

No. 24-180

In the Supreme Court of the United States

ROKU, INC.,

Petitioner,

v.

INTERNATIONAL TRADE COMMISSION, ET AL.,

Respondents.

*On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Federal Circuit*

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should disturb the Federal Circuit's factbound application of longstanding law on the domestic industry requirement when the court adhered to precedent interpreting the plain language of 19 U.S.C. § 1337(a)(3)(C).

CORPORATE DISCLOSURE STATEMENT

Respondent Universal Electronics Inc. (“UEI”) has no parent corporation. Immersion Corporation, a publicly held company, beneficially owns 10% or more stock in UEI. Immersion Corporation’s beneficial ownership is through its wholly owned subsidiary, Toro 18 Holdings LLC, and its corporate officers, Eric B. Singer and William C. Martin.

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INTRODUCTION

Neither of Roku's largely redundant questions presented warrants this Court's review. The decision below is unremarkable, applying established and uncontroversial precedent that relief under section 337(a)(3)(C) of the Tariff Act of 1930 is available "[a]s long as the patent covers the article that is the subject of the exclusion proceeding, and as long as the party seeking relief can show that it has a *sufficiently substantial investment in the exploitation of the intellectual property* to satisfy the domestic industry requirement." *InterDigital Commc'ns, LLC v. ITC*, 707 F.3d 1295, 1304 (Fed. Cir. 2013) (emphasis added).

That proposition has long been settled, even before the Federal Circuit spelled it out in 2013. As the court there noted, "the Commission has consistently interpreted the statute" this way, dating at least to 1992, shortly after the 1988 statutory amendment that added the language here at issue. *Id.* at 1304; see *id.* at 1298 (collecting cases). The statutory interpretation in *InterDigital* derived from "the clear intent of Congress and the most natural reading of the 1988 amendment," confirming that "section 337 makes relief available to a party that has a substantial investment in exploitation of a patent through either engineering, research and development, or licensing." *Id.* at 1303. In this case, UEI fit that same mold, and so the Federal Circuit, quoting *InterDigital*, applied the established standard to UEI's proof of a domestic industry in a routine way, reaching a routine outcome. Pet. App. 12a–13a.

The statutory language is clear, and its interpretation and application equally so, but the petition seeks to draw a divide where none exists. The petition stumbles from the start, prefacing its questions presented with the incorrect notion that “the plain language of the statute requires a showing of certain ‘significant’ or ‘substantial’ domestic investments ‘in articles protected by’ [the] patent.” Pet. (I). But the statute never refers to substantial domestic investments directly “in” the articles protected by the patent; it refers to substantial domestic investments “*in [the patent’s] exploitation, including engineering, research and development, or licensing.*” 19 U.S.C. § 1337(a)(3)(C) (emphasis added).

The 1988 amendment “expand[ed] the coverage of section 337 so that it would provide protection for American industries that did not manufacture products but were engaged in engineering, research and development, or licensing of the technology that others used to make products.” *InterDigital*, 707 F.3d at 1300. UEI, headquartered in Arizona, spent millions of dollars on domestic investments in engineering and research and development for QuickSet, which Samsung uses in its televisions to practice UEI’s ’196 patent. Congress captured precisely this scenario in section 337(a)(3)(C), and the court of appeals below needed only two paragraphs to confirm its application here. Pet. App. 12a–13a.

The petition at best seeks a case-specific ruling regarding UEI’s domestic industry under subparagraph (C). But answering that question does not even resolve the parties’ dispute, for the Commission never reached UEI’s independent proof

of a domestic industry under subparagraph (B). Pet. App. 24a, 57a. In short, the petition presents non-dispositive questions on a decision below that tracks the statutory text, its history, Congress’s intent, and decade-old precedent, leading to unanimous determinations—by each of the administrative law judge, the Commission, and the Federal Circuit—that UEI proved a sufficient domestic industry. This Court’s intervention is unnecessary. The petition should be denied.

