In the Matter of

CERTAIN VIDEO PROCESSING
DEVICES AND PRODUCTS
CONTAINING THE SAME

Investigation No. 337-TA-____
Docket No. 3626

STATEMENT OF THIRD PARTY
PUBLIC INTEREST PATENT LAW INSTITUTE
IN RESPONSE TO THE COMMISSION’S SOLICITATION
OF COMMENTS RELATING TO THE PUBLIC INTEREST
DATED JULY 5, 2022
Pursuant to the Commission’s Federal Register Notice of July 5, 2022, soliciting comments on the investigation and relief proposed by VideoLabs, Inc.’s (“VideoLabs”) complaint of July 1, 2022, the Public Interest Patent Law Institute (“PIPLI”) submits the following comments.

PIPLI is a nonpartisan, nonprofit organization dedicated to ensuring the patent system promotes innovation and access for the benefit of all Americans, including those who depend on patented technology but do not participate directly in the patent system—among them, research scientists, health care providers, and small businesses. This lack of public participation makes it difficult for the patent system to serve the public’s interest in innovation, economic growth, and access to technology. PIPLI works to improve the patent system’s ability to serve the public by conducting policy research, engaging in educational outreach, and representing the public’s interest before institutions that shape patent law and policy, including federal courts and agencies.

VideoLabs has requested the Commission commence an investigation and issue an exclusion order against a wide range of consumer electronics devices. At the same time, it seeks to withhold information we need to evaluate and comment on the impact of its requests on the public—namely, the identities of the licensees on which it relies to satisfy the domestic industry requirement and alleges can be relied on to satisfy domestic needs for the articles it seeks to exclude. As long as the identities of these licensees remain secret, members of the public, including PIPLI, cannot ascertain or explain how the requested exclusion order would impact consumers, economic conditions, or public health in this country, which is already struggling with disruptions to the supply chain for electronic devices while the COVID-19 pandemic makes access to such devices more essential than ever.

We urge the Commission to deny the request to keep this basic yet crucial information secret and give the public an opportunity to comment once it can access the information it needs.
I. LICENSEES’ IDENTITIES DO NOT QUALIFY AS CONFIDENTIAL BUSINESS INFORMATION.

The Supreme Court has recognized that there is “a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). While this right is not absolute, neither is a party’s entitlement to secrecy. The Commission has the authority to seal confidential business information, but that term has a specific definition—and a licensee’s name does not satisfy it.

Pursuant to 19 C.F.R. § 201.6, confidential business information is “information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission’s ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained.” *Id.* Licensees’ names do not qualify.

Disclosing the names of licensees will not impair the Commission’s ability to obtain information it needs to perform its statutory functions. To the contrary, disclosure of these licensees’ names is necessary for the Commission to obtain information it needs: information about how the requested exclusion order would affect U.S. consumers, economic conditions, and public health. The public cannot provide the Commission with this information if it does not know who will be able to practice VideoLabs’ patents in the U.S. if it obtains the relief it seeks.

Disclosing the names of VideoLabs’ licensees will not cause any, let alone substantial harm, to VideoLabs or its licensees. Importantly, identifying a patent licensee is not equivalent to identifying a customer. Because patents confer exclusive rights, VideoLabs has no competitor for licenses to its own patents; if companies infringe, they need licenses that only VideoLabs can
provide. Owners of unrelated patents therefore cannot use information about the identities of VideoLabs’ licensees to divert income from VideoLabs or impose additional costs on its licensees.

By itself, the name of a patent licensee has no commercial value or expectation of secrecy. A company’s status as a patent license is frequently disclosed. For example, licensees often identify themselves because patent law requires that they mark patented products they make and sell as a condition for the patent owner to recover damages for infringement. See 35 U.S.C. § 287(a). Patent owners often disclose the existence of licenses, including to encourage other companies to take licenses, prove damages in patent infringement litigation, or support a request for voluntary dismissal of a lawsuit which has been settled.

Licensee names are not confidential business information and should not be treated as such. Such treatment would render VideoLabs’ assertions about its licensees unverifiable—either by members of the public or the licensees themselves.

The unverifiability of VideoLabs’ assertions is especially concerning given the Commission’s request for supplemental information, which strongly indicates that VideoLabs has failed to provide enough information to support its claims about its licensees. See Letter from Monika Desha, International Trade Commission, Re: Complaint of VideoLabs Inc. Concerning Video Processing Devices and Products Containing the Same (Docket No. 3626), dated July 13, 2022. Although the public cannot see the confidential materials VideoLabs submitted, we commend the Commission for requesting the submission of actual license agreements. Nevertheless, if these submissions are confidential, neither the public nor the licensees will be able to verify their contents, let alone evaluate the impact of the requested exclusion order.
II. THE PUBLIC LACKS INFORMATION IT NEEDS TO ASSESS AND COMMENT ON THE REQUESTED EXCLUSION ORDER’S HARM TO THE PUBLIC.

The public cannot answer the questions asked by the Commission in its solicitation without knowing who VideoLabs’ alleged licensees are. The solicitation asks that we “identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;” “indicate whether complainant, complainant’s licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time;” and “explain how the requested remedial orders would impact United States consumers.”

Without knowing who VideoLabs’ licensees are, we cannot answer these questions. We cannot determine what like or competitive articles are, whether the licensees have the capacity to supply them, or how an exclusion order would impact U.S. consumers, economic conditions, and public health. Given the broad scope of VideoLabs’ requested exclusion order, which covers “personal computers, tablets, smartphones, and other similar products,” Complainant VideoLabs, Inc.’s Initial Public Interest Statement at 1, the public needs to know which licensed entities they would be forced to rely on if VideoLabs receives the relief it seeks.

III. GIVEN THE CURRENT SUPPLY CHAIN CRISIS AND ONGOING COVID-19 PANDEMIC, THERE IS A GRAVE RISK OF HARM TO U.S. CONSUMERS, THE ECONOMY, AND PUBLIC HEALTH, SAFETY, AND WELFARE.

Without more information, there is a grave risk of harm to the public. VideoLabs asserts that two licensed entities will be able to supply consumers with a sufficient volume of a wide array of electronic devices, but U.S. manufacturers and consumers are grappling with global supply chain disruptions of historical proportions. Those disruptions are hitting the consumer electronics
industry and supply chain for personal computers, smartphones, and digital devices—the very articles VideoLabs seeks to exclude—especially hard.\(^1\) With supply chain disruptions already hurting U.S. consumers and economic conditions, there is good reason to doubt that two licensees can provide adequate supply to prevent substantial harm to U.S. consumers and our economy.

While the Commission has not historically considered the availability of consumer electronic devices as raising public health, safety, or welfare concerns, the public’s need for and reliance on such devices during the COVID-19 pandemic is unprecedented and overwhelming. At this time, numerous Americans need to use laptops, tablets, and smartphones for reasons related to health, safety, and welfare—for example, to consult with health care providers in lieu of in-person visits, receive health information (\textit{e.g.}, COVID-19 test results and vaccination records), and transmit health data (\textit{e.g.}, for contact tracing and out-patient monitoring).\(^2\) An exclusion order affecting access to such devices at this time threatens grievous harm to public health and safety.

VI. CONCLUSION

Without knowing who VideoLabs’ licensees are, the public cannot fully or fairly answer the questions in the Commission’s solicitation regarding the public interest. We respectfully urge the Commission to (1) order the disclosure of the names of licensees on which VideoLabs’ complaint relies, and (2) give the public an opportunity to comment once it has the information it needs to assess the requested relief’s impact on U.S. consumers, the economy, and public health.


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Respectfully submitted,

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