

PATENT LITIGATION BEFORE  
THE INTERNATIONAL TRADE COMMISSION  
AND ITS EFFECTIVENESS  
(1988-1992)

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## I. INTRODUCTION

The International Trade Commission (the "ITC" or the "Commission") is one of two venues for enforcement of United States Letters Patents, the other venue being the Federal District Courts. The ITC conducts investigations of and issues relief against unfair methods of competition and unfair acts in the importation and/or sale of imported goods under 19 U.S.C. § 1337 (commonly referred to as "Section 337"). The majority of ITC investigations are based on the importation of goods which are alleged to infringe a United States patent.

This paper focuses on ITC investigations based on patent infringement<sup>2</sup> and addresses (a) the authority of the ITC to conduct investigations, (b) the procedures under which ITC investigations are conducted, (c) the statutory elements of a Section 337 violation, (d) the requirement of a domestic industry to support a complaint under Section 337, (e) the differences between ITC investigations and litigation before the Federal Courts, (f) ethical considerations, and (g) the effectiveness of ITC investigations since the amendments to Section 337 effective in 1988.

## II. STATUTORY BASIS FOR ITC INVESTIGATIONS

Investigations before the ITC under Section 337 are governed by the statutory authority of 19 U.S.C. § 1332(a) (1988)<sup>3</sup>. This authority charges the International Trade Commission with enforcement of Section 337, particularly the following portions pertinent to investigations of patent infringement:

### **§ 1337. Unfair practices in import trade**

#### **(a) Unlawful activities; covered industries; definitions**

(1) Subject to paragraph (2), the following are unlawful, and when found by the Commission to exist shall be dealt with, in addition to any other provision of law, as provided in this section:

(A) Unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), and (D)) into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is -

(i) to destroy or substantially injure an industry in the United States;

(ii) to prevent the establishment of such an industry; or

(iii) to restrain or monopolize trade and commerce in the United States.

(B) The importation into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee, of articles that -

(i) infringe a valid and enforceable United States patent or a valid and enforceable United States copyright registered under Title 17; or

(ii) are made, produced, processed, or mined under, or by means of, a process covered by the claims of a valid and enforceable United States Patent.

\* \* \* \* \*

(2) Subparagraphs (B), (C), and (D) of paragraph (1) apply only if an industry in the United States, relating to the articles protected by the patent, copyright, trademark, or mask work concerned, exists or is in the process of being established.

The 1988 amendments to Section 337 eliminated the requirement of proof of economic injury previously necessary to bring a Section 337 action. However, relief under Section 337 still requires the existence or concurrent establishment of a domestic industry.<sup>4</sup>

### III. PRACTICE AND PROCEDURE

#### A. Rules and Regulations

Practice and procedure before the ITC, including pleadings, discovery, motions, hearings, briefs, and petitions for review, are governed by the Code of Federal Regulations<sup>5</sup> and the Administrative Procedures Act ("APA").<sup>6</sup> Section 337 investigations and determinations require notice, an opportunity to be heard, and are conducted "on the record" in conformance with the APA.

#### B. Initiating An Investigation

An ITC investigation is initiated by submitting a complaint to the Secretary of the ITC.<sup>7</sup> An ITC Complaint requires detailed and specific information,<sup>8</sup> unlike complaints filed in Federal Courts which require only notice pleading. Thus, counsel representing a complainant must do much of the work necessary to prove a violation prior to filing a complaint. This process may take weeks or months and usually provides a complainant with an advantage at the beginning of an investigation.

It is customary for a potential complainant to send a draft of a complaint to the ITC's Office of Unfair Import Investigations for review prior to formal filing. Staff attorneys from the Commission will assist in the preparation of a complaint, and a draft complaint may be revised until there is a preliminary indication that the draft complaint is sufficient to cause the ITC to initiate an investigation. All such communications are treated as confidential by the ITC; thus, potential complainants are advised to take advantage of this procedure.

