No. 24-180

In the Supreme Court of the United States

ROKU, INC., PETITIONER

v.

INTERNATIONAL TRADE COMMISSION AND
UNIVERSAL ELECTRONICS, INC.

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

REPLY BRIEF OF PETITIONER

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The International Trade Commission—an independent, quasi-judicial federal agency—has been granted under Section 337 of the Tariff Act the unique power to exclude from importation into the United States products that infringe patents. Recognizing that such *sui generis* remedies should be cautiously wielded, Congress imposed in Section 337 a threshold showing called the "domestic industry requirement."

Section 337 is clear—to satisfy this requirement, a complainant may rely only on investments that are made "with respect to the articles protected by the patent." Not just any level of investment will do—those investments must be "substantial" or "significant" with respect to the articles protected by the patent, necessitating a quantitative, context-based inquiry to assess their relative importance to the patent-practicing arti-

cles. Contravening Section 337, both the Commission and Federal Circuit found such an inquiry to be unnecessary.

Roku's petition presents an important question that must be addressed in *every* patent-related Section 337 investigation. The domestic industry requirement is a carefully constructed gatekeeper to the issuance of an exclusion order—a sweeping remedy without analogue, issued by a non-Article III forum and without applying any equitable test. In such a situation, adherence to the clear statutory language enacted by Congress is critical.

I. THE BRIEFS IN OPPOSITION HIGHLIGHT THE NEED FOR THIS COURT'S INTERVENTION

Section 337 provides that a domestic industry exists if there is in the United States, "with respect to the articles protected by the patent":

(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).

Here, UEI relied on R&D activities relating to its QuickSet software—which is not an "article protected by the patent," but may be a component in certain Samsung TVs that UEI alleged practice the patent (as well as other products). Thus, for the ITC to find a domestic industry exists, it needed to determine that these QuickSet-related investments were both (1) made "with respect to" the protected Samsung TVs and (2)

"substantial" when viewed in the context of the Samsung TVs. As the petition explains, the ITC disregarded the statute and never made such findings.

Respondents' briefs in opposition mischaracterize Roku's arguments, the facts of the case below, and Federal Circuit precedent, trying to couch the petition as fact-specific. But respondents' briefs highlight the correctness of Roku's arguments and why this Court's guidance is necessary.

A. Roku's Petition Addresses Recurring Statutory Interpretation Issues Concerning the Domestic Industry Requirement

Roku's petition questions whether the ITC is appropriately interpreting "with respect to the articles protected by the patent" and "substantial" in the context of the sweeping exclusionary power that Congress granted it. The government denigrates (Br. 16) the importance of this issue, and UEI (Br. 19) claims that it represents a "mere factbound challenge." But domestic industry must be addressed in every Section 337 investigation. Moreover, it is often a subject of ITC-related appeals to the Federal Circuit and has been addressed many precedential opinions over the past decade. See, *e.g.*, *Zircon Corp.* v. *ITC*, 101 F.4th 817 (2024); *Philip Morris Prods. S.A.* v. *ITC*, 63 F.4th 1328 (2023); *INVT SPE LLC* v. *ITC*, 46 F.4th 1361 (2022); *Broadcom Corp.* v. *ITC*, 28 F.4th 240 (2022); *Bio-Rad Labs, Inc.* v. *ITC*, 996 F.3d 1302 (2021); *Hyosung TNS Inc.* v. *ITC*, 926 F.3d 1353, 1361 (2019); *Lelo Inc.* v. *ITC*, 786 F.3d 879 (2015).

B. The Statutory Language "With Respect To" Requires Allocation of the Domestic Industry Investments to the Articles Protected by the Patent

The first step in the domestic industry analysis requires determining which of complainant's relied upon investments were made "with respect to" the articles protected by the patent. Respondents claim (see Gov't Br. in Opp. 9-11, UEI Br. in Opp. 8, 10) that Roku contends that only investments directly in whole, patent-practicing articles (as opposed to a component of such articles) may be counted for domestic industry and then knock down those contentions.

