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**Submission of the Institute for Policy Innovation (IPI) in Response to the Commission’s Request for Written Submissions in the Matter of *Electronic Digital Media Devices*, Inv. No. 337-TA-796**

Dear Office of Secretary Barton:

The Institute for Policy Innovation (IPI) is a non-profit, non-partisan public policy research organization based in Dallas, Texas. IPI covers a wide range of policy issues, including both communications technology issues and intellectual property issues. In fact, IPI is an accredited observer non-governmental organization (NGO) with the World Intellectual Property Organization (WIPO) in Geneva, Switzerland, and we have participated in a number of WIPO meetings and sessions over the years. IPI also maintains a blog on intellectual property issues, [ipmatters.ipi.org](http://ipmatters.ipi.org). IPI has an expertise in intellectual property policy, economic growth, and free-market competition.

It’s crucial to both continued innovation and also the maintenance of a vibrant consumer market for smartphones that sound policy be applied in intellectual property matters. Because all smartphones are assembled elsewhere and “imported” into the United States, we are generally concerned at the outsized role that has developed for the ITC in actually determining the outcomes of markets, since the “nuclear option” of injunctions is what the ITC is allowed to issue, as expressed in a June 8 op/ed by Holman Jenkins in the Wall Street Journal.

We’re sympathetic to the ITC’s problem; namely, that it has an enforcement role in intellectual property matters, but not a role in shaping patent law. And we’re convinced that overly broad design patents on such details as “rounded corners” and “beveled cases” are unimportant distinctions, the likes of which our patent system was never intended to referee. Nevertheless, IPI urges an attitude of forbearance from issuing drastic injunctions in the smartphone patent wars, in order to facilitate the work of domestic courts and private settlements, which are better able to deliver nuanced solutions.

The Institute for Policy Innovation (IPI) submits these comments in response to the Notice of Commission Decision to Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions issued by the United States International Trade Commission in the matter of *Electronic Digital Media Devices*, Inv. No. 337-TA-796.

**I. COMPETITION AND MARKET SHARE WILL BECOME ONE-SIDED IF SAMSUNG DEVICES ARE PROHIBITED FROM ENTERING THE U.S.**

IPI is concerned that if the ITC delivers a ruling in this case that grants a broad-scope exclusion order that threatens to cover all Samsung smartphones and tablets, market competition and consumer choice as a whole will suffer.

Prohibiting Samsung devices from entering the U.S. market will decrease existing competition in the cellphone and tablet market. Samsung is the leading manufacturer of these devices and a top competitor in the United States. Without Samsung devices entering the marketplace, competitors may use this opportunity to further increase its market share and close the door on other, smaller competitors. Experts predict that the United States market will take one year to replenish existing smartphone options if Samsung were eliminated from the picture through this ruling.

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Less marketplace competition means a shortage of 4G devices, fewer smartphones and broadband access plans, and increases in price. Samsung is the top manufacturer of affordable devices with multiple options that consumers can select based on their preferences and needs. Smartphones with reliable access to the Internet are becoming a necessity in today's society. This high demand drives the marketplace and encourages competition between manufacturers. As a leading mobile device developer, Samsung plays a vital role to ensuring prices stay economical and no one company has majority share.

## II. CONSUMER DEMAND IS RISING FOR MORE MOBILE DEVICE OPTIONS AND INCREASED ACCESS TO WIRELESS INTERNET

The need for mobile broadband access is increasing daily in the United States as well as globally, and increasing demands on the global economy for innovative, consumer-driven technologies. Businesses and individuals alike are relying on consistent access to a 4G connection. Individuals connect with friends and family, access healthcare and government services, apply for jobs, and utilize GPS functions, among many other activities, every day. Businesses recruit talent, connect with clients on the go, and increase their productivity using smartphone and tablet devices.

Limiting the number and type of devices that are available by banning Samsung smartphones will disrupt the technology market and consumer demands will not be met. Ultimately, the growing digital economy will suffer and the impacts will be felt most by consumers and manufacturers.

## III. EXCLUSIONARY ORDERS AND INJUNCTIONS ARE DRASTIC, INDUSTRY-ALTERING STEPS THAT UNNECESSARILY ESCALATE PATENT DISPUTES

Exclusionary injunctions are the "nuclear option" in the smartphone wars, and are unhelpful. They represent a drastic ratcheting up of the costs not only of innovation, but also of working through the hard details of solving the patent and litigation policy problems that have led us to where we are today. We urge the ITC to adopt a mode of forbearance, which will not only be a positive step toward solving our problems, but could preclude the necessity of a raft of presidential vetoes of ITC injunctions, such as were suggested by Jenkins in the June 8 op/ed.

### **Conclusion**

The Institute for Policy Innovation (IPI) urges the ITC to forbear from issuing further exclusion orders in this matter, in order to discourage the forum shopping that brought these cases to the ITC.

Otherwise, should the ITC issue a wide-reaching exclusion order that bans Samsung devices, we request that it is limited in scope and well thought out so it is easy to follow and considers impacts on the marketplace and consumers.

The Institute for Policy Innovation (IPI) is happy to work with you and to share our thoughts with you as you sort out these difficult issues.

Sincerely,



Tom Giovanetti  
President