Upon receipt of a complaint, the Commission's Office of Unfair Investigations examines the complaint for sufficiency of information.<sup>9</sup> Within thirty (30) days after a complaint is filed, the ITC determines whether to initiate an investigation.<sup>10</sup> If the Commission decides to proceed with an investigation, a notice is published in the *Federal Register*.<sup>11</sup> The Commission must conclude the investigation and render its determination within twelve (12) months (eighteen (18) months for complicated cases) after publicizing the notice of investigation.<sup>12</sup>

An investigation begins with four participants: the complainant, the respondent(s), the Commission's investigative attorney, and an administrative law judge ("ALJ").<sup>13</sup> After an administrative law judge is appointed, the respondent(s) file response(s) to the complaint.<sup>14</sup>

#### C. Discovery

Discovery rules<sup>15</sup> before the ITC are similar to the Federal Rules of Civil Procedure. Vehicles of discovery include interrogatories, requests for production of documents, requests for admissions, and depositions.<sup>16</sup> Subpoenas are available to obtain testimony and documents from third parties.<sup>17</sup> Broad discovery requests usually will not be limited by an ALJ, except with respect to privileged information and material which is clearly irrelevant, and discovery motions are not favored.

Under the ITC rules of practice, discovery responses are due ten (10) days after the service of the discovery requests. This is an important difference with respect to the thirty (30) day response periods specified by the Federal Rules of Civil Procedure. This short period for responding to discovery is only one aspect of the somewhat frantic pace of a Section 337 investigation. The ALJ will usually set a discovery cut-off approximately one month before the date of the final hearing, with the final hearing usually being scheduled

during the seventh month after the initiation of an investigation. Thus, the parties will have a scant six (6) months to complete discovery.

Issuance of a protective order is usually automatic and disclosure of confidential information is restricted even without the entry of a protective order.<sup>18</sup> The Rules also provide for the issuance of a protective order upon motion.<sup>19</sup> Even under a protective order, the disclosure of confidential business information is usually restricted to outside counsel.

#### D. Motion Practice

ITC Rules provide for motions for summary determination,<sup>20</sup> motions for termination,<sup>21</sup> and motions for temporary relief.<sup>22</sup> Motions for temporary relief, the most important motions in Section 337 investigations, provide relief similar to a preliminary injunction.

Requests for temporary relief pursuant to Section 337(e) or (f), may appear in the complaint if supported by a separate motion.<sup>23</sup> A motion for temporary relief filed after the complaint must be filed prior to the Commission's determination on whether to institute an investigation, and must also include a showing that "extraordinary circumstances," of which the complainant was not aware at the time the complaint was filed, warranting temporary relief.<sup>24</sup> All motions for temporary relief must contain a detailed statement of specific facts bearing on:

- (A) Complainants probability of success on the merits;
- (B) Immediate and substantial harm to the domestic industry in the absence of the requested temporary relief;
- (C) Harm, if any, to the proposed respondents if the requested temporary relief is granted; and
- (D) The effect, if any, that the issuance of the requested temporary relief would have on the public interest.<sup>25</sup>

#### E. Presentation Of Evidence

The hearing in a Section 337 investigation is in essence a trial, supported by pre and post-hearing briefs. At the hearing, the parties make opening statements, present evidence through live witnesses (both expert and fact), documents, and deposition testimony, and make closing statements. One difference between a Section 337 hearing and a District Court trial is that a staff attorney represents the ITC at a Section 337 hearing; the staff attorney has the right to present evidence at the hearing. Another important difference is that the evidentiary standards applied are much lower than the Federal Rules of Evidence -- most evidence will be allowed into the record.

#### F. Commission Review

The ALJ must prepare an initial determination ("ID") within nine months of the date of publication of notice in the Federal Register.<sup>26</sup> The Commission may review an ID on its own motion or upon a petition for review.<sup>27</sup> Decisions to grant a petition, whether in whole or in part, must be issued within thirty (30) days of the service of the ID.<sup>28</sup> If the Commission does not review an ID, the ID becomes the Commission's final determination. If the Commission finds a violation, with or without review, the parties are notified and the Commission's rulings are immediately published in the *Federal Register* and forwarded to the President of the

United States for review.<sup>29</sup> The President has sixty (60) days in which to approve or disapprove the Commission's findings.<sup>30</sup> After Presidential review, the Commission's determination becomes final.

