UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of CERTAIN VIDEO CAPABLE ELECTRONIC DEVICES, INCLUDING COMPUTERS, STREAMING DEVICES, TELEVISIONS, AND COMPONENTS AND MODULES THEREOF	**Investigation No. 337-TA-1380**

STATEMENT OF THIRD PARTY COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION IN RESPONSE TO THE COMMISSION'S FEBRUARY 27, 2025, NOTICE OF REQUEST FOR STATEMENTS ON THE PUBLIC INTEREST

The Computer & Communications Industry Association ("CCIA") submits the following comments in response to the Commission's Federal Register Notice of February 27, 2025. CCIA represents over two dozen companies of all sizes providing high technology products and services.[1] CCIA members manufacture devices like those proposed to be excluded, such as computers and streaming devices, and develop software for such devices.

As noted in our first public interest submission, the exclusion of standards-practicing products, especially over minor aspects of the standard, is generally an inappropriate remedy. Given Amazon's stated willingness to license and the existence of an active proceeding to set such a rate, there is no rationale to cause harm to the U.S. economy and competitive conditions by excluding Amazon's products. An exclusion order based on a standard-essential patent is inappropriate here—and in any circumstance in which a respondent would reliably pay an adjudicated RAND[2] rate. CCIA reiterates our comments from the first round of public interest briefing. We submit additional comments in response to the Commission's new questions.

I. QUESTION 5A: When the complainant alleges that an asserted patent is a standard essential patent, subject to reasonable, and non-discriminatory (RAND) licensing terms, is the complainant precluded from seeking an exclusion order and/or cease and desist order based on infringement of that patent?

Generally speaking, and with certain limited exclusions, yes. If a complainant—or respondent—alleges that an asserted patent is encumbered by RAND obligations, the complainant should be generally precluded from seeking an exclusion or cease and desist order. The primary exception to this general principle exists when the respondent either will not or cannot pay for a license. This follows from the basic nature of the RAND commitment—a

[1] A list of CCIA's members is available online at https://www.ccianet.org/members. Respondent Amazon is a CCIA member, but took no part in the preparation of these comments.

[2] We use the term RAND here for consistency with the Commission's Notice, but all arguments within apply equally to FRAND commitments.

binding obligation to license on fair and reasonable terms. It also follows from the underlying antitrust rationale for RAND commitments, which seek to protect competition.

Private standards are, at their core, agreements among competitors as to which technologies to adopt and which to exclude on an industry-wide basis. In any other context, this would be an illegal cartel under antitrust law.[3] While standards contain significant pro-competitive benefits that justify a looser approach, the RAND obligation also provides a crucial antitrust safety valve. Absent a RAND or royalty-free obligation, SEP holders could control market access by controlling who they license to.[4] By imposing an obligation to license to all on reasonable terms, this market power is removed.[5]

Once a respondent has indicated a willingness to license under RAND terms, the patentee no longer has the ability to not license them on such terms.[6] The sole remaining question for determination is what those RAND terms should be. At that point, questions of patent infringement are effectively nonexistent and questions of contract and economics take the fore. The § 337 process is not the correct place to determine RAND rates. To the extent that there is a concern that a respondent might affirm their willingness to accept a RAND license and then deny the jurisdiction of U.S. courts to set such a rate, it might be appropriate for the ITC to defer dismissal of a proceeding until such time as the respondent has accepted the jurisdiction of a federal district court or committed to binding arbitration. At a minimum, where a parallel

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[3] *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492 (1988) ("Agreement on a product standard is, after all, implicitly an agreement not to manufacture, distribute, or purchase certain types of products. Accordingly, private standard-setting associations have traditionally been objects of antitrust scrutiny.")
[4] *See, e.g.*, Douglas Melamed & Carl Shapiro, *How Antitrust Law Can Make RAND Commitments More Effective*, 127 Yale L.J. 2110, 2114 (2018).
[5] *Id.* at 2116-2121.
[6] *See, e.g., Ericsson, Inc. v. D-Link Sys., Inc.*, 773 F.3d 1201, 1230 (Fed. Cir. 2014) (SEP holder subject to IEEE RAND obligations "cannot have … [a] policy" of "not licensing others to use the invention or … granting licenses under special conditions").

litigation exists that will result in setting a RAND rate, the Commission should defer execution of any remedy until after the conclusion of the rate-setting case and only put the exclusion order into operation if there is evidence that the RAND rate is not being paid. This is similar to how the Commission has treated *inter partes* reviews in a number of cases.

