UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

The Honorable Cameron R. Elliot
Administrative Law Judge

In the Matter of **Certain Active Electrical Cables and Components Thereof**	**Investigation No. 337-TA-1446**

COMMISSION INVESTIGATIVE STAFF'S RESPONSE TO NON-PARTY MARVELL SEMICONDUCTOR, INC.'S MOTION TO DISQUALIFY FISH & RICHARDSON (PUBLIC VERSION)

The Commission Investigative Staff ("Staff") hereby responds to non-party Marvell Semiconductor, Inc.'s ("Marvell") motion to disqualify Complainants' counsel Fish and Richardson ("Fish"). Marvell seeks to disqualify Fish from representing Complainants Credo Semiconductor, Inc. and Credo Technology Group Ltd. (collectively "Credo"), alleging that Fish's representation of Credo in this Investigation in conjunction with Fish's on-going and prior representations of Marvell present a conflict of interest and violate ABA Model Rules of Professional Conduct 1.7 and 1.9.

Based on the current record, the Staff is of the view that Fish's representation of Credo here presents a conflict of interest with its on-going and prior representation of Marvell, requiring disqualification under the applicable ethical standards.

I. STATEMENT OF FACTS

A. Procedural Background

On March 13, 2025, Fish filed the Complaint in this Investigation on behalf of Credo. Doc. ID 845760. Although Marvel is not a named Respondent, as originally filed, the Complaint

Amphenol Exhibit 1096
Amphenol v. Credo
IPR2025-00699

identified certain Marvell retimer chips,[1] specifically including those chips in the infringement claim charts attached to the Complaint. *Id*. at Exs. 34–45. Those charts, in turn, match the Marvell chips to certain limitations of the Asserted Claims. *Id*.

The Complaint, in part, sought an order, "excluding from entry into the United States all of Respondents' certain active electrical cables and components thereof that infringe one or more claims of" the Asserted Patents." *Id*. at 46. In addition, the Complaint sought an order "directing each Respondent to cease and desist from the importation, marketing, advertising, demonstrating, warehousing inventory for distribution, sale and use of certain active electrical cables and components thereof that infringe one or more claims of" the Asserted Patents. *Id.*

On the same day as the Complaint was filed, Marvell emailed Fish stating: "[redacted] Motion, Exh. 9 at 2.

Subsequently, on March 18, 2025, Fish filed an Amended Complaint, withdrawing and removing all references to Marvell from the Complaint, exhibits, and claim charts. EDIS Doc. ID 846150. [redacted] Motion at 8.

The Commission instituted the Investigation on April 14, 2025. Doc. ID 848700. During the ensuing discovery, Credo sought information, among other things, about the Marvell chips in

[1] Retimer chips are used, among other applications, in active electrical cables ("AECs"), such as the Accused Products.

the Accused Products, both from the Respondents, and directly from Marvell by subpoena. Soon after the issuance of the subpoena, Marvell filed the Motion.

On July 21, 2025, Credo and Fish jointly filed an opposition to the Motion. ("Opposition).[2]

B. Marvell-Fish Relationship

According to the Motion, [redacted]. Motion at 3. [redacted]. *Id.* at 3-5. [redacted]" Opposition at 13.

II. APPLICABLE LAW

The Administrative Law Judge has the authority to disqualify an attorney or firm from practice before him pursuant to Commission Rule 201.15 and incident to his inherent authority to control proceedings. *See* 19 C.F.R. § 201.15; 5 U.S.C. § 556(c); *Certain Dynamic Random Access Memory and NAND Flash Memory Devices and Products Containing Same*, Inv. No. 337-TA-803, Order No. 40, at 4 (Apr. 18, 2012). At the Commission, "this authority has rarely been exercised, as disqualification of counsel is drastic and disfavored." *Id.*, *citing Certain Network Interface Cards and Access Points for Use in Direct Sequence Spread Spectrum Wireless Local Area Networks and Products Containing Same*, Inv. No. 337-TA-455, Order No. 26 at 3 (Aug. 2, 2001) ("*Network Interface Cards*"). Indeed, "[t]he right of a party to choose and maintain its own

[2] Separately, on the same day, Respondents filed a response in which they take "no position" with respect to disqualification. Doc. ID 857387 at 1.

counsel is a matter of significant importance." *Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets*, Inv. No. 337-TA-543, Order No. 29 at 19 (Mar. 9, 2006). Thus, disqualification is used "only when absolutely necessary," with "the movant bear[ing] the burden of showing that disqualification is warranted by a high standard of proof." *Certain Semiconductor Chips with Minimized Chip Package Size & Prods. Containing Same*, Inv. No. 337-TA-605, Order No. 15 at 3 (Dec. 27, 2007); *Certain Cold Cathode Fluorescent Lamp Inverter Circuits and Products Containing Same*, Inv. No. 337-TA-666, Order No. 7 (Apr. 17, 2009); *Network Interface Cards*, Order No. 26, at 3; *Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus*, Inv. No. 337-TA-337, Order No. 40, at 8 (July 17, 1992).