STATEMENT OF THE CASE

A. Factual Background

1. UEI is a 38-year-old publicly traded company based in Scottsdale, Arizona, and a technology leader in home entertainment and home automation control. Pet. App. 79a. “UEI researches, designs, and produces products in the area of entertainment interaction and control.” *Id.* One of UEI’s flagship technologies is QuickSet, “a product family dedicated to simplifying and automating the configuration and control of remote controls and home entertainment devices.” *Id.*

UEI invested millions of dollars and devoted years of research and development to creating QuickSet. Pet. App. 235a, 252a–253a. The investments included its U.S. employees’ developing, maintaining, and supporting various aspects of QuickSet, including investments in the QuickSet Platform and QuickSet integrations for Samsung televisions. *Id.* UEI’s efforts resulted in several patents covering the technology, including the one at issue here: U.S. Patent No. 10,593,196 (“the ’196 patent”).

2. The '196 patent solved a problem that had been plaguing consumers for decades. Remote controls for televisions and other entertainment devices had trouble keeping pace with the proliferation of wireless and wired communication methods. Manufacturers' adoption of suitable control methods was inconsistent and fragmented, a problem compounded by a large installed base of prior generation appliances.

The '196 patent solved the problem “with a Universal Control Engine (‘UCE’), which can identify and select the optimal communication pathway for transmitting command signals to control each target device, based on information about that device received from a remote control device.” Pet. App. 25a. The invention thus coordinates available methods of controlling each device and selects the best and most reliable method for issuing commands to a given device.

3. Many of the world's leading consumer electronics brands and subscription broadcasting operators purchase or license QuickSet from UEI. In the case below, “UEI base[d] its domestic industry on its own investments in the development, maintenance, improvement, and integration of its QuickSet software into” the televisions offered by one of those leading brands, Samsung. Pet. App. 23a.

At trial, UEI presented evidence of “widespread adoption” of the invention in the industry, including in Samsung televisions. Pet. App. 50a, 229a. The evidence also included two laudatory articles—one by the Wall Street Journal and the other by CNET—praising UEI's invention as incorporated on the

Samsung televisions. See *id.* at 227a–228a (Wall Street Journal article: “Hallelujah! Samsung [using UEI’s QuickSet] fixed the most annoying thing about TVs! It only took 30 years!”); *id.* at 228a (“[T]he Wall Street Journal article praised the technical solution, and there is sufficient nexus to the [’]196 patent for such praise to be pertinent. ... The CNET [article] similarly praised the Samsung TVs, and similarly described the programming process ...”). Both articles “describe[d] in general terms what is recognizably claim 1 of the [’]196 patent.” *Id.* at 229a. As the Commission ruled, UEI “show[ed] that this objective evidence is tied to specific Samsung products that practice the invention disclosed and claimed in the ’196 patent.” *Id.* at 50a.

B. Proceedings Below

1. In 2020, UEI filed an ITC complaint accusing Roku of importing certain devices that infringed the ’196 patent—the Roku Ultra and the Roku Soundbar. Pet. App. 75a, 83a. After an evidentiary hearing (an ITC trial), the administrative law judge issued an Initial Determination (“ID”) finding that Roku violated section 337. *Id.* at 262a. The Roku Ultra and Roku Soundbar were found to infringe claims 1, 3, 11, and 13–15 of the ’196 patent. *Id.* at 192a. Roku proved none of these claims invalid. *Id.* at 230a, 233a.

The ID also found that UEI established the “technical prong” of the domestic industry requirement by demonstrating that the Samsung televisions practice claims 1 and 2 of the ’196 patent. Pet. App. 212a (“Accordingly, the Samsung TVs containing UEI’s QuickSet software practice claim 1 of the [’]196 patent.”); *id.* at 213a–214a (“Therefore,

the Samsung TVs containing UEI's QuickSet software can and do practice claim 2 of the [']196 patent when connected to a media source controllable by the Samsung TVs, including a cable box.”).

