

In the Supreme Court of the United States

ROKU, INC., PETITIONER

v.

INTERNATIONAL TRADE COMMISSION, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

**BRIEF FOR THE FEDERAL RESPONDENT
IN OPPOSITION**

DOMINIC L. BIANCHI
General Counsel
WAYNE W. HERRINGTON
Assistant General Counsel
BENJAMIN S. RICHARDS
CARL P. BRETSCHER
Attorney Advisors
International Trade
Commission
Washington, D.C. 20436

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, prohibits the importation of articles that infringe a U.S. patent. 19 U.S.C. 1337(a)(1)(B)(i). A patentee can obtain such a remedy only “if an industry in the United States, relating to the articles protected by the patent * * * exists or is in the process of being established.” 19 U.S.C. 1337(a)(2). One way a patentee can meet this “domestic industry” requirement is by showing that “there is in the United States, with respect to the articles protected by the patent, * * * substantial investment in [the patent’s] exploitation, including engineering, research and development, or licensing.” 19 U.S.C. 1337(a)(3)(C). The question presented is as follows:

Whether the court of appeals correctly affirmed the International Trade Commission’s finding that respondent Universal Electronics, Inc. satisfied Section 337’s domestic industry requirement by virtue of its U.S.-based investments in software that is incorporated into a patent-protected article and that enables the article to practice the patent.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-14a) is reported at 90 F.4th 1367. The redacted public opinion of the International Trade Commission (Pet. App. 15a-67a) is unreported but available at 2021 WL 5822291. The redacted public initial determination of the administrative law judge (Pet. App. 68a-265a) is unreported but available at 2021 WL 3185836.

JURISDICTION

The judgment of the court of appeals was entered on January 19, 2024. A petition for rehearing was denied on April 3, 2024 (Pet. App. 266a-267a). On June 17, 2024, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including August 16, 2024, and the petition was filed on that date.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A. Legal Background

Section 337 of the Tariff Act of 1930, 19 U.S.C. 1337 (Section 337), prohibits “[t]he importation into the United States * * * of articles that * * * infringe a valid and enforceable United States patent.” 19 U.S.C. 1337(a)(1)(B)(i). The Act authorizes the International Trade Commission (ITC or Commission) to investigate any alleged violation of Section 337. 19 U.S.C. 1337(b)(1). If the Commission finds a violation, it must issue a remedial order—either an exclusion order prohibiting the importation of infringing articles into the country, or a cease-and-desist order prohibiting certain activities related to importation—unless, after considering certain public-interest factors, the Commission concludes that no order should issue. 19 U.S.C. 1337(d)(1) and (f)(1). The remedies ordered by the Commission are prospective only, and the Commission is not authorized to award monetary damages. See *ibid.*

Section 337’s ban on importation of infringing goods applies only if “an industry * * * relating to the articles protected by the patent * * * exists or is in the process of being established” in the United States. 19 U.S.C. 1337(a)(2). That prerequisite is known as the “domestic industry” requirement.

A complainant under Section 337 must make two showings in order to satisfy the domestic industry requirement. First, the complainant must demonstrate the existence of “articles protected by the patent,” *i.e.*, an article that practices at least one claim of the complainant’s asserted patent. 19 U.S.C. 1337(a)(2). This

is the so-called “technical prong” of the domestic industry requirement.

Second, the complainant must demonstrate the existence of an industry in the United States “with respect to” those protected articles. 19 U.S.C. 1337(a)(3). This is the so-called “economic prong” of the domestic industry requirement. Specifically, Section 337 provides that a domestic industry “shall be considered to exist if there is in the United States, with respect to the articles protected by the patent,” either “(A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in [the patent’s] exploitation, including engineering, research and development, or licensing.” 19 U.S.C. 1337(a)(3). The required showing for the economic prong thus depends on whether the complainant is proceeding under subparagraph (A), (B), or (C) of Section 337(a)(3).

