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**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, DC**

IN THE MATTER OF

CMOS IMAGE SENSORS AND PRODUCTS
CONTAINING SAME

Investigation No. 337-TA-
DN 2895

**COMPLAINANT CALIFORNIA INSTITUTE OF TECHNOLOGY'S
REPLY TO RIM RESPONDENTS' SUBMISSION IN RESPONSE TO COMMISSION
NOTICE OF REQUEST FOR STATEMENTS ON THE PUBLIC INTEREST**

Pursuant to U.S. International Trade Commission ("Commission") Rule § 210.8(c)(2), Complainant California Institute of Technology ("Caltech") submits this reply to Respondents Research In Motion Ltd.'s and Research In Motion Corp.'s (collectively "RIM") Submission in Response to Commission Notice of Request for Statements on the Public Interest ("Response"). RIM's Response does not show that there is an even remote possibility that the limited permanent exclusion order sought by Caltech of certain RIM products containing CMOS image sensors manufactured or sold by Respondents STMicroelectronics N.V. and STMicroelectronics Inc. (collectively "STMicro") would adversely affect the public health and welfare, distort competition, raise prices, or deter innovation in the United States.

I. The Commission Has Never Determined That an Exclusion Order of RIM's Products Would Adversely Affect the Public Interest.

As is widely known, RIM's mobile phones and tablets are currently the subject of a number of ITC investigations. But, tellingly, not once has the Commission ever determined that an exclusion order of RIM's products would adversely affect the public interest. In fact, on only a handful of prior occasions have public interest concerns justified the Commission's refusal to

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provide a remedy upon finding a violation.¹ The products at issue in those investigations were uniquely essential for public health, scientific research benefiting the public, or a congressionally mandated public policy.²

RIM's mobile phones and tablets are not essential to the public's health and welfare and are hardly comparable to nuclear devices or burn beds. RIM's products are sold through regular commercial channels, such as its website and retail outlets, and are geared towards consumers for personal use.³ Indeed, RIM has been "frantically battling to quash reports that it is abandoning the consumer market" following its recent "grim" financial reports.⁴ Further, RIM clearly advertises that its mobile devices are used for recreational activities such as taking pictures, playing music, e-mail and browsing the Internet—not that they are critical to the infrastructure of the United States as claimed by RIM.⁵

II. RIM Could Avoid an Exclusion Order by Selecting a Different Supplier of CMOS Image Sensors.

Caltech's requested limited exclusion order only targets RIM products that contain CMOS image sensors manufactured or sold by STMicro. These sensors are used in the camera feature of RIM's products, not in the security-related features cited by RIM as essential to the public interest. RIM could easily substitute STMicro's infringing CMOS image sensors with the

¹ See *Certain Variable Speed Wind Turbines & Components Thereof*, Inv. No. 337-TA-376, Comm'n Op. at 36 (Sept. 1996) (noting that the Commission has found overriding public interest concerns in only three cases).

² See *Fluidized Supporting Apparatus & Components Thereof*, Inv. Nos. 337-TA-182/188, 1984 ITC LEXIS 256, at **1, 35-57 (Oct. 1984) (denying relief because the domestic producer could not satisfy demand for hospital beds for burn patients within a reasonable time and there were no available comparable substitutes); *Certain Inclined-Field Acceleration Tubes*, Inv. No. 337-TA-68, Comm'n Order (Dec. 1980) (finding that the infringing tubes were essential to nuclear energy "research programs affecting the public health and welfare"); *Certain Automatic Crankpin Grinders*, Inv. No. 337-TA-60, Comm'n Order (Dec. 1979) (denying relief because the domestic producer was found to be unable to satisfy demand for automotive parts needed to manufacture fuel efficient automobiles on the timetable mandated by Congress).

³ See <http://us.blackberry.com/>.

⁴ <http://news.techworld.com/mobile-wireless/3348180/what-rim-really-said-about-ditching-blackberrys-consumer-offering/>.

⁵ See <http://us.blackberry.com/smartphones/blackberrystorm/#!/phone-specifications> (describing the features of RIM's BlackBerry Storm 2).

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comparable CMOS image sensors offered by Caltech's many licensees. [REDACTED]

[REDACTED]

[REDACTED]⁶

III. Like or Comparable Existing Devices Could Replace RIM's Products.

Even if the exclusion of RIM's products could affect the public interest, there are many effective substitutes currently existing in the market for RIM's products. Although RIM touts the "important security features" found in its products and, in particular, its certification by the National Institute of Standards and Technology as meeting Federal Information Processing Standard Publication 140-2 ("FIPS 140-2"), well over 1,200 FIPS 140-2 certifications have been handed out to various companies.⁷ Of particular relevance, both Motorola and Samsung manufacture mobile devices that satisfy this standard.⁸ In addition, certification for Apple's iPhone and iPad is currently in process with the NIST.⁹

RIM also highlights its BlackBerry messaging service ("BBM") as an important feature of its mobile products, but ignores the fact that Apple recently released its own alternative, iMessage, for the iPhone and iPad. Commentators agree that iMessage is Apple Inc.'s "answer" to BBM and have found that the services are comparable.¹⁰ And, while BBM may have been a dependable service in the past, recent reports have questioned its reliability after widespread BBM outages in Europe, Africa, the Middle East, Canada, and the United States.¹¹

⁶ See Exhibit A (Techno Systems Research Co., Ltd., CCD/CMOS Area Image Sensor Market Analysis, December 2011 Market Report 25 (2011) (describing the forecasted CMOS image sensor market share in 2010-2011 by unit)).

⁷ See <http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/140val-all.htm>.

