

May 18, 2018

VIA HAND DELIVERY

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

Re: *Certain Infotainment Systems, Components Thereof, and Automobiles Containing the Same*, Inv. No. 337-TA-___, Docket No. 3316

Dear Secretary Barton:

The Alliance of Automobile Manufacturers, Inc. (“the Alliance”) is a trade association of twelve car and light truck manufacturers, including proposed respondent Toyota, representing 70% of all car and light truck sales in the United States. Formed in 1999, the Alliance serves as a leading advocacy group for the automobile industry on a range of public policy issues. The Alliance is committed to developing and implementing constructive solutions to public policy challenges that promote sustainable mobility and benefit society in the areas of environment, energy, and motor vehicle safety. The members of the Alliance are BMW Group, Fiat Chrysler Automobiles (“FCA”), Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen, and Volvo.

The Association of Global Automakers (“Global Automakers”) is a nonprofit trade association whose members include, among others, the U.S. manufacturing and distribution subsidiaries of international motor vehicle manufacturers, including proposed respondent Toyota. Global Automakers’ mission is to foster an open and competitive automotive marketplace in the United States that works to improve vehicle safety, encourage technological innovation, and promote responsible environmental practices. The automobile manufacturer members of Global Automakers include Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Subaru, Suzuki, and Toyota.

Together, the Alliance and Global Automakers represent virtually all of the automobile manufacturers producing, distributing, and selling motor vehicles in the United States.

The Alliance and Global Automakers hereby respond to the Commission’s invitation to file comments regarding the public interest issues raised by the Complaint filed on May 7, 2018 by Broadcom Corporation (“Broadcom” or “Complainant”). In short, the issuance of an exclusion order and/or a cease and desist order in this Investigation would negatively affect each of the public interest factors the Commission is commanded by 19 U.S.C. § 1337 to consider in

determining whether to issue a remedy, including: (a) adverse health, safety, and welfare impacts; (b) an effective lack of any like or directly competitive articles; and (c) no demonstrated capacity by Complainant, its purported licensees, and/or third-party suppliers, to replace the volume of automobiles or in-vehicle infotainment systems potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time.

The relief sought by Complainant would impede Toyota's ability to manufacture and sell a substantial portion of its automobiles—most of which are manufactured in the United States.¹ Specifically, Broadcom's Complaint seeks to exclude from importation at least the following vehicles, or infotainment systems needed for the domestic manufacture of these vehicles: Toyota Avalon, Camry, Corolla, Highlander, Sienna, and Prius.

Remedial orders directed to the accused automobiles and systems would have significant negative effects on public health, safety, and welfare. Automobiles in the United States are used for business and personal travel, and the automobiles that would be subject to Commission remedial orders in this Investigation are no different. Indeed, passenger vehicles are essential to mobility in the U.S. and are used daily by most individuals. As Broadcom acknowledges in its Statement of Public Interest Under § 210.8(b) (Broadcom's Public Interest Statement), the accused systems "allow the users of such devices to perform a multitude of tasks in an automobile, including navigation, communications, and play video, among other things." (Broadcom's Public Interest Statement at 1). The functionalities identified by Broadcom, navigation and communications, in particular, on their own demonstrate the threat to the public health, safety, and welfare. The accused infotainment systems and the vehicles containing them make travel safer, more convenient, and more efficient. Further, in the modern vehicle, infotainment systems are a hub of a vehicle's safety and communications systems. Excluding the infotainment systems, as well as the vehicles that contain them, adversely impacts public health, safety, and welfare, and would deprive the public of safe vehicles expected in the market today.

While Broadcom's Complaint excludes other automakers, and alleges that other automobiles with systems outside the scope of the investigation are available, Broadcom has failed to show that consumers are willing or able to divert their purchases from potentially-barred Toyota vehicles to another automaker. For example, Broadcom's Complaint targets several vehicle categories, namely, sedan, SUV, minivan, and hybrid. An automobile is a carefully considered expensive purchase. Consumers have product preferences, brand loyalty, financial or other considerations that affect or constrain their purchasing decisions. Broadcom's decision to accuse Toyota only does not diminish the negative impact on customers if the accused vehicles were to be excluded from U.S. commerce. Broadcom's bare assertions that alternatives exist are insufficient and the Commission should take evidence on this point.

