

**STATEMENT
OF THE
ALLIANCE FOR AUTOMOTIVE INNOVATION**

**BEFORE THE:
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY, AND THE
INTERNET
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

**LEGISLATIVE HEARING TITLED:
“IP Litigation and the U.S. International Trade Commission”**

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Chairman Issa, Ranking Member Johnson, and distinguished members of the Subcommittee, on behalf of the Alliance for Automotive Innovation (“Auto Innovators”) and our member companies, thank you for the opportunity to appear at this hearing to share the automotive industry’s perspective on intellectual property rights complaints and the United States International Trade Commission, or the USITC.

The Alliance for Automotive Innovation was formed in 2020 and represents the automakers producing most vehicles sold today in the United States, original equipment suppliers, technology companies, battery makers, and other value-chain partners within the automotive ecosystem.

Representing approximately 5 percent of the country’s Gross Domestic Product, responsible for supporting nearly 10 million jobs, and driving \$1 trillion in annual economic activity, the automotive industry is the nation’s largest manufacturing sector.

My testimony makes the following essential points:

- Intellectual property rights are key to automotive innovation;
- Automotive companies are supportive of USITC’s Section 337 investigative authority;
- The nature of Section 337 disputes involving the automotive industry has evolved in recent years;
- The automotive industry is increasingly concerned about the use of Section 337 by non-practicing entities; and
- The automotive industry supports USITC reform.

Intellectual Property Rights are Key to Automotive Innovation.

From copyrights to patents to trademarks to trade dress to trade secrets, the automotive industry recognizes the value of intellectual property rights to innovation. For example, the issuance of high-quality patents protects the significant investments that automotive companies make in research and development to bring breakthrough technologies to consumers. Trademark enforcement counters the threat of counterfeit automotive components, which endanger public health and safety and may not operate or perform as a consumer would expect.

As significant rights holders, automotive companies support robust legal protections for intellectual property rights. At the same time, however, the automotive industry faces frequent lawsuits alleging intellectual property rights infringement, many of which are filed by non-practicing entities making spurious assertions. Automotive companies want to ensure that intellectual property rights are properly granted and not being used for anti-competitive purposes.

Automotive Companies Support the USITC’s Section 337 Investigative Authority.

The automotive industry agrees with and supports the intent of Section 337 of the Tariff Act of 1930 to protect domestic industry from unfair foreign competition. Automotive companies have a long history of participation in Section 337 investigations before the USITC. Our member

companies have used Section 337 to file their own complaints at the USITC when imported products infringed their intellectual property rights and/or when there was unfair competition involving such products. Automotive companies have also been the targets of Section 337 investigations, including those involving abusive claims by non-practicing entities.

The Evolution of Automotive Section 337 Disputes at the USITC.

Historically, Section 337 disputes involving automotive companies addressed the “importation of mechanical and electromechanical articles, ranging from such components as tires, wheels, headlamps, engines, transmissions; to security systems, control systems, infotainment systems.”¹ However, new advancements in automotive technology – including automation, connectivity, crash avoidance, cybersecurity, and electrification – involve modern technologies like semiconductors, microelectronics, and artificial intelligence. Increasing use of computerized systems has introduced significant complexity in vehicles and by extension, the global supply chains that contribute to their manufacture. These technologies have also led to an increase in the number of patents being issued in the automotive space, which, in turn, has resulted in more patent infringement lawsuits targeting automotive companies, both in district court and at the USITC.² At the same time, automotive companies are incorporating more technologies that are not unique to the industry into their products, which also expands the number of patented technologies on which USITC complaints can be filed.

Automotive Concerns with Section 337.

Lawsuits against automotive companies alleging patent infringement have increased partially due to automotive companies incorporating more technologies that are not specific to the automotive industry. A fair number of these cases have been brought by non-practicing entities.

These entities regularly bring Section 337 complaints to the USITC, often with the intent to gain unfair leverage against an automotive company and force a company to settle pending litigation in another venue. The possibility that the USITC will issue an exclusion order, a remedy not available in U.S. courts, makes it an appealing venue for this purpose. In the end, important automotive resources are often diverted away from innovation to expensive litigation and settlement negotiations.

Complaints filed by non-practicing entities at the USITC frequently relate to small dollar parts within a vehicle. Since the primary enforcement remedy available to the USITC is an exclusion order that applies to the entire vehicle, automotive companies are frequently forced into settling – even when the merits of the complaint are weak. A potential violation of one patent could result in an import ban on an entire vehicle. Shared platforms across a single automaker or shared suppliers with components to multiple automakers could result in the exclusion of multiple vehicles. Such exclusion orders hurt manufacturers, suppliers, customers, and overall

¹ Foley & Lardner LLP, “Automation, Electrification, and Connectivity: The Auto Industry in the ITC,” Auto Trends Series: Article 5, 11 April 2023, (last accessed July 17, 2024): [Automation, Electrification, and Connectivity: The Auto Industry in the ITC | Foley & Lardner LLP](#).

² See *id.*

competition, by reducing consumer choice, discouraging innovation, and increasing costs for those companies compared with others in the marketplace.

Automotive Support for USITC Reform.

The USITC should be reformed so that it can focus on its mission of protecting domestic industry and so it is no longer misused by non-practicing entities to harm manufacturers, workers, and consumers. To this end, the automotive industry supports the following reforms:

- **Strengthen the domestic industry requirement.** Specify that production-based licensing that leads to the creation of products embodying patented inventions is necessary to rely on the USITC’s “domestic industry” standard. Eliminate the ability of non-practicing entities to satisfy the domestic industry requirement by subpoenaing licensees that are not party to the complaint.
- **Reinforce the public interest requirement.** Direct the USITC to consider the public interest throughout a Section 337 investigation. Require the USITC to make an affirmative determination as to whether an exclusion order preventing the importation of a product into the U.S. is in the public interest. Modify the “production of like articles” public interest factor to focus exclusively on production by the complainant and its licensees and not third-party production.
- **Reduce the time to disposition.** Require the USITC to identify potentially dispositive issues that can be heard on an expedited basis and direct Administrative Law Judges to decide such issues within 100 days of instituting an investigation.
- **Limit the issuance of exclusion orders.** Prohibit the issuance of an exclusion order when an allegedly infringing component is less than or equal to 10 percent of the value of the overall product containing the component.
- **Increase transparency in USITC complaints.** Mandate that complainants and respondents in Section 337 USITC complaints disclose the real parties in interest, including disclosure of any and all beneficial owners and investors.

These reforms would make the USITC a less attractive venue for non-practicing entities seeking to force settlements in separate litigation.

On behalf of the U.S. automotive industry, the Alliance for Automotive Innovation looks forward to working with Congress on meaningful reforms to the USITC that will retain the agency’s important mission, while ensuring that it is no longer misused by non-practicing entities.