#### G. Reconsideration And Appeal

There are two modes of review of an adverse ITC decision. Parties to an ITC case may file a petition for reconsideration within fourteen (14) days after receiving service of a determination.<sup>31</sup> Parties may also appeal adverse determinations to the Court of Appeals for the Federal Circuit.<sup>32</sup>

#### H. Remedies

The sole remedies which the ITC may grant to a successful complainant are set forth in subsections (d), (e), and (f) of Section 337. Under Section 337(d), the ITC can exclude the infringing imported goods from entering into the United States unless public policy dictates otherwise.<sup>33</sup> The ITC may also issue a temporary exclusion order under 337(e) if the ITC has a reason to believe that there has been a violation of Section 337.<sup>34</sup> Lastly, the ITC may issue a cease and desist order, prohibiting a person or business firm from continuing a particular course of conduct.<sup>35</sup>

Section 337 provides only equitable relief. Thus, a complainant may not recover monetary damages in an action before the ITC.

### IV. THE COMPLAINT

The contents of the complaint are governed by Rule 210.20(a). A complaint must:

- (1) Be under oath and signed by the complainant, or his duly authorized officer, attorney, or agent ...
- (2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;
- (3) Describe specific instances of alleged unlawful importations or sales; for importations occurring prior to January 1, 1989, include the tariff schedules of the United States item number under which the article was imported; for importations occurring on or after January 1, 1989, include the harmonized tariff schedule of the United States item number under which the article was imported;
- (4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating Section 337 of the Tariff Act;
- (5) Include a statement as to whether or not the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

\* \* \* \* \*

- (7) Include a description of the complainant's business and its interests in the relevant domestic industry or in the trade and commerce allegedly affected. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject property;

Rule 210.20(a)(6) specifies varying requirements depending on the type of intellectual property rights asserted. For alleged violations of Section 337 based on patent infringement, the complainant must:

- ...include a description of the relevant domestic industry as defined in section 337(a)(3), including the relevant operations of any licensees. Relevant information includes but is not limited to:
- (A) Significant investment in plant and equipment;
  - (B) Significant employment of labor or capital; or

(C) Substantial investment in the exploitation of the subject patent, copyright, trademark, or mask work, including engineering, research and development, or licensing.

When a complaint is based upon patent infringement, Rules 210.20(a)(9) and 210.20(a)(10) require that the complaint must also contain or be accompanied by:

(1) the identification of each U.S. Patent, a certified copy of the Patent and the file history and four (4) copies of each patent and applicable pages of each technical reference mentioned in the file history of each involved U.S. Letters Patent;

(2) the identification of the ownership of each involved U.S. Patent and a certified copy of the assignment of each such patent;

(3) the identification of each licensee under each involved U.S. Patent and three copies of each license agreement;

(4) when known, a list of each foreign patent and each foreign application;

(5) a non-technical description of the invention of each involved U.S. Patent;

(6) a reference to the specific claims of each involved U.S. Patent that allegedly cover the article imported or sold by each respondent, or the process under which such article was produced;

(7) a showing of any domestic production of the involved article or of any domestic utilization of the involved process allegedly covered by the specific claims of each involved U.S. Patent, and a showing that each respondent is importing and/or selling the article covered by, or produced under the patented process; and

(8) drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each respondent.

If an alleged violation involves an unfair method of competition or other unfair act other than infringement of a patent or registered copyright, trademark or masked work, the complaint must include: an allegation that the threat or effect of the importations or sales in question is to destroy or substantially injure an industry in the United States; or the threat or effect of an importation or sales in question is to prevent the establishment of an industry in the United States; or the threat or effect of the importation or sales in question is to restrain or monopolize trade and commerce in the United States.<sup>36</sup> If the basis for the complaint is a common law trademark, misappropriation or other business torts, proof of economic injury must still be made.

## V. ELEMENTS OF A SECTION 337 VIOLATION

Section 337 defines the elements necessary in order to find a violation of a U.S. industry's patent rights by imports of foreign goods.