In general, the Commission looks to the ABA Model Rules of Professional Conduct ("Model Rules") for guidance when faced with motions to disqualify counsel. *Baseband Processor Chips*, at 20; *Certain Convertible Rowing Exercisers*, Inv. No. 337-TA-212, Order No. 45, at 2 (July 30, 1985) (applying the Model Code). The Model Rules represent a "'national consensus, which the Commission should follow.'" *Network Interface Cards*, Order No. 26, at 4 n.3, quoting *Certain Salinomycin Biomass and Preparations Containing Same*, Inv. No. 337-TA-370, Order No. 13, at 5 (May 25, 1995).[3] Marvell seeks disqualification under Model Rules 1.7 and 1.9.

Model Rule 1.7 ("Conflict of Interest: Current Clients") states in relevant part: "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest." Such a

[3] The Commission has also looked to state rules of professional responsibility under appropriate circumstances. *See Certain Mechanical Lumbar Supports and Products Containing Same*, Inv. No. 337-TA-415, Order No. 6, at 5 (Nov. 2, 1998) (applying Michigan rules); *Certain Recombinantly Produced Human Growth Hormones*, Inv. No. 337-TA- 358, Order No. 23A, at 7 (Oct. 22, 1993) (citing Indiana and DC rules).

conflicts exists if "the representation of one client will be directly adverse to another client." Model Rule 1.7. "Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." *Id.*, Comment 6.

Rule 1.9(a) ("Duties of Former Clients"), on the other hand, states, "A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." Model Rule 1.9. A "substantial relationship" exists, and disqualification is therefore warranted, "if the similarity between 'the two representations is enough to raise a common-sense inference that what the lawyer learned from his former client will prove useful in his representation of another client whose interests are adverse to those of the former client.'" *Apeldyn Corp.v. Samsung Elecs. Co. Ltd.*, 660 F. Supp. 2d 557 at 562 (D. Del. 2009).[4] In this inquiry, "[k]nowledge of … 'playbook information'–for example, 'what lines of attack to abandon and what lines to pursue, what settlements to accept and what offers to reject,'–is a basis for disqualification." *Madukwe v. Del. State Univ.*, 552 F. Supp. 2d 458 at 462 (D. Del. 2008). "To determine whether a current matter is 'substantially related' to a matter involved in a former representation, and, thus, whether disqualification under Rule 1.9 is appropriate, the Court must answer the following three questions: '(1) What is the nature and scope of the prior representation at issue? (2) What is the nature of the present lawsuit against the former client? (3) In the course of the prior representation, might the client have disclosed to his attorney confidences which could be relevant to the present

[4] Applying Model Rule 1.9.

action? In particular, could any such confidences be detrimental to the former client in the current litigation?'." *Innovative Memory Solutions, Inc. v. Micron Tech., Inc.,* 2015 U.S. Dist. LEXIS 63861, at *4 (D. Del. May 15, 2015).

Rule 1.9 "exists for the purpose of preventing even the potential that a former client's confidences and secrets may be used against him, to maintain public confidence in the integrity of the bar, and to fulfill a client's rightful expectation of the loyalty of his attorney in the matter for which he is retained." *Id.* at *4. Because maintaining the integrity of the legal profession and "preventing the appearance of impropriety" are of paramount concern, courts "resolve all doubts in favor of disqualification." *United States v. Clarkson*, 567 F.2d 270, 273, n.3 (4th Cir. 1977); *International Business Machines Corp. v. Levin*, 579 F.2d 271, 283 (3d Cir. 1978).

III. ANALYSIS

Marvell seeks to disqualify Fish under both Model Rule 1.7 and 1.9. The Staff address each in turn.

