

**ABUSIVE PATENT LITIGATION: THE ISSUES IMPACTING  
AMERICAN COMPETITIVENESS AND JOB CREATION AT THE  
INTERNATIONAL TRADE COMMISSION AND BEYOND**

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON COURTS,  
INTELLECTUAL PROPERTY, AND  
THE INTERNET  
OF THE  
COMMITTEE ON THE JUDICIARY HOUSE  
OF REPRESENTATIVES  
ONE HUNDRED THIRTEENTH CONGRESS

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Before the  
House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet

“Abusive Patent Litigation: The Issues Impacting American Competitiveness and Job Creation at the  
International Trade Commission and Beyond”

April 16, 2013

Mr. Chairman, and members of the committee, thank you for convening this hearing and for the opportunity to testify about the impact of abusive patent litigation today. I’ll speak to abuses with patent litigation in general, and then more specifically with respect to the International Trade Commission.

Despite the best efforts of Congress and the courts, patent assertion entities continue to have a deeply damaging effect on the U.S. economy and consumers, through both federal court litigation and the ITC. These abuses cost U.S. companies billions of dollars that could be used to create jobs, invest in R&D, and bring new products to consumers. This problem in the past few years has expanded far beyond Avaya and technology industry colleagues. Today, we see the problem plaguing small business, traditional retailers, venture back startups, and many more. The abuses are even more clearly evident at the ITC, where Patent Assertion Entities (“PAEs”) are frequently bringing cases against companies with operations in the U.S. seeking remedies that they don’t want, namely an exclusion order – the only remedy available at the ITC – yet one that goes contrary to the very business model of PAEs. This is by its nature a misuse of the system.

PAEs take advantage of lopsidedness in our litigation system. PAEs typically have very little in discovery costs but at the same time they have the ability to make defendants like Avaya spend a lot of resources responding to very broad and burdensome discovery requests. The cost to defend against a PAE suit far exceeds the PAE’s cost to assert the patent. By stretching the interpretation of the claims of the patent beyond the intended invention, an aggressive PAE is able to target a large number of potential defendants and increase its potential windfall. PAEs then use their profits from one suit to file additional suits and buy additional patents, which are then similarly monetized with more settlements. As this cycle continues and expands, no businesses are furthered, no jobs are created, and progress of science or the useful arts is not promoted.

## Introduction to Avaya

I am the head of intellectual property law & litigation for Avaya. Avaya is a leading provider of business and government communications systems worldwide with approximately 7000 employees in the United States across 10 states, and about 16,000 employees worldwide. Avaya traces its roots back over a century ago to Alexander Graham Bell, beginning as part of Bell Labs. The business unit that became Avaya today was once part of AT&T and then spun out of Lucent in 2000. In 2009, Avaya purchased the Nortel Enterprise business assets out of bankruptcy. The role our company has played in revolutionizing how people communicate is well documented in U.S. history and our engineers are at the forefront of American leadership in this field. Avaya has a long outstanding culture for innovation, and currently invests about 17% of its product revenue in research and development, about \$464M dollars in the last year.

Avaya is a strong supporter of the U.S. patent system having more than 3200 issued and pending U.S. patents. But when it comes to patent litigation, we believe our system has room for improvement, particularly with respect to PAEs, and abusive litigation.

Avaya is now the target of a growing number of legal claims as a result of a patent system that still has many questionable issued patents and legal uncertainty. As a result, rather than investing in innovation and more jobs, Avaya diverts valuable resources to fighting unwarranted threats of exorbitant liability and baseless claims. The cost is not merely in dollars, but in time spent defending claims. Engineers are spending time in depositions and in extensive discovery exercises, instead of creating the next great invention. Prior to 2008, Avaya had no PAE lawsuits, but since 2008, Avaya has been sued 25 times by PAEs, with numerous more demand letters and lawsuits against customers. Avaya, as well as many other technology companies, is increasingly becoming risk averse in this environment, hedging against the risks of innovation to avoid the additional costs that result from an abusive patent claim.

