

HENRY C. "HANK" JOHNSON, JR.
4TH DISTRICT, GEORGIA

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JUDICIARY

TRANSPORTATION AND INFRASTRUCTURE

Congress of the United States
House of Representatives
Washington, DC 20515-1004

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THE INTERNET
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ADMINISTRATIVE LAW
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BUILDINGS, AND EMERGENCY MANAGEMENT

November 23, 2019

The Honorable Lisa A. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: 337-TA-1089, In the Matter of Certain Memory Modules and Components Thereof

Dear Secretary Barton:

I am writing you today regarding the initial determination by the Administrative Law Judge in the matter related to certain memory modules and components thereof manufactured by SK Hynix. Based on the materials in the public record, I am concerned that the issuance of an exclusion order may potentially undermine the U.S. Patent and Trademark Office (USPTO) patent review process.

I understand the petitioner's claims in these Section 337 proceedings were invalidated in the USPTO's parallel review of the patents at issue. I am concerned that implementing an exclusion order based on invalidated patent claims contravenes the strong federal policy interest in permitting full and free competition in the use of ideas that are part of the public domain.

Excluding SK Hynix's products on the basis of adjudicated invalid patent claims – which would essentially circumvent the patent system – would be contrary to public interest and could possibly raise significant, far-reaching public policy concerns in the area of patent law.

Given the potential consequences I outline above, I urge your agency to carefully consider the public interest in preserving a robust patent review process.

Sincerely,



Henry C. "Hank" Johnson, Jr.
Member of Congress