A. Fish's concurrent representation of Marvell and Credo violates Rule 1.7.

There is no dispute that Fish is concurrently representing Credo (in this Investigation) and Marvell (in on-going trademark matters). "Absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated." Comment 6 to Rule 1.7. Nor does the conflict disappear because different lawyers within the firm handle the different matters because the conflict of one attorney is imputed to the entire firm. *See* Model Rule 1.10(a) ("While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9."). Thus, the key question here is whether Fish's representation

of Credo in this Investigation is directly adverse to Marvell. Based upon the facts here, the Staff believes the answer is yes.

Credo contends that, at least with respect to certain Accused Products, it is in fact the Marvell chips that satisfy certain limitations of the Asserted Patents. Indeed, Credo insists that discovery on Marvell chips is relevant and essential to its infringement allegations. *See, e.g.*, Complainants' Written Explanation of Discovery Dispute, EDIS Doc. ID. No. 857543 at 1, ("Production of the Marvell technical documents and source code in Respondents' possession, which Credo has been seeking since its April 21st initial discovery requests, is critical …"). To that end, not only is Credo pursuing discovery about the relevant Marvell chips from the Respondents, but it is also seeking direct discovery of Marvell through a subpoena.

The subpoena[5] to Marvell states that "Marvell [Active Electrical Cable] Components (as defined in the subpoena) are understood to be components that employ or include functionality or features that, as part of the Respondents' AECs, may practice one or more limitations of the asserted claims and therefore contribute to the accused infringement by the Accused AECs." Motion, Exh. 11. The subpoena goes on to say that "[i]nformation concerning Marvell's AEC Components is likely to support Complainants' contentions that Respondents' making, using, offering for sale, and selling their AECs infringe one or more claims in" the Asserted Patents. *Id.* The subpoena contains 24 requests for production, seeking detailed information and source code relating to "AEC Components" manufactured by Marvell for the Respondents. *Id*. Req. for Production at 14-20. The subpoena defines "AEC Component," in part, as including Marvell's Alaska® line of Products manufactured or sold for use in AECs, including, but not limited to,

[5] In the Staff's view, it is of little consequence that a law firm other than Fish served the subpoena here because Fish would necessarily be relying on the fruits of that discovery in striving to prove a violation under Section 337.

Marvell's Alaska® A and Alaska® P Product families ….” *Id.* at Definitions, p. 2. Lastly, and by way of example, the subpoena, seeks “Documents sufficient to show the structure and functionality related to the ***selection of registers to specify initial preequalizer coefficient values***.” *Id.* at Request 16 (emphasis added). The emphasized language matches with certain limitations in the asserted claims. *See, e.g.*, Motion at 14.

Regarding [redacted], Marvell states that it has shared [redacted] .” Motion at 18. Marvell adds that here [redacted] *Id.* at 19.

In response, Credo/Fish state that “***Fish*** has not taken a directly adverse positions towards Marvell,” that there are no trademark issues in this Investigation and adds that Fish has implemented an ethical wall segregating Fish attorneys on the trademark team from those on this Investigation. Opposition at 30, 33, 37-38 (emphasis added).

The Staff is of the view, again based on the current record, that targeting the Marvell chips in certain Accused Products creates direct adversity. The fact that there are no trademark infringement allegations in this Investigation does not alter the Model Rule 1.7 analysis because “a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated.” Comment 6 to Rule 1.7. Fish’s trademark work for Marvell directly benefits Marvell and the sale of its retimer chips in the U.S.

market. On the other hand, Fish's representation of Credo in this Investigations is directly adverse, as it aims to exclude products containing those very chips from the U.S, market because of the role those chips allegedly play in the infringement of the Asserted Patents.

The Opposition points that there are no "contributory infringement" allegations against Marvell. Although that is technically correct, Marvell's chips remain an integral part of the direct infringement contentions against the AEC products that use Marvell chips, as evidenced by the discovery sought from Marvell. Contending that Marvell's chips play a part in the infringement of the Asserted Patents and pursuing an exclusion order against products that incorporate those very chips would seem to present an actual conflict of interest. It is difficult to reconcile Credo's "critical" need for discovery about Marvell chips as part of its infringement and remedy contentions with the statement that "Crdeo has not, and does not intend to, seek adjudication of Marvell chips or seek their exclusion outside of the Respondents' AECs." Opposition at 10.