## The Patent Assertion Entity Problem

Patent Assertion Entities are becoming widely recognized as a problem to the U.S. economy. The Federal Trade Commission has confirmed that patent assertion entities “deter innovation by raising costs and risks without making technological contribution.”<sup>1</sup> As Supreme Court Justice Anthony Kennedy explained in the *eBay* decision, “[i]n cases now arising . . . the nature of the patent being enforced and the economic function of the patent holder present considerations quite unlike earlier cases. An industry has developed in which firms use patents not as a basis for producing and selling goods but, instead, primarily for obtaining licensing fees.” The Supreme Court further recognized in curbing injunctive relief in federal court actions brought by patent assertion entities that PAEs use the threat of an injunction simply for undue leverage in negotiations, and that in such situations legal damages are sufficient to compensate for any infringement and an

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<sup>1</sup> FTC, *The Evolving IP Marketplace, Aligning Patent Notice and Remedies with Competition*, 9 (Mar. 2011).

injunction may not serve the public interest.<sup>2</sup>

Patent Assertion Entities use of litigation to tax and deter innovation is contrary to the public policy set forth in the Constitution. Article 1, section 8 of the Constitution authorizes Congress “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Promotion of innovation through the patent system is a fundamental value of our society. Patent Assertion Entities subvert the public policy promoted by the Constitution, namely the promotion of innovation. They do not use granted patents to promote the progress of the useful arts but instead lay traps with their rights to siphon the progressive efforts of others. For example, a patent owner who actively promotes their new idea through efforts to manufacture or offers to license to encourage manufacture are promoting innovation, and are not the type of patent owner that causes problems with abusive patent litigation. But a patent owner who passively waits for others to step on or near their rights in order to threaten them with a toll is exactly the type of patent assertion entity that causes problems in our litigation system and should further not be using the ITC as a forum for its disputes. The patent owners that acquire or set up companies for the sole purpose of litigation and nothing else, are the most problematic and place the greatest burden on U.S. companies and the economy.

The ITC has also previously recognized, that in amending Section 337 in 1988, “Congress intended to cover ‘licensing activities that encourage practical applications of the invention or bring the patented technology to the market.’”<sup>3</sup> PAEs seeking revenue licensing income do not encourage practical applications of the invention nor do they bring the patented technology to market. The entire business model of PAEs, and particularly their use of the ITC, goes directly against the public interest, controlling Supreme Court precedent, and the purpose of section 337.

Abusive litigation in both federal court and the International Trade Commission are driven by the current economics of what can be obtained by PAEs. The current system encourages patent owners to seek settlements that far exceed the value of the patent’s contribution. The amount of money potentially at stake in litigation as a result of this approach creates huge pressure on defendants to settle regardless of the strength of the infringement claim. If the economic incentives and leverages are reduced so PAEs do not treat patent litigation as winning lottery tickets, then there will be fewer abuses.

### Abusive Patent Litigation

Federal court proceedings have their issues that lead to abuse. As discovery is still too expensive and asymmetrical with respect to PAEs, invalidity is a challenge and extremely costly, even when you have good evidence of invalidity, such as Avaya often has because we are a treasure

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<sup>2</sup> *eBay v. MercExchange LLC*, 547 U.S. 388, at 396-97 (2006).

<sup>3</sup> *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same*, Inv. No. 337-TA-694, Comm’n Op, at 25 (Jul. 21, 2011)

trove of prior art going back to some of the greatest work done in Bell Labs that we have and are often incorporated into our products long before the filing of patents being asserted by a PAE. Unfortunately, it still often requires a defendant to go through trial at a cost of approximately \$4M to prove that the patent is invalid. With this type of patent litigation system, PAEs have an advantage and defendants will often settle for amounts less than litigation even when a patent is most-likely invalid, because most defendants, like Avaya, do not have the resources to be spending millions of dollars on every patent that is asserted against us to prove that it is invalid. We are not alone here, and many similarly situated companies need these issues to be addressed.

There has been a steady stream of cases correcting past imbalances in patent law, including on critically important issues such as damages, injunctions, venue, and the scope of patentability. These changes, along with the American Invents Act, have vastly improved the landscape of patent law from where it was just a few years ago. Today, the increasing trend of abusive litigation is a challenge for our industry. From my experience, rarely in a PAE suit is the accused product or system the same as the invention described in a PAE's patent specification, but PAEs based on a broad reading of its claims will assert infringement against similar but different innovations independently developed. The cost of defending a PAE suit is asymmetrical with the PAE having little discovery costs, and the PAE knowing that it will cost at least \$2M and often more around \$4M to prove that there is no infringement or that the patent is invalid. This puts all defendants and particularly defendants with limited resources at a distinct disadvantage.

