

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ROKU, INC., PETITIONER

v.

INTERNATIONAL TRADE COMMISSION AND UNIVERSAL ELECTRONICS, INC.

APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

To the Honorable John G. Roberts, Jr., Chief Justice of the
United States and Circuit Justice for the Federal Circuit:

Pursuant to 28 U.S.C. 2101(c), and Rules 13.5, 22, and 30.2
of this Court, petitioner Roku, Inc. ("Roku")¹ respectfully re-
quests a 45-day extension of time, up to and including August
16, 2024, within which to file a petition for a writ of certio-
rari.

1. The decision of the Federal Circuit was entered on
January 19, 2024. Petitioner timely filed a petition for panel
rehearing and rehearing en banc on March 4, 2024. The court of
appeals denied the petition on April 3, 2024, and issued its
mandate on April 10, 2024. Unless extended, the time to file a

¹ Pursuant to Supreme Court Rule 29.6, Petitioner Roku states
that it has no parent corporation and no publicly held company
owns 10 percent or more of its stock.

petition for a writ of certiorari will expire on July 2, 2024. This application is being filed at least 10 days before that date. As explained below, Roku requests an extension because the petition will likely raise complex statutory interpretation issues, and this extension will allow its counsel to adequately preparing a detailed petition for certiorari while balancing matters involving other clients. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). A copy of the court of appeals' opinion is appended hereto as Appendix A ("App. A"), and its order on Roku's petition for rehearing and rehearing en banc as Appendix B ("App. B").

2. Roku expects that its petition will raise unique, complex, and important issues concerning the interpretation of the International Trade Commission's enabling statute, 19 U.S.C. § 1337 (also known as "Section 337"), and the Commission's authority thereunder. Specifically, Roku's petition will address Section 337's so-called "domestic industry" requirement. Under Section 337 the Commission has the extraordinary power to bar the importation and sale of products that infringe a patent via an injunction-like remedy called an exclusion order, enforced by U.S. Customs. However, the party invoking such power must also show that an industry within 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). This threshold

rule ensures that the Commission's jurisdiction will only be invoked to protect genuine domestic innovative activity, not mere patent ownership. Without this domestic industry requirement, the Commission would turn into just another patent infringement forum, creating potential constitutional issues under Article III and/or the Seventh Amendment. See *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 138 S. Ct. 1365, 1379 (2018) (holding that while patent validity may be addressed in a non-Article III forum, the Court's holding did not address infringement actions).

3. For a patent owner complainant in a Section 337 proceeding to establish a domestic industry, the plain language of the statute requires a showing of certain "significant" or "substantial" domestic investments in "articles protected by" the patent that is the subject of the proceeding. 19 U.S.C. 1337(a)(3). Otherwise, the Commission's unique and powerful remedy of an exclusion order -- an order not available in the district court and not subject to the four-factor equitable test set forth in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006) -- is unavailable, and the patent owner must pursue infringement claims in district court.

4. In the case below, complainant UEI asserted a patent that claims a physical device. But UEI does not make or sell any "articles protected by" that patent, and instead relied

solely on investments made certain unpatented software, portions of which ultimately may be incorporated into or used with a variety of different consumer products, including certain televisions made by third-party Samsung. The Commission found these Samsung televisions to be "articles protected by" the patent. But despite Section 337's requirement that the domestic investments be both "substantial" and made "with respect to" the "articles protected by the patent," the Commission considered *all* of UEI's software-related investments and did not evaluate whether they were substantial to the Samsung televisions. The Commission issued an exclusion order barring the importation of certain Roku products into the United States, and the Federal Circuit affirmed. Roku's combined petition for rehearing, which received amicus support from Unified Patents, LLC, was subsequently denied.

5. Roku's petition will address two important questions of statutory interpretation and the Commission's authority under Section 337. First, does the Commission exceed its statutory authority under Section 337 by finding the complainant's investments in unpatented software or components to be made "with respect to the articles protected by the patent" when such software or components have many uses outside the patent-practicing articles? And second, does the Commission exceed its statutory authority under Section 337 when it fails to consider whether

the investments in unpatented software or components are “substantial” “with respect to the articles protected by the patent” at issue? These questions require addressing decades of Federal Circuit and Commission precedent, and interpretation of Section 337 (and the domestic industry requirement language itself) is an issue of great importance and of first impression for this Court.

6. Roku therefore respectfully requests an extension of 45 days, up to and including August 16, 2024 (a Friday), within which to file a petition for certiorari. Additional time is necessary and warranted because Roku’s counsel anticipates (1) preparing and filing a reply brief in an appeal pending before the U.S. Court of Appeals for the Ninth Circuit, due in early July 2024; (2) preparing for and representing a client in a Section 337 evidentiary hearing in the U.S. International Trade Commission, taking place between July 24, 2024 and July 31, 2024; (3) previously scheduled international travel during the initial scheduling period; (4) preparing for an expedited appeal before the U.S. Court of Appeals for the Second Circuit; and (5) preparing and filing a reply brief in an appeal pending before the U.S. Court of Appeals for the First Circuit, due in July 2024. Given these time constraints, Roku’s counsel will need additional time to prepare a petition for certiorari that address

the complex statutory interpretation questions at issue in this case.²

7. No meaningful prejudice would arise from the extension. If the writ of certiorari is granted, this Court would in either event hear oral argument and issue its opinion in the October 2024 Term.

Wherefore petitioner Roku respectfully requests that the time for filing the petition for writ of certiorari be extended up to and including August 16, 2024.

Dated: 6/12/2024

Respectfully submitted,



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² Additionally, given that the Commission has argued that its interpretations of Section 337 be granted deference on appeal, the requested extension of time would allow Roku's counsel to fully address the impact (if any) of the Court's forthcoming decisions in *Loper Bright Enterprises v. Raimondo* (No. 22-451) and *Relentless, Inc. v. Department of Commerce* (No. 22-1219).

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CERTIFICATE OF SERVICE

I, Matthew Rizzolo, counsel for Petitioner Roku, Inc. and a member of the Bar of this Court, certify that on June 12, 2024, one copy of the Application for an Extension of Time to File a Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit in the above-entitled case was sent via Federal Express and email to Carl P. Bretscher, 500 E Street, SW, Washington, DC 20436, carl.bretscher@usitc.gov, counsel for Respondent International Trade Commission, and Kirk T. Bradley, One South at the Plaza, 4000, 101 S. Tryon St., Charlotte, NC 28280-4000, kirk.bradley@alston.com, counsel for Universal Electronics, Inc. I further certify that all parties required to be served have been served.



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