When competitors encroach on your protected intellectual property in the US, you need to respond. The ITC is an option.

With the globalization of corporations, new technologies, and increasing competition worldwide, holders of intellectual property rights are increasingly turning to the International Trade Commission for its accelerated procedures and powerful remedies.

The ITC has become a favored forum for resolving infringement disputes, due to its expedited time schedule and availability of remedies. The ITC is a quasi-judicial federal agency that functions much like a specialized court—and Section 337 of the Tariff Act of 1930 empowers the ITC to investigate complaints brought by owners of U.S. intellectual property. Effective injunctive-type relief is available to those companies whose intellectual property has been infringed by those importing products or selling imported goods in the U.S.

The ITC is an attractive forum for those searching for relief that may not be available in the district courts. The majority of proceedings involve intellectual property owners who seek to stop importation of products that infringe their U.S. patents, trademarks, or copyrights.

The ITC allows both U.S. and foreign corporations to address claims of patent, trademark, or copyright infringement by imported goods, unfair competition related to imported products, misappropriation of trade secrets or trade dress, false advertising, and antitrust issues. Any company that imports products or sells imported products in the U.S. faces the possibility that it will be named as a respondent in a Section 337 proceeding before the ITC.
The ITC can offer distinct advantages over district courts: quicker review—and injunctive-type relief at the border.

**ITC Litigation**
Resolving disputes in the ITC provides several key advantages; the ITC’s rules and procedures often result in a faster determination and can provide immediate consequences for importers, manufacturers, and sellers of infringing products.

However, the Commission has its own unique rules and procedures, and its proceedings are complex and specialized. While similar to district court proceedings, litigating in the ITC requires skilled attorneys who know the complex procedural rules as well as the substantive area of the law. Section 337 actions differ from actions in the district courts in several ways, including:

**In Rem Jurisdiction**
The ITC has in rem jurisdiction over all goods imported into the U.S., unlike district court proceedings, which require the presence of the parties. A complainant can file for an investigation even if the importer, seller, or consignee is unknown. This allows for the opportunity to address infringement claims by multiple parties and products in a single forum without jurisdictional disputes, especially over foreign parties. The ITC also has nationwide subpoena powers and sanctions available against foreign respondents who fail to comply with discovery.

**Domestic Industry**
The ITC is charged with protecting U.S. industry. Its focus is to provide swift, effective relief against infringing imports that adversely affect U.S. commerce. As a result, only patent owners who make use of the patent (directly or through licensing activities) in the U.S. can request that the ITC initiate an investigation.

**Public Interest**
After a complaint is filed, the ITC assigns an investigative attorney from the Commission’s Office of Unfair Import Investigations (OUII) to examine the complaint for sufficiency and compliance. The investigative attorney is a full party to the investigation, functioning as an independent litigant who represents the public interest in the litigation.

**Speed**
The ITC provides an attractive option for IP owners seeking a quick remedy against infringing imports. Discovery takes place in a matter of months, and the parties can expect a hearing on the merits before an administrative law judge in approximately nine months from the initiation of the investigation. The administrative law judge usually issues an initial ruling, referred to as an initial determination, about three months after the hearing. The ITC may review the initial determination, but the process is generally completed within 15 months of initiation.

**Relief**
The ITC will issue relief in the form of an exclusion order that bars importation of the infringing product. The U.S. Customs and Border Protection enforces the ITC’s exclusion orders at the U.S. border by prohibiting entry of excluded imports. The ITC also may issue cease-and-desist orders to prohibit the sale or distribution of imports already in the U.S. However, unlike in district courts, monetary damages are not available.
Brinks has unmatched experience in proceedings before the ITC—which you can leverage to protect your interests.

The International Trade Commission group at Brinks Gilson & Lione represents a vast array of clients before the Commission. We rely on a team approach to offer clients a unique combination of legal and technical knowledge.

With more than 100 experienced litigators with undergraduate and advanced technical and scientific degrees—nearly all of whom are registered members of the U.S. Patent and Trademark Office—our ITC group has the technical experience necessary to understand patented technology and products.

The majority of investigations under Section 337 involve alleged patent infringement. These cases require a strong command of patent law. The Brinks ITC group has years of patent experience, both in the U.S. and abroad. Among its members, the group is proud to include attorneys and scientific advisors trained in patent law in China, Korea, and Japan, as well as former administrative law judge Carl Charneski, who joined Brinks after stepping down from the bench at the ITC.

Many ITC proceedings have parallel district court cases, and our attorneys are experienced at handling both types of proceedings.

Our ITC group also draws experience from all of the firm’s industry groups in order to successfully argue cases under Section 337, including from our copyright, biotechnology/pharmaceutical, trademark, unfair competition, electrical, mechanical, and nanotechnology practice groups. In addition, litigation paralegals and clerks with ITC experience assist each team in efficiently managing document collection, filings, and case coordination. As necessary, the ITC group partners with the firm’s scientific advisors to provide additional insights in complicated technical areas.

Need more information?

Brinks has unmatched experience in proceedings before the ITC—a recourse you can leverage to protect your interests. To find out more about our intellectual property legal services—including our experience in infringement cases before the International Trade Commission, please call us at (866) 222-0112.

ALL IP.
ALL THE TIME.
Brinks has litigated more than 120 cases before the ITC. That’s experience you can count on.

Representative cases include:

*ZF Friedrichshafen and ArvinMeritor*

Brinks represented ZF Friedrichshafen AG and ArvinMeritor, Inc. as respondents in a Section 337 patent infringement investigation before the International Trade Commission. After the ITC granted our clients’ motion for summary determination with respect to one of the six asserted patents, the patent owner requested termination of the investigation of two other patents and several other claims of the remaining three patents. After a 10-day hearing on the merits, the administrative law judge ruled in favor of our clients on all but one claim of one patent. Our clients designed around the one remaining claim. After a further two-day hearing on the merits, the administrative law judge ruled that the redesign did not infringe. The opposing party originally sought penalties in excess of $40 million, all of which were subsequently denied, and the ITC adopted the ruling. It appears that this was the first time in the 75-year history of the ITC’s Section 337 investigations that an administrative law judge ruled for a respondent in an enforcement proceeding.

*The Holmes Group*

The ITC Group successfully defended its client, The Holmes Group, in a temporary exclusion proceeding. The complaint alleged that The Holmes Group, parent of The Rival Company, had infringed Tilia’s patent for home vacuum sealers. Following a multi-day evidentiary hearing, the administrative law judge rejected Tilia’s request for a temporary exclusion order barring Rival from importing and selling its Seal-a-Meal® home vacuum-packaging machine.