

# 2025

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## **ITC Section 337 Year in Review**

ANALYSIS & TRENDS | 3RD EDITION

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# Introduction

Section 337 investigations at the U.S. International Trade Commission (ITC) remain an efficient and powerful tool for American businesses seeking relief from foreign acts of unfair competition, including infringement of intellectual property rights. The Commission's injunctive powers provide an attractive forum for patent owners seeking relief from patent infringement litigation and other unfair acts. In 2025, the number of Section 337 violation complaints filed at the ITC decreased compared to 2024, but remained close to the average number filed over the last decade. The ITC is a useful forum when enforcing patents against multiple infringers; 42% of the complaints filed in 2025 involved more than one respondent group.

In the Fall of 2025, the U.S. federal government entered a shutdown that disrupted operations across federal agencies, including the ITC. As a result, the ITC's website operated at limited capacity, and EDIS was online for search and document access, while document filing was disabled. When the shutdown ended, the ITC tolled all statutory and other investigative deadlines pending before it for 47 days to account for the shutdown and resumption of activities. It is likely that the shutdown affected the number of Complaints filed as well.

The ITC issued 25 Final Determinations, of which 14 found a violation of Section 337. The percentage of violations ticked above 50%, reversing a three-year trend of a declining percentage of violation findings.

In our webinar "ITC Section 337 Year in Review," in addition to statistical trends, we highlighted some important legal decisions in 2025 involving the ITC, especially the Federal Circuit affirming that small U.S. investments can satisfy the domestic industry requirement, the effect of the government shutdown on the ITC, and a look ahead to 2026.

We appreciate your interest in this report, and we encourage you to read our other year-in-review publications covering design patents, the Federal Circuit, artificial intelligence and intellectual property, and the Patent Trial and Appeal Board in detail. Please contact us if you would like to discuss enforcement or defense of intellectual property at the ITC.

**Uma N. Everett**

Director, Trial & Appellate Practice Group

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## Editors



**Paul A. Ainsworth, Director**  
painsworth@sternekessler.com



**Uma N. Everett, Director**  
ueverett@sternekessler.com



**Daniel E. Yonan, Director**  
dyanan@sternekessler.com

## Authors



**Josephine Kim, Director**  
joskim@sternekessler.com



**Paige E. Cloud, Associate**  
pcloud@sternekessler.com



**Cristen A. Corry, Associate**  
ccorry@sternekessler.com



**Davin Guinn, Associate**  
dguinn@sternekessler.com

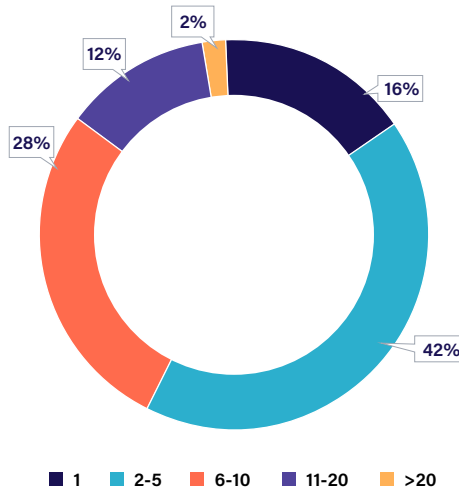


**Brooke N. McClain, Associate**  
bmclain@sternekessler.com

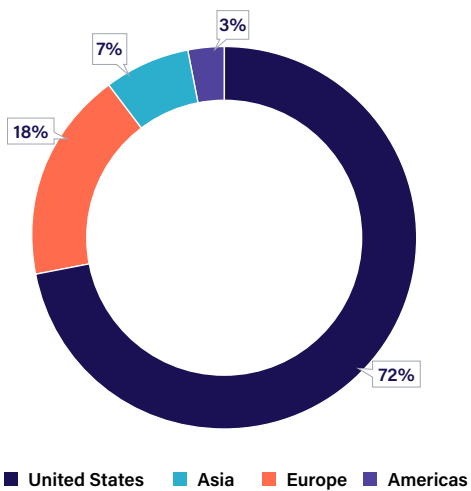
\*Former Sterne Kessler Director, Robert Niemeier, also contributed to this report.