To establish a violation of Section 337(a)(1)(B) or Section 337(a)(2), the complainant must prove three elements: (1) importation of goods into the United States or sales within the U.S.; (2) the imported goods must

infringe a valid and enforceable United States patent; (3) and it must be shown that there is an industry in the United States or an industry being established, relating to the articles protected by the patent.<sup>37</sup> Proof of an efficiently and economically operated business is no longer needed to establish a violation of the statute.

A. Import or Sale in the United States

The first element, that the unfair acts involve an importation or sale in the U.S., has been interpreted to mean that the unfair acts need only relate to a product that is imported or sold within the United States.

B. Infringement

Proof of infringement is the same as that required in the Federal Courts. All defenses available to defendants in Federal Court actions are applicable to ITC investigations.

C. Domestic Industry

The third element, having to show that a domestic industry exists, or is in the process of being established has become the threshold requirement in determining whether a Section 337 violation has occurred. If the domestic industry requirement is not met, no violation of Section 337 will be found, and the case will be terminated.

The existence of a domestic industry is required under Section 337(a)(2) and the factors to be considered are set forth in Section 337(a)(3):

- (3) For purposes of paragraph (2), an industry in the United States shall be considered to exist if there is in the United States, with respect to the articles protected by the patent ...
- (A) Significant investment in plant and equipment;
  - (B) Significant employment of labor or capital; or
  - (C) Substantial investment in its exploitation, including engineering, research and development, or licensing.

A key issue is that the domestic industry must exploit the subject matter described by the claims of the patent. This requirement may pose a problem for United States companies who manufacture goods offshore, and whose only activities in the United States are sales of the patented devices.

In *In re Certain Doxorubicin*,<sup>38</sup> the complainant alleged the importation and sale of products that infringed two claims of United States patents covering the production of doxorubicin from daunomycin. Upon initiating an investigation, the ALJ (and later the Commission) determined that complainant was supplied its finished products by respondent and that a finishing facility which the complainant hoped to have fully operational, was at the time of the investigation, not operating. Without this finishing plant, the complainant could not exploit its patent. Because complainant was not exploiting the patent, the commission found no violation of Section 337.

Another case dealing with the domestic industry provision of Section 337, specifically, the exploitation of the patented product, is *In the Matter of Certain Minoxidil Powder, Salts, and Compositions for the Use in Hair Treatment*.<sup>39</sup> The *Minoxidil* investigation dealt with the importation of products intended for the use as, or for the formulation of, topical compositions for the treatment of human baldness, or promoting hair growth.

Complainant could not sell its products at the time of investigation because they had not been approved by the Food and Drug Administration.

The question in the case was whether "pre market" activities, such as building plants and producing the product, are sufficient to constitute a domestic industry, even though complainant did not have the legal right to make or sell the accused product in the United States. The existence of a domestic industry depends upon the nature and significance of the activities carried out in the United States in connection with the products in issue.<sup>40</sup>

In *Minoxidil*, the Commission determined that there was sufficient exploitation of the patented product on the basis that the formulation, bottling, and packaging plant was started and had been running on a commercial scale to produce the inventory necessary to meet its projected demand. The Commission also found significant investment in plant and equipment in that complainant had expanded its manufacturing plants and had expanded production to meet the demand. Based on the construction of a packaging plant and the expanded production of its patented product, the Commission found both exploitation of the patent and significant investment and held that a domestic industry existed.

## VI. ETHICAL CONSIDERATIONS

One area not to lose sight of when handling an investigation before the ITC is the complainant's duty of candor. The Commission has formulated standards of conduct applicable to a complainant and its counsel's pre-investigation submissions; when these standards are not met, the Commission will terminate the case with prejudice and reprimand counsel for not satisfying the requirements.<sup>41</sup> The Commission, sua sponte, may also impose attorney's fees for breach of this duty. Counsel should assume that the same duty of candor applies to respondents.

The first standard of conduct, which is not the subject of a published rule, but has been established through commission decisions, is the duty of candor.<sup>42</sup> To establish a breach of this duty, it must be shown that the complainant and/or its counsel failed to disclose or submitted false material information, with an intent to deceive the commission.<sup>43</sup> Material information is defined as information that a reasonable decision maker would have considered important in deciding whether to institute the investigation.