Broadcom's Complaint seeks exclusion of entire vehicles based on patents directed to chip-level components that process GPS and video/graphics data, and provide power/memory management for infotainment systems used in vehicles. In the context of civil patent infringement

¹ See <https://www.toyota.com/usa/operations/map.html> (last visited May 15, 2018). The Toyota Camry and Avalon are manufactured at Toyota's manufacturing plant in Kentucky, the Highlander and Sienna are manufactured at Toyota's Indiana plant, and the Corolla is manufactured at Toyota's Mississippi plant. See <https://www.toyota.com/usa/operations/map.html#!/Vehicles> (last visited May 15, 2018).

actions for damages, the Federal Circuit has repeatedly said that the value of an invention lies in the advantages it provides over the prior art. The Commission itself has declined to exclude entire vehicles based on infringement of certain patents by component parts of far less value. *See e.g., Certain Erasable Programmable Read Only Memories (EPROM)*, Inv. No. 337-TA-276, USITC Pub. No. 2196 (May 1989), *aff'd sub nom., Hyundai Elec. Indus. Co. v. U.S. Int'l Trade Comm'n*, 899 F.2d 1204 (Fed. Cir. 1990) (declining to exclude entire vehicles containing infringing semiconductor chips based on disproportionate value of the infringing chips and the “downstream” vehicles). Use of patents on relatively small components to seek exclusion of entire, complex products such as automobiles is contrary to our patent system, violates Commission precedent, discourages innovation, and harms competitive conditions in the United States economy.

Moreover, while Broadcom has alleged that there are non-accused sources that offer alternatives to replace the accused infotainment systems and components therein (Broadcom’s Public Interest Statement at 2-3), Toyota’s use of alternative components is not as simple as replacing a computer chip. Broadcom ignores the extensive research, development, and testing that automakers and their suppliers must conduct to integrate new components into existing systems, often several years in advance. Because of all the necessary steps required to ensure that the new components perform safely and effectively within existing systems, it is unlikely that an auto maker could make replacement vehicles available within a commercially reasonable time frame and avoid negatively impacting the public, consumers, and competitive conditions in the United States.

A sweeping remedial order would be deleterious to automobile customers and risks tens of thousands of American jobs. One out of every twenty-five jobs in the United States is dependent on the automotive industry.² Few other industries (if any) generate as much retail business or employment. Even cars manufactured abroad for importation into the U.S. contain substantial quantities of U.S.-made parts and are sold at U.S.-based dealerships. Nationwide, dealers, suppliers, manufacturers, and corporate offices combined create approximately 7.25 million jobs.³ It should not be the case that an entity with patents on components that process GPS and video/graphics data, and provide power/memory management in infotainment systems can threaten a major disruption to the automobile supply chain.

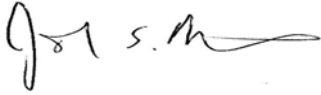
We request that the Commission conclude that the remedy sought by Broadcom would be injurious to the automotive industry and the United States economy, and would be harmful to consumers and to public safety. Moreover, Broadcom already has litigation in the United States District Court, and any grievances it has can be remedied in that action. For these reasons, the Alliance and Global Automaker respectfully request that the Commission not institute this

² *See* Auto Alliance Driving Innovation, Industry Impact, available at <https://autoalliance.org/in-your-state/> (last visited May 16, 2018).

³ *See* Center For Automotive Research, “Contribution of the Automotive Industry” (Jan. 2015), available at <http://www.cargroup.org/wp-content/uploads/2017/02/Contribution-of-the-Automotive-Industry-to-the-Economies-of-All-Fifty-States-and-the-United-States2015.pdf> (last visited May 16, 2018).

investigation or, in the event it does, the Commission should take evidence and make findings regarding the negative effects any such remedial orders would have on the public interest.

Respectfully submitted,



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