In short, where a patent is subject to RAND obligations and the respondent has indicated a willingness to license on RAND terms, no violation within the Commission's § 337 jurisdiction can be found—all that remains is a dispute over proper terms for a license.

II. QUESTION 5B: Should the Commission consider RAND licensing obligations as a legal or equitable defense (i.e., as part of its violation determination) under section 337(c), 19 U.S.C. 1337(c)) or as part of its consideration of the public interest factors under section 337(d)(1) and (f)(1)?

The Commission should primarily treat RAND licensing obligations as a legal defense, as noted above. When an obligation to license exists and an expression of willingness to license has been made, absent some evidence that the potential licensee either cannot pay a RAND rate or is unwilling to do so then no violation within the Commission's jurisdiction can be found. Only one item remains in dispute—the terms of the license. Given the threshold nature of this inquiry, it would be appropriate for the Commission to examine the presence of RAND obligations and the expressed willingness of a respondent to take a RAND license at a 100-day hearing, similar to other threshold questions such as the presence of domestic industry. Doing so will limit wasteful and unnecessary litigation. It will also save time and costs for all parties involved, including the Commission.

At the same time, there may be occasions in which RAND obligations would remain important to the public interest factors even if the Commission generally declines to take jurisdiction over RAND encumbered patents. For example, even if the RAND obligation is violated because a potential licensee refuses to take a license and the Commission thus has jurisdiction to act, it might still not be in the public interest to exclude the product if the exclusion would result in significant harm as judged by the statutory public interest factors. In such cases, the RAND licensing obligation is potentially relevant at the public interest phase. It is most likely to prove relevant to the factor regarding competitive conditions in the U.S. economy, as discussed *infra* regarding Question 6A, given the close linkage between standards, RAND licensing, and competition law, but could potentially prove relevant to others depending on the specific facts of a case.

III. QUESTION 6: In the event a violation is found, does the information regarding the parties' RAND obligations and licensing attempts inform any particular public interest factor that the Commission should consider under section 337(d)(1) and (f)(1)?

In the event that the Commission finds a violation of § 337 based on a RAND-encumbered patent, despite the presence of a RAND obligation and its acceptance eliminating Commission jurisdiction discussed above, it absolutely must consider the RAND obligation and licensing attempts as part of the public interest inquiry. Assertion of a standard-essential patent to obtain exclusive relief, whether at the ITC or a district court, represents an exercise of anti-competitive market power and must be considered and, barring specific circumstances, rejected under the competitive conditions public interest factor.

Information on RAND obligations and licensing attempts is critical to the competitive conditions factor in large part because RAND obligations are, as noted above, fundamentally rooted in competition law. While the Commission has a statutory mandate to prevent unfair methods of competition in importation of articles, it does not have a mandate to do so in defiance of antitrust law, as exemplified by the inclusion of competitive conditions in the public interest factors. Absent a consideration of the impact of the abuse of a RAND-encumbered SEP in front of the ITC, it would effectively enable SEP holders to exert monopoly power over the market and thereby harm competitive conditions in the United States. Even the threat of such monopoly power is likely to harm competitive conditions by disincentivizing market entry and creating a significantly higher barrier to entry into standardized product spaces via supra-RAND royalty rates. The ITC would provide an additional avenue for a patent holder to exert their monopoly power, allowing them to avoid the competition-protecting RAND obligation.

Information regarding licensing attempts is less likely to prove relevant to Commission action unless the complainant argues that the respondent has expressed its refusal to take a RAND license. In that circumstance, it might prove relevant to the Commission's analysis and may be appropriate to consider during the threshold 100 day proceeding suggested above.

IV. CONCLUSION

For the reasons set forth above, the Commission should disclaim its jurisdiction here as inappropriate regarding the RAND-encumbered patents in suit, which Amazon has committed to license on RAND terms. At a minimum, any remedy must be held in abeyance to allow the rate-setting process to play out.

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Respectfully submitted,

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