Patent assertion entities exploit the current system to coerce high settlements from productive companies, such as Avaya. A typical patent case costs over \$4 million through trial. This is more than four times as expensive as a typical copyright case with similar liability exposure. Regardless of the merits of the patents at issue, defendants are put in the position of rolling the dice in a system that ill serves inventors and producers of products alike. These complex cases not only cost millions in legal bills, but often coerce settlements that are out of line with the value of a claimed inventive contribution that represents a miniscule part of a targeted product. All of these costs result in wasted capital, fewer jobs, and less innovation, and are eventually shouldered by consumers buying products in the form of a hidden innovation tax.

In our industry, one device may have thousands of patents encompassed within it. Some of those patents pertain to voice communications features. We have experienced numerous instances in which a patent assertion entity buys a patent that superficially touches on one of many features in the hopes that it can collect a large sum of money on the allegation that we have infringed upon its patent. Speculating on patents in the hope of a large recovery based on an allegation of infringement has become a cottage industry in this country. Although some recent caselaw helps make progress in appropriately limiting damages, there is still uncertainty with respect to when damages can be calculated based on the entire market value of a device, or merely on the value provided by the patent that has been found to be infringed upon. Instead of focusing on what is the smallest saleable unit representing the patented invention, these patent assertion entities often

seek damages on the entire product. The uncertainty in damage calculations drives up risk and the cost of litigation, and coerces settlements.

Further, patent assertion entities subvert productivity and innovation. PAEs acquire patents with the express intent to extract money from as many companies as possible. They do not use their patents to promote innovation, but instead lay traps with their patent rights to siphon the progressive efforts of others. This differs greatly from a patent owner such as Avaya who actively promotes its new ideas by obtaining patents and through efforts to manufacture products or offer licenses for others to manufacture products. The efforts that derived from Alexander Graham Bell, and later from our Bell Labs, and now Avaya labs has spawned entire industries from our innovation. Patent assertion entities passively wait for others to step on or near their patent rights in order to threaten them with a toll. This cottage industry threatens Avaya's and the U.S.'s long history of continued research, development and innovation efforts.

Prior to the American Invents Act, the last comprehensive revision of U.S. patent law took place in 1952, a time when typewriter correction fluid was the new technology, highly integrated global markets were not the norm, and the networked interoperable devices on which our economy now relies were more science fiction than everyday reality. In addition, the number of patents issued annually in the early '50's was less than one-quarter of today's volume. And then, patent litigation was a tool of last resort, not first resort. The AIA made improvements to the patent system, but more needs to be done in litigation reform and with respect to the ITC.

As many members of this committee may be aware, many PAEs file numerous lawsuits seeking settlements that are under the cost of litigation knowing that most defendants will settle to avoid costly litigation. Further many PAE lawsuits target mature industries and products and processes that operate in accordance with various standards that were developed in cooperation for the betterment of consumers and the economy as a whole without any contribution by the PAE to promote the useful arts. Something is terribly wrong when patents are being used, not to further innovation but instead to tax innovation by others, costing companies dollars that could have been used to create new jobs, fund R&D, and create the next great technology.

I don't believe the patent system was intended to be a playground for trial lawyers and assertion entities to use as a lottery ticket at the expense of U.S. companies by diminishing what they can contribute to the overall economy through capital spending, job creation, manufacturing, and selling of products.

#### ITC abuse

Neither the America Invents Act nor recent court rulings apply at the ITC, making it fertile ground for the exact type of abuse Congress has sought to eliminate. We welcome Congress addressing abusive patent litigation, and want to make it clear that any truly effective effort to stop the corrosive impact of patent assertion entities must address ITC abuse as well.

We believe that Section 337 of the Tariff Act is an important tool for the protection of American jobs and intellectual property. Section 337 is a US trade law, enacted in 1930. It was designed to protect U.S. manufacturers from unfair foreign competition, and empowers the U.S. International Trade Commission (ITC) to exclude products from the U.S. market. The statute is particularly useful in intellectual property enforcement cases because it sometimes is difficult to enforce a patent against foreign infringers in the U.S. courts due to jurisdictional issues. Section 337 permits direct action against the infringing products, whether or not the maker of the products is subject to the U.S. courts.

