for a period of three (3) years from the close of the fiscal year to which they pertain.

(B) For the purpose of determining or securing compliance with the Order and for no other purpose, and subject to any privilege recognized by the federal courts of the United States, duly authorized representatives of the Commission, upon reasonable written notice by the Commission or its staff, shall be permitted access and the right to inspect and copy in Respondent's principal offices during office hours, and in the presence of counsel or other representatives if Respondent so choose, all books, ledgers, accounts, correspondence, memoranda, and other records and documents, both in detail and in summary form as are required to be retained by subparagraph VI(A) of this Order.

Any failure to make the required report or the filing of any false or inaccurate report shall constitute a violation of this Order, and the submission of a false or inaccurate report may be referred to the US. Department of Justice as a possible criminal violation of 18 U.S.C. § 1001.

VII.

Service of Cease and Desist Order

Respondent is ordered to and directed to:

(A) Serve, within fifteen (15) days after the effective date of this Order, a copy of this Order upon each of their respective officers, directors, managing agents, agents, and employees who have any responsibility for the importation, marketing, distribution, or sale of imported covered products in the United States;

(B) Serve, within fifteen (15) days after the succession of any persons referred to in subparagraph VII(A) of this Order, a copy of the Order upon each successor; and

(C) Maintain such records as will show the name, title, and address of each person upon whom the Order has been served, as described in subparagraphs VII(A) and VII(B) of this Order, together with the date on which service was made.

The obligations set forth in subparagraphs VII(B) and VII(C) shall remain in effect until the date of expiration of U.S. Patent Nos. 5,870,087; 6,982,663; 6,452,958; and 6,707,867, whichever is later.

VIII.

Confidentiality

Any request for confidential treatment of information obtained by the Commission pursuant to Sections V and VI of this Order should be in accordance with Commission Rule 201.6, 19 C.F.R. § 201.6. For all reports for which confidential treatment is sought, Respondent must provide a public version of such report with confidential information redacted.

IX.

Enforcement

Violation of this Order may result in any of the actions specified in section 2 10.75 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.75, including an action for civil penalties in accordance with section 337(f) of the Tariff Act of l930,19 U.S.C. § 1337(f), and any other action as the Commission may deem appropriate. In determining whether Respondent is in violation of this Order, the Commission may infer facts adverse to Respondent if Respondent fails to provide adequate or timely information.

X.

Modification

The Commission may amend this Order on its own motion or in accordance with the procedure described in section 2 10.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R.§ 210.76.

XI.

Bonding

The conduct prohibited by Section III of this Order may be continued during the sixty (60) days period in which this Order is under review by the United States Trade Representative as delegated by the President, 70 *Fed. Reg.* 43251 (July 21, 2005), subject to Respondent posting a bond of in the amount of 3.5% of the imported value per unit for covered products. This bond provision does not apply to conduct that is otherwise permitted by Section IV of this Order. Covered products imported on or after the date of issuance of this Order are subject to the entry bond as set forth in the limited exclusion order issued by the Commission, and are not subject to this bond provision.

The bond is to be posted in accordance with the procedures established by the Commission for the posting of bonds by complainants in connection with the issuance of temporary exclusion orders. *See* Commission Rule 210.68, 19 C.F.R. § 210.68. The bond and any accompanying documentation is to be provided to and approved by the Commission prior to the commencement of conduct which is otherwise prohibited by Section III of this Order.

The bond is to be forfeited in the event that the United States Trade Representative approves, or does not approve within the review period, this Order, unless the U.S. Court of Appeals for the Federal Circuit, in a final judgment, reverses any Commission final determination and order as to Respondent on appeal, or unless Respondent exports the products subject to this bond or destroys them and provides certification to that effect satisfactory to the Commission.

The bond is to be released in the event the United States Trade Representative disapproves this Order and no subsequent order is issued by the Commission and approved, or not disapproved, by the United States Trade Representative, upon service on Respondent of an order issued by the Commission based upon application therefore made by Respondent to the Commission.

By Order Of The Commission.

