Legal Research Guide for The Customs Enforcement of ITC Exclusion Orders

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ITC Exclusion Orders

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I. Introduction

In recent years, the ITC has become more important in the enforcement of intellectual property ("IP") rights, including the enforcement of ITC exclusion orders by the Customs and Border Protection ("CBP"). This Legal Research Guide ("Guide") provides comprehensive coverage of the primary and secondary sources available in the field of CBP enforcement of ITC exclusion orders, and focuses on primary sources because of the subject’s relative newness and administrative law nature. Primary sources include: (1) the U.S. Constitution; (2) U.S. statutory provisions under Title 19 and 35, and legislative histories for those provisions; (3) international treaties; (4) case law from the U.S. Supreme Court, the Federal Circuit, and the Court of International Trade; (5) administrative rules and regulations under Title 19 of the Code of Federal Regulations ("C.F.R."); and, (6) administrative proceedings of the ITC and CBP. Secondary sources include: (1) treatises and looseleaf services; (2) periodical articles; (3) practice aids; (4) government websites; and, (5) current awareness materials such as newsletters, blogs, and other e-resources. This Guide should serve as a valuable resource on ITC enforcement for both practitioners and scholars.

II. Primary Sources

A. U.S. Constitutional Authority to Regulate Patents and U.S. Trade

Congressional authority to establish a set of exclusive rights for patents stems from the U.S. Constitution, art. I, § 8, cl. 8, which grants Congress the power to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Statutes relating to patent law—codified in Title 35—derive authority from this clause. Congressional authority to regulate trade stems from

the U.S. Constitution, art. I, § 8, cl. 1, which grants Congress the power to “lay and collect Taxes, Duties, Imposts and Excises,” and from the U.S. Constitution, art. I, § 8, cl. 3, which grants Congress the power to “regulate Commerce with foreign Nations.” Statutes relating to trade in unfair imports—codified in Title 19—derive authority from the preceding two clauses.\(^2\)

B. **Federal Statutory Authority**

1. **United States Code Sections**


Congress created the current form of patent law through the 1952 Patent Act, codified in Title 35 of the U.S. Code. The following list is a useful guide for the most relevant sections of Title 35 with regard to the enforcement of IP rights:


- Section 101 limits patents to four categories: a process, machine, manufacture, or composition of matter. Patents are not allowed for physical phenomena, laws of nature, or abstract ideas. Section 101 has not been modified since it was originally enacted in the 1952 Patent Act, Pub. L. No. 82-593, 66 Stat. 797.


- Section 102 disqualifies inventions that do not invent something new because things already known to the public should not be given a patent. Section 102 has undergone some changes since it was originally enacted in the 1952 Patent Act, 66 Stat. 797.
- The America Invents Act (“AIA”),\(^4\) significantly changed § 102, moving the United States from a first-to-file country to a first-inventor-to-file country, though a full discussion of this distinction is beyond the scope of this Guide.\(^5\)


- Section 103 disqualifies asserted inventions that are obvious to a person with ordinary skill in the art, which is similar to a reasonable person standard, but in the context of patent law. Section 103 is known as the “crown jewel” of the 1952 Patent Act. It has undergone some changes since it was originally enacted in the

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\(^3\) The U.S. GPO/FDsys reports that the 2012 version of Title 35 is positive law (as of Nov. 19, 2012).


\(^5\) For more information on these changes, see the legislative history to the AIA, *infra* Part II.B.2.
1952 Patent Act, 66 Stat. 797, and the AIA adopted some changes to make § 103 consistent with § 102.⁶

- Section 271 defines different types of infringement. Section 271(a) defines direct infringement by a person as anyone who, “without authority makes, uses, offers to sell, or sells any patented invention.” Section 271(b) defines induced infringement, which covers anyone who induces or encourages others to infringe. Section 271(c) defines contributory infringement, which covers anyone who makes components of a patented invention to be combined into an infringing product.
- Section 271 has undergone some changes since it was originally enacted in the 1952 Patent Act, 66 Stat. 811.
- Interestingly, the most recent amendment to § 271 was through the Patient Protection and Affordable Care Act (“ACA”),⁷ because § 271 and the ACA overlap in the area of infringement of biological product patents.

- Section 283 provides U.S. courts with the authority to grant injunctions “in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.” Section 283 has not been modified since it was created in the 1952 Patent Act, 66 Stat. 812.

- Section 284 provides that courts “shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer.”
- This section has undergone some minor changes since it was originally enacted in the 1952 Patent Act, 66 Stat. 813.


Although Title 35 governs patents, Congress regulates trade through Title 19. Title 19 spans twenty-six chapters and includes many different aspects of international trade. The key law concerning the ITC and CBP enforcement is the Tariff Act of 1930,⁸ codified at 19 U.S.C. § 1337 (referred to as “§ 337”, in accordance with its section number in the Tariff Act of 1930),

which governs unfair practices in import trade. A synopsis of the subsections of § 337 is set forth below:

- This subsection defines unlawful activities under § 337: “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.”

19 U.S.C. § 1337(b)–(c).  
- These subsections set forth the investigatory authority of the ITC and the process by which the ITC should conduct investigations of violations of § 337(a)(1)(B).

- This subsection sets forth the ITC’s authority to issue exclusion orders, which exclude infringing products from entry into the customs territory of the U.S.

19 U.S.C. § 1337(e).  
- This subsection sets forth the ITC’s authority to provide preliminary relief through § 337(d) exclusion orders and § 337(f) cease-and-desist orders.

- This subsection sets forth the ITC’s authority to issue cease-and-desist orders.

19 U.S.C. § 1337(g)–(n).  
- These subsections set forth rules regarding defaulting respondents, sanctions for abuse of discovery, the authority to issue forfeiture orders, U.S. Presidential review of ITC decisions, and the period of effectiveness of ITC orders.


Legislative histories for the 1952 Patent Act and the America Invents Act are available through HeinOnline. The legislative history for the Tariff Act of 1930 is available online through Proquest Congressional.

1952 Patent Act Legislative History

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9 The U.S. GPO/FDsys reports that the 2012 version of Title 19 is not yet positive law (as of Nov. 19, 2012).

Leahy-Smith America Invents Act Legislative History

The legislative history for the original Tariff Act of 1930 is very sparse, but includes:
• S. Doc. No. 71-138 (1930) (Conf. Rep.).
  o This Conference Report is only 30 pages and contains recommended compromises for the House and Senate regarding proposed amendments.
  o This Conference Report is 117 pages, and has more information concerning the tariff rates that Congress assigned to each industry.
  o It provides explanations and additional detail concerning the recommended compromises for the House and Senate amendments.