Increasingly, Section 337 is being abused by PAEs that acquire and hold patents for the purpose of litigation. PAEs don't produce goods – they don't actually use technology to create products or jobs in the United States. Their goal is to threaten other businesses with patent litigation in the hope that those other businesses will agree to pay royalties rather than face continuing legal claims.

The intensity and fast pace of ITC litigation creates an atmosphere where a respondent in the ITC must divert extensive resources quickly to its defense or face a rapid, adverse and unfair result. Even if a company is confident that its imported products do not infringe a patent, the costs of litigation, the uncertainty of litigation, and the risks of an interruption of business are so great that the company often will settle avoiding the unfair discovery process where PAEs have minimal discovery.

While a PAE may have a claim in federal court, it should have no place in the ITC, which is intended to protect U.S. industries and jobs, not to allocate existing value among claimants by awarding damages. The current domestic industry test in Section 337 does not specifically distinguish between production-based licensing and revenue-based licensing. PAEs were not contemplated, and did not exist in their modern form, when Congress last updated the ITC's statute in 1988. And so, under current practice, almost any patent owner, even foreign based PAEs with virtually no presence in the U.S. and licensees with limited capacity, can bring an action against an entire U.S. industry.

This is happening because the 1988 Congressional amendments to Section 337 of the Tariff Act of 1930 have been interpreted to require the ITC to accept complaints from entities that invest in *any* kind of domestic licensing, including "revenue-driven licensing."

"Revenue-driven licensing" is licensing or attempted licensing that occurs *after* another company has already developed and sold products allegedly using the patented technology. Generally, the targeted products were independently developed without knowledge of the patent, and it is not uncommon for the patent claims to be drafted after the targeted product has already been sold. This is not "production-driven licensing" activity, where licenses encourage the development and sales of new products that Congress intended would satisfy the ITC's jurisdiction requirement when it amended the Tariff Act.

Use of the ITC by PAEs has become more prevalent in recent years because the remedy the ITC may issue – an exclusion order that bars a U.S. company from importing its products for sale in the U.S. – has been unavailable to patent assertion entities in federal court since 2006, when the Supreme Court decided *eBay v. MercExchange*<sup>4</sup>. In that case, the Supreme Court held that injunctive relief may only be awarded to patent holders who satisfy a traditional four prong equitable test for an injunction by proving, among other things, that their patent claims cannot be adequately satisfied by an award of money damages. Patent assertion entities, which by definition are looking for money, have no standing to seek injunctive relief in federal courts. Because of this, they have turned their sights on the ITC as a preferred venue for asserting their patents against U.S. operating companies, in order to threaten them with the prospect of exclusion orders that they would not be able to receive in a federal court. By filing in the ITC, these entities hope to extract more than the true value of the patented technology from U.S. operating companies. This is particularly unfair and abusive where the allegedly infringing component is: minor to an overall product and doesn't drive consumer demand, yet is enough to have the ITC grant an exclusion order on the entire product. This is a result that would not be available in federal court.

The use of the ITC in this manner should not be allowed. Patent assertion entities do not engage in the kind of domestic licensing activities that should qualify them to use the ITC. Congress did not intend for its trade statutes to allow patent assertion entities who target existing products for licensing revenues to bring their claims in the ITC. The ITC is a trade forum intended to protect U.S. industry and U.S. consumers. It was not intended to be a forum for a few individuals to extract settlements far beyond what they would be entitled to receive if they sued in a federal court.

Claims by patent assertion entities can be and are adjudicated in federal district courts empowered to award money damages where appropriate. The ITC is an international trade forum intended to protect U.S. industry. Yet under current ITC practice, it is being used with increasing frequency by patent assertion entities to harm U.S. industry.

PAEs have discovered that the much lower bar for obtaining exclusion orders at the ITC gives them tremendous leverage to demand outrageous licensing fees – even as they pursue cases in federal court. This often leads to companies being left with little choice but to give-in to PAE demands, resulting in truly wasted capital, higher costs for consumers, and barriers to American innovation.

