UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of **CERTAIN SEMICONDUCTOR DEVICES, SEMICONDUCTOR DEVICE PACKAGES, AND PRODUCTS CONTAINING SAME**	**Investigation No. 337-TA-1010**

TESSERA'S STATEMENT ON THE PUBLIC INTEREST

Tessera Technologies, Inc., Tessera, Inc. and Invensas Corporation ("Invensas") (collectively "Tessera") respectfully submit this Statement on the Public Interest in response to the Commission's notice (82 Fed. Reg. 32584) and to statements filed by Respondents.

I. The Public Interest Favors Robust Enforcement of Section 337

The purpose of Section 337 is to protect U.S. industries against unfair methods of competition and unfair acts in the importation and sale of foreign-manufactured articles into the United States. As the Commission has correctly recognized, Section 337's remedies are not restricted to any particular industry, nor limited to entities of a particular size or type. In 1988, Congress "liberalized the domestic industry requirement by allowing that requirement to be satisfied by proof of non-manufacturing activity, such as licensing and research."[1] These amendments to Section 337 were purposefully designed to "strengthen the effectiveness of section 337 in addressing the growing problems being faced by U.S. companies from the importation of articles which infringe U.S. intellectual property rights."[2]

More specifically, the 1988 amendments to the domestic industry requirement of Section 337 were specifically intended to give U.S. companies such as Tessera that are part of the nation's world-class, information-based economy access to justice when companies such as Broadcom and the other Respondents import foreign-manufactured infringing products:

> [W]e are more and more an information based economy. For those who make substantial investments in research, there should be a remedy. For those who make substantial investments in the creation of intellectual property and then license their creations, there should be a remedy.

133 Cong. Rec. S9,964 (1987). Tessera, like other U.S. patent owners, has been granted a temporary statuory right, guaranteed by the Constitution, to exclude all others from exploiting its

[1] *John Mezzalingua Assoc.'s v. Int'l Trade Comm'n*, 660 F.3d 1322, 1327 (Fed. Cir. 2011) (citing H.R. Rep. No. 100–40, at 157).

[2] H.R. Rep. No. 100-40 at 155 (1987).

intellectual property. As Congress explained: "The importation of any infringing merchandise derogates from the statutory right, diminishes the value of the intellectual property, and thus indirectly harms the public interest." S. Rep. No. 100-71 at 128 (1987). Tessera conducts R&D; its technology is contained in products manufactured by others. There is no requirement that the intellectual property holder itself manufacture a competing product. Sale or importation of an infringing good violates a Constitutionally-guaranteed right, and the enforcement and protection of Constitutional rights is in the public interest.[3]

II. Tessera Is Entitled to Protection against Respondents' Section 337 Violations

Following the evidentiary hearing, the final ID found a violation of Section 337 by Broadcom and all of the other Respondents based on infringement of U.S. Patent No. 6,849,946 ("'946 patent") by more than 2,100 Broadcom semiconductor devices spanning multiple product families and technology nodes, and products containing one or more of those chips. The ALJ recommended a limited exclusion order, cease-and-desist orders, and a 100% bond during the Presidential review period. Respondents' arguments that Tessera should be deprived of these remedies because the '946 patent is supposedly "trivial," and because Tessera is supposedly a non-practicing entity, have no basis in fact or law and must be rejected.

First, the '946 patent claims a fundamental semiconductor manufacturing process. The public interest favors enforcement of intellectual property particularly where, as here, the ID found widespread infringement of the '946 patent.

[3] Respondents suggest that Congress "has considered raising requirements for entities like Tessera to pursue alleged Section 337 violations," citing the so-called "Trade Protection Not Troll Protection Act." Tessera is not a "troll" under any definition of that term. In addition, this bill has been introduced in three different sessions of Congress, and each time Congress has shown no interest in discussing or enacting such amendments to Section 337, killing the bill in committee. *See* H.R. 2189, 115th Cong. (2017); H.R. 4829 ,114th Cong. (2015); H.R. 4763, 113th Cong. (2014).