In *In re Certain Cabinet Hinges and Mounting Plates*<sup>44</sup>, the complainant alleged infringement by fourteen respondents of three patents covering concealed cabinet hinges and/or mounting plates. Towards the close of the discovery period, two respondents filed a motion to terminate the investigation for violation of the duty of candor. The motion alleged that the complainant had made false statements, omissions, and misrepresentations in its complaint regarding all three of the patents at issue and many of the allegations regarding the domestic industry. After hearing evidence on the duty of candor issues, the ALJ terminated the investigation for violation of the duty of candor. On review, the Commission adopted the ALJ's findings of fact and issued an order terminating the investigation for a violation of the duty of candor. The Commission stated that this standard would be applied in all future cases pending the issuance of final rules on the duty of candor.

The second standard of conduct established by the commission is stated in Rule 210.5(b), which requires that each pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not

represented by an attorney shall sign or his duty authorized officer or agent shall sign the party's pleading, motion, or other paper and shall state the party's address.

Aside from the duty of candor and Rule 210.5(b), the Commission has also held that an attorney representing a complainant also has an affirmative duty to make certain that the client understands the legal significance of the factual allegations in the complaint, and the consequences to the client and its case if the allegations prove baseless.<sup>45</sup> The Commission has acknowledged that allocating fault between attorney and client is difficult; nevertheless, the Commission has publicly reprimanded an attorney for breaching this duty. Therefore, it is important for the practicing attorney, aside from knowing the substantive rules for what goes into the complaint, to make sure the client is aware of the importance of providing accurate information.

## VII. ITC VERSUS THE FEDERAL COURT

### A. Res Judicata and Collateral Estoppel

Determinations of patent infringement and validity within the context of a Section 337 proceeding are given no *res judicata* or collateral estoppel effect by the Federal Courts.<sup>46</sup> The rationale presented for this position is that the purpose of the International Trade Commission is to enforce the trade laws and not the patent laws,<sup>47</sup> and that jurisdiction over infringement of U.S. Patents and other Federal Law based claims is held exclusively by the Federal Courts.<sup>48</sup>

On the other hand, a patentee who first loses in Federal District Court does not have an opportunity to pursue an ITC investigation.<sup>49</sup> Further, unfair competition claims and other trademark claims and licensing claims have *res judicata* effect because the Commission does have jurisdiction over these claims.<sup>50</sup>

### B. Advantages/Disadvantages of ITC Investigations

When a patent owner decides to bring an action for either unfair competition or patent infringement, the forum, or forums, to litigate the allegations must be chosen.

An ITC investigation has the following advantages:

- C Statutory time limit of twelve or eighteen months.
- C The absence of jurisdictional problems due to the *in rem* nature of ITC proceedings. Since *in rem* orders operate against the goods, not the parties, such orders do not require obtaining personal jurisdiction over foreign manufacturers.<sup>51</sup> ITC exclusion orders are enforced at all ports of entry by the Customs Service.
- C No *res judicata* or collateral estoppel effect with respect to validity issues.
- C No venue issues.

There are also aspects of an ITC proceeding which may be considered as disadvantages.

- C No right to obtain damages.
- C No jury trial.
- C All activities conducted in Washington, D.C.

C. Parallel Proceedings

It is possible to have a Section 337 investigation pending concurrently with a District Court infringement action. The ITC will not suspend an investigation merely because of concurrent District Court litigation. Suspension decisions are based on the facts of each case. Some factors which have been persuasive include interference with the District Court by the ITC investigation, re-examination or re-issue of the involved patents, and district court decisions on infringement or validity reached during the ITC investigation.

VIII. EFFECTIVENESS OF THE ITC PROCEEDING

Since 1988, there have been a total of fifty three (53) Section 337 investigations conducted by the ITC.<sup>52</sup> Forty three (43) or 81% of those investigations included allegations of patent infringement. Of those 43 cases, 17, or almost 40%, have resulted in the issuance of exclusionary orders, either general or limited, or have been terminated via consent orders.<sup>53</sup> Either result stops the importation of infringing goods. Of the remaining patent cases, eighteen or 41% were terminated via settlements between the parties.