With respect to the ITC, the system is clearly broken when a Patent Assertion Entity that relies only on revenue licensing (as opposed to production licensing) seeks a remedy that it doesn't want and would actually hurt its business, which is based on generating licensing revenue from the sale of products. It is a perversion of our legal system when a party seeks a remedy that it doesn't want in order to create leverage for an award of money that isn't available to it. The federal courts are the proper venue when monetary damages are sufficient to remedy any harm. At least in the

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<sup>4</sup> *eBay Inc. v. MercExchange LLC*, 547 U.S. 388 (2006)

federal courts, a defendant can present arguments on reasonable damages based on recent case law. In the ITC, a respondent does not have that opportunity and is forced to settle for unreasonable amounts rather than face the possibility of an exclusion order.

Some argue that there isn't a problem in the ITC because the ITC isn't issuing exclusion orders for revenue licensing PAEs. That argument misses the point, and actually argues against PAEs being granted access to the ITC. The fact that PAEs are instituting these proceedings, but seek and prefer monetary settlements over an exclusion order further evidences that the ITC is not the proper forum for them, as the federal courts can more than adequately address the PAE concerns.

The bottom line is that a Patent Assertion Entity wants and needs licensing revenue. The ITC does not offer damages as a remedy and if it granted an exclusion order, it would actually be detrimental to the PAE. In such a situation, the system is clearly being misused.

PAEs like to bring their cases against prominent U.S. companies, because their goal is not to exclude foreign products from the United States or to protect American manufacturers; it is to negotiate a royalty stream by placing the respondent in a state of duress. Pay a royalty or face an exclusion order. U.S. manufacturers, and others, operate on a global basis. They sell their products globally, and they ensure their products are internationally competitive by purchasing parts and materials globally as well. Exclusion of critical parts or components from the U.S. market can lead to a disastrous shut-down of U.S. operations.

#### Example of ITC abuse

Avaya, along with several other major U.S. companies, recently faced an ITC dispute against a PAE that was only seeking licensing revenue on products that we had developed and been commercializing for many years incorporating a standard. The PAE waited for an industry to mature then asserted its patent against the products practicing the standard. The PAE's specific embodiment of what it had invented was not the same as the standard, but the PAE asserted that the claims of its patent were broad enough to encompass the standard and that it deserved royalties. Knowing that its patent was at best just applicable to a powering feature of an overall communication system – and therefore not justified to large damages in a federal court proceeding – it filed an ITC action threatening an exclusion order for essentially all of our phones and gateways. During the case, settlement demands were based on a disproportionate share of the entire revenue of these products, and due to the cost of litigation and the chance of an exclusion order issuing, Avaya settled for a substantial sum of money. During the ITC mediation, the PAE admitted that it never wanted an exclusion order, but only licensing revenue. They were using the ITC as leverage to maximize licensing revenue that quite frankly would not be justified under current damages law in any federal court proceeding. The PAE subsequently withdrew its ITC complaint, but not before costing the respondents tens of millions of dollars in defense fees.

We believe if a patent owner wants only money that it should be limited to the federal

courts, which are more than adequately prepared to address patent damages. In an ITC proceeding, Respondents do not have the opportunity to present damages arguments or any rationale of what reasonable damages should be. And, respondents are not able to establish the importance of the allegedly infringing component and whether it really drives consumer demand, or is it merely an insignificant feature in a larger product. Respondents are therefore subject to either paying above what is legally required as damages to avoid the possibility—even when they don't believe they infringe or they believe the patents are invalid—the possibility of an exclusion order that would be devastating to their business.

PAE cases demonstrate the extent to which 337 investigations have strayed from their intended purpose. PAEs should not be allowed to initiate a 337 investigation because they have no real trade grievance – they are only seeking money damages. They do not make products and do not promote adoption and production of new innovations through licensing others. They, therefore, do not have the capacity to supply even a fraction of the industry that they seek to exclude. Nonetheless, PAEs are able to proceed because they claim domestic industry under the licensing clause in Section 337, and because there is no procedure to challenge the reasonableness of an ITC remedy at the beginning of an investigation.