The Honorable Lisa R. Barton
Acting Secretary of the Commission

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN AUDIOVISUAL COMPONENTS AND PRODUCTS CONTAINING THE SAME**	**Investigation No. 337-TA-837**

[PROPOSED] LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation, sale for importation, and sale after importation by Respondents Funai Electric Company, Ltd., Funai Corporation, Inc., P&F USA, Inc., and Funai Service Corporation (collectively "Funai") of certain audiovisual components and products containing the same that infringe claims 1, 5, 7, 8, 9, 10, 11, and 16 of U.S. Patent No. 5,870,087 ("the '087 Patent"); claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11 of U.S. Patent No. 6,982,663 ("the '663 Patent"); claims 22, 23, 24, 25, 26, 29, 32, and 35 of U.S. Patent No. 6,452,958 ("the '958 Patent"); and claims 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 47, 49, 50, 21, 52, 53, 54, 55, 56, 58, 59, 60, and 61 of U.S. Patent No. 6,707,867 ("the '867 Patent").

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of audiovisual components and products containing the same that infringe the ‘087, ‘663, ‘958, and ‘867 patents and are manufactured abroad by or on behalf of, or imported by or on behalf of Funai.

The Commission has also determined that the appropriate form of relief includes a cease and desist order against Funai.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order or cease and desist orders and that the bond during the Presidential review period shall be in the amount of 3.5% of the entered value of audiovisual components and products containing the same that are subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Audiovisual components and products containing the same that are covered by one or more of claims 1, 5, 7, 8, 9, 10, 11, and 16 of the ‘087 Patent; claims 1, 2, 3, 4, 5, 6, 7, 8, 9, and 11 of the ‘663 Patent; claims 22, 23, 24, 25, 26, 29, 32, and 35 of the ‘958 Patent; and claims 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 47, 49, 50, 21, 52, 53, 54, 55, 56, 58, 59, 60, and 61 of the ‘867 Patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of Funai or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents except under license of the patent owner as provided by law.

2. Products that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 3.5% of entered

value pursuant to subsection (i) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative until such time as he notifies the Commission that this action is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this action.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import audiovisual components and products containing the same that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to audiovisual components and products containing the sane that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.

7. Notice of this Order shall be published in the *Federal Register*.

By Order Of The Commission.

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The Honorable Lisa R. Barton
Acting Secretary of the Commission

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN AUDIOVISUAL COMPONENTS AND PRODUCTS CONTAINING THE SAME**	**Investigation No. 337-TA-837**

[PROPOSED] LIMITED EXCLUSION ORDER

The Commission has determined that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the unlawful importation, sale for importation, and sale after importation by Respondent Realtek Semiconductor Corporation ("Realtek") of certain audiovisual components and products containing the same that infringe claims 22, 23, 24, 25, 26, 29, 32, and 35 of U.S. Patent No. 6,452,958 ("the '958 Patent"); and claims 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 47, 49, 50, 21, 52, 53, 54, 55, 56, 58, 59, 60, and 61 of U.S. Patent No. 6,707,867 ("the '867 Patent").

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of audiovisual components and products containing the same that infringe claims 22, 23, 24, 25, 26, 29, 32, and 35 of the '958 Patent; and claims 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 47, 49, 50, 21, 52, 53, 54, 55, 56, 58, 59, 60, and 61 of the '867 Patent and are manufactured abroad by or on behalf of, or imported by or on behalf of Realtek.

The Commission has further determined that the public interest factors enumerated in 19 U.S.C. § 1337(d) do not preclude issuance of the limited exclusion order or cease and desist orders and that the bond during the Presidential review period shall be in the amount of 3.5% of the entered value of audiovisual components and products containing the same that are subject to this Order.

Accordingly, the Commission hereby **ORDERS** that:

1. Audiovisual components and products containing the same that are covered by one or more of claims 22, 23, 24, 25, 26, 29, 32, and 35 of the '958 Patent; and claims 20, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 47, 49, 50, 21, 52, 53, 54, 55, 56, 58, 59, 60, and 61 of the '867 Patent and that are manufactured abroad by or on behalf of, or imported by or on behalf of Realtek or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns, are excluded from entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, for the remaining term of the patents except under license of the patent owner as provided by law.

