UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of **CERTAIN MEMORY DEVICES AND ELECTRONIC DEVICES CONTAINING THE SAME**	**Investigation No. 337-TA-_____** **(Docket No. 3751)**

PROPOSED RESPONDENT TESLA, INC.'S PRE-INSTITUTION PUBLIC INTEREST STATEMENT

TESLA-1151
Tesla v. Bulletproof
IPR2026-00204

Pursuant to 19 CFR § 210.8(c)(1), proposed respondent Tesla, Inc. ("Tesla") respectfully responds to the Notice (89 Fed. Reg. 48,688 (June 7, 2024)) soliciting comments on the public interest issues raised by the Complaint filed June 3, 2024, by MimirIP LLC ("MimirIP"). As discussed below, MimirIP's requested remedial orders would have negative effects on the U.S. electric vehicle ("EV") industry; cause a shortage of fully electric vehicles at a time when those vehicles are increasing in demand;[1] reduce competition in the EV market, leading to price increases and a reduction in consumer choice;[2] harm U.S. consumers interested in purchasing EVs;[3] and frustrate the Biden Administration's declared policy goals of increasing EV jobs, production, and usage.[4] The Commission previously considered proposed remedial orders to exclude parts for U.S.-manufactured cars, and concluded that they raise sufficient public interest concerns to merit evaluation before the ALJ. To ensure a full evidentiary record on these issues affecting the public health and welfare, competitive conditions in the U.S., and U.S. consumers, Tesla respectfully requests the Commission delegate the public interest to the presiding ALJ.

1. Certain Articles Impacted by the Requested Remedial Orders are Electric Vehicles

In its Complaint, MimirIP asserts six patents, each purportedly infringed by "certain dynamic random access memory ("DRAM") and NAND devices" representing a small fraction of

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[1] *See, e.g.*, www.forbes.com/sites/energyinnovation/2024/05/19/the-vibes-lie-electric-vehicles-accelerate-toward-50-of-global-sales/ ("In the United States, the world's second largest auto market, EV sales are forecast to rise 20% compared to 2023.").

[2] *See, e.g.*, www.iea.org/reports/global-ev-outlook-2024/trends-in-electric-cars (In the U.S., since 2022, the price gap between electric models and conventional equivalents has "begun to close, as market size increases and competition leads carmakers to cut prices.").

[3] *See, e.g.*, https://b2b.kbb.com/dealer-resources/news/ev-purchase-high-2023/ ("Tesla continues to dominate the EV market," with Tesla Model Y and Tesla Model 3 topping the list of best-selling electric vehicles of 2023 in the U.S.).

[4] *See, e.g.*, https://tinyurl.com/27bsjn9w (White House Fact Sheet "announcing $325 million in new investments this week across three programs to increase the reliability and resilience of publicly accessible chargers, advance EV technologies, and support workforce development for EV charging deployment and maintenance.").

the total cost of Tesla's EVs with the accused "self-driving automotive computers and automotive media control units."[5] As a remedy for the alleged infringement, MimirIP seeks an exclusion order that would disrupt Tesla's production of high-performance fully electric vehicles in the United States. In 2023, 55% of all EV sales in the U.S. were Tesla vehicles, and each of those vehicles was engineered and manufactured in the U.S.[6]

2. The Requested Remedies Would Adversely Impact U.S. Consumers, Workers, and the Economy

MimirIP seeks to exclude Micron memory components it alleges are used to manufacture or repair Tesla's EVs. Founded in 2003, Tesla is the first successful American automotive startup in more than 50 years. Tesla designs, builds, and sells the world's most advanced fully electric vehicles out of its U.S. manufacturing facilities. To do so, Tesla employs more than 100,000 workers worldwide and invests tens of billions of dollars in U.S. manufacturing and associated economic activity.[7] In California, according to a 2022 economic report, Tesla-supported jobs (direct and indirect) exceeded 80,000 in 2021, Tesla supported economic activity totaling $16.6 billion in 2021, and total capital investments in California facilities since 2016 exceeded $5 billion.[8] In Texas, Tesla was responsible for $5.8 billion in property investment and contributed (direct and indirect): nearly $2.2 billion to Travis County in 2022, alongside more than 15,000

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[5] Complaint ¶¶ 1.0, 3.15.