# ITC Statistics *Cases Instituted in 2025*

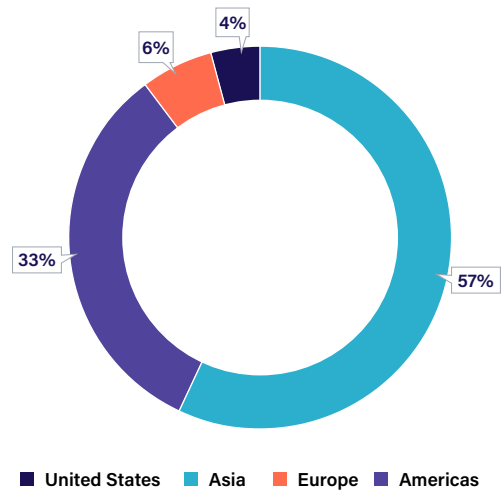
**Respondents per Investigation**



**Complainant Region**



**Respondent Region**



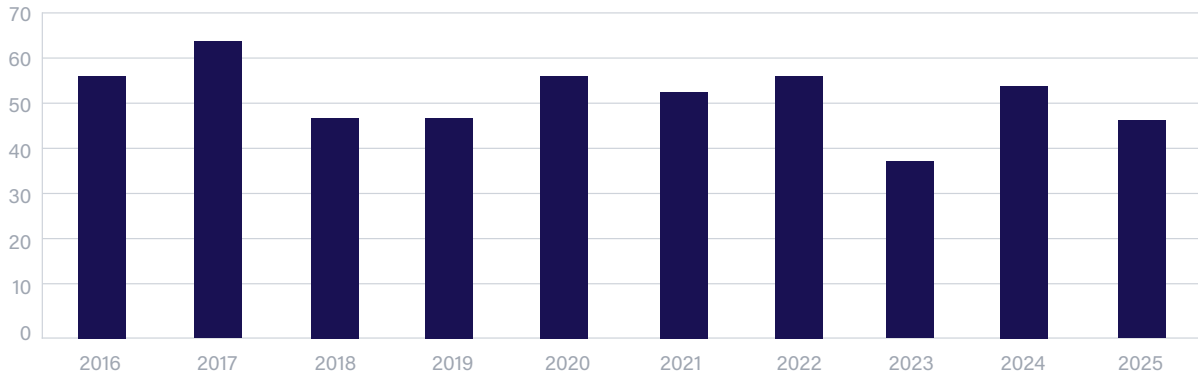
Respondent counts in the top chart reflect corporate consolidation. The regional charts on the bottom count related corporate entities in different regions independently.

IP Type in Investigations	#	%
Utility Patent	39	91%
Design Patent	3	7%
Trade Secret	2	5%
Trademark	1	2%
Unfair Competition	1	2%