2. Products that are excluded by paragraph 1 of this Order are entitled to entry for consumption into the United States, entry for consumption from a foreign-trade zone, or withdrawal from a warehouse for consumption, under bond in the amount of 3.5% of entered value pursuant to subsection (i) of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(j), and the Presidential Memorandum for the United States Trade Representative of July 21, 2005 (70 *Fed. Reg.* 43251), from the day after this Order is received by the United States Trade Representative until such time as he notifies the Commission that this action is approved or disapproved but, in any event, not later than 60 days after the date of receipt of this action.

3. At the discretion of U.S. Customs and Border Protection ("CBP") and pursuant to procedures it establishes, persons seeking to import audiovisual components and products containing the same that are potentially subject to this Order may be required to certify that they are familiar with the terms of this Order, that they have made appropriate inquiry, and thereupon state that, to the best of their knowledge and belief, the products being imported are not excluded from entry under paragraph 1 of this Order. At its discretion, CBP may require persons who have provided the certification described in this paragraph to furnish such records or analyses as are necessary to substantiate the certification.

4. In accordance with 19 U.S.C. § 1337(l), the provisions of this Order shall not apply to audiovisual components and products containing the sane that are imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

5. The Commission may modify this Order in accordance with the procedures described in Rule 210.76 of the Commission's Rules of Practice and Procedure, 19 C.F.R. § 210.76.

6. The Secretary shall serve copies of this Order upon each party of record in this investigation and upon the Department of Health and Human Services, the Department of Justice, the Federal Trade Commission, and CBP.

7. Notice of this Order shall be published in the *Federal Register*.

By Order Of The Commission.

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The Honorable Lisa R. Barton
Acting Secretary of the Commission

Appendix B

Appendix B: Summary Table of LSI Licenses to U.S. Patent Nos.: 6,707,867 ("867"), 6,452,958 ("958"), and 6,982,663 ("663")

Eff. Date	Licensor	Licensee	License Type	Contract Type [1]	Patents [2]	867	958	663	License Term [3]	Payment by Licensee [4]	[redacted] Royalty [4]	Exhibit No.
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	[redacted]
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[1] In this colum [redacted]

[2] In this column, [redacted]

[3] In this column, [redacted]

[4] These columns contain a high-level summary of monetary payment terms. Additional non-monetary consideration may be included in the agreement. See individual license agreements for a complete statement of the consideration provided.

**Appendix B: Summary Table of LSI Licenses to U.S. Patent Nos.:
6,707,867 ("867"), 6,452,958 ("958"), and 6,982,663 ("663")**

Eff. Date	Licensor	Licensee	License Type	Contract Type [1]	Patents [2]	867	958	663	License Term [3]	Payment by Licensee [4]	[redacted] Royalty [4]	Exhibit No.
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	[redacted]		[redacted]
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[1] In this colum [redacted]

[2] In this column, [redacted].

[3] In this column, [redacted].

[4] These columns contain a high-level summary of monetary payment terms. Additional non-monetary consideration may be included in the agreement. See individual license agreements for a complete statement of the consideration provided.

APPENDIX C

Appendix C: Summary Table of LSI Initial Offers to Licensees of U.S. Patent Nos.: 6,707,867 ("867"), 6,452,958 ("958"), and 6,982,663 ("663")

License Eff. Date	Licensor	Licensee	867	958	663	License Exhibit No.	Offer Date	Offered Patents/Products	Offered License Structure	Offered Royalty Payment [1]	Comparison of Offer to Offers Made to Funai and/or Realtek	Offer Exhibit No.	Offer Production Bates No.
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[1] This column contains a high-level summary of offered monetary payment terms. Additional non-monetary terms, or additional or alternative monetary terms, may be included in the offer. See individual offers for a complete statement of the license terms offered.