Relevant Congressional Research Service (“CRS”) Reports created for Congress:
  o This report is the most recent update of two reports from 2008–2009.
  o This report is the most recent update of four reports from 2007–2009.

3. Amendments to the Tariff Act of 1930 and Proposed Legislation

Legislative histories for amendments to the Tariff Act of 1930 are available at the Public Laws indicated below, or on Lexis (1988 to present) or Westlaw (1994 to present):

  o Minor amendment revising § 337(c).

  o Significant amendment revising § 337(a), (b), (c), (d), (e), (f), (g), and (h).
  o For more on this amendment, consult the “History” or “Amendments” sections of the free and paid finding aids for § 337 in Part II.B.4–5.
  o Minor amendment revising various subsections to clarify “the matter” as “a matter, in whole or in part,” and other similar revisions.

  o Significant amendment concerning judicial review of ITC determinations regarding the public interest.

  o Minor amendment revising § 337(c).

  o Relatively minor amendment revising § 337(c) concerning the 60-day time period for appeals of final determinations of the ITC.

  o Significant amendments relating to many different subsections of § 337.
  o For more on this amendment, consult the “History” or “Amendments” sections of the free and paid finding aids for § 337 in Part II.B.4–5.
  o Compiled Legislative History from Lexis: 100 CIS Legis. Hist. P.L. 418.

  o Minor amendments relating to the termination of investigations.

  o Significant amendments relating to many different subsections of § 337.
  o For more on this amendment, consult the “History” or “Amendments” sections of the free and paid finding aids for § 337 in Part II.B.4–5.
  o Legislative History documents are also available on Westlaw History.

  o Minor amendments relating to § 337(b)(3).
  o Legislative History documents are also available on Westlaw History.

  o Minor amendments relating to “mask work.”
- Minor corrections to the indentation of subsections.
- Legislative History documents are also available on Westlaw History.

Most of the proposed bills address countervailing duties or aviation smuggling, and are therefore not relevant to this Guide. Proposed bills can be found using ProQuest Congressional or Thomas/Library of Congress. A search of bills using “Tariff Act of 1930” on ProQuest Congressional reveals 38 bills proposed by the 112th Congress (2011–2012).

4. Non-Commercial (Free) Finding Aids for Statutory Authority

- The U.S. GPO’s Federal Digital System (“FDsys”) provides free online access to official government publications, including the U.S. Code (1994 to date), Statutes at Large (2003 to date), and Congressional documents (99th Cong. to date): http://www.gpo.gov/help/index.html#what_s_available.htm.
- Advanced search options, and the ability to refine and narrow search results: http://www.gpo.gov/fdsys/search/advanced/advsearchpage.action
- Retrieve by citation: http://www.gpo.gov/fdsys/search/showcitation.action
- Browse publications: http://www.gpo.gov/fdsys/browse/collectiontab.action

Thomas/Library of Congress: http://www.loc.gov/law/help/statutes.php#locate
- Search fields available include: keyword, title, section, appendix, subtitle, division, chapter, part, subchapter, subpart, rule, or form.
- Search functions available include: Boolean and proximity connectors; concepts, related words, fuzzy searches, or dictionary; and cross references to titles or sections.
- If the specific provision of the U.S. Code is unknown—e.g., The Tariff Act of 1930 or the Smoot-Hawley Act—the Popular Name Tool is very helpful to figure out the correct Title and Section of the U.S. Code and find the statute.
- Classification tables show where enacted laws will appear in the U.S. Code.
- There is also a new (but unofficial) beta version with several key improvements:
Default search to the most current version of the U.S. Code, internal links between U.S. Code sections and chapters, updates to explanatory material, and external links from the U.S. Code Classification Table to public laws.


- Thomas recommends also consulting the official U.S. Code from the U.S. GPO.

- The ITC provides the text of 19 U.S.C. § 1337 without charge on its website, which is very helpful if one is trying to find out quickly which statutes are relevant to the ITC, or to get background on § 337 without charging the client.
- However, this version of § 337 may not be official or up-to-date.

- Does not provide access to the text of the U.S. Code, but a list of which parts of the U.S. Code that CBP enforces

**OpenCRS:** [https://opencrs.com/](https://opencrs.com/).
- OpenCRS provides free access to CRS reports.

### 5. Commercial (Paid) Finding Aids for Statutory Authority

**HeinOnline**
- HeinOnline provides PDF images of all of the official (preferred) print versions of the U.S. Code (1925–2006) and U.S. Statutes at Large (1789–2009).
- For the most recent statutes, HeinOnline recommends the U.S. GPO/FDsys.
- HeinOnline is very useful if one has an exact citation to the U.S. Code or the Statutes at Large, but it is harder to use if one is trying to conduct a search.
  - Limited search functions are available, such as by public law number (e.g., if one does not know the Congress number), or by a chapter of a statute at large from a certain year.

**Westlaw and the United States Code Annotated**
- For each section, e.g., 19 U.S.C. § 1337, the U.S.C.A. provides not just full text, but also Notes of Decisions, History, Citing References, and Context & Analysis.
  - Notes of Decision provides a summary of the key subject areas of § 337, with links to relevant Westlaw Key Numbers (Westlaw’s system of organizing the law by topic area) and key cases.
  - History is helpful because it provides relevant amendments to § 337—including the actual text of the Public Law, Joint Committee Prints, Testimony, Bill Drafts, Reports, Congressional Record, and Presidential Messages associated with each amendment—back to 1994.
o Citing references provides authorities citing § 337, including cases, other statutes, regulations, administrative decisions, and secondary sources.
o Context & Analysis is helpful because it provides cross references, relevant C.F.R. sections, law review articles, other library references, ALR articles, encyclopedias, forms, and treatises & practice aids citing § 337.

LexisNexis and the United States Code Service
- Lexis provides an unofficial U.S. Code with helpful annotations, called the United States Code Service (U.S.C.S.). It is very similar to Westlaw, and one can access it by following the link to U.S. Code Service, and selecting or searching § 337.
- Lexis provides access to the following:
  o Interpretive Notes and Guidance summarizes key cases discussing the various subject areas of § 337, and provides links to those cases.
  o History on Ancillary Law and Directives provides references, notes, a summary of the amendments to § 337, and other provisions.
  o One helpful resource on Lexis is that if one clicks on a recent amendment to § 337 (1988 to present), Lexis provides links to the text of the Bill, Bill Tracking, and a compiled legislative history for that Public Law.