Continuing, the ID next found that UEI established the “economic prong” of the domestic industry requirement in two independent ways. First, UEI proved significant domestic employment of labor or capital under section 337(a)(3)(B). Pet. App. 248a (“Accordingly, UEI has made significant investment in labor and capital under prong B for the [']196 ... patent[.]”). Second, UEI proved substantial domestic investment in the exploitation of the '196 patent under section 337(a)(3)(C). *Id.* at 253a (“Therefore, UEI has shown by a preponderance of evidence that it has satisfied prong C for the [']196 ... patent[.]”).

As to subparagraph (C), the ID found that, “[q]uantitatively, approximately two-thirds of UEI's engineering and R&D investments [in] the QuickSet Platform and Samsung integration projects are carried out in the U.S.” Pet. App. 252a. The ID continued: “Quantitatively, as noted, UEI's investments go directly to the functionality necessary to practice many claimed elements of the ... [']196 patent[.]. ... Furthermore, maintenance of the QuickSet Platform is necessary to promote and sustain the commercial viability of the Samsung [televisions].” *Id.*

The ID also found that “QuickSet involves software and ‘software updates’ that result in practice of the asserted claims when implemented on the Samsung [televisions]” and that “the entirety of [UEI's asserted] expenditures is attributable to [its] domestic investment in research and development

and engineering.” Pet. App. 253a. The ID then quantified UEI’s annual R&D investments in exploiting the ’196 patent and concluded that UEI “is engaged in substantial research and development” with investments “sufficient to establish substantiality.” *Id.*

2. Roku petitioned for review of the ID. Pet. App. 19a. On review, the Commission “determined to affirm the ID’s findings of infringement and validity of the ’196 patent, with some clarifications,” and affirmed the technical prong of the domestic industry requirement. *Id.* at 24a. As for the economic prong, the Commission took “no position on whether UEI satisfied the economic prong under Section 337(a)(3)(B),” thus leaving it an open question.¹ *Id.* at 24a; see also *id.* 57a. As for subparagraph (C), “[t]he Commission determined not to review and thus adopted the ID’s findings that UEI satisfied the economic prong under Section 337(a)(3)(C).” *Id.* at 24a; see also *id.* at 57a.

The Commission issued a limited exclusion order and cease and desist order against Roku. Pet. App. 58a–61a, 66a. In response, Roku revised its products to remove the infringing functionality, and Roku

¹ Vice Chair Stayin joined the Commission’s determination to take no position on UEI’s showing under subparagraph (B). Pet. App. 57a n.9. But “[i]f the Commission were to reach the issue, he would affirm the ID’s findings that UEI satisfied the economic prong with respect to all three patents under Section 337(a)(3)(B).” *Id.* In Vice Chair Stayin’s view, “UEI is not required to show its QuickSet investments are significant in comparison to the Samsung [televisions], and UEI demonstrated that its investments are significant as set forth in the ID.” *Id.* (citing Pet. App. 248a–250a).

continues to sell its revised Ultra and Soundbar today. *Id.* at 83a, 188a–192a.

3. Roku appealed the final determination from the Commission. Pet. App. 2a. The Federal Circuit panel unanimously affirmed the Commission’s findings. On the economic prong, the court observed that “Subparagraph (a)(3) of Section 337 requires a party filing suit with the Commission to possess a domestic industry in the United States, which can be satisfied by showing ‘substantial investment in [a patent’s] exploitation, including engineering, research and development, or licensing.’ 19 U.S.C. § 1337(a)(3)(C).” *Id.* at 7a (alteration in original). The court also acknowledged the Commission’s finding that “[UEI]’s investments constituted exploitation of the asserted patent as required for investments under subparagraph (a)(3)(C).” *Id.*

Addressing Roku’s substantive argument, the court of appeals ruled that Roku incorrectly focused on investments directly in the Samsung televisions rather than, under the statute and precedent, investments in “the exploitation of the intellectual property.” Pet. App. 12a. The court said Roku’s approach “is not the appropriate inquiry,” explaining:

Our precedent does not require expenditures in whole products themselves, but rather, “sufficiently substantial investment in the exploitation of the intellectual property.” *InterDigital Commc’ns, LLC v. ITC*, 707 F.3d 1295, 1303–04 (Fed. Cir. 2013). In other words, a complainant can satisfy the economic prong of the domestic industry requirement based on

expenditures related to a subset of a product, if the patent(s) at issue only involve that subset.