Second, Tessera is no "troll." It is a Silicon Valley and American success story, and part of the technology-based economy that Congress specifically intended Section 337 to protect.[4] The Tessera Complainants are subsidiaries of Xperi Corporation, a U.S. publicly-traded company based in San Jose, California with approximately 700 employees (including about 450 engineers), 27 offices, and a market capitalization of more than $2.1 billion. Since it was founded as a startup more than 25 years ago, Tessera and its affiliates have innovated, developed, and licensed cutting-edge technologies, including technologies that focus on audio (through Xperi's DTS subsidiaries, which make products such as HD Radio®), imaging (through its FotoNation subsidiaries, which make smartphone camera features like face detection and red eye removal), and semiconductor packaging, interconnect, and bonding (through Invensas). They license their products and the patents that protect them to their customers, who use them in their own products. Tessera and its affiliates generate about half their revenues from patent licensing, and half from product licensing. Their licensed solutions are found in more than five billion consumer electronics devices and 100 billion chips worldwide.

Tessera engages in extensive licensing efforts with respect to its patents, technologies, software, and products. This licensing is an activity that Section 337(a)(3)(C) is designed to protect, and there is no requirement that Tessera, or any complainant, be the one that practices its patents. H.R. Rep. No. 100–40, at 157 ("The definition could, however, encompass universities

[4] Protecting companies such as Tessera is critical to the U.S. economy: In 2014, for example, IP-intensive industries accounted for more than 38 percent of the entire U.S. economy and directly support more than 18 percent of all jobs in the U.S. economy. *See* Econ. & Stats. Admin. & USPTO, *Intellectual Property & the U.S. Economy: 2016 Update*, at 22, *available at* https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf. The export of technology is also one of the few areas in which the U.S. maintains a large trade surplus—over $80 billion in 2016. *See* U.S. Census Bureau, Bureau of Econ. Analysis, *U.S. Int'l Trade in Goods and Services May 2017*, at 1, 3–4, July 6, 2017, *available at* https://www.census.gov/foreign-trade/Press-Release/current_press_release/ft900.pdf.

and other intellectual property owners who engage in extensive licensing … to manufacturers."). In addition, the Commission has correctly interpreted Section 337 to include licensing activities regardless of whether the licensed product pre-dates or post-dates the license.[5]

III. The Commission's Public Interest Questions

In requesting submissions on the public interest, the Commission set forth five subjects of particular interest: (1) how the accused articles are used; (2) any implicated public health, safety, or welfare concerns; (3) like or directly competitive articles made in the U.S. that could replace accused articles; (4) whether others have the capacity to replace the volume of articles; and (5) how the recommended orders would impact U.S. consumers. 82 Fed. Reg. 32,585. Respondents barely address any of these issues, focusing instead on their results-driven policy argument about the domestic industry requirement as well as their plea that the Commission give them a pass for widespread infringement of the '946 patent.

- ***Question 1*:** The articles potentially subject to the remedial orders are chips used for telecommunications, Internet access, cable and satellite television, Bluetooth, GPS, and network and infrastructure technologies. They are contained in products such as mobile devices, set-top boxes, routers, modems, gateways, Ethernet switches, and the like.

- ***Question 2*:** Respondents do not identify any of the articles as used in areas that would impact public health, safety, or welfare concerns in the U.S.

- ***Questions 3&4*:** The evidence introduced at the hearing in the context of Respondents' *EPROMs* contention established that all of the articles exist in highly-competitive markets with multiple sources of alternative chips and other products.

- ***Question 5*:** The Respondents offer no evidence supporting their claim that the requested remedy would impact U.S. consumers. While an exclusion order would prevent the importation of infringing set-top boxes, for example, nothing would prevent Comcast from sourcing its set-top boxes from a non-infringing source, or from continuing to provide internet and cable services to its existing customers. There would be little to no disruption to U.S. consumers, as the impacted articles all have readily available alternatives given the intense competition in the relevant markets.

[5] *See, e.g., Certain Computers and Computer Peripheral Devices, and Components Thereof, and Products Containing Same,* Inv. No. 337-TA-841, Comm'n Op. at 37 (Jan. 9, 2014) ("We reject the respondents' invitation to impose a production-driven requirement on licensing-based domestic industries.").

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