UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of CERTAIN DIGITAL MODELS, DIGITAL DATA, AND TREATMENT PLANS FOR USE IN MAKING INCREMENTAL DENTAL POSITIONING ADJUSTMENT APPLIANCES, THE APPLIANCES MADE THEREFROM, AND METHODS OF MAKING THE SAME	Investigation No. 337-TA-833

SUBMISSION OF NON-PARTY GOOGLE INC.
IN RESPONSE TO COMMISSION'S
REQUEST FOR PUBLIC COMMENTS

Google respectfully submits this statement in response to the January 17, 2014 Notice seeking written submissions on the issue of whether electronic transmissions are "articles" within the meaning of Section 337. In particular, Google addresses the Commission's first question:

> **Question 1**. Are electronic transmissions "articles" within the meaning of Section 337? Please answer with respect to the text, structure, and legislative history of Section 337. Also address any potentially relevant judicial precedent, such as *Bayer AG v. Housey Pharmaceuticals, Inc.*, 340 f.3d 1367, 1373-74 (Fed. Cir. 2003), and *Suprema, Inc. v. Int'l Trade Comm'n*, _ F.3d _, Nos. 2012-1170, -1026, -1124, 2013 WL 6510929 (Fed. Cir. Dec. 13, 2013); Commission decisions, including *Certain Hardware Logic Emulations Systems and Components Thereof*, Inv. No. 337-TA-383 (1998); and any other potentially informative decisions by other government agencies.

Google respectfully submits that the language of Section 337—a trade statute—and its legislative history demonstrate that electronic transmissions are not "articles" within the meaning of the statute and cannot form the basis for jurisdiction, violation, or remedial orders. Recent case law, including decisions from the Commission and Federal Circuit, dictate the same

conclusion. Further, current concerns associated with enforcement of the Commission's remedies are exacerbated by any attempt to stretch those remedies to cover electronic transmissions. As a matter of law and as a matter of policy, the ITC is not an appropriate forum for software patent litigation wherein the accused products are non-tangible electronic transmissions into the United States.

I. THE LANGUAGE AND LEGISLATIVE HISTORY OF SECTION 337 LIMITS "ARTICLES" TO PHYSICAL OBJECTS.

Section 337 is a trade statute, the purpose of which is to regulate unfair competition resulting from the importation of products. *See* Cong. Rec. H. 2297 (1988) ("Under Section 337 of the Tariff Act of 1930, products can be excluded from the United States if they have been produced or manufactured through use of an unfair trade practice."). Throughout the legislative history, the term "articles" is used interchangeably with goods, products, and merchandise. Indeed, within the voluminous legislative history relating to Section 337, there is not a single mention of electronic transmissions or anything similar, though at the time of the later amendments, electronic transmissions were certainly known to Congress. Without question, Congress, from the original statute in 1922 through the multiple amendments resulting in the current statute, considered Section 337 to apply to physical goods and not electronic transmissions. This intention is captured in the statutory language.

Properly recognizing the limits of its jurisdiction and remedial powers, the Commission has stated that it "'is a creature of statute, and must find authority for its actions in its enabling statute.'" *In re Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software*, Inv. No. 337-TA-724, Comm'n Op. at 12 (Dec. 21, 2011) ("*Electronic Devices*") (*citing Kyocera v. Int'l Trade Comm'n*, 545 F.3d 1340 (Fed. Cir. 2008)). The Commission then analyzed the language of Section 337 and determined that "infringement,

direct or indirect, must be based on the ***articles as imported*** to satisfy the requirements of Section 337." *Electronic Devices*, Comm'n Op. at 14 (emphasis added). In *Electronic Devices*, the Commission recognized Section 337 does not apply to all instances of infringement of a U.S. patent, even with a nexus to importation, as there must be a "sufficient basis for a violation of Section 337(a)(1)(B)(i), which concerns the 'importation' or 'sale' of articles that infringe a U.S. patent." *Id.* at 19. The Commission's decision in *Electronic Devices* is consistent with the limits of Section 337, the plain language of which demonstrates that "articles" are physical objects, not electronic transmissions.