From these figures, it can be inferred that the ITC is an effective medium for resolving conflicts resulting from importation of infringing goods. In 40% of the cases, the complainant prevailed in the proceeding by being issued an exclusionary order or obtaining a consent decree. With these numbers in mind, another 41% of the cases ended in the parties coming to an agreement by establishing a settlement agreement among themselves. In total, 81% of the patent cases have been positively resolved.<sup>54</sup>

Overall, the results are just as impressive. Of the fifty-three (53) investigations, 40% resulted in the issuance of exclusion orders or consent decrees. Another 32% were settled by the parties. Four (4) investigations are still pending.

**DISPOSITION OF INTERNATIONAL TRADE COMMISSION CASES**

<u>Subject Matter</u>	<u>Number</u>	<u>Percent</u>
Patent Infringement	43	81.13
Trademark Infringement	3	5.66
Copyright Infringement	1	1.89
Other (Antitrust, Unfair Competition)	3	5.66
Patent & Trademark	2	3.77
Patent, Trademark & Copyright	1	1.89
Totals:	53	100

<u>Result</u>	<u>Number</u>	<u>Percent</u>
No Violation	4	7.55
Settled (Termination)	17	32.08
Pending (In Progress)	4	7.55
Exclusionary Order Issued	12	22.64
Terminated (Consent Order)	9	16.98
ALJ Decision (Being Reviewed)	2	3.77
Terminated/Dismissed (Other Reasons)	5	9.43
Totals:	53	100

**PATENT CASES: 43**

<u>Result</u>	<u>Number</u>	<u>Percent</u>
Settled	18	41.86
Exclusionary Orders	7	16.28
Terminated	10	23.26
No Violations	4	9.30
In Progress	4	9.30
Totals:	43	100

**TRADEMARK CASES: 3**

<u>Result</u>	<u>Number</u>	<u>Percent</u>
Settled	0	0
Exclusionary Orders (Consent Order)	1	33.33
Terminated	1	33.33
No Violation	1	33.33
Totals:	3	100

**COMBINED PATENT AND TRADEMARK: 45**

<u>Result</u>	<u>Number</u>	<u>Percent</u>
Settled	18	40
Exclusionary Orders	9 (2)	20
Terminated	10	22.22
No Violations	4	8.89
In Progress	4	8.89
Totals:	45	100

## ENDNOTES

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2. The ITC also has Section 337 jurisdiction over infringement of registered trademarks, registered copyrights and registered mask works. However, the Commission has accepted jurisdiction of investigations based on infringement of common law trademarks and trade dress, false designation of origin, and misappropriation of trade secrets.
3. It shall be the duty of the Commission to investigate the administration and fiscal and industrial effects of the customs laws of this country, the relations between the rates of duty and raw materials and finished or partly finished products, the effects of ad valorem and specific duties and of compound specific and ad valorem duties, all questions relative to the arrangement of schedules and classification of articles in the several schedules of the customs law, and, in general, to investigate the operation of customs laws, including the relation to the Federal revenues, their effect upon the industries and labor of the country, and to submit reports of its investigations as hereinafter provided. 19 U.S.C. § 1332(a).
4. See Section V.C., *infra*.
5. 19 CFR §§ 201.7 - 210.50.
6. 5 U.S.C. § 706.
7. 19 CFR § 210.10.
8. 19 CFR § 210.20. See, Section IV, *infra*.
9. 19 CFR § 210.11(a).
10. 19 CFR § 210.12. In exceptional circumstances, this statutory limit may be extended such that the decision whether or not to instigate an investigation will be made as soon as possible.
11. *Id.*
12. 19 U.S.C. § 1337(b)(1) (1988). Most patent cases are not complicated cases. This makes sense when considered in light of the fact that most Section 337 investigations are based on allegations of patent infringement.
13. 19 C.F.R. § 210.4.
14. 19 C.F.R. § 210.21.
15. 19 C.F.R. §§ 210.30 - 210.37.
16. 19 C.F.R. §§ 210.32, 210.33, 210.34.