Bloomberg Law
- Bloomberg Law provides the unofficial U.S. Code. It also includes the history, codification, prior provisions, amendments, and the C.F.R. sections citing § 337.

ProQuest Congressional
- ProQuest is useful for finding Congressional documents related to U.S. statutes.
- For older statutes such as the Tariff Act of 1930, ProQuest is more difficult to use because older documents are not cross-referenced.
- The Congressional Record and Tariff Commission Investigations are available.
- ProQuest is helpful in finding CRS reports. A search using “Section 337” returns two CRS Reports. A search using “International Trade Commission” returns thirty-six CRS Reports, but they address aspects of the ITC other than § 337.
- ProQuest is very helpful in locating proposed bills to amend § 337. To find these bills, search “Tariff Act of 1930” on ProQuest using bills and 112th Congress.

CCH IntelliConnect
- CCH has browse and search functions for its databases, but it is not very easy to use, is not free, and is not particularly helpful regarding section 337.
- CCH provides key treatises in trademark, copyright, and computer law.
- CCH has a synonym lookup function, which is pretty useful.

C. Treaties and International Agreements
1. **Trade-Related Aspects of Intellectual Property Rights (“TRIPS”)**

The most relevant treaty to this topic is the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”), which was part of a series of agreements known as the Uruguay Rounds of the General Agreement on Tariffs and Trade (“GATT”):


- TRIPS is too complex to cover completely here, but it provides, among other things, a "national-treatment commitment under which the nationals of other parties must be given treatment no less favourable than that accorded to a party’s own nationals with regard to the protection of intellectual property."

This treaty forced the ITC to change its rules to provide foreign complainants with equal access to the ITC compared with domestic complainants.


2. **Non-Commercial (Free) Finding Aids for Treaties**

United Nations Treaty Collection (“UNTC”)


- UNTC is searchable by Popular Name, Title, Participant, Advanced Search, Full-Text, and Actions Search, but it is harder to use without knowing a treaty’s name.

World Trade Organization: [http://www.wto.org/english/docs_e/legal_e/legal_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm),

- Another useful free finding aid for treaties relating to intellectual property rights is the World Trade Organization (“WTO”) website, which provides a list of legal treaties and links to their full text. The WTO website also provides secondary source material, including summaries of the treaties and interpretive guidance.

D. **Case Law Related to Patent Infringement Injunctions and Exclusion Orders**

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11 See the 1994 amendment to § 337 for more details on the impact of TRIPS and GATT, *supra* Part II.B.3.
1. **Selected Key Cases**

The following is a list of key cases on the ITC and CBP:

  - This case highlights the Federal Circuit’s unwillingness to acknowledge conflict of interest regarding certifications of non-infringement provided by importers.

  - This case reiterates the Federal Circuit’s unwillingness to acknowledge conflict of interest regarding certifications of non-infringement provided by importers.
  - “Hyundai’s challenge strikes us as a thinly veiled and vaguely expressed dissatisfaction with the certification procedure it expects the Customs Service to devise when it implements the Commission’s order.” 899 F.2d at 1210.

  - This case held that the ITC’s modification of an exclusion order was appealable.

*Fuji Photo Film Co., Ltd. v. Int’l Trade Comm’n*, 386 F.3d 1095 (Fed. Cir. 2004).
  - This case highlights the Federal Circuit’s unwillingness to acknowledge conflict at CBP between enforcing ITC exclusion orders and counterterrorism efforts.
    - “As we did in Hyundai, we reject Fuji’s suggestion that the Customs Service is incapable of enforcing the Commission’s general exclusion order effectively because of a lack of expertise and other priorities.” 386 F.3d at 1107.

  - This case notes that no statutory provision expressly authorizes the ITC to conduct enforcement proceedings, but § 337(b) provides the ITC with general authority to investigate violations. Thus, it held that the ITC does have authority to conduct enforcement proceedings. It also held that a respondent not part of the initial case can raise a defense of invalidity in the enforcement proceeding.

*Jazz Photo Corp. v. United States*, 439 F.3d 1344 (Fed. Cir. 2006).
  - This case held that a patent owner could not intervene or join as a party to a CBP case against an importer.

  - This case is the key authority setting forth the four-factor test for permanent injunctions in patent infringement cases.

*Fuji Photo Film Co. v. Int’l Trade Comm’n*, 474 F.3d 1281 (Fed. Cir. 2007).
  - This case is a companion to *Jazz Photo Corp.*, and the Federal Circuit held that a patent owner lacked standing to challenge the ITC’s civil penalty determination.

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12 *Jazz Photo Corp. v. United States*, 439 F.3d 1344 (Fed. Cir. 2006).
- Although this authority does not address patents, it sets forth the four-factor test for preliminary injunctions, which is slightly different from the one for permanent injunctions. The Federal Circuit adopted this test verbatim for preliminary injunction issues arising in patent infringement cases in Apple.13

- This key case held that the CIT lacks subject matter jurisdiction to hear petitions by IP rightsholders against CBP decisions.

Spansion, Inc. v. Int’l Trade Comm’n, 629 F.3d 1331 (Fed. Cir. 2010).
- This key case held that the eBay test for injunctive relief did not apply to the ITC when deciding whether to issue an equitable remedy or permanent injunction.

TiVo, Inc. v. EchoStar Corp., 646 F.3d 869 (Fed. Cir. 2011) (en banc).
- This case is the key authority setting forth the procedure for contempt proceedings following an alleged violation of a permanent injunction against patent infringement.

- This case affirmed the ITC’s “assessment of a civil penalty against Ninestar companies for failure to comply with exclusion and cease and desist orders arising from violation of Section 337 of the Tariff Act.” The ITC had authority to issue a civil penalty against a company that continued in bad faith to import and sell products that were subject to ITC exclusion and cease-and-desist orders.

- This case is the most recent one addressing preliminary injunctions against patent infringement and adopts the Winter four-factor test as controlling precedent.

2. Non-Commercial (Free) Finding Aids for Case Law

- As of Nov. 19, 2012, slip opinions are available from the current term back to the 2007 term.

- Search and filter functions are available by case name, appeal number, court of origin, and date. This website also helpfully indicates whether an opinion is precedential or not.
- Recent oral argument recordings are also available.

