

Comcast Corp. v. Int'l Trade Comm'n, 951 F.3d 1301 (Fed. Cir. 2020)

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The International Trade Commission found a violation of Section 337 by Comcast X1 set-top boxes, and Comcast appealed two issues of statutory interpretation underlying the Commission's finding. First, Comcast argued that its set-top boxes did not infringe—directly or indirectly—at the time they were imported. Second, Comcast argued that others—not Comcast—imported the set-top boxes.

As to infringement, Comcast argued that the X1 set-top boxes could not violate Section 337 because any indirect infringement occurred only after importation. This is because the imported boxes are incapable of infringement until they link up to Comcast's domestic servers and to Comcast's customers' mobile devices. The Commission relied on both pre- and post-importation activities of Comcast in its decision, and the panel held that the decision was supported by substantial evidence. However, the panel did not explain whether pre- or post-importation activities carried the day, which suggests the distinction may not be important.

Comcast next argued that it did not import the set-top boxes because it did not physically bring the boxes into the United States and did not exercise any control over the process of importation. The panel again recited the Commission's reasoning and concluded that it was supported by substantial evidence. The ALJ had found that Comcast provided detailed, customized technical specifications to its suppliers and—knowing the set-top boxes are manufactured abroad—required delivery to Comcast in the United States. The ALJ concluded—and the Commission and the panel agreed—that “the evidence shows that Comcast is sufficiently involved with the design, manufacture, and importation of the accused products, such that it is an importer for purposes of Section 337.”

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