Appendix C: Summary Table of LSI Initial Offers to Licensees of U.S. Patent Nos.: 6,707,867 ("867"), 6,452,958 ("958"), and 6,982,663 ("663")

License Eff. Date	Licensor	Licensee	867	958	663	License Exhibit No.	Offer Date	Offered Patents/Products	Offered License Structure	Offered Royalty Payment [1]	Comparison of Offer to Offers Made to Funai and/or Realtek	Offer Exhibit No.	Offer Production Bates No.
[redacted]	[redacted]	[redacted]			[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
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[1] This column contains a high-level summary of offered monetary payment terms. Additional non-monetary terms, or additional or alternative monetary terms, may be included in the offer. See individual offers for a complete statement of the license terms offered.

APPENDIX D

Complainants LSI Corporation and Agere Systems LLC

APPENDIX D

Supplement to Complainants' Response to Notice of Determination Question on the Public Interest, Question No. 5, second sentence ("LSI, Funai and Realtek are each requested to submit specific licensing terms for the '663, the '958, and the '867 patents that each believes are reasonable and non-discriminatory.")

The following high-level term sheet of a potential patent license agreement between LSI Corporation, Agere Systems LLC and Funai Electric Company, Ltd. is submitted pursuant to the International Trade Commission's request and is for discussion purposes only. These high-level terms shall not constitute a binding agreement nor obligate any party in any manner. These terms shall be treated as CONFIDENTIAL.

<u>**High-Level Term Sheet: Funai Electric Company, Ltd.**</u>

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APPENDIX E

Complainants LSI Corporation and Agere Systems LLC

APPENDIX E

Supplement to Complainants' Response to Notice of Determination Question on the Public Interest, Question No. 5, second sentence ("LSI, Funai and Realtek are each requested to submit specific licensing terms for the '663, the '958, and the '867 patents that each believes are reasonable and non-discriminatory.")

The following high-level term sheet of a potential patent license agreement between LSI Corporation, Agere Systems LLC and Realtek Semiconductor Corporation is submitted pursuant to the International Trade Commission's request and is for discussion purposes only. These high-level terms shall not constitute a binding agreement nor obligate any party in any manner. These terms shall be treated as CONFIDENTIAL.

<u>High-Level Term Sheet: Realtek Semiconductor Corporation</u>

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CERTIFICATE OF SERVICE

I, Stephannie Stover, hereby certify that a copy of the foregoing **PUBLIC VERSION OF COMPLAINANTS' STATEMENT REGARDING REMEDY, PUBLIC INTEREST AND BOND AND COMPLAINANTS' INITIAL RESPONSE TO THE COMMISSION'S OCTOBER 17, 2013 NOTICE ON REMEDY AND THE PUBLIC INTEREST** was served by e-mail, or as otherwise indicated, to the parties listed below, this 15th day of November, 2013:

Lisa R. Barton Acting Secretary U.S. International Trade Commission 500 E Street, SW, Room 112A Washington, DC 20436 **Via EDIS**	Cathy Chen Attorney-Advisor Office of the General Counsel U.S. International Trade Commission 500 E Street SW Washington, DC 20436 Email: cathy.chen@usitc.gov **Via E-Mail**
The Honorable David P. Shaw Administrative Law Judge U.S. International Trade Commission 500 E Street, SW, Room 317-O Washington, DC 20436 **Via Hand Delivery (2 copies)**	Patricia E. Chow Attorney-Advisor Office of the Administrative Law Judges U.S. International Trade Commission 500 E Street SW Washington, DC 20436 Email: patricia.chow@usitc.gov **Via E-Mail**
Elizabeth A. Niemeyer Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 901 New York Avenue, NW Washington, DC 20001 Email: Realtek-837@finnegan.com rszz-Realtek-837@ReedSmith.com **Via E-Mail** *Counsel for Respondent Realtek Semiconductor Corporation*	Paul Devinsky McDermott Will & Emery LLP 500 North Capital Street, NW Washington, DC 20001 Email: FunaiLSIITC@mwe.com QEFunai-837@quinnemanuel.com **Via E-Mail** *Counsel for Respondents Funai Electric Company, Ltd., Funai Corporation, Inc., P&F USA, Inc., and Funai Service Corporation*

s/ Stephannie Stover
Stephannie Stover