U.S. GPO/FDsys – United States Courts Opinions:

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• U.S. Courts Opinions is a pilot by the U.S. GPO and the Administrative Office of the U.S. Courts to provide public access to opinions in about 30 jurisdictions, from April 2004 to date:
  [link](http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=USCOURTS)
• Advanced search options are also available at
  [link](http://www.gpo.gov/fdsys/search/advanced/advsearchpage.action) - add United States Courts Opinions to “Selected Collections” to use these features.

Google Scholar: [link](http://scholar.google.com/)
• Select the Legal Documents option – and then narrow by jurisdiction.
• E.g., a search for *Apple v. Samsung* returns many different court opinions, but a search for 678 F.3d 1314 returns the *Apple v. Samsung*\(^{14}\) opinion.
• E.g., a search for “Crucible Materials Corp. v. U.S. Intern. Trade Comm’n” returns the unofficial court opinion on the first page of results.

3. Commercial (Paid) Finding Aids for Case Law

HeinOnline
• For more recent opinions, HeinOnline recommends the Supreme Court website.
• HeinOnline is very useful if one has an exact citation to the Supreme Court opinion. However, it can be more difficult to retrieve relevant results when searching for an opinion, even though HeinOnline has improved its search functionality across scanned PDFs. The available search fields are by case text, case title, and date.

Westlaw and Key Number System
• Westlaw provides full text access to U.S. Supreme Court, U.S. Courts of Appeals, U.S. District Court, and Court of International Trade cases.
  o For recent Courts of Appeals cases, Westlaw provides a PDF of the official source: e.g., a PDF image of *TiVo Inc. v. EchoStar Corp.*\(^{15}\)
  o For Supreme Court cases, it provides a PDF image of the Supreme Court Reporter, which is not as authoritative as the preferred U.S. Reporter.
• Westlaw provides KeyCite negative treatment, the direct history for the case, and citing references, which is very important to make sure a case is still good law.
• Docket filings are available depending on the subscription level and case type.
• Westlaw provides headnotes for each case summarizing key areas of law, using the West Key Number System to keep track of all cases citing each Key Number.
• Some very useful West Key Numbers are listed below (Patents corresponds to 291k; 114k corresponds to Customs Duties):
  o 291k317 Permanent Injunction

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\(^{15}\) *TiVo, Inc. v. EchoStar Corp.*, 646 F.3d 869 (Fed. Cir. 2011) (en banc).
Lexis Advance and Lexis Advance Headnotes

- Lexis also provides full text access to U.S. court cases, similar to Westlaw.
- Lexis provides Shepard’s and appellate history, which is similar to KeyCite.
- Docket filings are available depending on the subscription level and case type.
- Lexis lacks an equivalent to Westlaw’s Key Number system, but it does provide headnotes that summarize each case, and conducting a new search is easy:
  - E.g., clicking on a headnote and searching “Combined Federal Courts” returns a natural language search for the text in that headnote.

Bloomberg Law and BNA Headnotes

- Bloomberg Law provides full text cases, cross references, and Bloomberg Cite.
  - Bloomberg cite may not be comprehensive—Westlaw reports 1120 cases citing eBay Inc. v. MercExchange, LLC, and Lexis Shepard’s reports 1176 cases citing it, but Bloomberg Cite only reports 975 cases citing it.
  - Lexis Shepard’s reports 23 cases with cautionary language concerning eBay, and Westlaw KeyCite reports 16, but Bloomberg Cite reports 10.
- Bloomberg is very easy to use if one has an exact citation, but it can be more troublesome if one is trying to look up a case by party name—a search for eBay v. MercExchange using “Court opinions by case name” returns no cases, but a search for eBay Inc. v. MercExchange LLC returns eBay as 1 of 3 hits.
- One useful aspect of Bloomberg is the docket access it provides—documents are free as soon as at least one Bloomberg user has paid to obtain the document.
- Bloomberg provides BNA headnotes, which are compiled from BNA newsletters, the International Trade Reporter, and the U.S. Patent Quarterly.
- One useful BNA headnote for IP Law is:
  - Intellectual Property > IP.3 Patents > IP.3.1 Infringement
- Some useful BNA headnotes for the International Trade Reporter are:
  - Division III Import Competition > 54. Unfair Methods of Competition (Section 337) > 54.03 Importation and Sale
  - Division III Import Competition > 54. Unfair Methods of Competition (Section 337) > 54.05 Types of unfair acts > 54.053 Patents > 54.0537 Infringement > 54.05371 In general
- Some useful BNA headnotes for the U.S. Patent Quarterly are:
  - Division V—Remedies > 505. Non-monetary and Injunctive > 505.07 Equitable Relief > 505.0707 Preliminary Injunctions > 505.0707.07 Patents
  - Division I—Patents > 120. Infringement > 120.17 Contempt Proceedings
  - Division I—Patents > 155. U.S. Int’l Trade Comm’n > 155.02 Procedure
  - Division I—Patents > 155. U.S. Int’l Trade Comm’n > 155.07 Remedies

The U.S. Patent Quarterly (USPQ)
- The U.S. Patent Quarterly contains patent cases in U.S. courts and is available on Westlaw, Lexis Advance, the Bloomberg BNA IP Resource Center, and Bloomberg Law.

E. Administrative Rules and Executive Materials

1. Executive Order Creating an Interagency Trade Enforcement Center

- President Obama created an Interagency Trade Enforcement Center to consult with the IP Enforcement Coordinator to enforce U.S. trade rights relating to IP.
- This new Interagency Trade Enforcement Center has three main functions:
  1. (1) be the primary forum to coordinate enforcement of U.S. trade rights;
  2. (2) coordinate with other agencies by exchanging information related to violations of international trade agreements by foreign partners; and
  3. (3) conduct outreach with U.S. businesses and workers to reduce or eliminate trade barriers and unfair foreign trade practices.

2. Administrative Rules and Regulations Governing the ITC and CBP

a. Title 19 of the Code of Federal Regulations\(^\text{17}\)

No discussion of Customs enforcement of ITC exclusion orders would be complete without some analysis of the rules and regulations governing the ITC and CBP. Section 335 of the Tariff Act of 1930, 19 U.S.C. § 1335 (2006), authorizes the ITC to promulgate rules and regulations, which are set forth in Title 19 of the C.F.R., Parts 201 and 210. CBP Rules and Regulations regarding enforcement are set forth in Title 19, Part 174 and Part 177.