Roku has never advanced such an argument. Under the plain language of Section 337, domestic investments—even those in components—may be appropriately considered as part of the domestic industry, provided that the complainant can show that they were made "with respect to the articles protected by the patent." To make that showing, a complainant must allocate, in some way, the relied-upon component-related investments to the articles protected by the patent. Where the component itself practices the patent or is exclusively used in the referenced patent-practicing article, that allocation may be 100%. In other circumstances—like the case here, where QuickSet is used in many other products that, unlike the Samsung TVs, have not been found to practice the '196 patent—that allocation will be smaller. Without such an allocation, the ITC cannot determine—as required by the statute—which investments were made *with respect to the articles protected by the patent.* Indeed, when evaluating investments made under subsections (A) and (B),

both of which are subject to the same "with respect to language," the ITC consistently requires such an allocation to the patent-practicing articles. See, *e.g.*, *In re Certain Subsea Telecomm. Sys. & Components Thereof*, Inv. No. 337-TA-1098, 2019 WL 9596565, at *24 (Oct. 21, 2019) (finding no domestic industry under subsections (A) and (B) where complainant had not "allocate[d] expenses to account for non-domestic industry products"); see also *In re Certain Elec. Candle Prods. & Components Thereof*, Inv. No. 337-TA-1195, 2021 WL 4205637, at *5 (Sept. 13, 2021) ("When a complainant has investments or employment that are not solely directed to the domestic industry articles, the Commission requires that the complainant allocate the portion of those investments that are attributable to those domestic industry products.").

The ITC's finding that no such allocation was necessary under subsection (C)—and the Federal Circuit's affirmance thereof—eviscerates that same statutory requirement when a complainant invokes the "investment" prong of the test. Under respondents' view, if a component *might* be incorporated into or used by a patent-practicing article, all domestic investments relating to that component automatically are made "with respect to" that patent-practicing article—even if (as here) the component may be used in other products and satisfies just a single claim limitation of the patent at issue. See Pet. 17 n.2.

The government draws an analogy (Br. 10) to a car owner purchasing tires for a Honda Accord, stating that it would be natural to refer to the investment in the tires to be "for"—or in the language of the statute, "with respect to"—that car. Roku agrees. But if the

tire manufacturer invests $1M in making non-customized tires for a variety of vehicles, with only a handful of tires being actually used on Honda Accords, it would make no sense to say that the entirety of the tire maker's $1M investment was made "with respect to" Honda Accords—instead, one would allocate to count only the investments commensurate with the percentage of tires used by Honda Accords or specific to those cars.

In fact, this analogy illustrates why the petition should be granted. UEI is akin to the tire manufacturer in the analogy, QuickSet is the tires, and the Samsung TVs are the Honda Accords. Despite admitting that, like tires, the QuickSet software is used on a wide variety of products, UEI did not allocate its domestic investments in QuickSet to only those made "with respect to" the Samsung TVs. In finding such an allocation was unnecessary, Pet. App. 250a, the ITC and the Federal Circuit drastically reduced the statutory standard.[1]

C. "Substantiality" Must Be Measured in the Context of the Articles Protected by the Patent

The second step in the domestic industry analysis under subsection (C) is to analyze the allocated domes-

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[1] Respondents claim that such an allocation was performed (see Gov't Br. in Opp. 11-12, UEI Br. in Opp. 16) is not reflected in the record. See Pet. App. 187a-188a (UEI asserting that such an allocation under subsection (C) was unnecessary). Moreover, because any allegedly allocated amounts did not form the basis for the ITC's Final Determination, this would at most be addressed on remand under the correct legal standard.

tic investments to determine whether they are "substantial" when measured in the context of the articles protected by the patent. Respondents appear to argue (see UEI Br. in Opp. 14) in their briefs that Roku does not dispute that UEI's QuickSet investments were "substantial" under Section 337. This is incorrect and misses a crucial point of Roku's argument.

Roku asserts that the ITC's and Federal Circuit's decisions were based on a legal error—a misinterpretation of the statute. Roku strongly disputes the substantiality of UEI's QuickSet investments, when measured under the correct legal framework. That Roku did not separately raise a *factual* challenge to the ITC's determination made under the wrong legal test is unremarkable.

