

July 19, 2007

To the editor:

It is not in our national interest to short-circuit the U.S. patent system by using regulation of foreign trade to resolve patent infringement disputes between domestic companies. We come to this conclusion out of the same respect for protection of intellectual property that motivated your July 17th defense of the International Trade Commission's ban on importation of cellular phones containing chips made by Qualcomm.

Our principal objection to this ban is the massive collateral damage it will inflict on innocent third parties. In an economic analysis that we submitted on behalf of Qualcomm to the U.S. Trade Representative, we estimate that the ban will cause several billion dollars in harm to American consumers and firms. As an example, dozens of next-generation phones in the current pipeline of AT&T, Sprint-Nextel and other cellular carriers will be conspicuously missing from store shelves this coming holiday season.

Your claim that rejection of the ban would hurt U.S. international competitiveness fails to recognize how it will undercut the contributions that a vibrant and competitive mobile wireless industry makes to economic growth and broadband penetration. By hindering progress on these fronts, the ban will put a dent in U.S. productivity growth, a key factor in our international competitiveness.

Some trading partners will portray a presidential veto as proof of a double standard on patent enforcement. But if we succumb to their rhetoric, we shoot ourselves in the foot to prove we are tough on trade. How different is such a demonstration from China's recent execution of the former head of the State Food and Drug Administration to convince the world it is serious about unsafe exports?

The U.S. vigorously enforces patent rights in the federal courts, not in regulatory agencies. Patent law seeks to avoid collateral damage by confining remedies to transactions between the disputants. Should a Santa Ana, California court come to the same conclusion as the ITC regarding infringement of Broadcom's power-saving patent, the company will receive monetary damages or injunctive relief or both, leading us to infer that it is using the ITC to do an end run around the patent system.

The Bush Administration should reject the ITC's ban, and let Broadcom have its rightful opportunity to receive fair compensation from Qualcomm in federal court without holding our national prosperity and international competitiveness at ransom.

Prof. Daniel L. McFadden, Recipient of 2000 Nobel Prize in Economics

Prof. Glenn A. Woroch, Executive Director, Center for Research on Telecommunications Policy