Further, the Opposition argues that "Marvell will, at most, suffer a negligible economic harm if the Commission issues the requested remedial orders because those Respondents using Marvell chips will have to shift sales to other jurisdictions." Opposition at 15. Credo/Fish offer no support for their quantification of the economic impact of excluding the Accused Products with Marvell chips from the U.S. market on Marvell as "negligible" other than to state Marvell will be able to sell the impacted chips to other customers involved in non-AEC applications. *Id*. Nor does the Opposition adequately address the potential impact of an exclusion order on chips imported by Marvell on behalf of any Respondents or for use in Respondents accused AECs. *See* Motion at 28 (citing Nickel Decl.). Without speculating about the significance of the economic impact of a potential exclusion order, the Staff believes that the impact is as much economic as it is legal.

Similarly, the Opposition attempts the minimize the importance of the Marvell chips as "one of dozens of parts" or "but a single component in the Accused Products." Opposition at 26-27. But Credo expressly singled out this one component when it defined the Accused Products as "active electrical cables and components thereof. Active electrical cables are copper cables including a ***digital signal processor (DSP) or retimer***." Orig. Compl., EDIS Doc ID 845760, ¶ 19 (emphasis added). And the Commission's Notice of Institution of Investigation defines the scope of the investigation as "active electrical cables, which are copper cables including high bandwidth connectors, high speed metal conductors, and digital signal support elements such as a ***digital signal processor (DSP) or retimer***, and components thereof." EDIS Doc ID 848700 (Apr. 14, 2025) (emphasis added). Thus, the emphasis on the role of these retimer chips in the scope of this Investigation, as well as their clear importance to proving alleged infringement, undermine the warning about "a parade of conflict horribles that threatens basic practice at the ITC" if the Motion is granted. Opposition at 26. That is because there is no need to run conflicts check on "every circuit board, touch screen, memory module, processor, communications chips and supporting software in both accused and domestic industry cell phone systems" as the Opposition posits. *Id*. Rather the focus remains on what is expressly identified and called out in the complaint, the Notice of Investigation, sought discovery and the infringement contentions.

On this record, the Staff believes Fish's representation of Credo in this Investigation is directly adverse to Marvell.[6]

[6] Lastly, the Staff agrees that to the extent the ALJ determines there is a conflict of interest under Model Rule 1.7, the ethical wall cannot cure the conflict because the fact remains that Fish is advancing positions on behalf of Credo that are directly adverse to Marvell's interests, and that directly undermines trademark work Fish currently does for Marvell.

B. Fish's prior representation of Marvell violates Rule 1.9.

In the Staff's view, and again based on the current record, Fish's past representation of Marvell also appears to warrant disqualification.

In particular, aside from the on-going trademark work, Marvell has identified a dozen patent infringement cases between 2007 and 2020 in which Credo's lead counsel in this Investigation represented Marvell. Motion at 3-4. At least one other Fish attorney on Credo's current legal team here also represented Marvell in one of those cases. *Id*. at 4.

Under Model Rule 1.9, the inquiry here focuses on whether Fish's past representation of Marvell is "substantially related" to this Investigation. A "substantial relationship" exists, and disqualification is therefore warranted, "if the similarity between 'the two representations is enough to raise a common-sense inference that what the lawyer learned from his former client will prove useful in his representation of another client whose interests are adverse to those of the former client.'" *Apeldyn Corp.*, 660 F. Supp. 2d at 562.

Marvell highlights one of the dozen patent cases where Fish represented Marvell, the so-called "*CCO* matter", as having a substantial relationship to this case. Specifically, the Motion provides four bullet points purporting to show the technical similarities between the technology at issue in the *CCO* matter and the that which is involved here. Motion at 29-30.

The Opposition, on the other hand, counters that the products in the *CCO* matter are unrelated to the Marvell chips at issue here, and that the patents at issue in the two matters are also different. Opposition at 29.

Although Marvell and Credo/Fish present competing versions of the technology and the patents in the two matters, Marvell states that over the course of Fish's prior representation, Fish has had access to "a trove" of highly confidential and privileged Marvell information, including

Marvell's "most sensitive technical information" [redacted]," as well as non-technical information like [redacted] Motion at 4. Further, Marvell states, Fish has been "privy to strategic aspects of Marvell's litigation practice—[redacted]" *Id*. The Opposition does not adequately address this point.