19 C.F.R. § 201.16 (2013).\(^\text{18}\)
- This section sets forth the rules of general application for the ITC.

- This part sets forth ITC rules concerning adjudication and enforcement.
  - Subpart A provides rules of general applicability, including definitions, written submissions, sanctions, confidential business information, computing the trial time allowed for each party, service of process, and publication of notices.

\(^{17}\) This Guide does not cover Title 37 of the C.F.R., which sets forth rules for the U.S. Patent and Trademark Office.
\(^{18}\) U.S. GPO/FDsys reports that Title 19 of the C.F.R. is updated every April.
• Subparts B–F govern pre-institution proceedings and investigations; pleadings; rules concerning motions; motions for summary determinations; discovery and compulsory process; and prehearing conferences and hearings.
• Subparts G–H govern determinations and actions, and temporary relief.
• Subpart I governs enforcement proceedings and advisory opinions. Section 210.75 is the most relevant section because it governs proceedings to enforce exclusion orders, cease-and-desist orders, consent orders, and any other orders.

• This part sets forth the rules and regulations concerning CBP protests, including filing requirements, matters subject to protest, dispositions, and judicial review.

• This part sets forth the rules concerning CBP ruling letters, which bind CBP with respect to a specific product proposed to be imported by an importer.

b. Notices of Proposed Rulemaking (‘‘NPRM’’)

• This final rule amended CBP regulations to eliminate patent surveys based on a perceived lack of demand for the surveys due to diminishing effectiveness and other changed circumstances.
• The NPRM corresponding with this final rule was: Patent Surveys, 68 Fed. Reg. 13636 (Mar. 20, 2003).

• This NPRM proposed to set a goal of twelve months for the final determination of a formal enforcement proceeding, with the initial determination due three months before the final determination.

c. Non-Commercial (Free) Finding Aids for Administrative Rules

• Advance search options are available at http://www.gpo.gov/fdsys/search/advanced/advsearchpage.action - add the desired publication to ‘‘Selected Collections’’ to use these features.
• Title 19 of the C.F.R. is updated each April.

The International Trade Commission website: http://www.usitc.gov/

The Cornell Information Institute website:

d. Commercial (Paid) Finding Aids for Administrative Rules

HeinOnline
• HeinOnline provides PDFs of the following: official print versions of the C.F.R. (1938–2012); C.F.R. index and finding aids; all 77 volumes of the official print version of the Federal Register; the Federal Register Indexes; the List of C.F.R. Sections Affected; and the Compilation of List of C.F.R. Sections Affected.

Westlaw
• Westlaw provides the C.F.R. and Federal Register under Federal Materials.
• It also has:
  o Notes of Decision, which notes key cases interpreting the rules of the C.F.R.;
  o History, which is very useful because one can look up the text of final rules and notices of proposed rulemaking published in the Federal Register;
  o Citing references, which is useful to trace the relationships between the various rules, cases, administrative decisions, and other sources that cite the rules; and
  o Context & Analysis, which provides useful annotations with relevant law reviews, U.S. Code sections, and Federal Register notices.

LexisNexis
• Lexis provides the C.F.R. and Federal Register under Federal Legal.
• Lexis also provides limited annotations, with History, Authority, and Notes.
• Lexis has historical versions of the C.F.R., under the C.F.R. archive directory, where one can search each version of the C.F.R. back to 1981.
• Lexis Advance provides similar access, but does not provide access to the historical versions of the C.F.R. under the C.F.R. archive directory.

Bloomberg Law
• Bloomberg provides the full text of the current C.F.R., but it is slightly hard to navigate because it displays only one section at a time. For example, 19 C.F.R. pt. 210 does not return the subsections of pt. 210, only the title of pt. 210.

ProQuest Congressional
• ProQuest can be used to obtain the text of the C.F.R. or Federal Register. To switch to regulations, follow the link at the top of the page, next to Congressional Search.

• ProQuest provides limited annotations, with a History, Authority, and Note, similar to those on Lexis. Searching the Federal Register, however, is harder—
  o E.g., a search for 73 Fed. Reg. 38327 returns 0 results.
  o E.g., a search for “Rules of General Application and Adjudication and Enforcement,” with a limit on agency to "International Trade Commission”, a limit on action to “Final Rules,” and a limit on date to “January 1, 2008 to January 1, 2009” returns 52 hits, with 73 Fed. Reg. 38316 as the 9th result out of 52.
      ▪ The same search date-limited to July 1, 2008 to August 1, 2008, returns one hit, the correct result of 73 Fed. Reg. 38316.
  o E.g., a search for “Rules of General Application and Adjudication and Enforcement and 19 CFR Parts 201 and 210” with a limit on agency to "International Trade Commission”, a limit on action to “Final Rules,” and a limit on date to “January 1, 2008 to January 1, 2009” returns 8 hits, with 73 Fed. Reg. 38316 as the 1st result out of 8.

• U.S. Code sections are hyperlinked within ProQuest Regulatory to U.S.C.S. sections of Proquest Congressional.

3. Administrative Decisions, Interpretations, and Guidance

   a. Selected ITC Determinations

   The ITC holds administrative hearings before Administrative Law Judges (“ALJs”), under the Administrative Procedure Act, 5 U.S.C. §§ 554–557. After the hearing, the ALJ issues an initial determination, which becomes final unless the ITC’s Commissioners disagree with the ALJ, in which case the Commissioners issue the final determination. Each investigation has a docket number, e.g., Inv. No. 337-TA-1 (electronic pianos) (Feb. 6, 1976) and Inv. No. 337-TA-861 (portable electronic devices) (Nov. 16, 2012). Some helpful determinations include:

   • This investigation involves a previous ITC investigation that lead to the exclusion order against the products imported by Ninestar Technology Co.

   • The ITC found a violation of § 337, issued an exclusion order against the MP3 players, and directed CBP to seize and forfeit imports violating the order.
- This case provides an example of an ITC order, CBP enforcement of the ITC order, judicial review by federal courts, and the rescinding of the ITC order.

b. **Non-Commercial (Free) Finding Aids for ITC Determinations**

Case law research for administrative decisions can be quite difficult because each case can have a large number of documents with inconsistent categorization or naming. However, there are a number of useful finding aids if one has the ITC investigation number available:

A Reporter's Guide to Finding Documents on www.usitc.gov:

- The Office of Unfair Import Investigations (“OUII”) provides summary information on each of the 856 ITC investigations as of Sept. 21, 2012. OUII provides the text of exclusion orders and cease and desist orders, with only a few missing orders, back to the year 2000. Prior to 2000, availability is more limited.
- For concluded investigations, it provides a link to the text of the final exclusion, if any.
  - E.g., exclusion orders are available for Inv. No. 337-TA-759 (a relatively small case involving birthing simulators) and Inv. No. 337-TA-543 (a much bigger case involving microchips and cell phone handsets).