A. Early Section 337

History bears mention when considering whether Section 337 covers electronic transmissions, as the current Section 337 and its predecessors have always pertained to importation of physical articles. The first incarnation of Section 337 was included in the 1922 Fordney-McCumber Tariff, the purpose of which was to protect American manufacturing and goods following World War I. *See* Tariff Act of 1922, H.R. Doc. No. 393, at 95 (1922) ("Tariff Act of 1922"). The Tariff Act of 1922 included Section 316, a provision relating to protecting against unfair methods of competition resulting from the importation of cheap goods. *See* Tariff Act of 1922, at 95; S. Rep. No. 595, 67th Cong., 2d Sess., at 3.

In the midst of a global depression and again to protect American industries from foreign goods, in 1930, Congress passed the Smoot-Hawley Tariff Act which replaced Section 316 with Section 337. The statutory language remained largely the same, and the purpose of the provision continued to be protecting domestic industries against unfair methods of competition resulting from the importation of goods. *See* 133 Cong. Rec. H. 2297 (1988) ("Under Section 337 of the Tariff Act of 1930, products can be excluded from the United States if they have been produced or manufactured through use of an unfair trade practice."). Illustrative of this purpose, in

discussing Section 337, Congress focused on merchandise being imported into the United States, excluding merchandise found to infringe a patent, and the potential to seize goods. *See, e.g.*, 71 Cong. Rec. S. 3872 (1929); 71 Cong. Rec. S. 4640, 4648-49 (1929); 72 Cong. Rec. H. 12325 (1930) ("Another very important part of this new tariff law is section 337, which makes unlawful unfair methods of competition in import trade. This provision is drawn for the purpose of protecting domestic interests from unscrupulous importers and others who . . . perpetrate unfair practices in the importation of goods in this country to be sold in competition with goods produced in this country.").

In 1974, Congress passed another Trade Act meant to protect domestic industries from injury due to the importation of goods. *See* Sen. R. No. 93-1298, 7187 (1974). The Trade Act of 1974 replaced the Tariff Commission, which performed a purely advisory role, with the International Trade Commission ("ITC"). *See id.* at 7201. The newly formed ITC was given the authority to issue exclusion orders and issues cease and desist orders in cases where exclusion orders were "extreme or inappropriate." *See id.* at 7331. The ITC was further charged with concluding its investigations in no more than 18 months. *See id.* at 7327. Nothing in the statute changed the primary purpose of Section 337, which continued to be a trade statute to prevent unfair practice through the importation of goods.

B. Today's Section 337

The current version of Section 337 is essentially the result of amendments in 1988 as part of the Omnibus Foreign Trade and Competitiveness Act. With respect to Section 337, Congress amended the language of the statute to address more specifically intellectual property rights and to eliminate the requirements of injury (except in cases of temporary relief) and efficient and economic operation of the domestic industry. *See* S. Rep. 100-71, 100th Cong., 1st Sess., at 127-128 (1987) ("S. Rep. 100-71").

The statute enumerates the unlawful unfair acts relating to intellectual property and makes clear that "articles" refers to physical goods, not electronic transmissions. Section 337(a)(1)(B) makes unlawful, "[t]he importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of ***articles that***—(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under title 17; or (ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States patent." 19 U.S.C. § 1337(a)(1)(B) (emphasis added). Section 337(a)(1)(B)(ii) relates to product by process claims. *See* 134 Cong. R. S. 10711-01 (1988) ("With respect to section 1342 of the Trade Act (title 19), this bill reenacts prior section 337a of the Tariff Act of 1940 (as 337(a)(1)) which addresses protection of U.S. business from importation of ***products*** made outside of the United States by a process covered by a claim of a U.S. patent.") (emphasis added). In order for product by process claims to be valid, the "article" made, produced, processed, or mined must be a physical object as it is well settled that electronic signals do not constitute patentable subject matter. *See In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007). Consistent interpretation of "***articles that***" requires that the articles of subpart (i) be physical, as are the articles of subpart (ii).

