



Intellectual Property Litigation in the United States International Trade Commission

Peter H. Kang

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The United States International Trade Commission (or “ITC”) is a federal administrative agency which, among other things, has responsibility for protecting U.S. domestic industry from acts of “unfair importation.” One such type of unfair importation is the importation into the U.S. of products which infringe a valid, enforceable intellectual property right, such as a patent, for which there is a domestic industry.

As compared to the United States District Courts (which have exclusive jurisdiction for lawsuits for damages alleging infringement of a patent), the ITC can generally be a much quicker venue, in part because the ITC uses somewhat streamlined and unique procedures as contrasted with the procedures in the district courts. If an IP owner prevails in an ITC action (which, instead of a “lawsuit” is called an “investigation”), the remedy the ITC can provide includes a so-called “exclusion order” or a type of injunction which orders the U.S. Customs and Border Protection Service to exclude from importation into the U.S. any products determined to be infringing a valid, enforceable IP right for which a domestic industry exists.

Thus, barring a product from importation into the U.S. poses a tremendous risk for most companies, given the size and scope of the U.S. market for most businesses worldwide. However, the processes from starting or “instituting” an ITC investigation, through pre-trial and trial, and to enforcement can be extremely complex and deserve serious consideration whenever a company is faced with or contemplating the prospect of litigation before the ITC.

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