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June 6, 2012

Via EDIS

The Honorable Lisa R. Barton
Acting Secretary to the Commission
U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, DC 20436

Re: *Certain Wireless Communications Devices, Portable Devices, Computers, and Components Thereof*, Investigation No. 337-TA-745

Dear Acting Secretary Barton:

On behalf of Microsoft Corporation ("Microsoft"), we respectfully submit these comments to address the public interest issues raised by the ALJ's recommended exclusion and cease and desist orders and in response to the Commission's May 10, 2012 request for statements on the public interest.

Microsoft appreciates the importance of intellectual property, and the role of the Commission in protecting U.S. industry against the importation of infringing articles. *See, e.g.*, *In re Certain Mobile Devices, Associated Software, and Components Thereof*, Inv. No. 337-TA-744. But in this Investigation, Motorola seeks the massive leverage of an exclusion order on the basis of alleged infringement of patents it promised to license on reasonable and nondiscriminatory ("RAND") terms—a promise which led to the incorporation of Motorola's technology into industry standards. Rewarding a patentee's efforts to undermine the standard-setting process would harm "the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers." 19 U.S.C. § 1337(d)(1); *see also id.* § 1337(f)(1). No exclusion or cease and desist order should issue in this case. Motorola promised to license at reasonable rates. If Apple is willing to pay, then Motorola should be barred as a matter of law from invoking exclusionary remedies.

Standard-Setting Organizations (SSOs) and the technical standards they develop foster competition, eliminate unnecessary redundancy in design, and increase consumer choice while

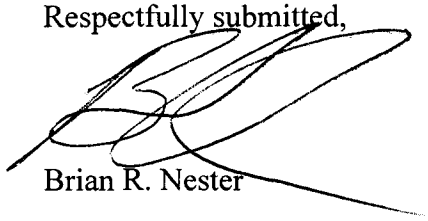
reducing switching costs—which itself further increases competition. Typically, market participants who are often otherwise competitors agree to cooperate to solve a common technical problem in a way that will allow myriad products from different manufacturers to interoperate. For example, any Blu-Ray disc produced consistent with the Blu-Ray standard can be played on any Blu-Ray player, because industry participants worked together to develop the specifications of the technical standard.

The standard-setting process presents a significant risk, however. Owners of patents necessarily practiced by any party who wishes to implement the standard may demand outsized royalties or seek to enjoin implementation altogether, thereby defeating the very purpose of standardization. To combat this risk of "hold up" by standard-essential patent holders, SSOs require that participants disclose their relevant patents and state their willingness to license on RAND terms—if a patentee is unwilling to do so, its technology is unlikely to be incorporated in the standard. RAND commitments ensure that standards that are developed, at significant cost to all those involved, can actually be implemented, and that implementers will not face extortionate demands once they have sunk the costs of implementation into a product.

Motorola promised to license its standard-essential patents on RAND terms, not to enjoin those ready and willing to pay a RAND rate. It should not be able to wield the massive leverage of exclusionary relief against enormously popular consumer products to extract royalties or other value that far exceeds its technological contribution to the standard. Motorola and Apple may well be competitors, but by committing to license its standard-essential patents, Motorola has agreed not to compete based on the presence or absence of technical standards. To permit Motorola to renege would undermine the standard-setting process to the detriment of competitive conditions in the domestic economy and ultimately of the public.

Any exclusion or cease and desist order in this investigation would be contrary to the public interest.

Respectfully submitted,



Brian R. Nester

CERTIFICATE OF SERVICE

I hereby certify that copies of the **Letter to Acting Secretary Lisa R. Barton re Comments to Commission's May 10, 2012 Request for Statements on the Public Interest in *Certain Wireless Communications Devices, Portable Devices, Computers, and Components Thereof*, Investigation No. 337-TA-745** were served on the following parties as indicated below on this 6th day of June, 2012 as indicated:

The Honorable Lisa R. Barton Acting Secretary to the Commission U.S. International Trade Commission 500 E Street, SW, Room 112 Washington, DC 20436	EDIS

/s/ Jennifer L. Gordon
Jennifer L. Gordon
IP Litigation Paralegal