

337 REPORTER

The Paul J. Luckern Summer Associate Edition

INSTRUCTIONS

Deadlines for submissions. The following deadlines apply to this year's article submissions:

June 26, 2020: Deadline to reserve topics. The editors—Jessica Hill, Josh Budwin, P.J. McCarthy, and Helena Kiepura—will reserve topics on a first-come-first-served basis. If your preferred topic has already been reserved, the editors will ask you to select a different topic.

August 7, 2020: Authors must submit a Word version of their article to the editors, along with their regular email address and mailing address. The editors may reject untimely submissions without review.

August 2020: Authors should expect to start receiving editorial comments from a Section 337 practitioner assigned by the Editorial Committee.

September 18, 2020: Authors must complete all rounds of revisions by this date to be eligible for publication.

November 6, 2020: Authors will be notified if their articles have been selected for publication. Authors of this year's best submissions will be invited to attend the ITCTLA Annual Meeting in November to receive recognition for their work.

Topics. Each year, the editors strive to cover the full scope of Section 337 practice, from the commencement of proceedings, including the pleading stage, through discovery, evidentiary hearing, remedy, and appellate practice. The editors have identified suggested topics below. The editors also encourage authors to develop their own topics through consultation with their summer employers; the editors, however, must approve such topics in advance. For reference, the editors have included a list of previous years' articles below. Articles for this year's Summer Associate Edition should not reuse a topic from a previous year unless there have been noteworthy developments in the law.

Limits on submissions. The editors generally limit submissions to one article per law firm and to no more than two authors per submission. Articles must be 5-10 pages long. The editors may reject submissions that fall outside these page limits.

Research. Authors can research Commission precedent on Section 337 via Westlaw and Lexis. On Lexis, check the ITRADE database. Copies of the statute, the Commission's rules, and other information concerning Section 337 investigations are available on the Commission webpage, https://www.usitc.gov/intellectual_property.htm. The "Section 337 FAQs" link (https://www.usitc.gov/intellectual_property/documents/337_faqs.pdf) on that webpage provides background information on Section 337 that first-time researchers may find useful. Authors can review Commission filings, including orders and opinions, using the Commission's EDIS databases (both the EDIS Legacy database and the new EDIS E-Filing database), which are located at <https://edis.usitc.gov/edis3-external/app>. That webpage hosts an EDIS User Guide as well. The hornbook on Section 337 practice, UNFAIR COMPETITION AND THE ITC, ACTIONS BEFORE THE INTERNATIONAL TRADE COMMISSION UNDER SECTION 337 OF THE TARIFF ACT OF 1930, also may be helpful. That hornbook may be available from your law firm's library.

Authors should note that they should determine whether any Administrative Law Judge orders applicable to their research have become final Commission orders. Every Initial Determination submitted by a Commission Judge will have a corresponding Commission Notice stating whether the Initial Determination will become, for example, final as is, modified, or reversed. Authors should check with a Section 337 practitioner for help in navigating the precedent on such matters.

Style and formatting rules. Authors are responsible for conforming their submissions to the style and citation rules in The Bluebook, 20th Edition, and to the below style and formatting rules:

- **Spacing:** Submissions must be single-spaced, with **one** space following periods and colons.
- **Footnotes:** Submissions should use footnotes, not end notes. Submissions must include a standardized first footnote about the summer associate author(s), by dropping an asterisk footnote after the author’s name using the following format: summer associate’s name; law firm; city/state of firm; 2018; Bachelor’s degree, school, and year; advanced degree(s) (if any), school, and year; J.D. candidate, school, and year. If summer associate authors wish to thank a practicing attorney for guidance in preparing the article, they may include the following statement in the first footnote: “The author wishes to thank [name], an [attorney, associate, partner] at the firm of [law firm], for guidance in preparing this article.”
- **Justification and margins:** Submissions should be left-justified, except for the article title and by line, which should be centered. Submissions should use one-inch margins.
- **Headings:** Submissions must include three main headings—I. INTRODUCTION (followed by a brief introduction), II. DISCUSSION, and III. CONCLUSION. Main headings should appear in all caps. Subheadings must use letters (A., B., C.) and then numbers (1., 2., 3.) in outline form, with the highest level subheadings in initial caps, and all lower-level subheadings in sentence case. Section headings should not employ automatic numbering, and all convenience and appearance codes (*e.g.*, automatic outlining codes, auto-generated tables) should be removed.
- **Introductions:** Long and involved article introductions describing the background of Section 337 of the Tariff Act of 1930 are not particularly interesting to our readership. (Authors may want to include a longer introduction on the background of Section 337 in any re-published version of their articles. The ITCTLA typically is very generous permitting republication.)
- **Font color:** Submissions should be in black and white. Please do not use any color, including for webpage links.
- **Citation format:** Articles should be thoroughly cite-checked prior to July 27 submission. Citations must be in Bluebook format; however, authors should use the Commission’s format when citing Commission documents, including administrative law judge orders

and Commission opinions. Citations to initial and summary determinations should include the status of any Commission review of the determination. The ITCTLA is not responsible for the accuracy of citations, the facts, or the law addressed in any submission.

- **Shorthand references:** For the sake of uniformity, please use the following shorthand references:
 - “Judge” for administrative law judges (rather than “ALJ”);
 - “Commission” or “ITC” (rather than “International Trade Commission”);
 - “Staff” or “Commission Investigative Staff” for the Office of Unfair Import Investigations (rather than “OUII”).
- **Patents:** Please do not capitalize “patent.” Please use open quotes, not closed quotes, for patent numbers (*e.g.*, ’123 patent, not ‘123 patent).
- **Other style rules:**
 - Please use *italics* for emphasis.
 - Please italicize *e.g.* and *i.e.*
 - Please use a comma before the conjunction in lists of three or more items (*i.e.*, use serial/oxford commas).
 - Please use “smart” quotes, not straight quotes, and the same for apostrophes.
 - Periods and commas should be inside quotation marks; all other punctuation should be outside quotation marks.

The editors thank you for complying with these style and citation guidelines. Each of these small efforts makes the editors’ job much easier.

Post-summer contact information. Summer associate authors are expected to continue to work with the editors to ready their articles for publication after the completion of their firms’ summer associate programs. Accordingly, authors should provide their post-summer contact information (email address and mailing address) when submitting their articles to the editors on or before August 7.

Recognition of the best articles. The editors will recognize the best submissions, as chosen by the editors. The editors will present the authors of the winning submissions an appropriate non-monetary prize (*e.g.*, a commemorative certificate) at the ITCTLA Annual Meeting in November 2020, which the authors will be invited to attend.

Possible topics. Below is a list of proposed article topics. As noted above, authors are free to propose their own topics. Section 337 practitioners in your firm should have plenty of

suggestions and may want to recommend writing a note on a particular case with which they are familiar. Please feel free to choose any topic of interest to Section 337 practitioners, but please keep in mind the need for even-handed scholarship, not advocacy, and please confirm with the editors that they approve your proposed topic. A topic that in strikethrough text has already been claimed.

1. A survey of Section 101 Decisions at the ITC
2. IPRs and the ITC
3. NPEs at the ITC
4. The CAFC's decision in the 1001 investigation, including its effect on other cases and Comcast's petition for cert to the Supreme Court
5. Survey of the effects of COVID-19 on the public interest
6. ~~Adjustments to ITC Section 337 Proceedings Due to the Covid-19 Pandemic~~
7. Trends in the Commission's review of IDs
8. Survey of recent trade secret litigation at the ITC
9. Trends in cases involving requests for general exclusion orders
10. Adjudication of redesigned goods by the ALJ
11. Should the Commission consider FRAND in evaluating the public interest
12. *Beloit* at the ITC
13. A survey of ALJ pre-hearing procedures (e.g., discovery teleconferences, *Markman* hearings)
14. What's required for ITC jurisdiction? What isn't?
15. Evolution of how sales and marketing impact the economic prong inquiry, including both in patent and non-patent cases
16. Overview of licensees making up the entirety of the domestic industry (in both patent and non-patent cases)
17. How to determine the trade secret law that governs a misappropriation investigation and instances where differing legal standards may make a difference
18. The ITC's view on arbitration clauses and other forum selection clauses
19. A study of when the ITC splits and does not split a complaint into multiple investigations
20. ~~Developments in Significance and Substantiality in the Wake of ITC's determination in Carburetors, Inv. 1123~~

Past Summer Journal Article Titles.