Further, even though Congress in the 1988 amendments eliminated the injury test for certain intellectual property rights cases, including patents, it reaffirmed that the purpose of the statute was to protect domestic industries from unfair practices relating to the importation of goods and, therefore, that the complainant had to establish that a United States industry relating to the intellectual property right concerned existed. *See* S. Rep. 100-71, at 129. Section 337(a) again references "articles protected" concerning the establishment of a domestic industry. 19 U.S.C. § 1337(a)(2)-(3). The Commission recently reinforced the significance of the

statutory language in requiring a finding of actual "articles protected" even with respect to licensing-based domestic industries. *See In re Computers and Computer Peripheral Devices, and Components thereof, and Products Containing Same*, Inv. No. 337-TA-841, Comm'n Op. at 32 (Jan. 9, 2014) ("[T]here is an 'articles' requirement for subparagraph (C), in addition to (A) and (B)."); *see also InterDigital Commc'ns, LLC v. ITC*, 707 F.3d 1295, 1297-98 (Fed. Cir. 2013).

Perhaps most fundamentally, "[i]f the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it ***shall direct that the articles concerned, imported by any person violating the provision of this section, be excluded from entry into the United States***." 19 U.S.C. § 1337(d)(1) (emphasis added). The presumptive remedy under Section 337—the exclusion of articles at ports of entry—cannot apply to electronic transmissions, as Customs has repeatedly recognized. *See In re Certain Hardware Logic Emulation Systems and Components Thereof*, Inv. No. 337-TA-383, Comm'n Op., 1998 WL 307240, at *9 ("*Hardware Logic*"); *see also* General Note 3(e) to HTSUS. Similarly, Section 337(i), added as part of the 1988 amendments, provides for the seizure and forfeiture of articles as well as notification of all ports of entry of the attempted entry of articles. 19 U.S.C. § 1337(i). The purpose of this provision was to provide Customs with "the means by which to deter and sanction the practice of 'port-shopping' under which some importers attempt to circumvent section 337 exclusion orders." S. Rep. 100-71, at 132. This provision only relates to physical objects and not electronic transmissions as electronic transmissions do not pass through ports of entry and may not be seized by Customs.

The 1988 amendments also modified the portion of the statute relating to cease and desist orders. In explaining the reason for the amendment, Congress stated "a cease and desist order

prohibiting a domestic respondent from selling the imported infringing product in the United States may be appropriate when the product has been stockpiled during the pendency of an investigation and exclusion order may be appropriate to prevent future shipments of the infringing product." *See id.* at 131. That this was the objective of the provision relating to cease and desist orders is apparent from the plain language of the statute. The focus of Congress with respect to remedies available to the ITC for a violation of Section 337 was for physical goods or products, not electronic transmissions.

Notably Section 337 also references "articles" in other contexts. By way of illustration, the Commission is asked to consider "the production of like or directly competitive articles in the United States" within the context of the public interest before entering a remedy. 19 U.S.C. § 1337(c)-(f). Production again relates to physical goods rather than electronic transmissions.

Taken in context, the provisions of Section 337 and its legislative history demonstrate that "articles," as used in the statute, relate to physical objects and not electronic transmissions. Indeed, electronic transmissions existed well before 1988. Congress did not include any reference to electronic transmissions in the statute, nor did Congress demonstrate any intention to so expand the scope of Section 337 in connect with its amendments. Thus, the Commission which recognizes that it "'is a creature of statute, and must find authority for its actions in its enabling statute'" will find none supporting the inclusion of electronic transmissions among the "articles" covered by Section 337. *See Electronic Devices* at 12.

II. HARDWARE LOGIC DID NOT CONSIDER THE FULL LEGISLATIVE HISTORY AND WAS INCORRECTLY DECIDED.

It is Google's position that *Hardware Logic* was decided incorrectly at a time when the current abuse of the statute could not have been fathomed. The analysis relating to the legislative history in *Hardware Logic* relies primarily on two cites. The first is that "section 337

is 'broad enough to prevent every type and form of unfair practice.'" *Hardware Logic*, 1998 WL 307240, at *13 (*citing* S. Rep. No. 595, 67th Cong., 2d Sess., at 3). The cited quote, however, is incomplete and misleading. The actual statement made in 1922 is that "[t]he provision relating to unfair methods of competition in the importation of goods is broad enough to prevent every type and form of unfair practice and is, therefore, a more adequate protection to American industry than any antidumping statute the country has ever had." S. Rep. No. 595, 67th Cong., 2d Sess., at 3. The concern being addressed by Congress in the first version of what eventually resulted in Section 337, as discussed above, is unfair practices resulting from the importation of products or physical goods. Taken in context, this statement simply supports the concept that the scope of the statute relates to the importation of physical goods, not electronic transmissions.