Unlike subparagraphs (A) and (B), satisfaction of subparagraph (C) turns on “exploitation” of the asserted intellectual property, which may include activities such as “engineering, research and development, or licensing.” 19 U.S.C. 1337(a)(3)(C). Congress enacted subparagraph (C) in 1988 to provide an additional means of satisfying the domestic industry requirement, thereby extending the potential benefits of Section 337 to universities, research institutions, and other intellectual-property holders “that were exploiting patents * * * even if not actually producing goods.” *InterDigital Commc’ns, LLC v. ITC*, 707 F.3d 1295, 1302 (Fed. Cir. 2013); see *id.* at 1301-1303; see also H.R. Rep. No. 40, 100th Cong., 1st Sess. Pt. 1, at 157-158 (1987) (subparagraph (C) “does not require actual production of the article in the United States”); S. Rep. No. 71, 100th Cong., 1st Sess. 129 (1987) (same).

B. Proceedings Below

1. In April 2020, the Commission commenced an investigation based on a complaint filed by respondent Universal Electronics Inc. (UEI). Pet. App. 75a. UEI’s complaint alleged that petitioner Roku, Inc. had violated Section 337 by importing into the United States electronic devices, including streaming players, televisions, set top boxes, and remote controllers, that infringe certain claims of United States patent 10,593,196 (the ’196 patent), which UEI owns. *Id.* at 75a-76a.

The ’196 patent is directed to a “Universal Control Engine” that can configure itself and a related remote control to control wired and wireless media devices in an entertainment system. Pet. App. 25a. “Different television and video devices (such as smart TVs and DVD or Blu-ray players) use different communication protocols,” including “wired communication protocols, such as HDMI connections; and wireless communication protocols, such as Wi-Fi or Bluetooth connections.” *Id.* at 2a. Many of these communication protocols are incompatible with one another. *Ibid.* The universal control engine “address[es] this incompatibility” by connecting to and scanning the target devices in an entertainment system to determine which kind of communication protocol the target device uses. *Id.* at 3a. In this way, the Universal Control Engine “essentially translates between the different types of devices.” *Ibid.*

Claim 1 of the ’196 patent is representative. It claims UEI’s Universal Control Engine in the form of a “media device” comprising a processor, an HDMI port, a transmitter, and a memory device on which executable instructions are stored. Pet. App. 4a. When executed, those instructions cause the Universal Control Engine to configure itself either to provide wired commands to

another media device in the entertainment system or to provide wireless commands through the remote control. *Id.* at 4a-5a.

UEI develops and licenses “QuickSet” software, which gives televisions the capability of executing the instructions recited in claim 1 of the ’196 patent. Pet. App. 212a. The patent-protected articles around which UEI built its domestic industry case are Samsung televisions that license and incorporate UEI’s QuickSet software. *Id.* at 208a.¹

2. After an administrative law judge (ALJ) presided over an investigation and issued an initial determination, Pet. App. 68a-265a, the Commission issued a final determination finding that the importation of petitioner’s products violated Section 337, *id.* at 15a-67a.

As relevant here, the Commission found that UEI had demonstrated the existence of a domestic industry related to the articles that practice the ’196 patent. Pet. App. 25a. UEI satisfied the technical prong by virtue of the Samsung televisions that incorporate the QuickSet software and accordingly practice the ’196 patent. *Id.* at 139a-145a, 208a. And the Commission found that UEI satisfied the economic prong under subparagraph (C), *i.e.*, through evidence of UEI’s “[s]ubstantial investment in [the ’196 patent’s] exploitation.” 19 U.S.C. 1337(a)(3)(C).² Specifically, the Commission determined that UEI had exploited the ’196 patent through

¹ The decisions below also refer to the Samsung televisions as “the Samsung DI [Domestic Industry] Products.”

