



CONGRESS OF THE UNITED STATES

March 19, 2008

The Honorable Daniel Pearson
Chairman, International Trade Commission
500 E Street SW
Washington, DC 20436

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US INTL TRADE COMM
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Dear Daniel:

I am writing regarding a matter currently before the Commission which has been brought to my attention by Robert Young of New Canaan, Connecticut. He has highlighted for me the potential effect of this matter on the future of U.S. technical innovation as he believes it directly and adversely affects the ability of our technology companies to enforce their intellectual property rights against foreign infringers.

According to my constituent, on February 25, 2008 (the second day of a scheduled 5-day hearing of Investigation 337-TA-605), Administrative Law Judge Essex entered an order staying the action at the request of the defendants. It is my understanding the request was based on the fact that the United States Patent and Trademark Office ("PTO") had issued non-final office actions rejecting claims of the patents being asserted in the ITC investigation, and that Judge Essex's order stayed the case until the PTO renders a final decision -- possibly for several years.

Because the patents at issue will expire within the next couple of years, I am concerned the effect of the stay order is to effectively terminate the investigation without considering its merits. Tessera, the complainant in the investigation, is a publicly traded U.S. company that has spent hundreds of millions of dollars developing valuable semiconductor packaging technology which it licenses to over 60 companies, including nine of the 10 largest semiconductor companies in the world.

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Christopher Shays
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I am told Tessera's extensive domestic industry has been previously recognized and upheld by the ITC in another investigation, and that the Commission found Tessera's patented technology to be a "paradigm shift." Now, the immediate effect of the order staying Investigation 605 was that Tessera's shareholders lost more than \$1.4 billion in less than one week.

Tessera states its domestic industry is fundamentally threatened by the practical result of the ITC's decision not to consider its claims on their merits. I am also concerned, however, that that a decision to stay an investigation in deference to the PTO's non-final action also threatens the Commission's ability to protect domestic industry from foreign infringement in a timely fashion. If U.S. companies are not able to have their "day in court" on the merits in the ITC until the completion of a long and tortuous reexamination and appeal process which can be repeatedly initiated by other or the same defendants citing "new" information, we will not only lose a significant portion of this market but will provide infringers a means of significantly delaying, if not avoiding altogether, responding for their unlawful actions in the ITC.


It seems to me undue harm will result if the ITC reduces patent owners' ability to use the ITC as a forum to protect their IP rights and their domestic industry. It could decrease funding for startups and innovation companies, as investors could perceive higher risks in making and recouping those investments. The could in turn result in fewer high paying jobs created in the U.S.

While the ITC must judge the merits of Tessera's infringement claims based on its expertise, it seems to me the ITC was not created to stay such disputes for years (particularly based on preliminary, non-final findings of another agency) while the patents expire and US domestic industries are lost. I am hopeful the Commission will resolve Investigation 605 within the statutory time frames, not uphold a procedural "stay" without any substantive review of the action.

The Honorable Daniel Pearson -- March 19, 2008 -- Page 3

Thank you for your time and consideration of this matter. If you have any questions please do not hesitate to contact me or my Legislative Director, Matt Meyer, at 202/225-5541.

Sincerely,



Christopher Shays
Member of Congress

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