The second portion of the legislative history relied upon in *Hardware Logic* relates to the 1988 amendments to the statute. The cite is "Congress stated that the predecessor version of Section 337 'was designed to cover a broad range of unfair acts' and that the purpose of the 1988 amendments was 'to strengthen the effectiveness of Section 337 in addressing the growing problems being faced by U.S. companies from the importation of articles which infringe U.S. intellectual property rights.'" *Hardware Logic*, 1998 WL 307240, at *13 (*citing* S. Rep. 100-71, 100th Cong., 1st Sess., at 128; *see also* H.R. Rep. No. 100-576 at 633). Again, these quotes are taken out of context. The first quote relates to the fact that Section 337 "was designed to cover a broad range of unfair acts not then covered by other unfair import laws." S. Rep. 100-71, at 128. Section 337 was, therefore, a catch-all, but one related only to unfair acts relating to the importation of products. The second quote relates to the 1988 amendment enumerating the unfair practices that constitute unlawful acts with respect to intellectual property rights. As discussed above, Congress recognized that Section 337 was being predominantly used to enforce

intellectual property rights. *See id.* The language and requirements of Section 337 were not designed for, and did not make sense with respect to, intellectual property rights. *See id.* Accordingly, in order to strengthen the effectiveness of Section 337 relating to U.S. intellectual property rights, Congress enumerated the unfair practices that constituted unfair acts with respect to patents, copyrights, trademarks, and mask works and eliminated the injury (except in cases of temporary relief) and efficient and economic operation requirements. *See id.* The 1988 amendments did not expand the scope of Section 337 beyond its initial purpose of preventing unfair practices resulting from the ***importation of physical goods***.

Further, the legislative history analysis of *Hardware Logic* ignores the numerous references to goods, products, and merchandise replete in the discussion of Section 337 in the Congressional record. *See e.g.*, S. Rep. 100-71, at 128-129 ("Any sale . . . of a product . . .); ("The importation of any infringing merchandise . . ."); ("The ITC is to adjudicate trade disputes between U.S. industries and those who seek to import goods from abroad."). For example, the Congressional record relating to the 1988 amendments is abounds with examples of statements referencing goods, products, and merchandise and the purpose of Section 337 relating to unfair practices from the importation of physical objects. *See, e.g.*, S. Rep. 100-71, 127-135; H.R. Rep. 100-40, 100th Cong., 1st Sess., 154-161 (1987); 133 Cong. Rec. S. 9964-65 (1987); H.R. Rep. 99-581, 99th Cong., 2d Sess., 109-117 (1986); 134 Cong. Rec. S. 10711-01 (1988).

Finally, following *Hardware Logic*, the Federal Circuit indicated in *Bayer AG v. Housey Pharms., Inc.*, its understanding based on the legislative history that "articles" in Section 337 relate to physical goods. 340 F.3d at 1373-1374 (Fed. Cir. 2003). In *Bayer*, the Federal Circuit was asked to determine whether 35 U.S.C. § 271(g) applied to information generated by a patented process. The Federal Circuit, in holding that 35 U.S.C. § 271(g) does not apply to

processed information but only to physical goods, analyzed both the statutory language and legislative history. *See id.* at 1373-77 ("We, therefore, hold that in order for a product to have been 'made by a process patented in the United States' it must have been a physical article that was 'manufactured' and that the production of information is not covered."). The Federal Circuit concluded that Section 271(g) was "designed to provide new remedies to supplement existing remedies available from the International Trade Commission ('ITC') under 19 U.S.C. § 1337 (2000)." *Id.* According to the legislative history, Congress at the time of enacting Section 271(g) was aware of the remedies available through the ITC, but determined that these remedies were "insufficient to fully protect the owners of process patents." *Id.* at 1374. The Federal Circuit discussed the relationship of § 271(g) to Section 337, stating that "section 271(g) was intended to address the same 'articles' as were addressed by section 1337." *Id.* at 1374. In view of its holding in *Bayer*, the Federal Circuit understands "articles" addressed in Section 337 to be physical goods.

