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JOINT ECONOMIC

United States Senate

WASHINGTON, DC 20510

July 7, 2014

The Honorable Meredith Broadbent
Chairman
U.S. International Trade Commission
500 E Street S.W.
Washington, DC 20436

Re: 337-TA-868, Wireless Devices with 3G and/or 4G Capabilities and Components Thereof

Dear Chairman Broadbent:

In connection with the Commission's Notice of Request for Statements on the Public Interest in the above referenced litigation, I am writing to express my views on the importance of innovation to our national economy, particularly with respect to small businesses, such as InterDigital, who are significant contributors to U.S. private sector employment.

InterDigital designs and develops advanced technologies that enable and enhance wireless communications. InterDigital also participates in, and contributes its technology services to, organizations responsible for the development and approval of standards, including those that govern 3G and 4G cellular devices and networks. It has research facilities in several states across the U.S., including Pennsylvania. As of December 31, 2013, InterDigital employed approximately 164 engineers, more than half of whom hold advanced technical degrees. Over the last two years alone, it has invested more than $120 million in research and development. InterDigital's substantial investments in research and development are predicated on its ability to earn a return on those investments by, among other things, licensing its intellectual property to others who incorporate InterDigital's technology into their products.

The U.S. patent system's principal purpose is to encourage innovators, like InterDigital, to make substantial, and often risky, investments in research and development based on the assurance that the inventions resulting from that research will be protected. Indeed, the U.S. patent system has successfully cultivated one of our country's strongest assets – its ability to innovate. While the U.S. has become a net importer of many products, in continues to be a net exporter of technology that enables such products. Based on the U.S. Commerce Department's latest statistics on cross-border trade, the U.S. trade surplus for royalties and license fees reached approximately $88 billion in 2013. An Economics and Statistics Administration and U.S. Patent and Trademark Office joint report, "Intellectual Property and the U.S. Economy: Industries in Focus," indicated that intellectual property-intensive industries supported at least 40 million jobs in the U.S. in 2010 and that the $5.06 trillion in value added by intellectual property-intensive industries represented 34.8 percent of total GDP.

To remain competitive with the rest of the world, the U.S. must continue to foster innovation through vigorous enforcement and protection of intellectual property rights, particularly where those rights are being infringed by products that are manufactured abroad and imported into the U.S. In fact, the primary objective of 19 USC §1337 ("Section 337") is to remedy acts of unfair competition related to the importation of infringing goods. Denying exclusionary relief in the face of valid and infringed intellectual property rights will encourage more infringing

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imports, deter future investments in research and development, stifle innovation, and ultimately deprive U.S. consumers of the rapid advancement in technology they have come to expect.

The Commission must be mindful of the significant benefits to consumers from standards-setting activities and of the need to continue incentivizing voluntary participation in standard-setting organizations. Innovators who have developed patented technology that is deemed essential to a standard and who have committed to license their essential patents on fair, reasonable, and non-discriminatory ("FRAND") terms should not be categorically precluded from obtaining exclusionary relief. As noted by the U.S. Patent and Trademark Office (USPTO) and the Department of Justice (DOJ), the statutory public interest factors set forth in Section 337 do not necessarily counsel against the issuance of an exclusion order to address infringement of a patent that has been deemed essential to a standard. Indeed, the U.S. Trade Representative (USTR), citing to the DOJ and USPTO Policy Statement on Remedies for Standard-Essential Patents Subject to Voluntary FRAND Commitments, has acknowledged that an exclusion order may be an appropriate remedy for infringements of standard-essential patents subject to FRAND commitments in some circumstances. The USTR acknowledged, for example, that "technology implementers also can cause potential harm by, for example, engaging in 'reverse hold-up' ('hold-out'), e.g. by constructive refusal to negotiate a FRAND license with the SEP owner or refusal to pay what has been determined to be a FRAND royalty." Where the Commission determines that an exclusion order is appropriate after examining thoroughly and carefully the public interest issues and having the parties develop a comprehensive factual record related to these issues in the proceedings before the ALJ and during the formal remedy phase of the investigation, and after having made explicit findings on these issues, the public interest favors upholding the Commission's remedy determination as the appropriate means for ensuring the protection and enforcement of valid and infringed intellectual property rights. To conclude otherwise would significantly devalue both the technology and intellectual property that is incorporated into standards and lead technology developers to opt out of the standard-setting process, resulting in more technologically inferior standards.

It should also be emphasized that American companies that create tomorrow's technologies through extensive research and development efforts within the United States have become the vanguard of our economy, and their efforts safeguard America's economic future. The ITC's longstanding domestic industry requirement, which was designed to *protect* American companies that invest at home in efforts to create new technology and license their knowledge to others willing to pay fairly for it, must not be used to foreclose their access to the one federal agency that can protect their valuable intellectual property from the harmful effects of imported infringing goods.

Accordingly, should the Commission ultimately determine that there has been a violation of Section 337 after a full consideration of the record it has developed regarding the patent holders' and prospective licensees' negotiation towards a FRAND license, I respectfully urge the Commission to fully consider this investigation's impact on the public interest. Thank you in advance for your time and consideration of this issue.

Sincerely,

Robert P. Casey, Jr.
United States Senator