[6] *See* https://b2b.kbb.com/dealer-resources/news/ev-purchase-high-2023/ ("[O]ne out of every three EVs sold in 2023 was a Tesla Model Y"—amounting to 394,497 vehicles sold in 2023—while the Tesla Model 3 was the second best-selling EV with 220,910 vehicles sold in 2023.).

[7] *E.g.*, Tesla 2023 Form 10-K at 13; *see also id.* at 8 (manufacturing), 30 (properties).

[8] *See* www.tesla.com/blog/teslas-california-footprint ("From 2018 to 2021, Tesla paid an average of $1 billion in federal, state and local taxes annually."); *see also* digitalassets.tesla.com/tesla-contents/image/upload/Tesla-California-Economic-Impact-Final-Report-October-2022 (explaining "How Tesla stimulates the California economy").

jobs created, and $789 million in wages paid.[9] In Nevada, since 2014, Tesla invested $6.2 billion, built a 5.4 million square foot Gigafactory providing 17,000 local construction jobs for the buildout alone, and staffs more than 11,000 employees.[10]

Tesla is the automotive leader in developing technologies, systems, and software to enable self-driving vehicles using primarily vision-based technologies.[11] Tesla's accused FSD Computer runs a neural network in its vehicles. To continually train and improve these neural networks for providing safety and convenience functionality through advanced driver assist systems, Tesla relies on the computer to process the field data captured by its vehicles. These efforts resulted in Tesla vehicles achieving among the lowest overall probability of injury of any vehicles ever tested by the U.S. government's New Car Assessment Program."[12]

In contrast, MimirIP does not make, sell, or develop anything. "Mimir is a patent management and licensing company, which owns the Asserted Patents by assignment." MimirIP's domestic industry allegations hinge on its single license to Korean-entity SK hynix that allegedly practices one claim of each asserted patent.[13] MimirIP's only contribution to the U.S. economy has therefore been to acquire patents and file lawsuits both here and in district courts.

3. The Requested Remedies Would Adversely Impact Public Health and Welfare

An exclusion order that covers parts destined for energy-efficient fully electric vehicles raises public health and welfare issues. As the Commission recently noted in considering remedial

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[9] *See* https://tinyurl.com/22wunjcb (2023 "Update" by Travis County Commissioners Court further noting Tesla's plan to invest more than $10 billion over time into its Texas vehicle factory).

[10] *See* www.tesla.com/blog/continuing-our-investment-nevada (Tesla plans to invest $3.6 billion more, adding 3,000 new employees and two new factories in Nevada.)

[11] *E.g.*, Tesla 2023 Form 10-K at 5.

[12] *See* www.tesla.com/VehicleSafetyReport.

[13] Complaint ¶ 9.4. SK hynix is a Korean corporation headquartered in South Korea. *Id.* ¶ 9.5. MimirIP describes the US subsidiary of SK hynix, SK hynix America Inc., as "a semiconductor sales company" having "sales offices" in California and other states. *Id.* ¶¶ 9.5-9.6.

orders directed at electric vehicle batteries:

> [I]n taking into account the relevance of this public-interest factor, the Commission is cognizant of the contribution EVs make to reducing automobile emissions and the contribution reduced automobile emissions make in efforts to combat climate change and its adverse impacts on public health and welfare. The Commission also recognizes, analogous to the views expressed in *Crankpin Grinders*, that it is in the public interest to avoid imposing a remedy that would hamper efforts to reduce automobile emissions and the consequent contribution such efforts make to combatting climate change and its adverse effects on public health and welfare. We take into account the relevance of this issue to the public health and welfare in determining the appropriate remedy in this investigation.

