



July 23, 2024

Hon. Darrell Issa
Chairman
Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

Hon. Hank Johnson
Ranking Member
Subcommittee on Courts, Intellectual Property, and the Internet
U.S. House Judiciary Committee
2138 Rayburn House Office Building
Washington, D.C. 20515

RE: "Hearing: IP Litigation and the U.S. International Trade Commission"

Dear Chairman Issa and Ranking Member Johnson:

Conservatives for Property Rights (CPR) writes in regard to the subcommittee's July 23 hearing, "IP Litigation and the U.S. International Trade Commission." CPR and other conservative and free-market organizations appreciate the important functions of the U.S. International Trade Commission (ITC) and its unique role in repelling imports that infringe U.S. patents.

CPR is a coalition of public policy organizations concerned with preserving and protecting private property rights. We have long advocated for policies that bolster U.S. industrial competitiveness and technological innovation. We believe U.S. public policy must provide for clear, secure, reliable, and enforceable property rights — including intellectual property (IP) rights.

Because the ITC is a trade agency, it falls under the jurisdiction of the Ways & Means Committee. Thus, the ITC may be less familiar to members of the Judiciary Committee. However, CPR and several other center-right organizations are well acquainted with the ITC and its important roles, including those connected with IP. We understand and

support the ITC and its balanced, evidence- and rules-based means of assessing matters that come before it. Moreover, we strongly oppose efforts to weaken this component of America's innovation ecosystem.¹

The U.S. International Trade Commission, an independent federal agency, investigates and makes determinations in trade-related matters regarding imports claimed to injure a domestic industry or violate U.S. intellectual property rights. The ITC performs independent analysis and develops information on tariffs, trade, and competitiveness in a fair, impartial manner.

In IP-related cases, the ITC adjudicates claims of importation of patent-infringing goods under section 337 of the Tariff Act. ITC has two remedies available should it determine IP infringement: exclusion orders and cease-and-desist orders. This outcome appropriately protected medical technology innovator Masimo in a recent ITC case.²

The ITC helps preserve U.S. innovation and competitiveness, particularly after the U.S. Supreme Court's 2006 *eBay* ruling made it extraordinarily difficult for patent owners to obtain domestic injunctive relief, even when a patent has been found valid and infringed.³

Big Tech firms and technology implementers (e.g., smartphone companies, automobile manufacturers) have targeted the ITC in recent years. They chafe at being constrained from importing their foreign-made (usually in China), U.S. patent-infringing goods. Their favored legislation is H.R. 3535, the Advancing America's Interests Act.

The Advancing America's Interest Act would make the ITC process for obtaining section 337 exclusion of patent-infringing imports steeper for patent owners. H.R. 3535 would tilt the currently balanced process so that infringers would more easily escape imposition of the ITC's effective remedies. As has been noted, "the vast majority of ITC investigations — nearly 80% of cases — involve infringing products coming from China. By making it more difficult for U.S. patent owners to assert their intellectual property rights against these imports, the bill would incentivize U.S. businesses that want to sidestep licensing fees to manufacture infringing products overseas — all but

¹ See the coalition letter of March 19, 2024, to the Ways & Means Committee: https://www.property-rts.org/files/ugd/651e0c_58c17e5decd74ca3862b692d2e4b1cce.pdf.

² <https://www.property-rts.org/post/coda-on-a-guardian-of-u-s-innovation>.

³ <https://ipwatchdog.com/2020/02/06/obtaining-injunctions-ebay-versus-international-trade-commission/id=118576/>.

ensuring that our high-tech supply chains remain dominated by China. And if U.S.-based firms could do it, Chinese firms would likely follow suit.”⁴ In other words, H.R. 3535 would do to the ITC what infringers have done to impair injunctions in federal courts.⁵

In closing, the ITC fills big shoes in the U.S. international trade system, part of which involves excluding goods that infringe U.S. IP. The subcommittee should not become party to an anti-IP agenda that would diminish U.S. innovation by robbing U.S. innovators’ IP rights and its value, as well as taking away meaningful enforcement remedies granted in a fair, balanced, rules-based manner. We urge the subcommittee to refrain from rewarding infringers of U.S. patents and Chinese manufacturing.

Sincerely,

James Edwards, Ph.D.
Founder and Executive Director

⁴ <https://www.washingtontimes.com/news/2023/mar/27/weakening-us-trade-protections-cements-chinese-sup/>. Also, see <https://thehill.com/opinion/technology/4157340-big-techs-patent-troll-attacks-are-a-smokescreen-dont-let-them-fool-you/>.

⁵ This blog post discusses how weakening the ITC fits into predatory patent infringers’ strategy: <https://www.property-rts.org/post/safeguarding-cutting-edge-u-s-innovation>.