Ignoring the statute's "with respect to the articles protected by the patent" language, the government (Br. 12) oddly claims that evaluating UEI's QuickSet investments in the context of investments in the Samsung TVs would be an "apples and oranges" comparison that would "reveal little."[2] Such a quantitative analysis is *exactly* what the statute requires. Indeed, the Federal Circuit has elsewhere explained that determining the "relative importance" of the proffered domestic industry investments—*i.e.*, whether they are "substan-

[2] Any implication of an "apples and oranges" comparison stems from UEI's own litigation strategy. To establish a domestic industry, UEI could have sought and relied on its licensee *Samsung's* domestic investments in the Samsung TVs, and it could have also obtained Samsung's worldwide TV investments to provide appropriate context. In fact, UEI served a subpoena on Samsung, but did not enforce it. C.A. App. 28389-28391.

tial"—requires examining such investments in relation to the overall investments in the patent-practicing articles. *Lelo*, 786 F.3d at 883-884. No such analysis was performed here.

Again, the government's Honda Accord analogy (Gov't Br. in Opp. 10) is instructive. The question whether an investment in new tires is "substantial" to the vehicle cannot be determined in isolation, without quantitatively comparing it to other investments that the owner may have made in the vehicle—new engine, brakes, etc.

D. Respondents Misinterpret Relevant Precedent

Respondents misinterpret several Federal Circuit cases, all of which support Roku's plain language reading of the statute.

The government (Br. 14) cites *Motorola Mobility* v. *ITC*, 737 F.3d 1345 (Fed. Cir. 2013) for the proposition that nothing in Section 337 precludes a complainant from relying on investments "directed to significant components, specifically tailored for use in an article protected by the patent." But, unlike the Microsoft operating system software at issue in *Motorola Mobility*—which was "specifically tailored to meet the specifications and demands of each mobile device that utilizes it," 737 F.3d at 1351—the QuickSet software here undisputedly is *not* specifically tailored for use in the Samsung TVs and is used in a variety of different products made by different companies that have *not* been found to be "articles protected by" the '196 patent. Pet. App. 82a. Moreover, there has been no finding by the ITC or Federal Circuit that QuickSet is a "significant component" of the Samsung TVs—nor could there

be, given the de minimis value it adds to those products. See Roku C.A. Br. 41.

UEI claims (Br. 10) that *InterDigital Commc'ns, LLC* v. *ITC*, 707 F.3d 1295 (Fed. Cir. 2013) "resolves the very issues presented by Roku's petition." In that case, the Federal Circuit explained that under subsection (C), the relied-upon investments must be "with respect to the articles protected by the patent, which means that the engineering, research and development, or licensing activities ***must pertain to products that are covered by the patent that is being asserted***." 707 F.3d at 1297-1298 (quotations omitted, emphasis added). The court then found that the licensing investments relied upon by the complainant pertained to the protected articles, because the complainant relied only on its patent licensing activities related to particular entities and the domestic industry products produced by those entities practiced those specific patents. See *id.* at 1298-1299. As a consequence, there was a one-to-one relationship of claimed investment to the patent-practicing domestic industry products. Here, in contrast, UEI relied on QuickSet-related R&D activities beyond those related to the protected Samsung TVs and therefore improperly included engineering and R&D activities that were not made "with respect to" protected articles.[3] C.A. App. 26880.

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[3] The *InterDigital* court was not asked to address the question of evaluating "substantiality" in the context of the patent-practicing articles; nonetheless, the Federal Circuit's subsequent decision two years later in *Lelo* addresses that question. See pp. 11, *infra*.

Respondents try to distinguish *Microsoft Corp.* v. *ITC*, 731 F.3d 1354 (Fed. Cir. 2013) (Gov't Br. in Opp. 14, UEI Br. in Opp. 10) as inapposite because that case lacked an article protected by the patent—while here, the ITC found that the Samsung TVs practiced the patent at issue.[4] But establishing the existence of an article protected by the patent satisfies only the so-called "technical prong" of the domestic industry requirement. See *Broadcom Corp.*, 28 F.4th at 250. It does *not* excuse a complainant from needing to demonstrate—and the ITC from needing to find—that the complainant's relied-upon domestic investments are quantitatively "substantial" *with respect to those protected articles*. Respondents ignore the Federal Circuit's critical explanation that it wasn't enough for Microsoft to have made substantial domestic investments in its operating system software, 731 F.3d at 1361, just as it was not enough for UEI to make allegedly "substantial" investments in its QuickSet software when measured in a vacuum. "A company seeking [S]ection 337 protection must therefore provide evidence that its substantial domestic investment relates to an actual article that practices the patent." *Id.* at 1362. Such evidence was lacking here, as (1) UEI admittedly relied upon QuickSet software-related investments not limited to the Samsung TVs, and (2) UEI did not adduce evidence allowing for an evaluation of the substantiality of its QuickSet investments relative to the Samsung

