

The Truth About Section 337 Proceedings Before the USITC

美国国际贸易委员会337条款调查程序的情况介绍

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U.S. International Trade Commission

美国国际贸易委员会



- Established by the U.S. Congress to *Protect U.S. industry* (由美国国会建立, 旨在保护美国产业) .
- Established in 1972

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Drastic Increase in the Number of Cases as the U.S. Relies More on Imports*

随着美国对进口依赖程度的增加，案件数量急剧增加

- 1972: 3 Cases (3件)
 - 1972-1979: Average less than 10 cases per year (每年平均少于10件)
 - 1980-1989: Average about 23 cases per year (每年平均23件)
 - 1990-1999: Average about less than 12 cases per year (每年平均少于12件)
 - 2000-2008: Average about 27 cases per year (每年平均27件)
 - 2007: 35 cases (35件)
 - 2008: 41 cases (41件)
 - 2009: 32 cases so far (到目前为止32件)
- *85% are patent cases (*其中85%是涉及专利的案件)

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Compare With District Court Proceedings 与联邦地区法院程序的比较

District Court Cases 联邦地区法院

- About 2,800 patent cases per year (每年约2,800个专利案件)
- Between 2005-2008 (2005-2008年):
 - About 85% cases settle (约有85%的案件和解)
 - About 3% of the cases went to trial (jury and bench trials) (约有3%的案件进入审理程序(有陪审团和无陪审团的审理))

337 Investigations 337调查程序

- About 10 to 27 investigations per year (每年约调查10至27个案件)
- Between 1995-2007 (1995-2007年):
 - About 58% of investigations settled and/or withdrawn (约有58%的案件和解和/或撤诉)
 - About 42% investigations went to trial (约有42%的案件进入审理程序)

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Compare With District Court Proceedings

District Court Cases 联邦地区法院 337 Investigations 337调查程序

- Between 2005 and 2008, patentees won 76% of trials (2005-2008年, 76%的法庭审理程序中专利权人胜诉)
- Computer/Electronics Industry: 32% (电脑/电子产业: 32%)
- Between 1995 and 2007, complainants won 58% of cases (1995-2007年, 58%的调查程序中原告胜诉)
 - BUT, in the parallel district court cases, patentees won 50% of cases (然而, 在与此平行的联邦地区法院的审理程序中, 50%的案件由专利权人获胜)
- Computer/Electronics Industry: 59% (电脑/电子产业: 59%)

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Why File 337 Investigations 为什么提起337调查程序?

District Court Cases 联邦地区法院 337 Investigations 337调查程序

- Average duration to final decision (最终裁决作出所需的平均时长): 26 months (26个月)
- Injunction (禁令): 64%
- Average duration to final decision (最终裁决作出的所需的平均时长): 14 months (14个月)
- Injunction (禁令): 100%

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Who is the Target of 337 Investigations 谁是377调查的对象?

- From 2001 to 2007 (2001-2007)
 - China (中国大陆): 41 investigations
 - Taiwan (台湾): 38 investigations
 - Japan (日本): 28 investigations
 - South Korea (韩国): 19 investigations
 - Hong Kong (香港): 11 investigations
- Companies from Asia were named in 66% of all investigations
(有66%的调查程序涉及亚洲的公司)

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Special Tactical Considerations at ITC 在美国国际贸易委员会的特别策略考量

- Time is a constraint (时间性要求很高)
 - Complainant will do as much preparation as possible before filing (including review of documents it will have to produce) (原告会在提起调查申请前做尽可能多的准备 (包括对其需要提交文件进行审查))
 - For Respondent, start discovery as soon as possible but continually analyze issues so your discovery is focused, and your trial preparation is always ongoing (对于被告而言, 尽快开始证据调查程序、继续分析有关问题以使调查方向集中, 而对审理程序的准备亦应始终持续进行)
 - Delay discovery by other parties as long as possible (尽可能久地拖延其他方所进行的证据调查)

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Special Tactical Considerations at ITC

- Work with the Investigative Staff（与调查专员共事）（OUII）
 - An independent party to the investigation representing the public interest（在调查程序中代表公共利益的独立一方）
 - OUII has the same rights as private parties（OUII拥有与其他当事人相同的权利）
 - Its positions are often given weight by the ALJ and the Commission（行政法官和委员会通常会重视OUII的观点和立场）

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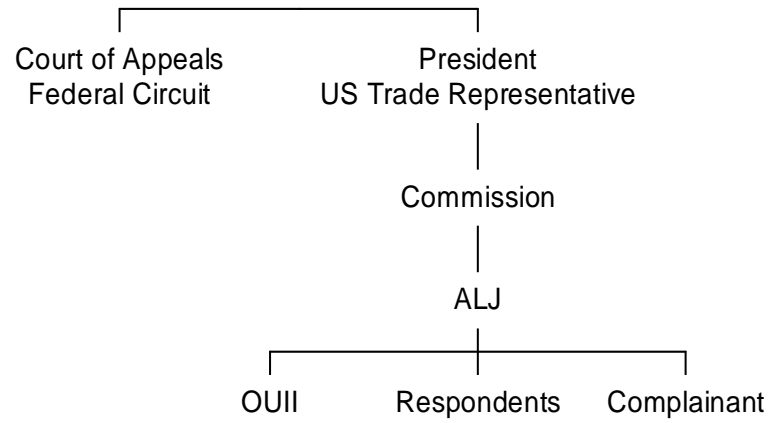
The customers（客户）！

**DO NOT LOSE SIGHT OF THE
FOREST FOR THE TREES**

（不可因小失大）！

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Organization 构架



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Questions?