**In 2025, on average, from institution...**

- 5.4 months to Markman hearing
- 17.4 months to target date

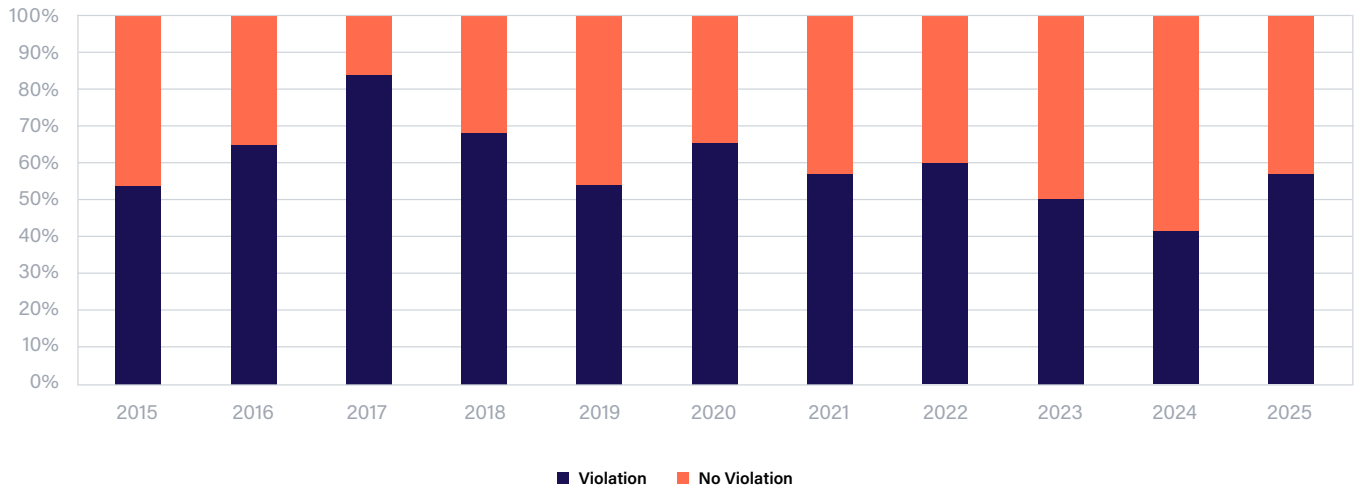
### Section 337 Violation Complaints



### Patents per Investigation (on average) In cases with any patents asserted

Year	Utility	Design	Total
2016	3.1	0.7	3.8
2017	3.4	0.2	3.6
2018	3.4	0.1	3.5
2019	3.4	0.0	3.4
2020	3.0	0.3	3.4
2021	3.6	0.8	4.4
2022	3.1	0.1	3.2
2023	3.6	0.1	3.7
2024	2.8	0.4	3.2
2025	3.7	<0.1	3.8
<b>Overall</b>	<b>3.3</b>	<b>0.3</b>	<b>3.6</b>

### Final Determination Outcomes



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# **Strategic Enforcement Before the US International Trade Commission – An Evaluation of Recent Enforcement Proceedings**

BY: DAVIN GUINN AND DANIEL YONAN

Merely “winning” and securing a remedial order at the U.S. International Trade Commission does not guarantee that violators will stop their unlawful acts. It may only be the first step in securing the desired outcome, particularly in instances where a violating party (respondent) has the will to continue fighting in a highly profitable market space. In such instances, enforcement proceedings under 19 C.F.R. § 210.75 are available. An evaluation of recent enforcement proceedings at the commission reveals strategic insights derived from the behavior of both enforcers and would-be circumventers alike. In particular, it appears

that formal enforcement proceedings are initiated in a variety of contexts, ranging from flagrant disregard for the commission’s remedial orders to crafty circumvention attempts by respondents. Formal enforcement complaints may alert an unwitting respondent to its own improper conduct. And in other instances, these proceedings may allow a complainant to bolster its remedies against defaulting respondents. Regardless of the scenario, overall settlement outcomes highlight their effectiveness as a follow-on tool to ensure resolution and closure when facing motivated adversaries.

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# **Federal Circuit Affirms Small US Investments Can Satisfy Domestic Industry Requirement**

BY: CRISTEN CORRY, PAUL AINSWORTH, AND UMA EVERETT

In February 2025, the U.S. Court of Appeals for the Federal Circuit and the U.S. International Trade Commission (ITC) affirmed that the ITC welcomes domestic industries of all sizes.

In *Wuhan Healthgen Biotech v. ITC*, Case No. 23-1389 (Fed. Cir. Feb. 7, 2025), the Federal Circuit affirmed the commission’s determination that the patentee had satisfied the economic prong of the domestic industry requirement by showing that 100% of the manufacturing occurred in the United States.

