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Litigating Patents in the ITC: When and Why Companies Take the Section 337 Route

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Formerly a niche venue for trade-related matters, the International Trade Commission ("ITC") has emerged as a battleground for many high stakes intellectual property disputes, particularly in the technology, life sciences, and consumer electronics industries. With the power to block infringing products from entering the U.S., the ITC has become an increasingly attractive option for patent holders seeking swift and decisive remedies.

Background on the ITC

The ITC is a governmental agency that protects U.S. industry from foreign competitors by enforcing Section 337(a) of the Tariff Act of 1930. Section 337 prohibits unfair methods of competition and unfair acts in the importation and/or sale of goods—including patent infringement. ITC investigations move at breakneck speed compared to district court litigation, often concluding within 15-18 months from complaint to final ruling.

When a company files a Section 337 complaint, the ITC launches an investigation presided over by an administrative law judge. These proceedings involve the full range of formal discovery, motions, trials, and appeals—but the key differentiator is the remedy.

Unlike federal courts, which can award monetary damages, if the ITC determines there is a violation of Section 337, the agency must issue an exclusion order blocking all infringing products from crossing U.S. borders. The ITC also can impose a cease-and-desist order to prohibit the sale or use of any commercially significant inventory previously brought into the country.

Key Differences Between Section 337 Investigation and District Court Litigation

Here are a few reasons patent owners choose the ITC over traditional district court litigation:

- Jurisdiction: The ITC has jurisdiction over only the articles imported into the U.S., and not the parties before it. So, the accused products must be imported into the US. If not, the ITC does not have jurisdiction.
- Global Reach: A presumption against applying U.S. law extraterritorially can make district courts unfavorable forums for enforcing patents against entities that manufacture products exclusively in foreign countries. The ITC, however, applies no such presumption. It has extensive reach over proprietary processes performed outside of the U.S.
- Swift, Powerful Remedies: Unlike district courts, the ITC cannot issue monetary damages. But, in district courts, a traditional four-factor test must be applied to determine whether injunctive relief for infringement is appropriate. The ITC does *not* need to apply this test to issue exclusion or cease and desist orders. The threat of exclusion often encourages licensing deals or design changes.
- Time to Trial and Resolution: Section 337 investigations are extremely accelerated. Unlike district court cases which can typically take 3-5 years to get to trial, a trial-like evidentiary hearing at the ITC typically is held within 8 to 10 months after the filing of a complaint, with final determinations often within 15-18 months.
- Pleading Standards: In a Section 337 investigation, a complaint must be detailed and specific, and it must include substantial supporting evidence to clearly demonstrate that a domestic industry is being harmed. But, unlike in district court, there is no opportunity to file a motion to dismiss or advocate that the factual basis set forth in the complaint is inadequate.

A Timely Example

One of the most high-profile ITC cases in recent years is the Apple/Masimo dispute over blood oxygen monitoring technology in Apple Watches. Masimo, a medical technology company, accused Apple of infringing its patents on pulse oximetry sensors and brought the fight to the ITC.

In a stunning turn, the ITC ruled in favor of Masimo, issuing an exclusion order barring the importation of certain Apple Watch models into the U.S., forcing Apple to temporarily halt sales of certain Watch models, demonstrating the ITC’s power to disrupt even the most dominant market players. While Apple ultimately worked around the ruling by modifying its devices to remove the accused technology, this case highlights the effectiveness of the ITC.

Conclusion

For patent holders looking for fast relief and powerful remedies, the ITC presents a compelling alternative to district courts. This may ring especially true for patents in tech-heavy industries like consumer electronics, pharmaceuticals, and semiconductors.

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