2019 Summer Journal:

1. Portfolio Licensing and the Domestic Industry Requirement: An Analysis of the Domestic Industry Requirement Since Certain Multimedia Displays and *Navigation Devices*
2. The State of *Suprema*: *Chevron* Deference and the Bounds of Articles That Infringe Under Section 337
3. Two Bites at the Apple: Revisiting the Preclusive Effects of Patent and Non-Patent ITC Decisions
4. Establishing a Domestic Industry at the ITC through Activities of a Licensee
5. Common Themes in ITC Investigations Involving Domestic Industries in the Process of Being Established

6. Standard Essential Patents at the ITC: How Respondents May Successfully Raise a FRAND Defense
7. Balancing Act: How the Life Sciences Industry Can Strategically Utilize ITC Section 337 Investigations to Meet Competitive Goals
8. To Institute or Not to Institute A 100-Day Proceeding – That is the Commission’s Question
9. Big Tech and the Public Interest: A Case Study at the International Trade Commission with Apple and Qualcomm Patent Infringement Disputes
10. Recent Developments in Domestic Industry: Satisfying the Articles Requirement in “Existing” and “In the Process” Cases
11. Accelerating Summary Determinations at the ITC: A Better Procedure for Section 337 Investigations
12. Redesigned Goods at the Court of International Trade
13. *Amarin* and Its Implications
14. Enforcement of ITC Exclusion Orders Since 2014 GAO Report: Guidance Was Given; Suggestions Were Made; Now What?
15. The Implementers Won’t Negotiate, Now What? A Standard Essential Patent Owner’s Guide to Pleading Hold-Out at the ITC
16. Conflicts of Interest and Disqualification in the ITC

2018 Summer Journal:

1. Designing Around Remedial Orders: Options for Patentees and Importers
2. Refusal to Investigate: An Often-Sought but Rarely-Seen Disposition
3. The International Trade Commission Has Proven to Be an Appropriate Forum to Litigate Disputes Involving Patents Asserted to Be Standard Essential and Subject to FRAND Commitments
4. Antitrust Injury in Antitrust-Based Claims under Section 337 after *Certain Carbon and Alloy Steel Products*
5. Are ITC Cease and Desist Orders Overstepping Statutory Constraints?
6. The Challenges of Non-Party Foreign Discovery at the ITC and Potential Methods to Overcome Them
7. Section 337 Costs: Debunking a Myth
8. *Oil States* and *SAS Institute* Open the Door for Increased Collaboration between the ITC and the PTO
9. *Octane Fitness* at the ITC: When Should a Prevailing Party Receive Attorneys’ Fees?
10. Considering Research and Development Investments under Section 337(a)(3)(A) & (B) in the Domestic Industry Analysis
11. Trends in the Commission’s Evolving Section 101 Jurisprudence
12. An Analysis of the Commission’s Decisions on Whether to Implement 100-Day Proceedings
13. Unfair Methods of Competition in the Digital Era: An Expanded Approach
14. The Ambiguous Nexus between False Advertising Claims and Section 337 Remedies
15. International Restrictions on Depositions
16. Equitable Defenses in Section 337 Investigations
17. “Sale for Importation:” The Reach of ITC Jurisdiction over Suppliers in the Chain of Distribution