² The ALJ’s initial determination also found that UEI had demonstrated the existence of a domestic industry under subparagraph (B) of Section 337(a)(3). Pet. App. 245a-248a. The Commission took no position on that finding, and it is not part of the Commission’s final determination. *Id.* at 57a.

its U.S.-based investments in the QuickSet software’s development and integration into the Samsung televisions. Pet. App. 235a-238a. The Commission determined that UEI’s research and development investments were “substantial” as a quantitative matter, both as an absolute dollar amount on an average annual basis and as compared to UEI’s non-U.S.-based investments in similar products. *Id.* at 252a-253a.

After finding the other elements of a Section 337 violation and determining that the public interest factors did not preclude issuing a remedy, the Commission issued a limited exclusion order and cease-and-desist order against petitioner and its infringing products. Pet. App. 66a.

3. Petitioner appealed the Commission’s final determination to the United States Court of Appeals for the Federal Circuit. See 19 U.S.C. 1337(c); 28 U.S.C. 1295(a)(6). On appeal, petitioner argued, *inter alia*, that the Commission had erred in its economic-prong finding because the Commission had not required UEI to show that UEI had made substantial domestic investments in the Samsung televisions as a whole, as opposed to the QuickSet software integrated into those patent-protected products. Pet. App. 12a.

The court of appeals affirmed. Pet. App. 1a-14a. With respect to petitioner’s economic-prong argument, the court of appeals explained that, as interpreted in the court’s precedents, Section 337(a)(3)(C) does not require domestic investments in “whole products.” *Id.* at 12a. Instead, the court explained, Section 337(a)(3)(C) merely requires “sufficiently substantial investment *in the exploitation of the intellectual property.*” *Ibid.* (quoting *InterDigital*, 707 F.3d at 1304) (emphasis added). Thus, a complainant can meet the domestic

industry requirement “based on expenditures related to a subset of a product, if the patent(s) at issue only involve that subset.” *Id.* at 12a-13a.

The court of appeals found “no dispute that the ‘intellectual property’ at issue is practiced by QuickSet and the related QuickSet technologies, a subset of the entire [Samsung] television.” Pet. App. 13a; see *ibid.* (noting that petitioner “d[id] not dispute that QuickSet embodies the teachings of the ’196 patent”). The court further explained that, according to the Commission’s finding, the QuickSet software “result[s] in practice of the asserted [patent] claims when implemented on the Samsung [televisions].” *Id.* at 12a (citation omitted). And the court emphasized the Commission’s additional finding that UEI’s domestic investments in QuickSet “‘go directly to the functionality necessary to practice many claimed elements of’ the ’196 patent.” *Ibid.* (citation omitted); see *ibid.* (determining that both findings were supported by substantial evidence). Finally, the court observed that petitioner had failed to “explain why [those] domestic investments into QuickSet are not ‘substantial.’” *Id.* at 13a. The court accordingly affirmed the Commission’s determination that UEI satisfied the economic prong and the domestic industry requirement. *Ibid.*

4. While the Commission proceedings were ongoing, petitioner began to import redesigned versions of the products UEI had accused of infringement. Pet. App. 83a, 188a-192a. Petitioner’s redesigned products implemented a different algorithm so that those products would not practice the asserted claims of the ’196 patent. *Id.* at 188a. Petitioner requested that the Commission adjudicate its redesigned products along with its legacy products. *Ibid.* The Commission agreed and

determined that petitioner’s redesigned products do not infringe the ’196 patent. *Id.* at 204a, 208a. The remedial orders at issue therefore cover petitioner’s legacy products, but not the redesigned products.

After the Commission’s ruling, petitioner implemented its new algorithm in additional products and sought a ruling from U.S. Customs and Border Protection (CBP) that the additional redesigned products did not infringe and thus were not subject to the Commission’s exclusion order. Pet. 26. CBP issued two such rulings, “which has allowed [petitioner’s] business to continue uninterrupted.” *Ibid.*; see Pet. 26 n.6.