III. UNDER CURRENT CASE LAW, ELECTRONIC TRANSMISSIONS ALONE MAY NOT FORM THE BASIS FOR IMPORTATION FOR JURISDICTIONAL OR REMEDIAL PURPOSES.

Recent decisions by the Commission and the Federal Circuit support the conclusion that electronic transmissions alone are not "articles" within the meaning of Section 337. Electronic transmissions alone simply cannot infringe a valid and enforceable United States patent at the time of importation.

A. Electronic Transmissions Alone Cannot Infringe Method Claims at the Time of Importation.

Under *Electronic Devices*, method claims cannot be directly infringed at the time of importation and, therefore, cannot form the basis for a violation of Section 337. Accordingly, electronic transmissions cannot directly infringe method claims at the time of importation.

Further, the Federal Circuit's decision in *Suprema, Inc. v. Int'l Trade Comm'n* holds that electronic transmissions cannot indirectly infringe a method claim at the time of importation, at a minimum by inducement. *See Suprema, Inc. v. Int'l Trade Comm'n*, No. 2012-1170, slip op., at *6 (Fed. Cir. Dec. 13, 2013). *Suprema* held that exclusion orders may not be predicated on induced infringement because the direct infringement does not occur until after importation of the article. *See id.*

While not specifically addressed in *Suprema*, the same logic applies to contributory infringement, and an electronic transmission should not be found to contributorily infringe a method claim at the time of importation. Specifically, the reasoning, *i.e.*, that Section 337 does not extend to indirect infringement based on the alleged intent of the importer, applies equally to allegations of contributory infringement. The Federal Circuit explained that a violation of Section 337 cannot be predicated on a theory of induced infringement where direct infringement does not occur until after importation, explaining that precedent "makes evident the nature of § 271(b) and its focus on the conduct of the inducer," and "[u]nder longstanding law, while the inducing act must of course precede the infringement it induces, it is not a completed inducement under § 271(b) until there has been a direct infringement." *Suprema* at *19. Importantly, the Federal Circuit noted that in connection with Section 337, "[t]he patent laws define articles that infringe in § 271(a) and (c) and those provisions' standards for infringement . . . must be met at or before importation in order for the articles to be infringing when imported." *Id.* As with inducement, contributory infringement requires an underlying act of direct infringement, which does not occur until the method is used in the United States after importation. *Suprema* at *18; *see also ERBE Elektromedizin GmbH v. Int'l Trade Comm'n*, 566 F.3d 1028, 1037 (Fed. Cir.

2009) (holding that where there was no evidence of direct infringement, there is no basis for finding induced or contributory infringement).

Accordingly, electronic transmissions cannot infringe method claims, directly or indirectly, at the time of importation and, as a result, cannot form a basis for a violation of Section 337.

B. Electronic Transmissions Alone Cannot Infringe Apparatus Claims at the Time of Importation.

Similarly, electronic transmission alone cannot infringe system or apparatus claims at the time of importation. Electronic transmissions are analogous to electronic signals. It is well settled that electronic signals are not patent-eligible subject matter. *See In re Nuijten*, 500 F.3d at 1357. Rather, electronic signals must be tied to a device or system. Accordingly, electronic transmissions cannot directly infringe apparatus or system claims at the time of importation.

Under *Suprema*, any induced infringement of apparatus or system claims cannot occur until after direct infringement is complete, *i.e.*, when the electronic transmission has been combined with a device. *Suprema* at *19. As discussed above, contributory infringement requires an underlying act of direct infringement. *See ERBE*, 566 F.3d at 1037. In the instance of an electronic transmission alone, this does not occur until after importation when an electronic transmission has been combined with a device. Accordingly, an electronic transmission alone cannot contributorily infringe at the time of importation.

Finally, as set forth above, "[t]he patent laws define articles that infringe in § 271(a) and (c)." *Suprema* at *19. Section 271(c) provides "[w]hoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition . . . shall be liable as a contributory infringer." The Supreme Court held that software does not constitute a component for purpose of Section 271(f), and the same

should hold for 271(c); specifically, the Supreme Court found that a copy of software combined with a computer constitutes a device, not software in the abstract. *See Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 451-452, 1756 (2007).

Accordingly, electronic transmissions alone cannot infringe system or apparatus claims, directly or indirectly, at the time of importation and, as a result, may not form a basis for a violation of Section 337.