The ITC’s Electronic Document Information System (EDIS): [https://edis.usitc.gov/edis3-external/app](https://edis.usitc.gov/edis3-external/app)
- “EDIS is the repository for all documents filed in relation to an investigation conducted by the United States International Trade Commission (USITC). EDIS provides the capability to file documents for an investigation as well as search for documents which have been submitted to the USITC.”
- This resource is very useful for the attorneys involved in an investigation, because it has basic and advanced search functions. However, it is difficult for other researchers to conduct a comprehensive search because documents can be mislabeled or miscategorized.

c. **Commercial (Paid) Finding Aids for ITC Determinations**

Westlaw
Westlaw’s ITC database covers ITC documents (1975 to present). It includes the formal conclusion of an investigation, an investigative report, a recommended determination, an order, or a memorandum prepared by the ITC general counsel.
  
  - Note: the ITC stopped releasing general counsel memoranda in 1985.

- The advanced search functions allow one to search by docket number, attorney, party name, and citation.

- However, it is difficult to determine the completeness of coverage because there are some exclusion orders available on OUII that do not seem to be available on Westlaw.
  
  - E.g., a search for “337-TA-759” (a relatively small case involving birthing simulators) returns 5 hits, including the ALJ order finding the respondents to be in default. But it does not seem to provide the text of the exclusion order, which was available on the OUII Summary Information website.
  
  - E.g., a search for “337-TA-543” (a much bigger case involving microchips and cell phone handsets), returns 74 results, including the Commission Opinion and exclusion order by the ITC.
    - All the hits involve this docket number, which is useful. (Cf. to LexisNexis, below.)

LexisNexis
- Lexis provides ITC decisions through the International Trade Commission Source, with coverage from 1979–present.
- ITC commission decisions (1979–present), ALJ decisions (1976–present), and general counsel memos (1975–1986) are also available.
- Lexis also provides a combined source: “Federal Agency Decisions, Combined,” which includes the ITC’s ALJ decisions, Commission decisions & General Counsel memoranda.
- The frequency of updates varies by source.
- Search results seem to be comparable to Westlaw.
  
  - E.g., a search of this database on Lexis.com using Terms and Connectors, for “Inv. No. 337-TA-759” returns 9 hits, including the ALJ initial determination that was available on Westlaw, and also the original notice in the federal register for that investigation.
  
  - E.g., a search for “Inv. No. 337-TA-543” returns 145 hits, including the Commission Opinion and exclusion order available on Westlaw.
    - However, not all of the hits involve this docket number.

- The LexisNexis ITC sources are also available on Lexis Advance.

Bloomberg Law
  
  - “The USITC Investigations directory contains Commission Opinions (1978 to present), and Notices and Determinations (1995 to present) concerning reviews of ALJ initial determinations pertaining to IP, antidumping & countervailing duty cases.
o The directory also contains complaints filed before the Commission (1971 to present).”

- However, it seems as if Bloomberg Law is still filling out the data in this database, and their search tools provide only limited search capability.
  - E.g., a search for Inv. No. 337-TA-759 returns 1 hit that is a press release announcing the investigation relating to birthing simulators; it does not return the ALJ decisions that are available on Westlaw and Lexis
  - E.g., a search for Inv. No. 337-TA-543 returns only 24 hits on Bloomberg (some of which were for other docket numbers).

- ITC Handbooks & Guides and ITC Guidance Publications are also available under Practice Centers > Intellectual Property > Regulatory Agencies > International Trade Commission.

d. **Selected CBP Rulings Relating to Exclusion Orders**

CBP rulings are more difficult to follow than ITC decisions, because there are basically no regulations governing CBP rulings and protests. Some sample rulings are listed below:

  - This HQ ruling from CBP corresponds to Investigation Number 395 at the ITC.
  - The ruling held that, despite the certification provision by the importer that the importer’s goods did not infringe the relevant exclusion order because they were redesigned, CBP headquarters determined that the redesigned products still infringed and were subject to exclusion from entry into the United States.

  - This HQ ruling from CBP corresponds to investigation number 406 at the ITC.
  - This ruling held that redesigned cameras did not fall within the scope of a general exclusion order by the ITC, and thus could be imported into the United States.

e. **Non-Commercial (Free) Finding Aids for CBP Rulings**

Finding CBP rulings is more difficult than finding ITC determinations, but CBP does provide one useful free online finding aid, the Customs Rulings Online Search System.

  - “CROSS is a searchable database of CBP rulings that can be retrieved based on simple or complex search characteristics using keywords and Boolean operators.”
  - Coverage includes rulings from 1989 to present.
E.g., a search of “Exclusion Order” returns 313 hits from Apr. 13, 1989 through July 12, 2012. But, many of these results discuss the tariff classification of various floor panels, with only a reference to an ITC exclusion order.

f. Commercial (Paid) Finding Aids for CBP Rulings

The examples in this section are taken from subsection II(E)(3)(d), above.

Westlaw
- Westlaw’s CBP database has coverage of CBP decisions (1962 to present).
  - E.g., a search for HQ H054521 does not return the correct HQ ruling.
  - E.g., a search for HQ 470783 returns the correct headquarters ruling.
  - E.g., an advanced search using HQ 470783 as the citation (CN) or as the docket number (DN) returns the correct HQ ruling as the first hit.

LexisNexis
- CBP decisions are available through the “Federal Agency Decisions, Combined” database:
  - E.g., a search for HQ H054521 returns the correct headquarters ruling.
  - E.g., a search for HQ 470783 returns the correct headquarters ruling.
- These LexisNexis sources are also available through Lexis Advance.

Bloomberg Law
- Bloomberg Law contains multiple CBP databases: Customs and Border Protection (1996 to present); Customs Rulings (1988 to present); Intellectual Property Rights Branch (no date coverage listed); Guidance and Interpretation (no date coverage listed); News & Information (no date coverage listed).
  - E.g., a search for “HQ H054521” returns the correct HQ ruling as on CROSS and Lexis, including pictures of the allegedly infringing cameras.
  - E.g., a search for HQ 470783 returns the correct HQ ruling.

