UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of **CERTAIN WIRELESS COMMUNICATION DEVICES AND COMPONENTS THEREOF**	**Investigation No. 337-TA-1429**

ASSOCIATION FOR COMPETITIVE TECHNOLOGY'S STATEMENT ON THE PUBLIC INTEREST

The Association for Competitive Technology (ACT) respectfully submits these comments in response to the Commission's request for submissions concerning the public interest in Investigation No. 337-TA-1429, titled *Certain Wireless Communication Devices and Components Thereof*, addressing the initial and recommended determinations issued on August 14, 2026.[1] The Commission is considering, should it find a violation, a limited exclusion order covering certain wireless communication devices and components imported by Dell Technologies Inc., Dell Products L.P., and Lenovo (United States) Inc., as well as cease-and-desist orders directed to those respondents.

I. INTRODUCTION

ACT is a global policy trade association for the small business technology developer community. The value of the U.S. ecosystem ACT represents is approximately $1.8 trillion and is responsible for 6.1 million American jobs.[2] Our members include startups, app developers, and device manufacturers that both own and use patented technologies and depend on a fair, predictable intellectual property system.

The Commission should preserve the Administrative Law Judge's determination that no violation of Section 337 occurred.[3] If the Commission nevertheless reaches the remedy stage, the statutory public-

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[1] Certain Wireless Communication Devices and Components Thereof; Notice of Request for Submissions on the Public Interest, Inv. No. 337-TA-1429, 91 Fed. Reg. 53,893 (Aug. 20, 2026).
[2] ASS'N FOR COMPETITIVE TECH., STATE OF THE APP ECONOMY (2022), https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL.pdf.
[3] Certain Wireless Communication Devices and Components Thereof, Inv. No. 337-TA-1429, Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond (Aug. 14, 2026).

interest factors weigh strongly against excluding the laptop computers, tablets, desktop computers, and wireless chips at issue, which are widely used products whose exclusion would disrupt essential computing tools, reduce competition, leave no adequate substitute, and impose costs on American consumers and businesses without protecting any domestic industry that Section 337 is meant to safeguard.

II. THE PUBLIC-INTEREST EVALUATION WEIGHS AGAINST EXCLUSION

An exclusion order is an extraordinary remedy that bars products from the U.S. market altogether rather than compensating a patent holder for infringement. It exists to protect qualifying domestic industries from unfair import competition, not to give patent holders leverage disproportionate to the value of the patented technology. The Supreme Court has cautioned that when a patent covers only a small component of a larger product, the threat of an injunction may be used for "undue leverage in negotiations," even though money damages are sufficient.[4] While the district-court injunction framework does not govern Commission remedies, Congress supplied a different safeguard in requiring that, before excluding products, the Commission must consider "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."[5]

A. Exclusion Would Disrupt the Computing Tools and Connectivity Americans Rely on Every Day

ACT's small-business members build software and connected products for the laptops, desktops, tablets, and wireless chips at issue, which households, businesses, schools, healthcare providers, and government institutions use throughout the U.S. economy.

The products subject to exclusion provide substantial functionality well beyond the wireless functionality at issue. Where that functionality involves standardized connectivity, exclusion also risks

[4] *See eBay Inc. v. MercExchange, L.L.C.,* 547 U.S. 388, 396–97 (2006) (Kennedy, J., concurring).
[5] *See* Spansion, Inc. v. Int'l Trade Comm'n, 629 F.3d 1331, 1358–59 (Fed. Cir. 2010); 19 U.S.C. § 1337(d)(1).

disrupting interoperability with existing networks, devices, software, and infrastructure—an essential feature of modern computing products.

B. Exclusion Would Harm Public Health and Welfare

These products also support functions directly relevant to public health and welfare. Clinicians and patients use laptops and tablets to reach electronic health records, telehealth visits, and remote monitoring data; schools rely on them for instruction and communications; and businesses and public institutions depend on connected computing devices for daily operations.