18. Recent Trends in Design Patent Investigations

2017 Summer Journal:

1. Administrative Guidance: How the Flexibility of the ITC Renders Legislation Like the Trade Protection Not Troll Protection Act Unnecessary
2. Reliance on Third-Party Investment to Establish a Domestic Industry
3. Differences in Inequitable Conduct Pleading Standards among ITC Judges
4. The Effects of Staff Participation on Voluntary Terminations
5. Section 337 Investigations and PTAB Proceedings: The Consequences of Inconsistent Results
6. Standard-Essential Patents at the ITC: Holding Up Relief?
7. A Comparative Study of Claim Construction in the ITC
8. A Look at the U.S. International Trade Commission's New Discovery Rules and Their Impact on Section 337 Investigations
9. Returning to a Need-Based Cease-and-Desist Order Standard
10. Trends in Section 337 Investigations Involving Requests for a General Exclusion Order
11. Estoppel Effects and the International Trade Commission
12. The Trademark Safe Distance Rule: A Formidable Remedy in Section 337 Investigations
13. International Trade Commissioner Dissents & Views: Trends & Impacts

2016 Summer Journal:

1. The Evolution Of The Commission's 100-Day Pilot Program
2. Sequencing Trade Secret Identification Before Discovery In Section 337 Investigations: Promoting Consistency, Efficiency and Efficacy In Commission Proceedings
3. The Role And Potential Liability Of Online Marketplaces In Intellectual Property Infringement Suits
4. To Judge Or Not To Judge: A Critical Analysis Of Section 337 Investigations When The ITC Delegates Public Interest Review
5. Articles That Induce, Digital Transmissions, And Prospective Consent Orders: Section 337's Year At The Federal Circuit In *Suprema*, *ClearCorrect*, and *DeLorm*
6. ITC May Suspend Remedial Orders, But Not An Investigation In View Of *Inter Partes* Review
7. Proving Economic Injury At The Commission For Non-Statutory Intellectual Property Actions: Three Perspectives In Section 337(a)(1)(A) Practice
8. A Comparative Analysis Of Post-*Alice* Section 101 Challenges At The ITC
9. Contextual Factors In Finding Significance And Substantiality After *Certain Printing And Imaging Devices*
10. Laying Low No Longer: The Impact Of The Federal Circuit's Decision in *Lelo v. ITC*
11. Are Biosimilars On The Horizon For Section 337 Investigations?

2015 Summer Journal:

1. The Breadth of Section 337: Exploring the Commission's Recent Injury Determinations for Non-Statutory Intellectual Property
2. Comparing The Treatment Of Sanctions In The ITC And District Court

3. Timing and Control: The Impact of Inter Partes Review on Section 337 Strategy
4. Time to Branch Out: A Recommendation to Provide the Commission With the Incentive to Issue Exclusion Orders Covering Electronic Imports
5. Tailored Remedies by the International Trade Commission
6. Soft-Edged Trampolines: The Separation of the Validity and Technical Prong Analyses
7. The Last 5 Years at the ITC: Overall Appellate Success Rate
8. Advantages of Section 337 for Industries Affected by the 271(g) Exemption
9. Trade Secret Litigation at the ITC Since TianRui

2014 Summer Journal:

1. Poaching the American Dream: The U.S. International Trade Commission's International Role in Combating Foreign Theft of American Trade Secrets
2. Trade Protection Not Troll Protection Act: A Legislative Proposal to Reform the International Trade Commission
3. Does the Commission have the Same Standing Requirements as Federal District Courts for Patent Cases?
4. Jurisdiction and Remedy Considerations With Respect to Electronic Transmissions at the International Trade Commission
5. Indirect Infringement Without Recourse: How Suprema Curtails the Commission's Ability to Investigate Unfair Competition
6. Strategic Considerations for Parallel Proceedings After the America Invents Act
7. The End of the Line or a New Beginning? Assertion of FRAND-Encumbered/Standard Essential Patents at the ITC
8. Claim Construction at the ITC: Overview and Analysis of Different Administrative Law Judges
9. Proving Invalidity in a Section 337 Investigation Using Prior Art that was Before the Examiner
10. Technically, There are Two Prongs: Recent Developments in Domestic Industry at the ITC
11. Revival of the Public Interest: The Importance of Understanding the New Role of the Statutory Public Interest Factors in Section 337 Investigation
12. Indecision at the ITC: Ramifications of the ITC's First Stay of a Remedy Order
13. Attorney's Fees as Sanctions at the ITC