Pet. App. 12a–13a. Applying that standard to UEI’s evidence of its investments in exploiting the ’196 patent, the Federal Circuit observed that, “[h]ere, there is no dispute that the ‘intellectual property’ at issue is practiced by QuickSet and the related QuickSet technologies, a subset of the entire television.” *Id.* at 13a. “Roku does not dispute that QuickSet embodies the teachings of the ’196 patent, nor does Roku explain why [UEI]’s domestic investments into QuickSet are not ‘substantial.’” *Id.* at 12a–13a. The Federal Circuit thus affirmed the Commission’s final determination that UEI satisfied the economic prong under section 337(a)(3)(C). *Id.* at 13a.

Roku then filed a combined petition for panel rehearing and rehearing en banc. Pet. App. 266a. The full Federal Circuit denied rehearing without comment or dissent. *Id.* at 267a.

REASONS FOR DENYING THE PETITION

I. The Federal Circuit Correctly Applied Long-Established Law That Embraces The Plain Language Of The Statute.

The petition acknowledges that the Federal Circuit’s precedent interpreting section 337(a)(3) has raised no concerns, and has “properly and consistently adhered to the statute.” Pet. 13 (capitalization omitted). The petition just challenges the Federal Circuit’s factbound application of that precedent here. *Id.* at 13–14. But in the case below, the court of appeals’ approach

fully aligned with precedent, including all three cases substantively addressed in the petition.

First, in *Microsoft Corp. v. ITC*, the Federal Circuit ruled there was no domestic industry because, although Microsoft had made substantial investments in an operating system for mobile phones, Microsoft had failed to “offer sufficient proof of articles actually protected by the patent.” 731 F.3d 1354, 1361 (Fed. Cir. 2013); *id.* at 1362 (“Microsoft failed to show that any Microsoft-supported products practiced the [patent-at-issue].”). Here, by comparison, UEI proved the thing missing in *Microsoft*. UEI proved that the UEI-supported Samsung televisions practice the ’196 patent. Roku readily acknowledges it: “Roku, UEI, and the ITC agree that the ITC found that the ‘article[] protected’ by the ’196 patent are Samsung televisions, such that these televisions satisfy the technical prong of the domestic industry requirement.” Pet. 15 (alterations in original); see also *id.* at 11 (“It is undisputed that the Samsung DI Products incorporate and use UEI’s QuickSet software to practice the ’196 patent and thereby satisfy the technical prong of the domestic industry requirement.” (quoting Gov’t C.A. Br. 39)).

Next, Roku points to *InterDigital*—an opinion that addresses and resolves the very issues presented by Roku’s petition. Pet. 13–14. The Federal Circuit interpreted the phrase “substantial investment in its exploitation” in section 337(a)(3)(C) and explained that “the word ‘its’ in the last clause of paragraph 337(a)(3) refers to the intellectual property at issue.” *InterDigital*, 707 F.3d at 1297. Thus, what matters for subparagraph (C) is not investments directly in the patent-practicing articles, as Roku contends, but

“substantial investment *in [the patent’s] exploitation, including engineering, research and development, and licensing.*” *Id.* at 1297 (alteration in original) (emphasis added).