ARGUMENT

Petitioner contends (Pet. 12-20) that the Commission erred in finding that UEI met the domestic industry requirement by showing substantial domestic investments in a component of a patent-protected article, rather than in the entire article. The court of appeals correctly rejected that contention, which lacks support in the statutory language, and the court’s decision does not conflict with any decision of this Court or of another court of appeals. Petitioner’s claim of an intra-circuit conflict (Pet. 13-18) is incorrect, and such a conflict would not warrant this Court’s review in any event. The petition for a writ of certiorari should be denied.

1. a. The court of appeals correctly affirmed the Commission’s domestic industry finding in this case. Pet. App. 12a-13a. There is no dispute that the Samsung televisions incorporating UEI’s QuickSet software are articles protected by the ’196 patent, thereby satisfying Section 337’s technical prong. See 19 U.S.C. 1337(a)(2) (requiring an “article[] protected by the patent”); see also Pet. App. 139a-140a, 208a-214a; Pet. 11. With respect to the economic prong, the court correctly

found that UEI’s U.S.-based investments in the research and development of the QuickSet software incorporated into those Samsung televisions—software that embodies the teachings of the ’196 patent and without which the televisions could not practice the ’196 patent—meet the standard in Section 337(a)(3)(C), because they are domestic investments in the patent’s “exploitation.” 19 U.S.C. 1337(a)(3)(C); see Pet. App. 12a-13a. And the court noted that petitioner had not challenged the Commission’s finding that those investments were “substantial.” Pet. App. 13a.

Petitioner argues (Pet. 15-19) that the court of appeals and the Commission erred because Section 337(a)(3)(C) limits the inquiry to the claimant’s investments in the whole “article,” or product, that is protected by the patent. In petitioner’s view (*e.g.*, Pet. 16), UEI was required to show that it has made substantial domestic investments in the Samsung televisions as a whole—not just in the QuickSet software that is incorporated into those televisions.

That argument reflects a misreading of the statutory language. Section 337(a)(3)(C) states that “an industry in the United States shall be considered to exist if there is in the United States, *with respect to* the articles protected by the patent * * * substantial investment in [the patent’s] exploitation.” 19 U.S.C. 1337(a)(3)(C) (emphasis added). As this Court has observed, phrases like “with respect to” or “respecting” have a “broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject.” *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 717 (2018); see *United States v. Tohono O’odham Nation*, 563 U.S. 307, 312 (2011) (“in respect to” suggests a “broad” meaning); see also *Muldrow v.*

City of St. Louis, 601 U.S. 346, 354-355 (2024) (treating “with respect to” to mean “pertain[ing] to” and equating it with the phrase “respecting”).

That understanding of Section 337(a)(3)(C) is consistent with the preceding paragraph’s use of the equally broad term “relating to” in describing the domestic industry requirement. See 19 U.S.C. 1337(a)(2) (requiring the existence or nascent existence of “an industry in the United States, *relating to* the articles protected by the patent” (emphasis added)). Like “with respect to,” “relating to” means “hav[ing] ‘a connection with.’” *Pugin v. Garland*, 599 U.S. 600, 607 (2023) (citation omitted); see *Lamar*, 584 U.S. at 717-718.

Thus, Sections 337(a)(2) and 337(a)(3)(C) require that the exploitation-based investment have a connection with the patent-protected article. The QuickSet investments undoubtedly qualify, since the QuickSet software is a “subset” of the Samsung television that “result[s] in practice of the asserted [patent] claims when implemented on the Samsung [televisions].” Pet. App. 12a-13a.

Petitioner repeatedly emphasizes the statute’s use of the phrase “with respect to” (Pet. 3, 11-17, 25), but ignores that language’s natural broadening effect. And even if “with respect to” were read narrowly to mean only the equivalent of “for,” petitioner’s whole-product interpretation would not follow. It is natural to refer to an investment in a component of a product as being made “for” that product. If a car owner purchases new tires to go on her Honda Accord, she has made an investment “for” that car.