F. Useful Search Terms

Some useful search terms for finding case law or administrative materials on Westlaw, Lexis, or Bloomberg include:

- Section 337; Custom!; exclusion and order!; enforc!; enforcement and exclusion and order!; (Custom! or border) and “enforcement of intellectual property rights”; International Trade Commission; CBP; and ITC.
III. Secondary Sources

A. Treatises, Books, and Looseleafs

1. Key Treatises, Books, and Looseleafs Relating to Section 337

The two most important treatises on the topic of Customs enforcement of ITC exclusion orders are *Unfair Competition and the ITC*, by Donald K. Duvall, and *Customs Enforcement*, by Timothy P. Trainer. The key treatise on general patent law is *Chisum on Patents*. Duvall and Trainer are bound treatises from the West group, and *Chisum* is a looseleaf available on Lexis.

These treatises are described in more detail below, along with other useful sources:


- This key treatise provides essential background on all aspects of ITC practice, updated annually. The most useful chapters are chapter 2, which covers basic background information for ITC actions, and chapter 10, which covers enforcement.
- § 10:1 provides an introduction to enforcement.
- § 10:2–10:5 discuss enforcement generally, enforcement of exclusion orders, enforcement of cease-and-desist orders, and enforcement of consent orders.
- § 10:6–10:9 discuss procedures to avoid enforcement of exclusion orders, abuse of enforcement and emergency relief, advisory opinions, and modification and revocation and changed conditions.
- Although published by West, this treatise is not available online through Westlaw.


- This key treatise provides an overview of CBP enforcement of exclusion orders, CBP administrative rulings, and judicial review of ITC and CBP enforcement activity. CBP’s IP Rights Branch (“IPR”) issues administrative rulings that determine whether “imported shipments fall within the scope of the patent which is the subject of a limited or general exclusion order.” Chapter 5 covers patents.
- § 5:1 discusses the bifurcated roles of the ITC and CBP in enforcement
- § 5:2–5:4 discuss the ITC, administrative adjudications, and exclusion orders.
- § 5:3 discusses CBP enforcement of ITC exclusion orders.
- § 5:4 discusses CBP rulings and judicial review of ITC and CBP enforcement.
- § 5:5 discusses CBP rulemaking and exclusion orders. It also discusses 19 C.F.R. § 12.39a, which covers the recently abolished Patent Import Survey. The current lack of the Survey is very relevant to the enforcement of exclusion orders.
- § 5:6 discusses the benefits of seeking ITC exclusion orders.
• This treatise includes appendices with useful examples of statutory materials, CBP Regulations on Patents, Exclusion Orders, CBP Administrative Rulings, and the recently abolished Patent Import Survey.
• Available online through Westlaw (PROTIPBORD).

• This looseleaf is Lexis’ corresponding treatise on the CBP and international trade.
• § 21.02 discusses unfair methods of import competition, section 337, and the Tariff Act of 1930. Chapters 2–3 also briefly mention section 337.
• This treatise is available online through LexisNexis (USCITG).
• This treatise is also available through Lexis Advance, but only through its full name, the U.S. Customs and International Trade Guide.

• This looseleaf has limited coverage of section 337 in § 29:55 International Trade Commission Proceedings. For more detail, it recommends consulting *Duvall*.
• This treatise is available online through Westlaw (MCCARTHY).

• Chisum is a very useful looseleaf because it is one of the key treatises concerning patent law, and Chisum discusses section 337 in sixteen parts of the looseleaf.
• Part III of Chisum focuses on the Federal Circuit, the reviewing court for the ITC, CBP’s decisions related to intellectual property imports, and CIT. Fifty sections of Chisum’s Federal Circuit guide discuss the various applications of § 337.
• Chisum is available online through LexisNexis and Lexis Advance (CHISUM).

• This looseleaf is Westlaw’s corresponding patent law treatise, but coverage of section 337 is much more sparse, with only a brief discussion of it in § 14:40.
• Walker on Patents is available online through Westlaw (MOY-PAT).

• This looseleaf is also helpful, providing a summary of investigations under section 337, ITC administrative rules, and case law from the Federal Circuit.
• Patent Law Fundamentals is available online through Westlaw (PATLAWF).

• Chapter 16 covers enforcement, advisory opinions, and redesigned products, including ITC enforcement and CBP administrative rulings and penalty actions.

2. Finding Aids for Treatises and Looseleafs / Library of Congress Subject Headings

Worldcat: http://www.worldcat.org/
• The best way to find treatises and looseleafs is to search a library catalog.
• Worldcat is the world’s largest online public access catalog, and it allows the user to input a zip code to find libraries nearby that carry each publication.
  o E.g., The GW Law Jacob Burns Library Catalog contains Chisum.

Availability through Westlaw and Lexis Advance
• Many major treatises and looseleafs are available in online form on Westlaw or Lexis, including Trainer, Chisum, Moy’s Walker on Patents, and others listed above. This availability allows users to search these treatises through natural language searches, Boolean connectors, and advanced search functionality.
• But, some treatises are not online and are only available in traditional print format from the West, Thomson-Reuters, Lexis, or Wolters-Kluwer bookstores.

Library of Congress Subject Classification (LCSC): http://www.loc.gov/catdir/cpso/lcco/
• Outlines of LCSC numbers are available in PDF, Word, and WordPerfect at the above website; intellectual property law subjects can be found at: K1401–1578; K7550–7582; KBP1155–1194.

B. Periodical Sources

1. Useful Legal Periodical Articles

• This foundation article discusses the nature and enforcement of exclusion orders.

• This article argues that CBP should disclose to IP rightsholders notice each time CBP detains or excludes the allegedly infringing goods at the U.S. border.

• This article proposes that the ITC preclude collateral attacks in enforcement proceedings.

- This article provides guidance to importers subject to exclusion orders on strategies to maintain market share while steering clear of exclusion orders.


- This article summarizes how importers can challenge exclusion orders before CBP and how IP rights-holders can enforce their rights through the ITC.


- This article provides a broad overview of all aspects of ITC investigations.


- This article argues that the CIT should be given more authority in IP enforcement.


- This article argues that injunctions do not automatically stop infringement, but are a gateway to faster than normal damages at faster than normal speed.


- This article proposes to improve the efficiency of exclusion order enforcement through: (1) modifying the domestic industry requirements to exclude mere licensing, and (2) reinstating a modified version of the “Patent Survey” that the CBP used under C.F.R. § 12.39.


