RETAIL INDUSTRY LEADERS ASSOCIATION
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July 22, 2013

Ambassador Michael Froman
United States Trade Representative
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: ***Certain Electronic Devices, Including Wireless Communication Devices, Portable Music and Data Processing Devices, and Tablet Computers*, USITC Inv. No. 337-TA-794**

Dear Ambassador Froman:

As the Administration reviews the exclusion order issued on June 4, 2013, in the above-referenced International Trade Commission (ITC) case, the Retail Industry Leaders Association (RILA) urges you to consider that the exclusion order would discourage competition and innovation and would be inconsistent with the views of the Federal agencies with the relevant policy expertise.

By way of background, RILA is the trade association of the world's largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than $1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

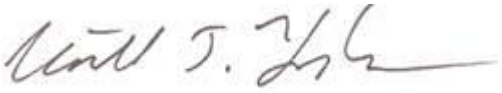
With a membership that invests millions of dollars in the design, manufacture and branding of products, RILA is a strong supporter of enforceable intellectual property rights ("IPR"), and generally supports the ability of IPR holders to enforce such rights at the ITC. However, given the nature of the limited remedies available under section 337, the public interest factors set out in 337 are particularly important when considering cases involving standard-essential patents. Patents protect investments in innovative technologies and RILA supports the patent holder's right to compensation for the use of standard-essential patents on FRAND terms. The concern is that, in the case of standard-essential patents in particular, complainants could transform 337 exclusion orders from shields into swords, and use the process to undermine the balance between compensation for use of the technology and the public interest that the FRAND regime seeks to achieve.

When a patent holder declares a particular patent essential to the standard, the patent holder generally makes a promise to license the patent on fair, reasonable, and non-discriminatory (FRAND) terms. A FRAND commitment generally precludes the patent holder from seeking an exclusion order at the ITC, except in very limited circumstances. At a minimum, these circumstances include when the putative licensee is unable or unwilling to take a FRAND license, or when the putative licensee is outside the jurisdiction of the US court system.

The Federal Trade Commission, the Department of Justice, and the US Patent and Trademark Office are the expert competition and intellectual property policy agencies in the US, and each has gone to great lengths to articulate the potential harms to consumers should a FRAND-encumbered patent be used to unfairly obtain an exclusion order. We urge you to carefully consider the views of these agencies during your review.

In sum, it is undeniably in the public interest to maintain policies and practices, such as the FRAND regime, that promote innovation and robust, fair competition. The standard setting process and FRAND regime benefit patent holders and also help to promote interoperability, affordability and consumer choice. In reviewing this exclusion order RILA therefore urges you to protect that regime and not undermine the standard-setting process.

Respectfully submitted,



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