⁸ See *id.* (identifying the Motorola Mobility Cryptographic Suite B Module and Samsung Kernel Crypto API Cryptographic Module as meeting FIPS 140-2).

⁹ See <http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/140InProcess.pdf>.

¹⁰ See http://reviews.cnet.com/8301-19512_7-20120646-233/blackberry-messenger-vs-apples-imessage/ (explaining that the choice between BBM and iMessage really depends on whether you are "a BlackBerry person or an iPhone person").

¹¹ See <http://business.financialpost.com/2011/10/12/rim-confidence-drops-as-blackberry-outage-stretches-on/>.

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IV. The Impact of an Exclusion Order on the U.S. Mobile Communications Market Would Be Minimal.

RIM drastically exaggerates the potential impact of an exclusion order on the U.S. mobile communications market, which would likely be minimal. Despite being a dominant player in the U.S. mobile communications market just years ago, RIM's current market share of the U.S. smartphone market has plummeted to 12.3 percent, and it now possesses less than 6.0 percent of the total mobile market in the United States.¹² Indeed, some analysts expect RIM's market share to dip below five percent.¹³ Thus, it is unlikely that an exclusion order would substantially impact U.S. consumers, who have a clear preference for RIM's competitors, including Samsung, LG, Apple, Motorola, and HTC.

V. RIM's Requested Discovery Would Be Futile.

RIM has requested that the Commission allow discovery on whether an exclusion order would harm the public interest. However, it has not identified any party that would have information relevant to this issue. Caltech certainly does not have any information showing that RIM's products are essential to the public interest. As noted, publicly available information shows otherwise. And, RIM—not a third party—should be in the exclusive possession of any facts that bear on the public interest, but it has provided sparse evidence to support its Response. Thus, discovery on this matter would likely be futile.

VI. Conclusion

For the foregoing reasons, Caltech respectfully requests that the Commission deny RIM's request for discovery and find that the remedial orders requested by Caltech will serve, rather than impair, the public interest.

¹² See http://www.comscore.com/Press_Events/Press_Releases/2012/5/comScore_Reports_March_2012_U.S._Mobile_Subscriber_Market_Share.

¹³ See <http://www.zdnet.com/blog/btl/rims-market-share-may-drop-to-5-percent-analyst/75815>.

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Respectfully submitted,

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Exhibit A

2nd Half 2011 CCD/CMOS Area Image Sensor Market Analysis

1.8.2. Revenues

Market Share in 2010 – 2011 Forecast (Revenues)												
Unit: USSM												
	Total				CCD				CMOS			
	2010		2011F		2010		2011F		2010		2011F	
		%		%		%		%		%		%
Sony	1,934.8	33.8%	2,663.9	37.3%	841.3	51.8%	650.8	56.4%	1,093.5	26.7%	2,013.1	33.6%
Aptina	391.4	6.8%	440.4	6.2%					391.4	9.6%	440.4	7.3%
Panasonic	523.1	9.1%	458.0	6.4%	420.6	25.9%	281.6	24.4%	102.5	2.5%	176.4	2.9%
OmniVision	582.6	10.2%	615.3	8.6%					582.6	14.2%	615.3	10.3%
Samsung	581.7	10.2%	844.7	11.8%					581.7	14.2%	844.7	14.1%
Canon	611.4	10.7%	874.3	12.2%					611.4	14.9%	874.3	14.6%
Sharp	323.1	5.6%	185.2	2.6%	311.8	19.2%	183.2	15.9%	11.3	0.3%	2.0	0.0%
Nikon	169.0	3.0%	240.7	3.4%					169.0	4.1%	240.7	4.0%
Toshiba	232.3	4.1%	321.4	4.5%					232.3	5.7%	321.4	5.4%
ST Micro	171.9	3.0%	223.1	3.1%					171.9	4.2%	223.1	3.7%
Hynix	70.1	1.2%	126.0	1.8%					70.1	1.7%	126.0	2.1%
FujiFilm	7.8	0.1%	14.8	0.2%	7.8	0.5%	1.3	0.1%		0.0%	13.5	0.2%
Others	119.6	2.1%	137.3	1.9%	43.3	2.7%	36.1	3.1%	76.3	1.9%	101.2	1.7%
Total	5,718.8	100.0%	7,145.1	100.0%	1,624.8	100.0%	1,153.0	100.0%	4,094.0	100.0%	5,992.1	100.0%

※ The revenues above were calculated based on shipments of application devices, which do not match the actual image sensor shipment revenues.

※ The volumes of sensors for Chinese non-brand camera phones are not included in the figures above.

• In the 2011 image sensor market in terms of total revenues, Sony secured the largest share of 37.3%. Sony commanded the top share in the CCD area image sensor market and, also in the CMOS area image sensor market, it sold primarily high-end DSLR/mirrorless cameras, high-end camcorders and 8-Mpixel camera phones. It achieved the highest market share in terms of revenue because it sold products of high unit prices. Canon took the second place, followed by Samsung and OmniVision. Canon is increasing its market share in the DSLR application by 43% compared to 2010. Since its unit price zone for DSLR sensors is \$65 to 120, Canon is way up on the high level based on the revenue share.

• Our projection for 2012 is that Sony will increase its market share and maintain the top position. Its shipments of BSI sensors for DSCs and camera phones are significantly increasing. Canon plans to ship 10 million DSLRs annually, which is an increase of 33% compared to 2011, and its share of the sensor market in terms of revenue will also increase further. Aptina is also projected to increase shipments of mirror-less camera sensors for Nikon, which will contribute to an increase of its revenue.