



February 23, 2023

Lisa R. Barton  
Secretary to the Commission  
United States International Trade Commission  
500 E Street, S.W.  
Washington, DC 20436

**Re: The Innovation Alliance's Response to the Commission's Request for Submissions in the Public Interest in the Matter of Certain Light-Based Physiological Measurement Devices and Components Thereof, Inv. No. 337-TA-1276**

Dear Secretary Barton:

The Innovation Alliance respectfully submits these comments in response to the Notice of Request for Submissions on the Public Interest issued by the Commission in the matter of Certain Light-Based Physiological Measurement Devices and Components Thereof, Inv. No. 337-TA-1276, on January 10, 2023.

**About the Innovation Alliance**

The Innovation Alliance is a coalition of research and development-based technology companies representing innovators, patent owners, and stakeholders from a diverse range of industries that believe in the critical importance of maintaining a strong patent system that supports innovative enterprises of all sizes. The Innovation Alliance is committed to strengthening the U.S. patent system to promote innovation, economic growth, and job creation, and we support legislation and policies to help achieve those goals. American companies and innovators need protections from intellectual property infringement to safeguard against threats from domestic and international competitors.

**Concerted Efforts to Undermine ITC Authority**

Many large companies today seem to embrace a business model that involves taking and profiting off the ideas of others. For example, by engaging in the practice of predatory patent infringement (also known as "efficient infringement"), these companies now often incorporate the patented inventions of other innovators in their products, refuse to pay licensing fees, and then aggressively challenge the validity of the patents they are infringing in court and in USPTO Patent Trial and Appeal Board proceedings.

At the same time, these companies have moved their supply chains overseas to take advantage of lower manufacturing and labor costs. As a result, their business success is often heavily dependent on their ability to import patent infringing products into the United States. The ITC's ability to stop infringing

imports, therefore, poses a significant threat to these companies, which explains why some in industry have for years been promoting legislation that would undermine the ITC's authority.

### **Importance of Section 337 in Protecting American Innovators**

Despite the threat posed to some large companies from the ITC exercising its authority, it is clearly in the public interest to block infringing imports. Vigorous enforcement and protection of intellectual property rights are essential to the competitive viability of innovative companies within the United States. That is particularly so where those rights are being infringed by products that are manufactured abroad and imported into the United States. Accordingly, the objective of 19 U.S.C. § 1337 ("Section 337") is to remedy acts of unfair competition related to the importation of infringing goods.

Denying exclusionary relief in the face of valid and infringed intellectual property rights would have the effect of deterring future investments in research and development in the United States, stifling innovation, encouraging more infringing imports, and depriving U.S. consumers of the rapid advancement in technology they have come to expect. Moreover, it would run counter to the current bipartisan view that policymakers should be looking for ways to re-shore manufacturing to the United States, not facilitate U.S. companies keeping their manufacturing supply chains overseas.

### **Innovation Alliance Perspective**

If Masimo's patents are found to be valid and infringed, the ITC should move forward with providing appropriate relief, including blocking the importation of products that incorporate the patented invention or inventions at issue. The wide use of a product found to be infringing a valid U.S. patent should not be an excuse to allow the continued violation of the patent. America's innovation economy and global competitiveness are dependent on the continued robust enforcement of inventors' intellectual property rights.

Thank you for considering our comments on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Brian Pomper". The signature is written in a cursive, flowing style.

Brian Pomper  
Executive Director  
Innovation Alliance