Nor does petitioner offer any reason why Congress would have intended to circumscribe the definition of “domestic industry,” and in particular the subparagraph

(C) route of showing a domestic industry, in the manner petitioner suggests. As discussed, subparagraph (C) of Section 337(a)(3) was designed to make the Section 337 remedy available to entities like research universities that invest in the exploitation of a patent but may not engage in manufacturing. See p. 3, *supra*; see also *InterDigital Commc'ns, LLC v. ITC*, 707 F.3d 1295, 1301-1304 (Fed. Cir. 2013). But under petitioner's reading, a university will be unable to make a domestic industry showing unless it invests in the development of whole articles.

Petitioner asserts that the court of appeals' and the Commission's reading allowed UEI to consolidate "all of UEI's domestic QuickSet investments as part of the domestic industry, despite the fact that QuickSet is also used in many products, such as those from Microsoft, Sony, and others, that are not 'protected by' the '196 patent." Pet. 17-18. But to the extent UEI's QuickSet investments "go directly to the functionality necessary" for the Samsung televisions "to practice many claimed elements of' the '196 patent," Pet. App. 12a, it is immaterial whether the same investments benefited other products too. Petitioner is also mistaken in suggesting that UEI consolidated *all* of its domestic QuickSet investments to show an industry with respect to the Samsung televisions. To the contrary, the Commission found that UEI had counted only those QuickSet investments that are "necessary" for the functioning of Samsung televisions, and that UEI had not included "hundreds of QuickSet projects specific to other customers or in products not at issue." *Id.* at 239a (citations omitted).³

³ Petitioner notes (Pet. 18) that "UEI attempted to separately allocate or quantify its Samsung-related expenditures for purposes of

b. Petitioner additionally argues (Pet. 19-20) that “an evaluation of whether a complainant’s domestic industry investments are ‘substantial’ under [Section 337(a)(3)(C)] necessarily requires viewing such investments in the context of the articles protected by the patent.” But far from being a “separate” claim of error (Pet. 19), that theory relies on the same premise as petitioner’s first argument: that Section 337(a)(3)(C) requires substantial domestic investments in the whole article, not in a component of the article. For the reasons explained above, that premise is incorrect. See pp. 9-11, *supra*.

Moreover, the evaluation that petitioner appears to view as necessary would make little sense. Petitioner argues (Pet. 20) that UEI needed to show that its domestic investments in QuickSet were substantial in comparison to “investments made over that same period by UEI, Samsung, or anyone else in * * * the Samsung televisions.” But that apples-to-oranges comparison would reveal little about UEI’s industrial presence in the country beyond the raw dollar amount of its QuickSet investments (which the Commission separately credited, see Pet. App. 251a-253a). By contrast, the quantitative comparison that the Commission credited—that “approximately two-thirds of UEI’s engineering and R&D investments [in] the QuickSet Platform and Samsung integration projects are carried out in the

domestic industry under” subparagraph (B) of Section 337(a)(3), suggesting that UEI did not similarly isolate its Samsung-related QuickSet expenditures for purposes of its subparagraph (C) showing. As discussed above, that suggestion is incorrect. For purposes of its subparagraph (B) showing, UEI isolated an even narrower subset of its Samsung-related QuickSet expenditures (namely, its labor investments in *integrating* the QuickSet software into the Samsung televisions). See Pet. App. 237a-238a.

U.S.,” Pet. App. 252a—demonstrates UEI’s substantial stake in the United States. See *id.* at 253a.

2. The question presented does not meet this Court’s criteria for certiorari.

The decision below does not conflict with any decision of another court of appeals. Nor does petitioner meaningfully argue that the court of appeals’ decision conflicts with any relevant decision of this Court. Petitioner briefly adverts (Pet. 24-25) to this Court’s decision in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), noting that the Commission previously urged the court of appeals to accord *Chevron* deference to the Commission’s interpretation of Section 337. But the court of appeals did not apply *Chevron* deference, see Pet. App. 9a-10a, 12a-13a, so *Loper Bright* is inapposite.