Of particular interest, the Federal Circuit and the commission found the patentee still satisfied the economic prong even though the patentee’s actual domestic investments were small.

This holding confirms that the ITC will find even lower dollar investments sufficient for 100% U.S.-based manufacturing when determining whether a domestic industry exists.

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# **Non-Patent ITC Section 337 Investigations**

BY: ROBERT NIEMEIER AND DANIEL YONAN

Actions for patent infringement are the most common and well-known type of Section 337 investigation. However, Section 337 gives the U.S. International Trade Commission (ITC) broad authority to investigate and issue remedial orders against a range of unfair acts. This includes for infringement or misappropriation of non-patent intellectual property such as trademarks, copyrights, and trade secrets. But it also includes other causes of action, such as antitrust, false adver-

tising, unfair competition, and any other claim where the complainant can show an unfair act that injures or prevents the establishment of a domestic industry. With proper pre-suit investigations and factual development, these novel claims can serve as an important tool that provides litigants access to the powerful injunctive remedies available at the ITC to restrain unfair acts in the absence of the more common patent infringement claims.

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# **Federal Circuit Leaves Open Questions Regarding Jurisdiction of Sanctions Decisions**

BY: BROOKE MCLAIN AND UMA EVERETT

The U.S. Court of Appeals for the Federal Circuit has provided new clarity on its jurisdiction over U.S. International Trade Commission (ITC) sanctions appeals in *RealTek Semiconductor Corp. v. ITC*, Appeal No. 2023-1187 (June 18, 2025). Early in 2025, the court left open whether a petitioner could avoid sanctions by terminating an ITC investigation. In this subsequent appeal, however, the court held that it lacks jurisdiction to review sanctions decisions that are merely “ancillary” to a final ITC decision or have no effect on the entry of any articles.

The dispute arose after RealTek sought sanctions relating to an agreement between MediaTek and Future Link Systems, under which MediaTek would pay Future Link if it sued RealTek.

RealTek sought a sanctions order; however, the administrative law judge found sanctions unwarranted, concluding that the evidence showed the agreement did not influence Future Link’s decision to file its ITC complaint. After Future Link withdrew its complaint and the investigation was terminated, RealTek petitioned the ITC to review the sanctions denial, but it declined to do so. RealTek then appealed to the Federal Circuit, but the court dismissed the appeal, finding no statutory basis for jurisdiction over this type of sanctions dispute. The Federal Circuit’s ruling left open the question of whether RealTek’s sanctions motion could be revived in another jurisdiction and highlighted that jurisdiction over sanctions motions is fact-specific.

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# **Purchase Orders and IP Licenses: Recent ITC Decision Underscores Need for Caution**

BY: DAVIN GUINN AND ROBERT NIEMEIER

An opinion issued by the U.S. International Trade Commission in *Certain Power Converter Modules and Computing Systems Containing the Same* (Inv. No. 337-TA-1370) serves as a reminder for sellers to be cautious with any intellectual property-related provisions woven into purchase orders submitted by their clients and buyers. In this investigation, complainant Vicor sued various respondents for patent infringement, including respondent Foxconn. Foxconn raised a license defense based on an IP licensing provision contained in its purchase orders for Vicor power converters. The commission found that Vicor accepted

a valid offer when its employee provided shipment dates in an email response pertaining to a purchase order and determined that the email resulted in a contract that included the IP license to Foxconn. The commission's decision is a reminder for companies seeking to sell products subject to IP protection that business teams must work in close cooperation with in-house legal teams that, in turn, must take care to implement and monitor compliance with policies that prevent agreements or transactions from forming outside approved processes and terms.

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# **Amended Rules at the ITC**

BY: JOSEPHINE KIM AND PAIGE CLOUD

The U.S. International Trade Commission (ITC) has implemented new amendments to its Rules and Regulations, effective Feb. 3, 2025, significantly affecting discovery and complaint-filing procedures. The updates appear aimed at curbing expansive discovery and aligning ITC practice more closely with the Federal Rules of Civil Procedure.