Consistent with *InterDigital* and the statute, the Federal Circuit ruled that UEI made sufficiently substantial investments in the exploitation of the intellectual property at issue—the ’196 patent. See Pet. App. 13a (“Here, there is no dispute that the ‘intellectual property’ at issue is practiced by QuickSet and the related QuickSet technologies, a subset of the entire television. Roku does not dispute that QuickSet embodies the teachings of the ’196 patent, nor does Roku explain why [UEI]’s domestic investments into QuickSet are not ‘substantial.’”).

Lastly, Roku notes the precedent established in *Lelo Inc. v. ITC* that “[t]he plain text of § 337 requires a quantitative analysis in determining whether a petitioner has demonstrated a ‘significant investment in plant and equipment’ or ‘significant employment of labor or capital’” for subparagraphs (A) and (B).² 786 F.3d 879, 883 (Fed. Cir. 2015); Pet. 14. The court ruled that “[t]he Commission erred when it disregarded the quantitative data to reach its domestic industry finding based on qualitative factors.” *Id.*

Here again UEI proved the thing missing from the precedent relied on by Roku. UEI demonstrated *quantitatively* substantial investments in its exploitation of the ’196 patent via its documented investments in engineering and research and

² In *Lelo*, only subparagraphs (A) and (B) were involved, as the patent owner “did not set forth evidence of relevant investments under prong (C).” 786 F.3d at 885.

development for QuickSet. The ID, adopted by the Commission, identified the average dollar amount UEI spent annually between 2012 and 2020 and found it “sufficient to establish substantiality.” Pet. App. 253a. The ID was explicit that, consistent with *Lelo*, its analysis was quantitative:

Quantitatively, approximately two-thirds of UEI’s engineering and R&D investments [in] the QuickSet Platform and Samsung integration projects are carried out in the U.S. ... Quantitatively, as noted, UEI’s investments go directly to the functionality necessary to practice many claimed elements of the ... [’]196 patent[].

Pet. App. 252a.

The Federal Circuit’s decision below was fully consistent with the statute and precedent, including each of *Microsoft*, *InterDigital*, and *Lelo*, obviating any need for review by this Court.

A. The Federal Circuit Properly Affirmed UEI’s Substantial Investments in the Exploitation of the ’196 Patent Under Section 337(a)(3)(C).

1. The petition, having described *Microsoft*, *InterDigital*, and *Lelo*, argues that in this case “[t]he Federal Circuit has now abandoned its precedents and contradicted the plain language of the statute by blessing the ITC’s incorrect approach.” Pet. 15. The petition’s theory is that under subparagraph (C), the investment must be directly “in” the articles protected by the patent. See *id.* at (I), 2, 7, 8, 10, 11, 25–26 (variously arguing that subparagraph (C) requires “investments *in* ‘articles protected by the patent’” or

“investments *in* the protected article” or “investments *in* patent-practicing products” (emphasis added)).

Roku’s view tracks neither the statute nor the precedent interpreting and applying it. The statute’s language is straightforward: A domestic industry exists “with respect to the articles protected by the patent” if, “in the United States,” there is: “(A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in its exploitation, including engineering, research and development, or licensing.” 19 U.S.C. § 1337(a)(3). The statute does not require significant or substantial investment directly “in” the patent-practicing articles. It requires significant or substantial investment in the categories of activities recited in subparagraphs (A), (B), or (C), which activities must occur “in the United States” and “with respect to the articles protected by the patent.”

It has long been settled that investment in “*its* exploitation” in subparagraph (C) means investment in “[the patent’s] exploitation.” *InterDigital*, 707 F.3d at 1297 (alteration in original). Under the statute, qualifying investments in the patent’s exploitation “includ[e] engineering, research and development, or licensing” investments. 19 U.S.C. § 1337(a)(3)(C). If the “investment in [the patent’s] exploitation” is sufficiently “substantial” and made “in the United States, with respect to the articles protected by the patent,” then a domestic industry exists. *Id.* § 1337(a)(3).

