

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN POWER
SEMICONDUCTORS,
AND MOBILE DEVICES AND
COMPUTERS CONTAINING SAME**

Investigation No. 337-3605

**STATEMENT OF THIRD PARTY
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION
IN RESPONSE TO THE COMMISSION'S FEBRUARY 18, 2022,
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 18, 2022, inviting comments on the public interest in the above-referenced investigation. 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 smartphones and laptops, and develop software for such devices. Exclusion of these devices would harm U.S. consumers and the U.S. economy. Further, based on publicly available information and Arigna’s complaint, it is clear that their licensees cannot actually supply a substitute for the excluded articles.

I. USE OF POTENTIALLY EXCLUDED ARTICLES IN THE UNITED STATES

The products proposed for exclusion include at least 92% of all smartphones in the U.S. market,² as well as a significant proportion of laptops and other computing devices. A majority of American households rely solely on wireless devices such as those proposed for exclusion for purposes of voice telephony.³ Approximately 15% of American adults rely on smartphones as their primary Internet connection.⁴ Further, given pandemic-induced supply constraints and needs for remote interaction, these numbers likely underestimate the importance of maintaining a steady supply of the devices proposed for exclusion as well as ignoring the myriad uses for those devices in the modern world.

¹ A list of CCIA’s members is available online at <https://www.ccianet.org/members>. Proposed respondents Apple, Google, and Samsung are CCIA members, but took no part in preparing this comment.

² See Counterpoint Research, *US Smartphone Market Share: By Quarter* (Feb. 14, 2022), <https://www.counterpointresearch.com/us-market-smartphone-share/> (showing that respondents constitute at least 92% of the U.S. smartphone market).

³ Centers for Disease Control, National Center for Health Statistics, *Wireless Substitution: State-Level Estimates from the National Health Interview Survey, 2018* (Dec. 17, 2019), https://www.cdc.gov/nchs/data/nhis/earlyrelease/Wireless_state_201912-508.pdf.

⁴ See Pew Research Center on Internet & Technology, *Internet/Broadband Fact Sheet* (last visited Feb. 28, 2022), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/>.

II. PUBLIC HEALTH, SAFETY, AND WELFARE CONCERNS

The proposed exclusion order raises significant public health, safety, and welfare concerns. As noted above, these devices serve critical connectivity functions for many Americans. Excluding personal mobile electronic devices such as those identified in the complaint risks depriving American consumers of basic modern communication tools. Many devices proposed for exclusion also provide health and safety benefits to consumers in the form of Emergency Alerts and 911 Location Accuracy.⁵ Such benefits have helped to limit the negative impacts of natural disasters including hurricanes and the Dixie Fire.

Even a cursory analysis of the facts demonstrates that an exclusion order is clearly inappropriate in this case and institution should be denied. And at a minimum, the Commission must apply additional scrutiny at the start of the investigation given the likely disruption of supply chains, detrimental effects on public health and welfare, and widespread economic harm that an exclusion order would create.

III. SUBSTITUTE ARTICLES MADE BY COMPLAINANT OR ITS LICENSEES AND ABILITY TO REPLACE EXCLUDED ARTICLES IN A COMMERCIALY REASONABLE AMOUNT OF TIME

Arigna and its sole identified licensee, Microchip, do not make laptops or smartphones, nor do they make components suitable for use in place of the identified infringing chips. Further, the identified domestic industry products could not be used as substitutes for the alleged infringing components in the identified articles. Finally, the identified domestic industry products—even if suitable as substitutes—are not available in sufficient volume to replace the excluded articles in a commercially reasonable period of time.

⁵ See, e.g., FCC, *Wireless Emergency Alerts* (Dec. 19, 2019), <https://www.fcc.gov/consumers/guides/wireless-emergency-alerts-wea>.

Arigna has identified the Microchip “MCP16311 as well as Microchip’s MCP1602, MCP1603, MCP1612, MCP16301, MCP16301H, MCP16312, MCP16331, MCP16361, MCP16362, MCP16363, MCP16501, and MCP16502” as domestic industry products. It identifies envelope tracking chips, including the “Qualcomm QET4100, Qualcomm QET5100, Qualcomm QET5100M Qualcomm QET6100, Qualcomm QET7100, Qorvo QM81009, Qorvo QM81013 and similar envelope tracking module[s]” as the infringing components.

The identified articles are envelope trackers; they provide a power signal that rapidly varies based on a control signal to improve amplifier power efficiency. The domestic industry items are fixed and adjustable-voltage power regulators which provide a stable power supply that does not vary over time. Critically, the domestic industry items are not designed to perform envelope tracking—they are not actually capable of operating as substitutes for the alleged infringing semiconductors, nor does Microchip advertise them as suitable for such use.