The Third Circuit's application of Model Rule 1.9 is instructive. In considering a disqualification motion under Model Rule 1.9, the Third Circuit has stated that the Rule exists for the purpose of preventing "even the potential that a former client's confidences and secrets may be used against him," to maintain "public confidence in the integrity of the bar," and to fulfill a client's rightful expectation of "the loyalty of his attorney in the matter for which he is retained." *In re Corn Derivative Antitrust Litig*., 748 F.2d 157, at 162 (3d Cir. 1984). "Therefore, in attempting to determine whether a substantial relationship exists, disqualification is proper when the similarity in the two representations is enough to raise a common-sense inference that what the lawyer learned from his former client will prove useful in his representation of another client whose interests are adverse to those of the former client." *Innovative Memory Solutions,* 2015 U.S. Dist. LEXIS at *4-5 (internal quotation marks and citations omitted).

It is undisputed that two of the Fish attorneys here, including lead counsel, had an attorney-client relationship with Marvell. Nor is there a dispute that Marvell's products can be directly impacted by a potential exclusion order here. Clearly, Marvell is not consenting to Fish representing Credo in this Investigation. Thus, the only remaining issue with respect to Rule 1.9(a)

is whether this Investigation is "substantially related" to any of the dozen patent litigation matters in which Fish represented Marvell.

Even only focusing on the *CCO* matter which Marvell is highlighting, and despite Credo's disputes about the technical similarity between this Investigation and the *CCO* matter, it is difficult to imagine that Fish, as a trusted and very capable firm, has not obtained Marvell's most sensitive confidences—ones that will be impossible to unlearn. The dispute between the two sides about the similarity of the technologies involved in the *CCO* matter and this Investigation creates, at least, a doubt that should be resolved in favor of Marvell. At bottom, the Staff is of the view that the subject matters involved here and in the *CCO* matter are close enough that they might potentially implicate claim construction, prior art/invalidity analysis, depositions of witnesses previously interviewed as friendly client employees, and Marvell's general patent litigation/settlement strategy. Any such knowledge of Marvell's playbook information gained over the years tips any doubt in favor of disqualification. *See Madukwe*, 552 F. Supp. at 462, *Innovative Memory Solutions*, 2015 U.S. Dist. LEXIS at *13 (stating "any doubts about whether disqualification is appropriate should be resolved in favor of the moving party, in order to ensure protection of client confidences.").[7]

C. Competing claims of prejudice favor disqualification.

To the extent the ALJ agrees that there is direct adversity under either Model Rule 1.7 or 1.9, the prejudice to Marvell is self-evident. Yet, Credo/Fish argue that even if there is an ethical violation, Fish should not be disqualified because otherwise "***Credo*** would suffer immense prejudice." Opposition at 31 (emphasis added). But prejudice in impinging on Credo's right to

[7] This conclusion is in no way meant to impugn the integrity of Fish and its lawyers that enjoy a deservedly great professional reputation. But knowledge learned is hard to compartmentalize or unlearn in this context.

choose counsel and the cost associated with securing new counsel is at least partially a function of Credo's own strategy. [redacted] Motion at 3. Thus, both Credo and Fish knew the potential for conflict here and yet elected to continue with the representation. Further, the fact that Credo promptly removed the express references to Marvell when contacted by Marvell shows at the least that Credo was aware of the potential problem. After all, if Credo firmly believed that "there is no there there," it would have no reason to amend the Complaint.

Finally, there does not appear to be any evidence that the disqualification motion is purely a tactical device. *See* Opposition at 36-37. Marvell, a non-party, has acted swiftly here. First, it contacted Credo immediately upon learning that its chips were expressly identified as part of the infringement read in the Complaint. Seemingly satisfied with the amendments to the Complaint that removed any reference to its chips, Marvell next reacted quickly upon receiving a subpoena on June 11, 2025, taking steps, including the required meet and confer, that culminated in the filing of the Motion on July 10, 2025. Thus, the legal costs and delays that may result from disqualification are at least partially attributable to Credo itself. Regardless, any delays or associated cost do not outweigh the import of what the rules of professional responsibility are intended to accomplish.

IV. CONCLUSION

Disqualification motions are not taken lightly and as stated in the Opposition "ALJs regularly deny" such motions. Opposition at 17. But disqualification motions are also highly fact specific. As fully detailed above, the Staff believes that the facts here warrant disqualification and that Marvell's motion should be granted.