17. 19 C.F.R. § 210.35.
18. 19 C.F.R. § 210.6.
19. 19 C.F.R. § 210.37. Penalties for violating protective orders are specified in 19 C.F.R. § 210.37(a).
20. 19 C.F.R. § 210.50.
21. 19 C.F.R. § 210.51.
22. 19 C.F.R. § 210.24(e).
23. 19 C.F.R. § 210.20(a)(10).
24. 19 C.F.R. § 210.24(e)(2).
25. 19 C.F.R. § 210.24(e)(1)(a) - (d). Further requirements for motions requesting a temporary exclusion order are listed in 19 C.F.R. §§ 210.24(e)(iv)-(v) and (B).
26. 19 C.F.R. § 210.53 (1990); fourteen (14) months in complicated cases.
27. 19 C.F.R. § 210.53(a).
28. 19 C.F.R. § 210.54(b)(1).
29. 19 C.F.R. § 210.57(a).
30. 19 C.F.R. § 210.57(d).
31. 19 C.F.R. § 210.60. This type of petition is limited to novel questions which the determination raises and upon which the petitioner did not have a chance to offer arguments. *Id.* Non petitioning parties in such an appeal can oppose the petition, but they must file their opposition within 5 days of being served with their petition. *Id.*
32. Since October 1, 1982, appeals from the ITC decisions have been directly to the United States Court of Appeals for the Federal Circuit. Under 28 U.S.C. § 1295(a), "the United States Court of Appeals for the Federal Circuit shall have the exclusive jurisdiction ... (b) to review the final determination of the United States International Trade Commission relating to unfair practices and import trade, made under § 337 of the Tariff Act of 1930 (19 U.S.C. § 1337)..."
33. 19 U.S.C. § 1337(d). The order in question here is permanent in nature. Policy considerations which the ITC must consider in issuing a permanent exclusion order include "effect of exclusion on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers."
34. 19 U.S.C. § 1337(e). Exclusion orders are in rem and relate to the goods themselves.
35. 19 U.S.C. § 1337(f).

36. 19 C.F.R. § 210.20(8)(i) - (iii) (1990).
37. 19 U.S.C. § 1337(a)(1)(B) and § 1337(a)(2).
38. *In re Certain Doxorubicin in Preparations Containing the Same*, Investigation No. 337-TA-300, 20 U.S.P.Q. 2d 1602 (1991).
39. Investigation No. 337-TA-267.
40. *Id.* at 59.
41. *ITC Practice and Procedure* § 106.03[3]. Dismissal with prejudice is sanctioned for complainants violating ethical standards.
42. *See In re Certain Concealed Cabinet Hinges and Mounting Plates*, Investigation No. 337-TA-289 (1989).
43. *Id.*
44. *Id.*
45. *ITC Practice and Procedure*, § 106.03[3].
46. *In re convertible Exerciser Patent Litigation*, 721 F.Supp. 596 (D.Del. 1989), reh'g. denied (Fed.Cir. 1990); *See Lannom Mfg.Co. Inc v U.S. Intern Trade Com'n.*, 799 F.2d 1572 (Fed.Cir. 1986).
47. 19 U.S.C. § 1332(a).
48. Under 28 U.S.C. § 1338, (a) The District Courts shall have original jurisdiction of any civil action arising under any act of congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection, and copyright cases.
49. *Young Engineers v. U.S. Intern. Trade Comm.*, 721 F.2d 1305 (Fed.Cir. 1985).
50. *Teletronics Proprietary, Ltd. v. Meltronic, Inc.*, 7 U.S.P.Q. 2d 1777, 1778 (S.D.N.Y. 1988).
51. *See* 19 U.S.C. § 1337(b)(1).
52. *See* accompanying chart.
53. Consent orders are essentially the commission's police order. The parties draft the order, but if there is a violation of that order, the ITC will petition the appropriate District Court to enforce the order.  
  
Settlement agreements are contracts between the parties, where the parties are charged with handling breaches of its provisions.
54. Similar success can be seen in trademark and copyright cases: for trademark cases, 67% of the time, the complainant prevailed; for the lone copyright action, the case resulted in the issuance of a cease and desist order. *See Automotive Field Caps*, Investigation No. 337-TA-319 (1990).