Further, despite Arigna’s representations, the identified domestic industry articles are not available in quantity sufficient to replace the proposed excluded articles even if they were capable of operating as a substitute. Each year in the United States, tens of millions of smartphones are sold. But examining Microchip’s website for each of the identified domestic industry products, the products are either extremely limited in stock or out of stock entirely and are not available for months or even years. For example, Arigna’s lead domestic industry product, the MCP16311, is listed as “Out of Stock - Order now, can ship on 03-Mar-2023,”⁶ a delay of more than a year before delivery of any chips. Similar notices are present on the pages of the MCP1602 (“Out of Stock - Order now, can ship on 01-Aug-2022”), MCP16301 (out of stock, shipping on multiple dates in 2023), MCP16312 (out of stock, shipping on multiple dates

⁶ See, e.g., Microchip, *MCP16311*, <https://www.microchip.com/en-us/product/MCP16311> (last visited Feb. 25, 2022).

in 2023), etc. While some products are listed as available, such as the MCP1603, they are available only in limited quantities insufficient to replace the articles proposed for exclusion.⁷

In short, there is no evidence whatsoever that Arigna and its licensees have products that could replace the products identified as infringing. And even if the identified products could be used as a substitute—which, again, they are not technologically capable of doing—there is evidence that they would not be able to supply the necessary sales volume in a commercially reasonable amount of time. This is particularly the case given well-known chip supply chain issues, issues of sufficient concern that Congress has undertaken legislation to solve them.

This situation justifies an immediate and expanded public interest inquiry in order to ensure that the Commission neither excludes products that have no reasonable substitute nor forces respondents to expend resources defending themselves against an allegation that the Commission would not remedy. It may also justify an inquiry into whether Arigna actually undertook required pre-suit diligence before stating that substitute articles would be available.

IV. EXCLUSION OF THE REQUESTED ARTICLES WOULD HARM CONSUMERS

As noted above, the proposed excluded articles would eliminate more than 92% of all smartphones sold on the U.S. market. The remaining vendors are unlikely to be able to replace the sales volume at all, much less in a commercially reasonable time. This would be true even if the world were not currently affected by pandemic-induced supply shocks. Given those supply chain issues, especially with respect to semiconductor manufacturing capacity, the argument that exclusion of 92% of the U.S. smartphone market would not result in any harms to consumers in the form of unavailability of new and replacement products and price gouging is laughable.

The proposed exclusion order would also entirely eliminate consumer access to new iOS

⁷ See, e.g., Microchip, *MCP1603*, <https://www.microchip.com/en-us/product/MCP1603> (last visited Feb. 25, 2022).

devices, which would in turn harm the hundreds of thousands of individuals and small businesses who support themselves by developing accessories, apps, and services for iOS devices.⁸ The exclusion order would also eliminate access to the vast majority of Android devices, with similar impacts, although the few non-excluded Android devices would remain available.

Given the predictable and near-certain negative impacts on U.S. consumers, it is clear the public interest does not favor the imposition of an exclusion order in this case. Further, this case represents yet another example of a non-practicing entity (NPE)—in this case, a foreign NPE—attempting to use the ITC as a parallel forum in order to make an end-run around the federal district court *eBay* requirement.⁹ Such cases force respondents to expend significant monetary and engineering resources, thereby increasing costs to consumers and reducing the number of new products and features available to consumers. The Commission’s statutory obligation to protect the public interest does not require the Commission to allow itself to be used for the benefit of private equity and foreign shell corporations.

V. CONCLUSION

Given the significant questions about the appropriateness of the domestic industry requirement in this case, the Commission should strongly consider whether institution of an investigation is appropriate. In the event it determines an investigation is appropriate, the Commission should order the ALJ to conduct an expanded public interest inquiry, including dedicating time specifically to the public interest so that respondents are not forced to choose between their merits case and the public interest. Absent such dedicated time, the public interest record may be inadequate for the Commission’s review.

⁸ See Jonathan Borek *et al.*, *A Global Perspective on the Apple App Store Ecosystem* at 6 (June 2021), <https://www.apple.com/newsroom/pdfs/apple-app-store-study-2020.pdf>.

⁹ *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006).

Dated: February 28, 2022

Respectfully submitted,

/Joshua Landau/

Joshua Landau
Patent Counsel
Computer & Communications
Industry Association
25 Massachusetts Ave NW, Suite 300C
Washington, DC 20001
(202) 470-3622
jlandau@ccianet.org