Instead, petitioner primarily contends (Pet. 13-14, 16, 18-20) that the court of appeals overlooked or misapplied its own precedents concerning the domestic industry requirement. But any intra-circuit conflict would not warrant this Court’s review. See *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam). In any event, the court of appeals did not “abandon[] its precedents” (Pet. 15) when it affirmed the Commission’s domestic industry determination in this case. To the contrary, as the court below observed (Pet. App. 12a), prior Federal Circuit decisions have rejected interpretations of Section 337(a)(3) similar to that which petitioner urges now.

In *Motorola Mobility, LLC v. ITC*, 737 F.3d 1345 (Fed. Cir. 2013), for instance, the infringer (Motorola) argued that the complainant (Microsoft) was improperly “relying on separate products for the technical and economic prongs” because Microsoft had claimed a

domestic industry based on mobile devices while using its investments in mobile operating systems to establish substantiality. *Id.* at 1348, 1351; see Pet. 18. The court of appeals rejected that argument, agreeing with the Commission that “nothing in § 337 precludes a complainant from relying on investments * * * directed to significant components, specifically tailored for use in an article protected by the patent.” 737 F.3d at 1351.

Petitioner’s reliance (Pet. 12-14) on *InterDigital*, *supra*, is similarly misplaced. Petitioner itself quotes the *InterDigital* court’s conclusion that the R&D activities need only “*pertain* to products that are covered by the patent.” 707 F.3d at 1297 (emphasis added); see Pet. 13-14. And *InterDigital*, like *Motorola Mobility* and this case, involved a complainant that developed and licensed technology that enabled the domestic industry article to practice the asserted patent. See *InterDigital*, 707 F.3d at 1298-1299; see also *id.* at 1303-1304 (“It is not necessary that the [complainant] manufacture the product that is protected by the patent.”). Indeed, the court of appeals below cited *InterDigital* in support of its interpretation of Section 337(a)(3). See Pet. App. 12a.

Petitioner’s citation (Pet. 7, 13) of *Microsoft Corp. v. ITC*, 731 F.3d 1354 (Fed. Cir. 2013), is also misplaced. There, the court of appeals merely affirmed the Commission’s determination that Microsoft had not satisfied the technical prong of the domestic industry requirement because “Microsoft failed to show that there is a domestic industry product that actually practice[d]” the asserted patent in that case. *Id.* at 1361; see *id.* at 1361-1362. As the case comes to this Court, there is no dispute that Samsung televisions incorporating the Quick-Set software practice the patent at issue (and indeed,

the QuickSet software enables the televisions to do so). See Pet. App. 12a-13a.

Petitioner’s reliance (Pet. 12, 14) on *Lelo Inc. v. ITC*, 786 F.3d 879 (Fed. Cir. 2015), fares no better. In *Lelo*, the court of appeals held that the Commission had erred by disregarding “quantitative data” in favor of “qualitative factors” in making an economic-prong finding. *Id.* at 885; see *id.* at 883. Petitioner does not contend that a similar error occurred here. Rather, it points (Pet. 14) to language in the *Lelo* opinion paraphrasing another Commission decision, which *Lelo* described as having involved an assessment of the “‘relative importance of the domestic activities’” in comparison to a complainant’s “overall investment with respect to the articles at issue.” 786 F.3d at 883-884 (quoting *In re Certain Concealed Cabinet Hinges & Mounting Plates*, Inv. No. 337-TA-289, 1990 WL 10608981, at *11 (Jan. 8, 1990)). But that language was merely describing the facts underlying that other decision, in which the complainant happened to rely on whole articles in its economic-prong showing. See *Certain Concealed Cabinet Hinges*, 1990 WL 10608981, at *9, *11. *Lelo* did not implicitly reject the possibility that a complainant could make a quantitative comparison in terms of an article component.

