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United States Senate

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July 16, 2013

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G. Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

We are concerned about the process and capacity of U.S. Customs and Border Protection (CBP) to carry out a key enforcement role that protects certain U.S. patent holders from imports that infringe their patents without disrupting legitimate trade. Under Section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337), the U.S. International Trade Commission (ITC) investigates allegations by the owners of intellectual property rights of unfair import practices that usually involve patent infringement. If the ITC finds that a Section 337 violation has occurred, it issues an exclusion order that directs CBP to deny entry of the infringing product into the United States. Such cases brought before the ITC often involve costly, technical, and contentious litigation, and U.S. patent holders that prevail before the ITC have a right to expect robust enforcement from CBP.

To enforce an exclusion order, CBP must very often make determinations regarding whether an imported product falls within the scope of the order. For example, CBP may be required to determine whether a new product from a producer that was not a party to the original Section 337 investigation is covered by the exclusion order. CBP may also be called upon to make advance rulings at the request of producers or importers, pursuant to 19 CFR §177, as to whether a product is subject to an exclusion order, including in situations where a producer originally found to have violated Section 337 has changed the infringing product intending to take it outside the coverage of the exclusion order. These kinds of issues have arisen with increasing frequency, often in situations involving products with short life cycles and where high dollar values are at stake.

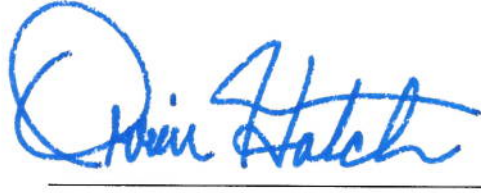
We would like to ensure that CBP has the necessary expertise and resources to appropriately make these important decisions and properly enforce exclusion orders in a manner that prevents the importation of infringing products without disrupting legitimate trade. In addition, it is important that CBP's proceedings are transparent and inclusive of both rights holders and importers. Accordingly, we would like GAO to provide information on CBP's enforcement of ITC exclusion orders, with particular emphasis on CBP's process and procedures

for determining whether a particular product falls within the scope and coverage of an ITC exclusion order, including the extent to which CBP consults with the ITC, rights holders, and importers during this process. We also would like to know CBP's resources and expertise for carrying out such an important function, as well as the resources and expertise that ITC has available to assist CBP in performing this function. If you have any questions concerning this request, please direct your staff to contact Lisa Pearlman, International Trade Counsel, at (202) 224-2532, or Kevin Rosenbaum, International Trade Counsel, at (202) 224-4678.

Sincerely,

A handwritten signature in blue ink, appearing to read "Max Baucus", written over a horizontal line.

Max Baucus
Chairman

A handwritten signature in blue ink, appearing to read "Orrin Hatch", written over a horizontal line.

Orrin G. Hatch
Ranking Member