IV. ANY ATTEMPT TO COVER ELECTRONIC TRANSMISSIONS AGGRAVATES CURRENT CONCERNS RELATING TO EFFECTIVE ENFORCEMENT OF ITC REMEDIES.

As previously discussed, the current remedies under Section 337 are not intended to address electronic transmissions. There are already concerns as to the effectiveness of enforcement of ITC remedies as it relates to physical goods. *See* Request for Public Comment: Interagency Review of Exclusion Order Enforcement Process, 78 Fed. Reg. 37,242 (June 20, 2013); *see also* FACT SHEET: White House Task Force on High-Tech Patent Issues, *available at* http://www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues ("White House Patent Issues"). Any attempt to extend those remedies to electronic transmissions would only aggravate concerns. Specifically, the President recently issued executive actions and legislative recommendations related to the patent system, including the enforcement of ITC exclusion orders. *See* White House Patent Issues. As a result of an executive action calling for an interagency review of both the ITC and Customs processes, the U.S. Intellectual Property Enforcement Coordinator sought public comments, which resulted in multiple responses from corporations and other interested organizations outlining the current deficiencies in the procedures employed by the ITC and Customs for the enforcement of exclusion orders. *See* 78 Fed. Reg. 37,242. A common theme in the comments was that

enforcement of Section 337 remedies, particularly exclusion orders, is a significant source of frustration for both complainants and respondents and that the process lacks transparency.

Concerns are exacerbated by any attempt to craft a remedy for electronic transmissions, as unlike exclusion orders on physical goods, Customs does not regulate electronic transmissions. *See* General Note 3(e) to HTSUS. Because electronic transmissions do not pass through ports of entry, Customs is unable to seize them. Accordingly, there is no independent third party to oversee enforcement of an exclusion order. As the Federal Circuit recognized in *Bayer*, "[t]he importation of information in the abstract (here, the knowledge that a substance possesses a particular quality) cannot be easily controlled." *Bayer*, 340 F.3d at 1376. Finally, it would fly in the face of Section 337 to issue cease and desist orders merely directed at electronic transmissions, as cease and desist orders were intended to aid the enforcement of exclusion orders, such as when a respondent had stockpiled product. *See* S. Rep. 100-71, at 131.

V. REGULATION OF ELECTRONIC TRANSMISSIONS BY THE ITC SHOULD BE LEFT FOR CONGRESS TO DECIDE.

The purpose of Section 337 is to prevent unfair trade practice resulting from the importation of physical goods. If action is to be taken with respect to electronic transmissions—something Google maintains is not appropriate for the ITC—then, Congress must determine the appropriate action to be taken. As the Federal Circuit stated in *Bayer*, "[u]nder these circumstances we think it best to leave to Congress the task of expanding the statute if we are wrong in our interpretation. Congress is in a far better position to draw the lines that must be drawn if the product of intellectual processes rather than manufacturing processes are to be included within the statute." *Bayer*, 340 F.3d at 1377.

VI. CONCLUSION

Section 337 was meant to protect domestic industries against unfair methods of competition from the importation of foreign physical goods. Interpreting electronic transmissions as "articles" would undermine that policy and conflict with the statute's language, structure, legislative history, and judicial interpretation. Electronic transmissions are an amorphous concept that could potentially apply to any number of electronic communications. The "articles" of Section 337 are not electronic transmissions.

Finally, when an investigation may improperly focus on electronic transmissions, the Commission should either decline to institute the investigation in the first place or, at a minimum, treat the issue as jurisdictional and not merely as a matter of violation. The Commission should utilize the 100-day pilot program to resolve the issue expeditiously and to avoid the waste of significant Commission and party resources.

Dated: February 3, 2014

Respectfully submitted,

/s/ Catherine Lacavera

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Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and Methods of Making Same
Investigation No. 337-TA-833

CERTIFICATE OF SERVICE

I, Robert Brown, hereby certify that on February 3, 2014, the foregoing SUBMISSION OF NON-PARTY GOOGLE INC. IN RESPONSE TO THE COMMISSION'S REQUEST FOR PUBLIC COMMENTS was filed with the Secretary and copies were served upon the following parties:

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Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and Methods of Making Same
Investigation No. 337-TA-833

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