As for the statutory phrase “with respect to the articles protected by the patent,” the Federal Circuit held more than a decade ago that it “means that the engineering, research and development, or licensing

activities must *pertain to products that are covered by the patent* that is being asserted.” *InterDigital*, 707 F.3d at 1297–1298 (emphasis added). The Federal Circuit and the Commission have been applying that rule ever since,³ and did so again here. UEI made investments in QuickSet that were sufficiently “substantial” (Roku does not contend otherwise), were made “in the United States” (undisputed and unsurprising, since UEI’s headquarters and R&D operations are in Arizona), and “pertain to products that are covered by the patent that is being asserted” (the Samsung televisions, which Roku admits practice the ’196 patent (see Pet. 15)).⁴

The opinion below, quoting *InterDigital*, ruled precisely that way. Pet. App. 12a–13a. The Federal Circuit recounted Roku’s incorrect “focus[] on [UEI]’s investments in certain smart TVs, rather than the QuickSet technology that is installed on those TVs.”

³ Roku posits that the Commission’s interpretation of the statute is not entitled to *Chevron* deference. Pet. 24–25 (quoting *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024)). None of the findings or rulings below relied on *Chevron*.

⁴ The petition hyperbolically states that the Samsung televisions “played no role whatsoever in the ALJ’s economic prong analysis.” Pet. 10. That notion is belied by the record below at every level. E.g., Pet. App. 12a–13a, 23a, 252a–253a. The petition also contends “[t]here is no dispute that UEI did not demonstrate that its investments “pertain to products that are covered by the patent that is being asserted.” Pet. 17. The contention presumes an investment will “pertain to” patent-practicing products only if made directly “in” those products. As explained, neither the statute nor precedent requires investments “in” the patent-practicing articles; they require investments “in” the exploitation of the patent, made “in the United States,” pertaining to (occurring “with respect to”) “articles protected by the patent.”

Id. at 12a. And the court reminded that its “precedent does not require expenditures in whole products themselves, but rather, ‘sufficiently substantial investment in the exploitation of the intellectual property.’” *Id.* (quoting *InterDigital*, 707 F.3d at 1304). The petition acknowledges that *InterDigital* “properly and consistently adhered to the statute.” Pet. 13 (capitalization omitted). The opinion below simply applied *InterDigital*.

2. As a corollary, the petition contends that UEI needed to identify “how much of UEI’s relied-upon investment was attributable or allocable to the Samsung televisions.” Pet. 16. Neither the statute nor precedent has ever required such an allocation. Consistent with the statutory requirements of subparagraph (C), UEI showed substantial investment in exploiting the ’196 patent through its engineering and R&D for QuickSet. UEI also showed that QuickSet is used in the Samsung televisions, and thus the investments in QuickSet pertained to—occurred “with respect to”—the patent-practicing Samsung televisions.⁵ No more is required, and the Federal Circuit correctly adhered to and applied its longstanding precedent to the particular facts here. See Pet. App. 12a (the pertinent investments concerned those for “the QuickSet technology that is installed on [Samsung] TVs,” and “Roku does not dispute that QuickSet embodies the teachings of the ’196 patent, nor does Roku explain why [UEI]’s

⁵ The petition references “the fact that” QuickSet is used in other products “that are not ‘protected by’ the ’196 patent.” Pet. 17–18. There is no such fact, nor is one cited. Other products indeed use QuickSet, but there has been no determination—nor any request for one—that those products do or do not practice the ’196 patent.

domestic investments into QuickSet are not ‘substantial’”).

Even if Roku’s proposed allocation were required, the record supports UEI, providing yet another reason why this Court’s review is unwarranted. UEI allocated its investments to the Samsung televisions (1) by identifying the QuickSet SDK projects that related to the Samsung televisions (while conservatively omitting investments in QuickSet projects that were “specific to other customers or in products not at issue”) (Pet. App. 239a); (2) by identifying the QuickSet Cloud projects that related to the Samsung televisions (*id.* at 235a–237a); and (3) by identifying the integration projects that related to the Samsung televisions (while conservatively disregarding other integration projects) (*id.* at 237a–240a).