C. Exclusion Would Distort Competitive Conditions and Create Leverage Far Beyond the Patented Feature

The competitive harm is particularly acute when exclusion is sought by a non-practicing entity (NPE). The Commission has become an attractive venue to NPEs following *eBay*, precisely because exclusion can provide leverage unavailable through an ordinary damages remedy.[6] When an asserted patent covers only one feature or component of a complex technology product—as is the case here—the threat of excluding the entire product can force a company to evaluate settlement based on the consequences of removal of its entire downstream product from the U.S. market rather than the value of the patented technology at issue.[7] That disconnect is a classic form of patent holdup, and it is directly relevant to the Commission's assessment of competitive conditions and the interests of U.S. consumers.

Standardization magnifies that leverage because adoption of a widely used standard, such as the IEEE 802.11 (Wi-Fi) family at issue here, eliminates technological alternatives and makes abandoning the standard prohibitively costly once a company has integrated it.[8] The threat or imposition of an exclusion

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[6] U.S. INT'L TRADE COMM'N, BUDGET JUSTIFICATION: FISCAL YEAR 2012, at 21 (2011), available at http://www.usitc.gov/press_room/documents/budget_2012.pdf ("since the U.S. Supreme Court's 2006 *eBay* decision, which has made it more difficult for patentholders that do not themselves practice a patent to obtain injunctions in district courts, exclusion orders have increasingly been sought by non-practicing entities that hold U.S. patents.")
[7] *eBay*, 547 U.S. at 396 (Kennedy, J., concurring) ("an injunction . . . can be employed as a bargaining tool to charge exorbitant fees.").
[8] Broadcom Corp. v. Qualcomm Inc., 501 F.3d 297, 310–14 (3d Cir. 2007).

order therefore derives leverage not only from the loss of access to the U.S. market but also from the cost of redesigning a standards-compliant product and disrupting interoperability.

ISG is an NPE that does not manufacture in the United States and relies on the activities of a third party to establish a domestic industry. Because ISG does not make the computers, tablets, or other downstream devices that would be subject to the recommended orders, exclusion is not necessary to protect ISG's sales of competing downstream products.

D. The Excluded Products Cannot Be Replaced or Readily Substituted by Like or Directly Competitive Articles

The record provides no basis to conclude that ISG itself can replace the excluded volume with like or directly competitive articles. The ALJ found the economic prong of domestic industry unsatisfied as to all asserted patents. That finding matters to the public interest as well, because a complainant that has not established a domestic industry has identified no domestic production that an exclusion order would preserve.

Nor does the existence of other computers or tablets in the marketplace establish that adequate substitutes are available. Businesses and consumers select devices based on operating systems, security and enterprise-management requirements, accessibility, warranties, hardware configurations, and compatibility with existing software and peripherals. An exclusion order affecting major suppliers can therefore reduce meaningful choice, impose switching costs, and place upward pressure on prices even if some alternative products technically remain available.

E. U.S. Consumers and Downstream Businesses Would Disproportionately Bear the Costs of Exclusion

These costs would fall on U.S. consumers and downstream businesses, and they can be disproportionate when the asserted patent concerns only a small part of a complex device, particularly where a design-around must preserve standardized interoperability.

Because ISG does not compete by making the excluded products, monetary relief is the adequate and appropriate remedy for any established infringement and remains available to it in federal district court. ISG has already resolved this investigation as to another respondent by settlement (Order No. 41 (Sept. 29, 2025), unreviewed Dec. 10, 2025), which confirms that its patents can be monetized through licensing without removing widely used computing products from the U.S. market.

If the Commission finds a violation, it should decline to order exclusion. Should it nonetheless order relief, it should tailor that relief to limit disruption through a transition period for standards compliance; exemptions for replacement, warranty, repair, and service units for devices already in use; exemptions for articles destined for government, educational, and health-care purchasers; and a certification provision allowing entry of articles that are non-infringing or licensed.

III. CONCLUSION

The Commission should leave undisturbed the Initial Determination that no violation of Section 337 occurred, and if it reaches remedy, it should find that the statutory public-interest factors weigh against exclusion. That conclusion is especially strong here, where the proposed remedy would exclude complex, widely used computing products based on patent rights directed to only a portion of their functionality, while the complainant does not itself compete by selling the downstream products that would be excluded and has not established a domestic industry that exclusion would protect.

Respectfully submitted,

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