



Conservatives  
for  
Property Rights

July 8, 2019

The Honorable Lisa R. Barton  
U.S. International Trade Commission  
500 E Street, S.W.  
Room 112A  
Washington, D.C. 20436

**RE: Digital Video Receivers and Related Hardware and Software Components, Inv. No. 337-TA-1103**

Dear Secretary Barton:

On behalf of Conservatives for Property Rights (CPR), this responds to the International Trade Commission's (ITC) June 7 request for statements on the public interest related to Investigation No. 337-TA-1103. CPR is a coalition of organizations that advocates for rights of private property in all its forms—physical, personal, and intellectual. We would like to express support for the protections afforded by 19 U.S.C. §1337 (“Section 337”) and urge the commission to consider Rovi's request for an exclusion order against the infringing products.

With respect to the public interest in this matter, CPR discusses several important aspects: American economic welfare, U.S. production, and American consumers.

#### **American Economic Welfare Is Best Served by an Exclusion Order**

Comcast may argue that its continued use of Rovi's technology serves to benefit the public interest because it creates value for the American economy. This is not so. Instead, American economic welfare benefits most from a robust patent system. Permitting patent infringement undercuts American economic well-being.

An individual's property—regardless of its form—has been the foundation of the American economy since our nation's beginning. The American Founders recognized that intellectual property is especially important for national economic welfare, and the Constitution specifically guarantees patent rights. The authors of the Constitution anticipated how important patent protection could be to America's future, and they have undeniably contributed to our nation's prosperity. The United States is one of the primary sources for new inventions, something that could not have been accomplished without strong respect for patent rights.

Patent protection is essential to the American economy because it ensures inventors have the incentive to pursue their ideas. Without strong patent rights, inventors would not benefit from their creation's profits. Thus, they would be less likely to take the risk necessary to bring their invention to market. Turning an idea into reality always takes investment, whether it

*“protecting the exertions of talents and industry . . . securing to them their justly acquired fruits”*  
— Alexander Hamilton

is time, money, or both. Unless this investment offers the promise of potential profit, entrepreneurs are unlikely to risk their time and money.

Of all forms of property, patent protection is particularly susceptible to theft, and thus particularly needs legal protection. Unlike other forms of property, intellectual property does not have to be physically obtained to be stolen; instead, it may be stolen through replication. The surest way to prevent this theft is by guaranteeing inventors legally enforceable patent rights.

### **An Exclusion Order Benefits the U.S. Production of Like or Directly Competitive Articles**

Also, Comcast may argue that it should be allowed to use Rovi's technology without compensation because an exclusion order would harm the production of similar products in the United States. Again, the opposite is true. America's ability to compete effectively in the global economy relies on the preservation of patent protection in cases like this one.

Patent rights are crucial to America's competitive advantage in the global economy. The innovations of America's inventors and entrepreneurs are essential to ensure our ability to compete economically with other countries. America does not compete on certain metrics. For instance, other countries have cheaper labor or fewer regulations. To compete, we have to rely on our innovations, and innovation relies on the American patent system. Unless intellectual property is adequately protected, America's ability to innovate, and by extension, our ability to compete globally, would be undermined.

### **Denying An Exclusion Order Would Harm American Consumers**

Finally, Comcast may argue that an exclusion order is contrary to the public interest because American consumers would be better served by Comcast products if they included the functionality of Rovi technology. However, this position rests upon a significant false assumption: that the only way to make this technology available is in a way that Comcast does not pay for it. Wrong. Not only did Comcast previously license the Rovi technology, but Comcast's competitors currently compensate Rovi for the use of its patented functionality.

Again, this public interest factor cuts in Rovi's favor: American consumers would be harmed if Rovi's intellectual property rights were not protected. If property rights are not respected, it decreases the likelihood that entrepreneurs will invest in their innovations. Even if Comcast had a strong argument for consumer benefit, it would have to be weighed against the costs of lost incentives for innovators. Instead, since Comcast's position is based on an incorrect premise—that its victory is the only way to provide consumers with Rovi technology—granting an exclusion order is clearly the decision that benefits American consumers.

The only remedies available to the commission in section 337 cases are an exclusion order and cease-and-desist order. For the reasons discussed above, the public interest is best served in this matter by acting on the remedies recommended. This is the appropriate way to safeguard the property rights of the infringed party and to serve the public interest.

Respectfully,

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