

February 27, 2007

Christopher A. Cotropia
Associate Professor of Law
ccotropi@richmond.edu
804-484-1574 (voice)
804-289-8992 (fax)

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UNIVERSITY OF RICHMOND
FOUNDED 1830

The Honorable Marilyn R. Abbot
Secretary
United States International Trade Commission
500 E Street SW, Room 112
Washington, DC 20436

Re: *In the Matter of Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets, Inv. No. 337-TA-543*

Faculty
The T. C. Williams
School of Law

Secretary Abbott:

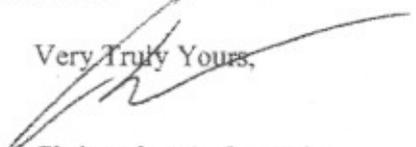
I request to appear at the International Trade Commission ("Commission") public hearing regarding remedies and public interest in Inv. No. 337-TA-543. This request is in response to the Commission's February 9, 2007 Order notifying the public of such a hearing.

Pursuant to the order, I attach a one-page synopsis of my oral presentation to the Commission. In short, after review of the public record and based on my knowledge of United States patent law, I believe the Commission should issue a downstream exclusionary order covering handsets containing infringing chips. Such an order is needed to maintain the publicly beneficial incentives of the United States patent system.

Finally, as way of background, I am an Associate Professor of Law at the University of Richmond School of Law and a member of the School's Intellectual Property Institute. I teach and research in the areas of patent law and patent policy. I have written multiple articles and book chapters on patent law. Prior to becoming a law professor, I practiced patent law and clerked for the Honorable Alvin A. Schall of the United States Court of Appeals for the Federal Circuit. All of this experience informs my thoughts on the remedy and public interest issues before the Commission in this investigation.

Please let me know if I can provide the Commission with any additional materials or answer any questions before the hearing. My e-mail address is ccotropi@richmond.edu. Thank you for your consideration.

Very Truly Yours,


Christopher A. Cotropia

enclosure

University of Richmond
Virginia 23173

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of:

CERTAIN BASEBAND PROCESSOR
CHIPS AND CHIPSETS, TRANSMITTER
AND RECEIVER (RADIO) CHIPS, POWER
CONTROL CHIPS, AND PRODUCTS
CONTAINING SAME, INCLUDING
CELLULAR TELEPHONE HANDSETS

Investigation No. 337-TA-543

SYNOPSIS OF TESTIMONY OF PROFESSOR CHRISTOPHER A. COTROPIA

Based on my review of the public record and knowledge of United States patent law, I believe the Commission should issue a downstream exclusionary order covering handsets containing infringing chips. My presentation focuses on the need for such a remedy in order to maintain the publicly beneficial incentives of the United States patent system. I make the following two points.

First, the exclusivity created by patent rights is necessary to maintain the incentive to invent and innovate.¹ The process of creating new, non-obvious, and useful inventions is costly, and inventors will not invest in such research without a mechanism to recover these costs. The exclusivity patent law provides gives inventors such a mechanism, allowing them to price their inventions to recover costs. This exclusivity can decrease the output or increase the price of the invention. However, without the ability to exclude, many inventors would forgo investing in research and, as result, patentable inventions are not produced. Society would never get the benefit of the invention. Furthermore, the societal costs associated with patent exclusivity are limited by the fixed period of patent protection. The effects of exclusivity, thus, need to be considered in the aggregate where they are net beneficial.

Second, patent exclusivity also incentivizes others to design around and improve the patented technology.² Patent exclusivity prompts the disclosure of the original invention so that others can learn about the patented technology. Then, because patent exclusivity prevents others from practicing the patented technology, competitors are incentivized to come up with something new in order to compete. This secondary incentive of patent exclusivity generates even more publicly beneficial innovation.

If the Commission does not recognize the full scope of patent rights in this investigation, uncertainty as to patent protection is created and the incentives discussed above are eroded. Creating such a situation is publicly harmful because it potentially robs the public of both initial patentable innovations and the technological improvements and design-arounds that follow. Thus, only in rare cases should a competing public interest outweigh the public interest in the production of patentable inventions. This is not such a case.

¹ See *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 480-481 (1974) ("The patent laws promote . . . progress by offering a right of exclusion for a limited period as an incentive to inventors to risk the often enormous costs in terms of time, research, and development.")

² See *Slimfold Mfg. Co. v. Kinkead Indus., Inc.*, 932 F.2d 1453, 1457 (Fed. Cir. 1991) ("Designing around patents is . . . one of the ways in which the patent system works to the advantage of the public in promoting progress in the useful arts, its constitutional purpose.")