- This article argues that CBP does not automatically exclude infringing goods subject to exclusion orders and proposes three solutions: provide notice to IP rightsholders, adopt a practical test to resolve close cases, and provide for a civil penalty to deter violations.

2. Non-Commercial (Free) Finding Aids for Periodical Sources

Google Scholar and Periodical Journal Websites

Searching for periodicals on Google has become easier as more authors post on SSRN, and periodical journals post electronic versions of journal articles online.

3. Commercial (Paid) Finding Aids for Periodical Sources

HeinOnline
- HeinOnline provides limited OCR search functions, and it allows one to find a periodical article by the volume, journal, and page number of the source.

Westlaw and Lexis Advance
- Westlaw and Lexis provide access to a wide range of periodicals with natural language search, Boolean connectors, advanced search, and citing references.

Bloomberg Law
- Bloomberg Law provides limited access to major periodicals, but it also provides access to financial data and the litigation linked to publically held companies
- Bloomberg Law provides access to well-known BNA newsletters in the IP fields
- Bloomberg also has practice pages devoted to patent law and international IP law, and the Bloomberg BNA IP Resource Center as a stand-alone service.

C. Useful Practice Aids

1. Legal Encyclopedia Articles
   a. Corpus Juris Secundum

   Lonnie E. Griffith, Jr., et al., 25 C.J.S. Customs Duties § 98 (2012).
   - C.J.S. covers ITC authority in § 98 Remedies, Exclusion and Cessation Orders.

b. American Jurisprudence

   - This AmJur article discusses the finality of CBP decisions, the types of decisions available to CBP after the issuance of an exclusion order, and the potential effects on the legal rights of respondents. The most relevant sections are § 222 Final Determination, § 223 Modification or Rescission of Exclusion or Order, and § 231 Customs Service Decisions, Generally.

2. American Law Reports

This article may be somewhat dated because it was written before TiVo, the key case on contempt proceedings and the “colorable differences” test, but it can be useful because it discusses enforcement of exclusion orders against redesigned products.

It provides an annotated list of cases where the imported product was materially changed, and cases where the imported product was not materially changed.


Also predating TiVo, §§ 11–12 discuss CBP enforcement of exclusion orders.

D. Organizations and Government Bodies

1. Useful Government Agency Websites and Reports


- The ITC website contains useful information, including recent publications, annual reports, the 2005 and 2010 surveys on the effectiveness of exclusion orders, statutory text, ITC rules and regulations, and ITC administrative decisions.

US Customs and Border Protection (“CBP”): http://www.cbp.gov/

- The CBP website contains CBP reports and surveys, rules and regulations, and administrative decisions discussed throughout this Legal Research Guide.

World Trade Organization (“WTO”): http://www.wto.org/

- The WTO website contains useful information relating to international trade, including international treaties on IP, such as GATT and TRIPS.


- WIPO can also be pretty helpful for treaties, though the WTO is more helpful.


- The PTO website contains a wealth of data about patents, including how to obtain a patent or search for a patent, and extensive databases for practicing lawyers.


- Report from the U.S. IP Enforcement Coordinator to the U.S. President and Congress. The report suggests the U.S. will improve data collection on IP related activity to maintain an open and balanced environment for IP rights-holders.

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20 Id.
21 For more information on international treaties, see supra Part II.C.
22 The U.S. IP Enforcement Coordinator is also referenced in Exec. Order No. 13601. See supra Part II.E.1.
2. Associations and Trade Groups

- The ITC Trial Lawyers Association website announces annual meetings, contains a members section, and provides background on § 337 and useful links.

3. Guides to Patent Law Research

- This guide is a very helpful starting point for any legal research in patent law.

E. Current Awareness

1. Electronic and Print Newsletters and Alert Services

Bloomberg BNA Newsletters, Libraries & Notification Services
- The BNA International Trade Reporter discusses U.S. trade and international business policy in Europe, North America, Latin America, Asia, and Africa
- The BNA Patent, Trademark & Copyright Journal discusses IP cases, statutes, trends, and other key developments in IP law
- The BNA Patent, Trademark & Copyright Daily provides daily news of IP cases, regulatory developments, and trends in IP law
- The BNA World Intellectual Property Report discusses global developments relating to trademarks, copyrights, and other areas of IP law
- Alert services are available for each of these Bloomberg BNA newsletters.

- This e-news service is a commercial service providing daily news coverage with sections on IP and on international trade.

Other Alert Services via Westlaw, Lexis, Bloomberg Law, and CCH IntelliConnect
- Westlaw: Alerts for Key Numbers, KeyCite, and many other advanced search functions are available, with the option of daily, weekly, or monthly alerts.
- Lexis: Any search on Lexis or Shepard’s search can be saved as an alert by clicking on “save as alert,” with the option of daily, weekly or monthly alerts.
- Bloomberg Law: Any search on Bloomberg Law can also be saved as an alert by clicking on “set up alert,” with the option of as available, hourly, or weekly alerts.
- CCH IntelliConnect also provides the ability to set up alerts.

2. Legal Blogs

• This blog was founded by to fill a void in information related to ITC investigations; it is written by two partners from Oblon Spivak’s litigation practice group.
• This blog is a key resource in keeping up-to-date on ITC decisions as they are issued by the ITC. It splits ITC decisions by ALJ; Commission Notices, Commission Opinions, and Commission Orders; Enforcement Complaints and Enforcement Determinations; new section 337 investigations; and settlements.

• This blog by McDermott Will & Emery provides timely updates to ITC rulings and developments. It is written by two partners from its litigation practice group.
• ITC 337 Update is updated much less frequently than ITC 337 Law Blog (above).

• This blog is written by two associate professors, and is regularly updated with 3–4 posts mentioning the ITC each month.

3. Continuing Legal Education Materials and Legal Forms

• This ALI-ABA article from 1990 discusses § 337 in some detail.

• This 2011 article, available only through Westlaw online, discusses CBP enforcement cases and defenses for importers.

• This 2009 article, available only through Westlaw online, provides practice tips to importers in cases before CBP.

• Chapter 7 of the Fundamentals of Patent Litigation 2012 discusses § 337.
• Chapters 3 & 8 of the Patent Litigation 2011 also discuss § 337.

Legal Forms
• 7 Eckstrom’s Licensing—Forms § 20:14 covers protective orders in ITC cases.

4. Law Firm Primers

A number of useful primers on ITC practice are available from law firm websites:
• Pillsbury also provides a comprehensive primer: http://www.pillsburylaw.com/siteFiles/Publications/Section337Primer13111.pdf.