

# Enforcing Intellectual Property Rights at the ITC

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## 19 U.S.C. § 1337(a)(1):

“Unfair methods of competition and unfair acts in the importation of articles . . . into the United States” are unlawful.

Three statutory requirements for investigation based on registered IP: (1) importation or sale for importation; (2) infringement of valid IP (an unfair act); and (3) domestic industry.

The domestic industry has two “prongs”, economic and technical

Licensing activities alone can suffice.

# Overview Background and Statutory Framework --Requirements

Three statutory requirements for investigation based on trade secrets: (1) importation; (2) misappropriation (an unfair act); and (3) injury to a domestic industry.

The domestic industry is not limited to the complainant's activities--The analysis focuses on whether there is a nexus between the alleged unfair acts and the injury.

A complainant need not wait until an infringing importation or sale occurs--A threat of injury can suffice.

Section 337 reaches acts of trade secret misappropriation that occur entirely abroad.

Unique Rules--Federal Rules do not apply

Parties

Complainant(s) (e.g, IP owner)

Respondent(s) (e.g., accused infringer)

Office of Unfair Import Investigations

ALJ conducts the “trial”

Hears evidence in trial-type administrative hearing

Issues initial determination (ID) on violation issues

Issues recommended determination (RD) on remedies

May hear evidence of the “public interest”

## Commissioners make final determination (FD)

Either party may petition for review of ID/RD

Commission may review *sua sponte*

If violation found, Commission determines appropriate remedy  
(exclusion order and/or cease and desist order)

## President (USTR) can review FD on policy grounds

USTR very rarely intervenes

## ITC has *in rem* jurisdiction over imports

Can pursue an unlimited number of infringing parties

There is no need to establish personal jurisdiction over defendants

Personal jurisdiction can be difficult to establish in district courts when foreign defendants are involved – especially numerous, unknown infringers in foreign countries

No need to establish venue is proper

## Expedited timelines - the principal advantage

ITC often rules within 16 to 18 months after investigation begins

Temporary relief may be available in certain circumstances, and those relief proceedings must be concluded in 90 – 150 days

No stay for IPRs—even after PTAB decision

# Typical ITC Schedule

Event	Deadline
Litigation commences	30 days after filing of a complaint
Answer is due	30 days after litigation commences
Initial Scheduling Conference	30-45 days after litigation commences
Initial Document Exchange	30-60 days after litigation commences
Fact Discovery Deadline	3-4 months after litigation commences
Expert Discovery Deadline	4-6 months after litigation commences
Summary Judgment	4-6 months after litigation commences
Pre-trial Conference	7-8 months after litigation commences
Trial	8-9 months after litigation commences
Post-trial Briefing	Immediately after trial
Decision by Judge	11-12 months after litigation commences
Conclusion of Investigation/ITC Review	16 months after litigation commences

# Advantages of ITC

## Broad Discovery

- Nationwide subpoena power

- Adept at handling foreign discovery

## No jury

All levels of the ITC are experienced with Intellectual Property



No damages

However, the ITC's remedies are powerful – Increasingly appealing as the Federal Circuit reins in damages and good for short life cycle products

Injunctive relief in the form of exclusion orders:

## **Limited Exclusion Order**

Directed to the infringing imports of named respondent(s)

## **General Exclusion Order**

Directed to *all* infringing imports regardless of source – both known and unknown entities – even those not named as respondents in the proceeding

Limited Exclusion Order would be circumvented

Pattern of violation and difficult to determine source of infringing products

## **Cease and Desist Order**

Directed to domestic entities with inventories of infringing goods in the U.S.

# Types of Violations Asserted

Fiscal Year	Solely Patent Infringement	Solely Trademark Infringement	Solely Trade Secret Misappropriation	Patent, Trademark or Copyright Infringement, Trade Secret Misappropriation, and/or Other Unfair Acts	Copyright Infringement, Trade Secret Misappropriation, Unfair Competition, False Advertising and/or Other Unfair Acts
2010	94	1	1	5	2
2011	126	2	-	-	1
2012	119	3	1	4	2
2013	113	2	2	3	4
2014	93	1	1	4	1
2015	71	7	1	9	-
2016	97	3	3	10	4
2017	102	1	1	8	5

[https://www.usitc.gov/intellectual\\_property/337\\_statistics](https://www.usitc.gov/intellectual_property/337_statistics)

# Technology Areas

## Percent of Investigations Per Year

Product Type	2010	2011	2012	2013	2014	2015	2016	2017
<b>Automotive/Manufacturing/Transportation</b>	5	4	4	8	11	9	11	5
Chemical compositions	0	1	2	2	2	0	3	0
<b>Computer and telecommunications products</b>	19	25	27	35	27	27	23	46
Consumer electronics products	12	15	18	4	6	9	4	5
Integrated circuits	14	6	16	2	5	5	1	2
LCD/TV	14	17	4	0	5	5	0	2
Lighting products	3	5	2	5	2	2	1	2
Memory products	3	5	0	2	6	0	1	3
<b>Pharmaceuticals and medical devices</b>	2	5	5	15	12	5	16	12
Printing products	9	4	2	0	2	6	1	3
Small consumer items	3	8	10	8	16	9	4	5
Other	16	5	10	19	6	23	35	15

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# Violations Found by Year

	2011	2012	2013	2014	2015	2016	2017
<b>Determination</b>							
<b>Number of Violations</b>	6	10	11	8	7	11	14
<b>Number of No Violations</b>	11	12	10	10	4	5	2
<b>Total No of Completed Investigations</b>	17	22	21	18	11	16	16
<b>Percentage of Violations</b>	35.3%	45.5	47.6	44.4	63.6	69	88

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– Questions / Discussion