The ITC Comes to Silicon Valley: The ITC’s Growing Role in Patent Adjudication

Presented By:
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Office of Unfair Import Investigations
U.S. International Trade Commission

May 18, 2010
New Section 337 Complaint Filings
FY 2000 – 2010 to date
# Section 337 Caseload
FY 2000 - 2010 (to date)

<table>
<thead>
<tr>
<th>FY</th>
<th>No. of New 337 Complaints</th>
<th>Total No. of New &amp; Ancillary 337 Matters Instituted</th>
<th>No. of 337 Matters Active During the FY</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>11</td>
<td>12</td>
<td>25</td>
</tr>
<tr>
<td>2001</td>
<td>29</td>
<td>32</td>
<td>40</td>
</tr>
<tr>
<td>2002</td>
<td>15</td>
<td>16</td>
<td>46</td>
</tr>
<tr>
<td>2003</td>
<td>19</td>
<td>21</td>
<td>41</td>
</tr>
<tr>
<td>2004</td>
<td>27</td>
<td>27</td>
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</tr>
<tr>
<td>2005</td>
<td>25</td>
<td>29</td>
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<tr>
<td>2006</td>
<td>34</td>
<td>40</td>
<td>70</td>
</tr>
<tr>
<td>2007</td>
<td>31</td>
<td>33</td>
<td>73</td>
</tr>
<tr>
<td>2008</td>
<td>43</td>
<td>50</td>
<td>88</td>
</tr>
<tr>
<td>2009</td>
<td>29</td>
<td>36</td>
<td>85</td>
</tr>
<tr>
<td>2010 to date (10/1/09 – 5/14/10)</td>
<td>29</td>
<td>33</td>
<td>76</td>
</tr>
</tbody>
</table>
### Number of Trials Held in Section 337 Investigations Before ITC Administrative Law Judges (FY 2006 - FY 2010 to date)

<table>
<thead>
<tr>
<th>FY</th>
<th>No. of Trials Held</th>
<th>Total No. of Trial Days</th>
<th>Type of Investigation – Asserted Unfair Act(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>14</td>
<td>101</td>
<td>13 patent invs.; 1 patent &amp; trade secret misappropriation inv.</td>
</tr>
<tr>
<td>2007</td>
<td>10</td>
<td>63</td>
<td>8 patent invs.; 1 patent &amp; trade dress inv; 1 patent &amp; trademark inv.</td>
</tr>
<tr>
<td>2008</td>
<td>19</td>
<td>125</td>
<td>19 patent invs.</td>
</tr>
<tr>
<td>2009</td>
<td>19</td>
<td>113</td>
<td>17 patent invs.; 1 patent &amp; trademark inv; 1 trade secret misappropriation inv.</td>
</tr>
<tr>
<td>2010 (10/1/09 – 5/14/10)</td>
<td>12</td>
<td>76</td>
<td>12 patent invs.</td>
</tr>
</tbody>
</table>
Unfair Acts Asserted in Section 337 Complaints
CY 2004 – 2008

- Patent Infringement
- Trademark Infringement
- Trade Secret Misappropriation
Types of Products & Technologies At Issue

- Wide Variety of Products & Processes Have Been At Issue in Section 337 Investigations
  - Computer/Telecommunications Technologies
  - Mechanical/Industrial Devices
  - Medical Technologies
  - Chemical Compositions & Processes
  - Broad Range of Consumer Goods
Products at Issue in Recent 337 Investigation Include:
Sources Of Accused Imports In Recent Investigation Have Included Respondents/Imports From:

- Belgium
- British Virgin Islands
- Canada
- Cayman Islands
- China
- England
- Finland
- France
- Germany
- India
- Ireland
- Israel
- Italy
- Japan
- Korea
- Malaysia
- Mexico
- Netherlands
- Pakistan
- Singapore
- Sweden
- Switzerland
- Taiwan
- Thailand
- Turkey
Common Theme of Complainants Who Use Section 337

- Desire for Speedy Discovery & Speedy Adjudication

- By a Forum with Expertise in the Resolution of Complex Intellectual Property Disputes
Office of Unfair Import Investigations ("OUII")

- Office of Attorneys Devoted to Section 337 Work
- Sometimes Referred to as the "Staff"
Changing Roles of OUII During the Course of Section 337 Proceedings
Changing Roles of OUII During the Course of Section 337 Proceedings

→ **Prior to Filing of a Complaint:**
  OUII is Available to Discuss Prospective Complaints

→ **Upon Filing of a Complaint:**
  OUII Advises Commission on the Sufficiency of the Complaint

→ **Upon Institution of the Investigation:**
  OUII Participates as an Independent Party Appearing on Behalf of the Public Interest – working to investigate the facts and develop the record & formulating its own positions on the issues
During Course of an Investigation, OUII:

- Participates in discovery, motions practice & trial, as well as the review & remedy phases before the Commission

- Takes positions on the issues (on an issue-by-issue basis)

- Comments on settlements & proposed consent orders (and is available to assist with settlement negotiations)
For More Section 337 Information

- **USITC website** - www.usitc.gov
- **IP Trade Remedy Investigations Page**
  - 337 FAQs Booklet; 210 Rules
  - 337 Investigational History
  - Links to EDIS (ITC’s Electronic Document Information System)