Certain Lithium Ion Batteries, Battery Cells, Battery Modules, Battery Packs, Components Thereof, & Processes Therefore, Inv. No. 337-TA-1159, Commission Op. (Public Version) at 70 (Mar. 4, 2021) (delaying remedy due to adverse effect on production of electric vehicles), citing *Certain Automatic Crankpin Grinders*, Inv. No. 337-TA-60, USITC Pub. 1022 (Dec. 1979) (denying remedy against parts needed for energy-efficient automobiles). MimirIP's public interest comment ignores these Commission concerns. On this basis alone—the potential adverse effect on the availability of fully electric vehicles to U.S. consumers—the Commission should delegate public interest to the ALJ for factual development.

Furthermore, as the Biden Administration has announced, there are key national interests in increasing the number of EV jobs, upping EV production, and putting as many American-made EVs on the road as possible. Tesla's EV operations significantly contribute to these key national interests for individual consumers and emergency responders alike. For example, the Anaheim California Police Department is currently using Tesla EVs as patrol cars after experiencing supply chain issues with another car manufacturer.[14] By contrast, MimirIP's requested remedies are in

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[14] *See* www.foxbusiness.com/technology/california-police-department-unveils-tesla-model-y-patrol-vehicles-cybertrucks-could-next; *see also* www.fremontpolice.gov/community/hybrid-and-electric-patrol-vehicles (Fremont Police are using Tesla vehicles manufactured locally in the City of Fremont as patrol cars).

direct conflict and would instead styme existing and future U.S. EV employment opportunities at Tesla, eliminate EV production for the U.S. market, and cause a shortage of EVs in the U.S.

4. Like or Directly Competitive Articles Cannot Replace the Excluded Components

MimirIP alleges Tesla already relies on "DRAM and NAND devices from other market participants."[15] In support, it cites an article from The Korea Economic Daily on Samsung's anticipated role in manufacturing the FSD chip for Tesla's Hardware 5.0 Computer. But the same article identifies Hardware 5.0 as a product Tesla plans to produce "three to four years" from 2023, thus confirming the long lead time for hardware changes in the FSD Computer.[16] Further, MimirIP is not actually accusing the FSD chip. Rather, MimirIP is accusing a DRAM memory chip, and for that component it provides no evidence that Tesla relies on other market participants.

MimirIP also provides vague comments about other automobile companies and component suppliers, but that is not enough to conclude that like or directly competitive articles can replace the excluded Micron chips in a commercially reasonable time. MimirIP again ignores the Commission's observations in *Lithium Ion Batteries*, showing that automobile components are not "standardized products," and that it could "take years" for another supplier to meet an automakers' highly specialized needs and be capable of substituting the excluded components. *Lithium Ion Batteries*, Commission Op. at 63-64. Indeed, the Commission delayed enforcement of the exclusion order in that Investigation by up to four years for certain EV vehicles because that was the amount of time necessary to qualify a new supplier.[17]

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[15] *See* MimirIP P.I. Statement at 4.

[16] *See* www.kedglobal.com/korean-chipmakers/newsView/ked202307180017.

[17] *See also Certain Vehicle Control Systems, Vehicles Containing the Same, & Components Thereof*, Inv. No. 337-TA-1235, Notice of Institution at 2 (Dec. 21, 2020) (directing the parties to develop and the ALJ to take evidence on the ease or difficulty of "removing, replacing, or altering the accused automobile driving-mode control systems, and . . . [the ALJ shall] make findings and issue a recommendation concerning the impact of this issue on any remedy").

Dated: June 17, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing document:

PROPOSED RESPONDENT TESLA, INC.'S
PRE-INSTITUTION PUBLIC INTEREST STATEMENT

have been filed and served on this 17th day of June, 2024, on the following:

The Honorable Lisa R. Barton Secretary to the Commission **U.S. International Trade Commission** 500 E Street, S.W. Washington, D.C. 20436	☐ **Via First Class Mail** ☐ **Via Hand Delivery** ☐ **Via Federal Express** ☒ **Via Electronic Filing**
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/s/ Tracy Haynes
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