

DARRELL E. ISSA

49TH DISTRICT, CALIFORNIA

www.issa.house.gov



WASHINGTON OFFICE:
2269 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3906

VISTA OFFICE:
1800 THIBODO ROAD, SUITE 310
VISTA, CA 92081
(760) 599-5000
FAX: (760) 599-1178

DANA POINT OFFICE:
33282 GOLDEN LANTERN, SUITE 102
DANA POINT, CA 92629
(949) 281-2449

COMMITTEE ON THE JUDICIARY

COMMITTEE ON FOREIGN AFFAIRS

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

Congress of the United States
House of Representatives
Washington, DC 20515-0549

August 7, 2017

Dear Chairman Schmidlein, Vice Chairman Johanson, and Commissioners:

As Chairman of the House Judiciary's Subcommittee on the Courts, Intellectual Property, and the Internet, I offer these comments for consideration in response to the Commission's Notice of Request for Statements on the Public Interest in the matter of *Certain Semiconductor Devices, Semiconductor Device Packages, and Products Containing the Same*, Inv. No. 337-TA-101, dated July 10, 2017.

I represent California's 49th Congressional District, which encompasses parts of Orange and San Diego Counties, where Broadcom has a substantial presence. I am deeply concerned that a remedial order could affect the livelihood of my constituents employed by Broadcom.

The ITC's purpose is to ensure and enforce fair trade practices. A remedy in the case at hand would be an affront to the ITC's mission as Broadcom's legitimate trade and operations that serve our public interest would be harmed in favor of a nonpracticing entity using these proceedings to extract compensation. I understand Complainant Tessera has sought inclusion of a broad swath of semiconductor components and products integrating such components in this Investigation, and that the Administrative Law Judge presiding over this Investigation has recommended a sweeping exclusion order, a cease-and-desist order, and a maximum bond preventing the importation and/or sale of a wide swath of consumer products.

A remedial order of this breath would bring substantial economic harm to the American public and jeopardize the ability of American businesses and consumers to access basic services as cable television, internet, and telecommunication. In fact, Broadcom is the sole supplier of chips for set-top boxes manufactured by co-Respondents ARRIS and Technicolor, who are themselves the suppliers of cable set-top boxes for co-Respondent Comcast. Moreover, a remedy in this case would affect even non-Comcast users as the marketplace would become less competitive.

An exclusion order in this matter will not serve to protect American industry. The licensees to Tessera's patent (Cypress and Micron), relied upon to demonstrate domestic industry, do not compete with Broadcom in the commercialization of the excluded products. When the ITC acts to protect domestic industry based on the businesses of licensees to a patent,

the licensees benefit because they can increase manufacturing or other business efforts to fill the void left by the exclusion of products. That, however, is not the case here. The companies to which Tessera licenses the patent do not provide the type of product sought to be excluded, so they cannot fill the gap in the American market created by this exclusion order. Likewise, the licensees are not harmed by Broadcom's continued sale of implicated products because they do not compete with Broadcom with respect to the products at issue in the case.

Any monetary harm to Tessera, which can be more appropriately addressed by Article III courts, is sufficient. Although I maintain that an exclusion order on these grounds is not appropriate, at very least, a stay of enforcement of any exclusion order pending the resolution of additional litigation would be much more appropriate.

Finally, I am especially troubled by the fact that Tessera does not actually manufacture products protected by the patents it is asserting, but rather seeks profits from such manufacturers in the form of patent royalties. It seems Tessera did not even invent the patent that underlies the currently recommended remedy — it bought the patent and has now asserted it against these respondent manufacturers. Furthermore, I believe Tessera's patented technology is trivial in the technological context of a semiconductor chip. As such, I implore the Commission to diligently consider any remedy in this investigation.

I am an original co-sponsor of legislation currently pending in the House of Representatives that seeks to curb abuses of patent assertion entities and nonpracticing entities at the ITC. The Trade Protection Not Troll Protection Act (H.R. 2189) would clarify the domestic industries requirement to reflect the fact that investment in licensing must be substantial and must lead to the adoption and development of articles that incorporate the patent in question. Patent trolls – PAEs and NPEs – drain billions of dollars from the U.S. economy every year.^[1] The instant case reflects yet another time when the Commission has the opportunity to rebuff litigious extortion and adhere to its mission of ensuring ITC actions are in the public interest.