In the end, the standard applied below, like the cases before it, adopt and apply Congress’s 1988 addition of subparagraph (C) in the intended way—“provid[ing] protection for industries that were based on the creation and exploitation of intellectual property even if they did not produce the ultimate products that embodied that technology.” *InterDigital*, 707 F.3d at 1300. UEI created and has exploited the ’196 patent, and UEI is entitled to protection for that domestic industry even though it does not produce the Samsung televisions that embody the technology.

B. The Federal Circuit Properly Affirmed That UEI's Investments in the Exploitation of the '196 Patent Were Quantitatively Substantial.

For its second issue, Roku argues that the Commission, and thus the Federal Circuit, “did not compare or evaluate UEI’s 2012-2020 domestic investments in QuickSet to any investments made over that same period by UEI, Samsung, or anyone else in the ‘articles protected by the patent’—the Samsung televisions.” Pet. 20. According to Roku, precedent requires “a quantitative analysis to determine whether there is a ‘substantial’ increase in R&D and engineering activities in the patent-practicing product due to [UEI]’s proffered domestic industry activities.” *Id.* (citing *Lelo*, 786 F.3d at 883). No review of this issue is warranted, for Roku’s comparative analysis is not grounded in the statute or precedent.

The plain language of the statute does not require comparing or evaluating the patent owner’s investments to investments made by others. The statute at issue, subparagraph (C), simply requires “substantial investments in [the patent’s] exploitation.” Those investments must also be “in the United States” and “with respect to the articles protected by the patent.” UEI satisfied these requirements. UEI’s evidence excluded foreign investments (see Pet. App. 252), and the domestic investments “pertain[ed] to” the Samsung televisions protected by UEI’s patent. *InterDigital*, 707 F.3d at 1298; see Pet. App. 253a.

Precedent likewise does not support Roku’s rule. In *Lelo*, the Federal Circuit stated that the terms

“significant” (in subparagraphs (A) and (B)) and “substantial” (in subparagraph (C)) “refer to an increase in quantity, or to a benchmark in numbers.” 786 F.3d at 883. In the case below, the ID (adopted by the Commission and affirmed by the Federal Circuit) undertook that very task. The ID performed a quantitative analysis, setting forth the average dollar amount spent by UEI annually between 2012 and 2020 on its exploitation of the ’196 patent. Pet. App. 253a. The ID omitted foreign investments, ensuring only UEI’s domestic investments were counted. *Id.* at 252a (“Quantitatively, approximately two-thirds of UEI’s engineering and R&D investments [in] the QuickSet platform and Samsung integration projects are carried out in the U.S.”). That evidence was “sufficient to establish substantiality.” *Id.* at 253a. And the ID confirmed that UEI’s investments “go directly to the functionality” of the ’196 patent. *Id.* at 252a.

In the Federal Circuit, Roku did not even challenge the substantiality of UEI’s investments in QuickSet. See Pet. 13a (“nor does Roku explain why [UEI]’s domestic investments into QuickSet are not ‘substantial’”). And there was “no dispute that the ‘intellectual property’ at issue is practiced by QuickSet.” *Id.* (“Roku does not dispute that QuickSet embodies the teachings of the ’196 patent”).

The Federal Circuit’s factbound opinion, just like the ID and Commission opinion before it, complied with the statute and associated precedent, spawning no reason for granting certiorari. See Sup. Ct. R. 10 (“A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.”).

II. The Questions Presented Have Already Been Answered And Are Not Recurring, Important, Or Even Dispositive Of This Case.

1. On top of the other problems with Roku's petition, this case does not warrant review because, Roku aside, there has been no disagreement on the answers to the questions presented. The petition does not contend that the decision below conflicts with this Court's precedents or involves any circuit split or even any intra-circuit disagreement, for there is none. In this case, there has been unanimity at every stage. The administrative law judge found for UEI, then the Commission unanimously affirmed, then the panel of the court of appeals unanimously affirmed, and then the full court of appeals denied Roku's petition for rehearing without comment or dissent.