[4] UEI misleadingly claims (Br. 14) that "Roku admits" that the Samsung TVs practice the '196 patent, but Roku contested that issue below. For purposes of Roku's petition, however, Roku is not challenging the ITC's technical prong findings.

TVs. Pet. 18, 20. UEI did not, as it claims, "prove[] the thing missing in *Microsoft*." UEI Br. in Opp. 10. The ITC exceeded its authority under Section 337 by finding that no allocation to or consideration of other investments in the Samsung TVs was necessary. See Pet App. 250a-252a.

Likewise, UEI did not, as it claims, "prove the thing missing from" the Federal Circuit's decision in *Lelo Inc.*, 786 F.3d 879. See UEI Br. in Opp. 11. While UEI claims that it "demonstrated quantitatively substantial investments in its exploitation of the '196 patent via its documented investments" for QuickSet, *id.* at 11-12, that ignores the fact that *Lelo*—and Section 337—requires a quantitative analysis to determine the substantiality of the investments *relative to the articles protected by the patent*. 786 F.3d at 883-884. There is no dispute that such evidence was lacking here, and that the ITC did not quantitatively analyze the substantiality of the UEI QuickSet investments to the Samsung TVs. And while the government argues (Br. 15) that *Lelo* "did not implicitly reject the possibility that a complainant could make a quantitative comparison in terms of an article components," this is irrelevant. In fact, Roku *agrees* with the government's reading of *Lelo*—UEI *could* have attempted to allocate its QuickSet-related investments specifically to the Samsung TVs, and then *could* have attempted to demonstrate that these allocated investments were quantitatively substantial in the context of the "overall investment with respect to" those articles protected by the '196 patent. 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 (U.S.I.T.C. Jan. 8, 1990)). But UEI did not do so—instead, it compared

its own domestic investments in *unprotected* software to its worldwide investments in that same software. Under the plain language of Section 337, that is insufficient.

II. The Issue Is Of Paramount Importance, And This Case Is An Ideal Vehicle

Finally, respondents seek to downplay the issues raised in the petition. But as noted above, the domestic industry requirement is a threshold issue that must be addressed in *every* Section 337 investigation. Similarly, respondents' arguments regarding allegedly unique facts below (see UEI Br. in Opp. 20) are of no moment, because the statutory interpretation issues raised here do not depend on any unique facts. The statutory language requiring that the domestic industry investments be made "with respect to" patent-practicing articles is in the preface of 19 U.S.C. 1337(a)(3), these issues apply with equal force to each subsection.

And respondents' references to the unremarkable absence of a circuit split (see Gov't Br. in Opp. 13, UEI Br. in Opp. 19) do not weigh against a grant of certiorari, as the Federal Circuit has exclusive jurisdiction over all Section 337 appeals. 28 U.S.C. 1295(a)(6). In fact, the Federal Circuit's exclusive jurisdiction means that this issue will percolate no further, notwithstanding its break from prior Federal Circuit precedent. Pet. 15.

Finally, respondents miss the mark in claiming that Congress, not this Court, is the appropriate forum to address the issues raised in Roku's petition (see Gov't Br. in Opp. 15, UEI Br. in Opp. 21). Congress was explicit when it amended Section 337 to include specific statutory language mandating a domestic industry requirement in patent-based investigations. It is precise-

ly this Court's duty to ensure that agencies that are creatures of Congress—especially independent, quasi-judicial ones wielding exclusionary powers like the ITC—do not stray from their statutory mandate. See *Civil Aeronautics Bd.* v. *Delta Air Lines, Inc.*, 367 U.S. 316, 322 (1961).

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition should be granted.

Respectfully submitted,

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DECEMBER 2024