While I express no opinion on the merits of the Investigation, I ask that full and fair consideration be given to the economic impact at stake for consumers throughout our country. Furthermore, I offer that I am deeply concerned about the impact a remedial order may have on the U.S. economy and American consumers generally.

Sincerely,



Darrell Issa
Member of Congress

CERTIFICATE OF SERVICE

I, Pamela A. Freitik, hereby certify that the attached document has been served upon the following parties as indicated below on August 7, 2017.

<p>The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street SW, Room 112-A Washington, D.C. 20436</p>	<p><input checked="" type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input checked="" type="checkbox"/> Via Hand Delivery</p>
<p>Sidney A. Rosenzweig Office of the General Counsel U.S. International Trade Commission 500 E Street SW Washington, D.C. 20436</p>	<p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at sidney.rosenzweig@usitc.gov</p>
<p>The Honorable Dee Lord Administrative Law Judge U.S. International Trade Commission 500 E. Street SW, Room 317 Washington, D.C. 20436</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input checked="" type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at edward.jou@usitc.gov</p>
<p>Sturgis M. Sobin Shara Aranoff Daniel E. Valencia COVINGTON & BURLING LLP One CityCenter, 850 Tenth Street, N.W. Washington, D.C. 20001</p> <p>Michael K. Plimack Dale A. Rice Nitin Subhedar COVINGTON & BURLING LLP One Front Street San Francisco, CA 94111</p>	<p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Tessera-Broadcom@cov.com</p> <p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Tessera-Broadcom@cov.com</p>

<p>Robert T. Haslam Anupam Sharma Thomas E. Garten COVINGTON & BURLING LLP 333 Twin Dolphin Drive Redwood Shores, CA 94065-1418</p> <p><i>Counsel for Complainants Tessera Technologies, Inc., Tessera, Inc. and Invensas Corporation</i></p>	<p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Tessera-Broadcom@cov.com</p>
<p>KILPATRICK TOWNSEND & STOCKTON LLP David E. Sipiora Kristopher L. Reed Matthew C. Holohan Brian P. O'Donnell 1400 Wewatta Street, Suite 600 Denver, CO 80202</p> <p>Joshua B. Pond 607 14th Street, NW, Suite 900 Washington, D.C. 20005-2018</p> <p>Norris P. Boothe Matthew J. Meyer William E. Mosley 1080 Marsh Road Menlo Park, CA 94025</p> <p>FOSTER MURPHY ALTMAN & NICKEL PC David F. Nickel Matthew N. Duescher 1899 L Street, N.W., Suite 1150 Washington, D.C. 20036</p> <p><i>Counsel for Respondents Broadcom Limited, Broadcom Corporation, Arista Networks, Inc. ARRIS International plc, ARRIS Group, Inc., ARRIS Technology, Inc., ARRIS Enterprises LLC, ARRIS</i></p>	<p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Broadcom-TesseraITC@kilpatricktownsend.com</p> <p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Broadcom-TesseraITC@kilpatricktownsend.com</p> <p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Broadcom-TesseraITC@kilpatricktownsend.com</p> <p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at FM-Broadcom-1010@fostermurphy.com</p>

<p><i>Solutions, Inc. , Pace Ltd., Pace Americas, LLC, Pace USA, LLC, ASUSTeK Computer Inc., ASUS Computer International, Comcast Cable Communications, LLC, Comcast Cable Communications Management, LLC, Comcast Business Communications, LLC, Technicolor S.A., Technicolor USA, Inc., Technicolor Connected Home USA LLC, NETGEAR, Inc., HTC Corporation and HTC America, Inc.</i></p>	
<p>David A. Hickerson George C. Beck Foley & Lardner LLP 3000 K Street, N.W., Suite 600 Washington, D.C. 20007-5109</p> <p>Steven J. Rizzi Ramy E. Hanna Foley & Lardner LLP 90 Park Avenue New York, New York 10016-1314</p> <p><i>Counsel for Broadcom Limited and Broadcom Corporation</i></p>	<p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Broadcom-Foley@Foley.com</p> <p><input type="checkbox"/> Via EDIS <input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Express Delivery <input type="checkbox"/> Via Hand Delivery <input checked="" type="checkbox"/> Via Electronic Mail at Broadcom-Foley@Foley.com</p>

/s/ Pamela A. Freitik
Pamela A. Freitik