The court of appeals' interpretation of section 337(a)(3)(C) has never been questioned by this Court, and despite the supposed importance of the issues (Pet. 21), the petition identifies no other case or petition for certiorari espousing the views Roku now presents. Roku is left with a mere factbound challenge arguing that the panel below misapplied the statute and associated precedents. See *Kyles v. Whitley*, 514 U.S. 419, 456–457 (1995) (Scalia, J., dissenting) (“[U]nder what we have called the ‘two-court rule,’ the policy [against reviewing alleged misapplication of a properly stated rule of law] has been applied with particular rigor when district court and court of appeals are in agreement as to what conclusion the record requires.”) (citing *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949)).

2. Determinations of an ITC complainant's domestic industry rarely if ever turn on disposition of the questions presented here, and the petition identifies no such case. As is well established, section 337(a)(3) "provides three different ways that a complainant can satisfy the domestic industry requirement"—subparagraphs (A), (B), and (C). *John Messalingua Assocs., Inc. v. ITC*, 660 F.3d 1322, 1327 (Fed. Cir. 2011). Complainants in the ITC typically rely on several of those ways, just as UEI did here, making it rare for a case to turn on resolution of any one path. Even the petition acknowledges that, "for procedural reasons, it is [an issue] unlikely to be escalated to this Court." Pet. 26. And while the petition requests certiorari because "it may be years before this Court is presented with another opportunity," *id.* at 26–27, that admitted paucity confirms why review is *not* needed.

3. On top of that, the issues on which Roku seeks review are not dispositive. Roku never contends that its preferred interpretation of subparagraph (C) would result in a determination that UEI necessarily lacks a domestic industry. Nor could it. The ID found that UEI also proved a domestic industry under subparagraph (B), which provides an independent basis. Pet. App. 244a–248a. The Commission affirmed the ID under subparagraph (C) without reaching subparagraph (B). *Id.* at 57a & n.9. Thus, if this Court were to reverse as to subparagraph (C), it would need to remand to allow the Commission to address subparagraph (B). Even putting aside all the other problems with Roku's petition, the questions presented would be "better resolved in other litigation where ... it would be solely dispositive of the case." *Relford v. Commandant*, 401 U.S. 355, 370 (1971).

4. Finally, Roku’s broad criticism of the prevalence and reach of ITC investigations (Pet. 21–24⁶) is no basis for review. Congress saw fit not only to enact the statute, but to expand it in 1988 to capture “the development in the United States of industries that devoted substantial investment to the exploitation of patent rights through engineering, research and development, and licensing.” *InterDigital*, 707 F.3d at 1304; see *John Messaliqua Assocs.*, 660 F.3d at 1327 (“But Congress, believing the Commission’s application of the domestic industry requirement had been too rigid, liberalized the domestic industry requirement by allowing that requirement to be satisfied by proof of non-manufacturing activity, such as licensing and research.”).

Roku’s criticism of the ITC’s remedy fares no better. Roku criticizes the ITC’s “near-automatic exclusion order absent very rare overriding issues of public interest—in stark contrast to district courts, where the availability of injunctive relief is restrained by the four factor *eBay* test.” Pet. 21; see *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388 (2006). But “[t]he legislative history of the amendments to Section 337 indicates that Congress intended injunctive relief to be the normal remedy for a Section 337 violation and that a showing of irreparable harm is not required to receive such injunctive relief.” *Spansion, Inc. v. ITC*, 629 F.3d 1331, 1358 (Fed. Cir. 2010). Roku’s criticisms are policy considerations that are more appropriately addressed to Congress, not this Court.

⁶ Roku raises concerns over non-practicing entities as well. Pet. 8, 22–23. That too makes this case a poor vehicle, as UEI is a *practicing* entity that, as pertinent here, has invested millions of dollars in developing innovations protected by the ’196 patent. Pet. App. 253a.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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