2013 Summer Journal:

1. Recent Congressional Hearings and Proposed Legislation on Abusive Patent Litigation at the International Trade Commission
2. FRAND Terms: Evaluating Reasonableness Prior to International Trade Commission Remedial Orders
3. Federal Circuit Review of International Trade Commission Determinations After City of Arlington
4. What to Expect When You're Enforcing: Recent Enforcement Proceedings at the United States International Trade Commission
5. No Means No: Recent Formal Enforcement Proceedings at the International Trade Commission

6. A Higher Bar for Establishing a Licensing-Based Domestic Industry
7. Geographic Changes in Respondent Locations in Section 337 Actions Over the Past Two Decades
8. Clarifying the Scope of the Investigation: The Proposal to Require Complainants to Specify the Accused Products and Improving Enforcement of ITC Exclusion Orders
9. New e-Discovery Rules at the International Trade Commission: Adopting Practices & Procedures that Were Already “Business as Usual”
10. Can the ITC Remove a Litigant’s Right of Appeal to the Federal Circuit By Refusing to Take a Stand on Issues Before the Whole Commission?
11. The Technical Prong Gets a Validity Check
12. Improving Effectiveness of the Exclusion Order Enforcement Process
13. The Impact of *Corning Gilbert, Inc. v. The United States*
14. Electronic Importation: Extending The Commission’s Relief To The Electronic Transmission of Pure Digital Goods
15. Standard-Essential Patents and the Public Interest: Analyzing FRAND Following Certain Electronic Devices
16. The America Invents Act And The Shift of Patent Assertion Entities to the Commission
17. Achieving Efficiency Through The Commission’s New 100-Day ID Procedure
18. Standing on a Catch-22: What the 739 Investigation Means to Non-Parties Regarding Modification of Exclusion Orders and Standing to Appeal Commission Determinations
19. A Complainant’s Guide to the Enforcement of ITC Cease and Desist Orders
20. The Rise of Section 337 Litigation among Patent Assertion Entities: an Empirical Study

2012 Summer Journal:

1. Deep Impact or Business as Usual? An Analysis of the Potential Effects of the AIA On Section 337 Investigations
2. An International Examination of ITC-Like Alternate Jurisdictions for Patent Litigation
3. Implications of the 724 Investigation on Trademark Infringement Claims
4. Method Claims at the ITC
5. An Analysis of Section 337 Investigations Involving Chemical Products
6. The Constitutionality of the Automatic Stay Provision in 28 U.S.C. § 1659
7. Potential Issues With Overly Broad Notices of Investigation—Scope of Discovery at the USITC
8. Compelling Site Inspections in China in Connection with 337 Investigations
9. Death of a Sale: how the International Trade Commission is Redefining the Term “Sale” In the Wake of Fujifilm
10. Electronic Importation: Principles and Consequences of the Commission’s Interpretation of the Importation Requirement in the Context of Electronic Transmissions
11. Reviewing The American University Law Review on Extraterritoriality: A Critical Response to Viki Economides, Note, TianRui Group Co. v. International Trade Commission: The Dubious Status of Extraterritoriality and the Domestic Industry Requirement of Section 337
12. Economic Prong of Domestic Industry and Value-Added Analysis
13. As NPEs Experience Some Turbulence in District Court, Are the Skies Friendlier at the ITC?

14. Applicability of the EPROMs Factors Test to Downstream Products of Named Respondents Post-Kyocera
15. Standard-Essential Patents and Exclusion Orders: Weighing the Public Interest
16. Reinterpreting the Public Interest—The Case for a Shift in the ITC’s Interpretation of Section 337