#### Solutions to the Problem

The federal court system, particularly the Federal Circuit Court of Appeals, is making progress in recognizing the PAE problem and fashioning judicial policy within their authority to put appropriate limits on abusive PAE practices. Congress also deemed it necessary to correct some of these practices in the recently enacted America Invents Act (AIA), which in part, limits a PAE's ability to include unrelated defendants in a patent lawsuit. Unfortunately, the adjustments made by the courts and Congress to limit PAEs do not apply to the ITC. And the ITC is not bound by Supreme Court precedent that requires a thorough equitable evaluation prior to the grant of injunctive type relief.

The ITC is not able to adequately remedy the problem without statutory change. The ITC is constrained by statute, which has resulted in an application of the law which has ultimately led to many examples of PAE abuse in the ITC. Some believe that the ITC has the ability to fix this problem without statutory change. There is no evidence, however, that it will do so. To the contrary, the ITC has stated that it will not distinguish between entities that claim domestic industry based on particular licensing activities. That is, any entity that can show it has licensed a patent to another party, even if it is revenue-based licensing, qualifies as a "domestic industry" under current ITC law. And while recent decisions and proposed rule changes indicate that the ITC may genuinely be trying to address the problem in limited respects, these attempts will likely fall far short of eliminating PAE activity from unfairly burdening productive US manufacturers that employ thousands of American workers.

There are several ways Congress can improve the system. We believe the following

suggestions, if implemented, would make a significant difference at each of these suggestions, if implemented, would make a difference toward American competitiveness and curbing ITC abuses.

First, institute an inquiry into the equities of each 337 investigation at an early stage of the proceeding, or even before an investigation is begun. The inquiry preferably would be the first matter undertaken by an ALJ. An initial determination by an ALJ on this issue should be immediately reviewable by the Commission, and a Commission determination should be reviewable by the Federal Circuit Court of Appeals. This inquiry will allow the ITC to use its discretion in preventing abusive PAEs from initiating non-trade related investigations. The inquiry could be similar to that used by the courts as set forth by the Supreme Court in *eBay* before awarding injunctive relief. This would align the ITC with the equitable principles it was founded upon.

Second, Congress should amend Section 337 to change the domestic industry requirements by limiting qualification to those who engaged in production-based licensing, and not allow complainants to rely on revenue based licensing to satisfy domestic industry.<sup>5</sup> This is appropriate as licensing entities are seeking money and the ITC cannot award damages.

Patent assertion entities would still have federal courts available to them and could still pursue fair monetary damages if they showed ownership of a valid and infringed patent and an entitlement to damages. And domestic manufacturers, and technology licensing companies and universities would continue to benefit from the ITC's protections. What patent assertion entities would lose is the ability to use the ITC to threaten companies with the prospect of an exclusion order, and the certainty of an expensive patent litigation, to obtain settlements far in excess of the true value of the patented technology. This litigation tactic does not benefit any U.S. industry.

These changes will preserve legitimate uses of the ITC while constraining PAEs who have an adequate remedy at law in the federal courts, thus protecting U.S. industry, jobs and technology from abusive and damaging litigation in the ITC.

If PAEs are allowed to continue to use the ITC as a forum to extract licensing revenue, we will eventually see a PAE assert a patent that tangentially covers a minor aspect of a system and demand an exorbitant rate that a respondent won't be able to pay forcing the respondent to risk getting an exclusion order against it, and face being put out of business costing thousands of jobs and losses of products that can't be replaced by the PAE. We should not wait for such a senseless outcome to occur before taking action. Allowing a PAE to misuse the ITC for a remedy that is of no use to it, solely as leverage should not be tolerated. The system should not force U.S. companies to face such choices through misuse of the ITC.

## Conclusion

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<sup>5</sup> The Federal Trade Commission has made a similar recommendation in its March 2011 Report, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition*.

Avaya supports common sense measures to modernize and bring balance to the patent system. We should stop abuse of the ITC by not allowing the forum to be misused for ulterior motives. Only parties needing an exclusion order should be in the ITC. A party that uses a forum for a remedy that it doesn't want and in fact will hurt it, just to use it as leverage for what they can't get under the law in federal court is an abuse that cries out for statutory reform to correct it.

Thank you for holding this hearing and addressing this problem that is harming American companies. I would be happy to discuss these issues further with any of you at your convenience, as these are critically important issues to Avaya.