

International Trade Commission (ITC) Proceedings Summary

I. Brief overview of ITC Investigations

- A. The proceedings involve investigation of infringing activities by the ITC. Generally, the ITC is attempting prevent the importation of patented or trademarked goods.¹ However, the investigation can include copyrighted or trade secret materials. Antitrust claims may also be asserted relating to the importation of certain goods. (Generally, this type of investigation is referred to under the rubric of investigating unfair trade practices in the importation of goods.)
- B. Generally, the investigation is started after a proper complaint is filed with the commission. The complaint must meet the requirements of 19 CFR 210.4, 210.12 and 68 Fed. Reg. 32971 (June 2003). Next, the ITC votes on whether or not it will initiate an investigation. If, an investigation is initiated, a NOTICE of investigation will be announced in the Federal Register.
- C. Each investigation is assigned an ALJ to preside over the proceedings and issue an initial determination about the violation of section 337. The parties to these proceedings are the Commission Investigative Attorney (CIA), the Complainant, and the Respondent. The CIA comes from the Commissions Office of Unfair Import Investigations (OUII) represents the public's interest in preventing the importation of infringing goods. The NOTICE generally announces the parties and the CIA.
 1. The Complainant and the Respondent is typically represented by private firms that practice in customs, international trade or IP work.
 2. Generally, the ALJ is required to resolve a section 337 proceeding within 15 months from the date the NOTICE is issued in the Federal Register.

¹ Most claims involved are patent and trademark infringement claims. However, unfair competition claims, such as misappropriation of trade secrets, passing off, reverse passing off, false advertising and antitrust claims may also be asserted in front of the ITC.

II. ITC process

- A. The ITC and claims in the International Trade Court are governed by the Administrative Procedures Act (APA). These are administrative trials conducted in front of Administrative Law Judge (ALJ). The ALJ's decision is subject to review by the ITC. Formally they are called 337 proceedings conducted under 19 USC § 1337. The procedural rules can be found in 19 CFR parts 201 and 210.
- B. Generally, the ALJ conducts a formal evidentiary hearing on the merits of a section 337 violation. The parties have a right to a fair hearing (adequate notice, cross-examination, presentation of evidence, objection, motion, argument and other rights relating to a fair hearing). Following the hearing, the ALJ issues an Initial Determination (ID) about a 337 violation. The ITC may reject or elect to review the ID. If the ID is not reviewed, then it becomes final. If the ID is reviewed, the ITC can adopt, modify, or reject the ALJ's ID.
1. The ALJ can issue a set of ground rules for the proceedings, which are similar to the Federal Rules of Civil Procedure.
 2. However, there is no jury and sometimes evidentiary rules may be more relaxed.
 3. There is no jury trial or right to a jury trial in section 337 investigations.
 4. A section 337 Complaint or proceeding can be settled or resolved by consent decree.
- C. Based on the ID, the ITC can issue an exclusion order barring the importation of infringing goods. The exclusion orders are effective within 60 days and may be disapproved by the President for policy reasons. The exclusion order may be appealed to the Federal Circuit.

III. Available Remedies

- A. The primary relief is an injunctive decree prohibiting the importation of infringing goods. The ITC can also issue cease and desist letter to importers. An expedited or a temporary injunctive decree is available, in the appropriate circumstances.
1. Typically competitors will be seeking to prohibit entry into the US market. This can be both foreign and domestic corporations. Often times, this is part of a larger acquisition strategy to buy out competitors.