Respectfully submitted,

/s/ Steve Shahida

David O. Lloyd, Acting Director
Steve Shahida, Investigative Attorney

Office of Unfair Import Investigations
U.S. International Trade Commission
500 E Street, S.W., Suite 401
Washington, D.C. 20436
(202) 205-2571

July 25, 2025

CERTIFICATE OF SERVICE

The undersigned certifies that on July 25, 2025, copies of the foregoing

COMMISSION INVESTIGATIVE RESPONSE TO NON-PARTY MARVELL SEMICONDUCTOR, INC.'S MOTION TO DISQUALIFY FISH & RICHARDSON

were delivered, pursuant to Commission regulations, to the following interested parties as indicated:

The Honorable Lisa R. Barton Secretary to the Commission U.S. International Trade Commission 500 E Street S.W. Room 112 Washington D.C. 20436	*Via* Electronic Filing
The Honorable Cameron R. Elliot Administrative Law Judge U.S. International Trade Commission 500 E Street S.W. Room 317 Washington D.C. 20436	*Via* E-Mail: Michael.Turner@USITC.gov
Richard A. Sterba FISH & RICHARDSON P.C. 1000 Maine Ave., SW Washington, DC 20024	*Counsel for Complainants Credo Semiconductor Inc. and Credo Technology Group Ltd.* *Via* E-Mail: FRServiceCredoITCOffense@fr.com
Adam D. Swain ALSTON & BIRD LLP 950 F Street NW Washington, DC 20004	*Counsel for Respondent Molex, LLC* *Via* E-Mail: MolexCredoITC@alston.com
Paul F. Brinkman, P.C. KIRKLAND & ELLIS LLP 1301 Pennsylvania Avenue, N.W. Washington, DC 20004	*Counsel for Respondent TE Connectivity Corporation* *Via* E-Mail: KE-TE-ITC@kirkland.com
Thomas E. Garten COVINGTON & BURLING LLP One CityCenter 850 Tenth Street, NW Washington, DC 20001	*Counsel for Respondent Amphenol Corporation* *Via* E-Mail: Amphenol-COV-337@cov.com

Matthew J. Dowd
DOWD SCHEFFEL PLLC
1717 Pennsylvania Ave., NW
Washington, DC 20006

Counsel for Complainants Credo Semiconductor Inc. and Credo Technology Group Ltd
Via E-Mail: Mdowd@dowdscheffel.com

/s/ Steve Shahida

Steve Shahida
Investigative Attorney

Office of Unfair Import Investigations
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
(202) 205-2044 (office)

CERTIFICATE OF SERVICE

The undersigned certifies that on July 31, 2025, copies of the foregoing

COMMISSION INVESTIGATIVE STAFF'S RESPONSE TO NON-PARTY MARVELL SEMICONDUCTOR, INC.'S MOTION TO DISQUALIFY FISH & RICHARDSON (PUBLIC VERSION)

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The Honorable Cameron R. Elliot Administrative Law Judge U.S. International Trade Commission 500 E Street S.W. Room 112 Washington DC 20436	*Via* E-Mail: Michael.Turner@USITC.Gov
Richard A. Sterba FISH & RICHARDSON P.C. 1000 Maine Ave., SW Washington, DC 20024	*Counsel for Complainants Credo Semiconductor Inc. and Credo Technology Group Ltd.* *Via* E-Mail: FRServiceCredoITCOffense@fr.com
Adam D. Swain ALSTON & BIRD LLP 950 F Street NW Washington, DC 20004	*Counsel for Respondent Molex, LLC* *Via* E-Mail: MolexCredoITC@alston.com
Paul F. Brinkman, P.C. KIRKLAND & ELLIS LLP 1301 Pennsylvania Avenue, N.W. Washington, DC 20004	*Counsel for Respondent TE Connectivity Corporation* *Via* E-Mail: KE-TE-ITC@kirkland.com
Thomas E. Garten COVINGTON & BURLING LLP One CityCenter 850 Tenth Street, NW Washington, DC 20001	*Counsel for Respondent Amphenol Corporation* *Via* E-Mail: Amphenol-COV-337@cov.com

Matthew J. Dowd
DOWD SCHEFFEL PLLC
1717 Pennsylvania Ave., NW
Washington, DC 20006

Counsel for Complainants Credo Semiconductor Inc. and Credo Technology Group Ltd
Via E-Mail: Mdowd@dowdscheffel.com

/s/ Steve Shahida

Steve Shahida
Investigative Attorney

Office of Unfair Import Investigations
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436
(202) 205-2044 (office)