3. Petitioner’s other arguments in favor of further review are not compelling. Its various criticisms (Pet. 21-23) of the Section 337 remedy are orthogonal to the specific statutory-interpretation dispute at hand. In any event, such policy concerns are better directed to Congress, not this Court—though as petitioner acknowledges, the legislative branch has not chosen to exclude a greater number of non-practicing entities from Section 337’s remedial scope. See Pet. 23 (citing Advancing America’s Interests Act, H.R. 3535, 118th Cong., 1st

Sess. (2023); Trade Protection Not Troll Protection Act, H.R. 2189, 115th Cong., 1st Sess. (2017)).⁴

Petitioner further asserts that the petition presents “an important issue affecting many companies.” Pet. 26. But petitioner does not identify any other investigation postdating the court of appeals’ decision in *Motorola* in which a Section 337 respondent has argued that a complainant’s investments in a component of a protected article were not investments with respect to the article. Petitioner provides no empirical support for its suggestion (*ibid.*) that appeals from investigations are rare because exclusion orders “force[]” the losing party “to settle and forego an appeal on the merits.” Indeed, there are currently six appeals pending before the Federal Circuit concerning investigations where remedial orders were issued. See *Bissell Inc. v. ITC*, No. 24-1509 (docketed Feb. 22, 2024); *Apple Inc. v. ITC*, No. 24-1285 (docketed Dec. 26, 2023); *HC Robotics v. ITC*, No. 24-1193 (docketed Nov. 28, 2023); *Crocs, Inc. v. ITC*,

⁴ Petitioner relies (Pet. 23) on statistics showing an increase in Commission investigations involving non-practicing entities (NPEs). But as petitioner acknowledges, Pet. 23 n.4, the Commission tracks two distinct categories of NPEs investigations. The first category includes investigations triggered by entities such as individual inventors, research institutions, universities, laboratories, and start-ups that engage in R&D related to their intellectual-property rights but do not, or do not yet, manufacture products. See ITC, *Section 337 Statistics: Number of Section 337 Investigations Brought by NPEs (Updated Annually)*, https://www.usitc.gov/intellectual_property/337_statistics_number_section_337_investigations.htm (Jan. 12, 2024) (defining “Category 1 NPEs” and “Category 2 NPEs”). The second category includes entities “whose business model primarily focuses on purchasing and asserting patents.” *Ibid.* In 2023, the first category accounted for 27% of all Section 337 investigations instituted that year. *Ibid.* The second category accounted for 3%—one investigation. *Ibid.*

No. 24-1300 (docketed Dec. 29, 2023); *AliveCor, Inc. v. ITC*, No. 23-1509 (oral argument held July 12, 2024); *Wuhan Healthgen Biotechnology Corp. v. ITC*, Fed. Cir. No. 23-1389 (oral argument held Sept. 3, 2024).

4. Petitioner is also mistaken in characterizing this case as an “ideal vehicle” in which to consider Section 337’s domestic industry requirement. Pet. 25 (capitalization omitted). As explained above and in the petition, see pp. 7-8, *supra*; Pet. 26, petitioner has redesigned its accused products so that they no longer infringe and are not subject to the Commission’s remedial orders. As a result, petitioner is free to import its redesigned products, “which has allowed [its] business to continue uninterrupted.” Pet. 26. Petitioner does not represent that it intends to return to its legacy products. And while petitioner posits (*ibid.*) that it might “inadvertently violate” the Commission’s remedial orders, that possibility appears speculative. As a result, this Court’s resolution of the question presented would likely have little if any practical effect even in the context of this dispute.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DOMINIC L. BIANCHI
General Counsel

ELIZABETH B. PRELOGAR
Solicitor General

WAYNE W. HERRINGTON
Assistant General Counsel

BENJAMIN S. RICHARDS
CARL P. BRETSCHER
Attorney Advisors
International Trade
Commission

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