One of the most notable changes is the imposition of a hard cap of 20 fact depositions per complainant group and per respondent group — regardless of the number of respondents — marking a major shift from rules that previously allowed larger respondent groups to take more depositions.

The ITC also adopted a default seven-hour deposition limit; however, parties can seek additional time from the administrative law judge when necessary, such as for foreign-language witnesses. For requests for production, responding parties must now specify whether documents are being withheld due to objections, matching Federal Rules of Civil Procedure 34(b)(2)(C). On the complaint-filing front, the ITC introduced stricter guidance on confidentiality designations and now requires complainants to identify known domestic patent applications.

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# Protecting Your Life Sciences Trade Secrets

BY: PAUL AINSWORTH

Trade secrets are a critical part of intellectual property protection in the life sciences industry, working alongside patents to prevent competitors from exploiting a company's research investments. Unlike patents, trade secrets do not require novelty or nonobviousness; they simply must provide economic value to the company by remaining confidential. In life sciences, trade secrets commonly include therapeutic targets, assays, manufacturing methods, proprietary cell lines, formulations, software, algorithms, research data, development plans, supplier information, and unpublished inventions. To maintain protection, companies must take "reasonable measures" to keep information secret.

These may include trade secret policies, nondisclosure agreements for anyone with access to confidential information — limiting access on a need-to-know basis — facility and IT security controls, and more. Additionally, agreements granting access to trade secrets should define permitted uses, ownership, whistleblower notices, and requirements for returning or destroying confidential materials.

Companies must also clearly identify what their trade secrets are and avoid accidental publication, while strategically deciding what innovations should be patented versus kept secret.

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# The Federal Circuit Expands IP Enforcement Opportunities at the ITC

BY: JOSEPHINE KIM

In April 2025, the U.S. Court of Appeals for the Federal Circuit issued a decision in the Lashify case that significantly broadens the opportunity for companies to bring a lawsuit before the U.S. International Trade Commission (ITC). The ITC is known for its potent remedy: exclusion orders that block infringing products from entering the United States. Prior to the Federal Circuit's Lashify decision, the ITC largely focused on whether intellectual property owners had substantial manufacturing activities within the United States that satisfied the "domestic industry" requirement for bringing an ITC investigation. "Mere importers" were not permitted to bring suit at the ITC. Now, the Lashify decision opens the door for the domestic industry requirement to be satisfied with nonmanufacturing

activities in the U.S., such as sales, marketing, warehousing, and distribution activities, all of which were previously insufficient to satisfy the domestic industry requirement.

The Lashify ruling changes the domestic industry requirement so that companies that previously may not have been eligible to bring suit at the ITC may now obtain relief, regardless of their manufacturing footprint, as long as they have made sufficient investments relating to other qualifying activities in the United States. International companies should be aware of this greater opportunity to take advantage of the ITC to protect their intellectual property from infringing imports into the United States.

## **About Sterne, Kessler, Goldstein & Fox**

Based in Washington, D.C., Sterne Kessler is one of the world's leading intellectual property law firms, specializing in the full range of IP services globally. We are passionate about IP law, with a unique combination of legal acumen and technical experience across both prosecution and litigation. With more than 200 attorneys, patent agents, and technical specialists across the firm, we are committed to delivering practical, business-driven solutions that support our clients' innovation and long-term objectives. For over 45 years, we have been a trusted partner to the world's most innovative companies and inventors, helping them protect, enforce, and maximize the value of their IP around the globe.

Our highly integrated IP practice focuses on patent prosecution and strategic counseling, post-grant proceedings, litigation in federal district and appellate courts and before the International Trade Commission, and trademark prosecution and enforcement. Our clients include Fortune 500 companies, entrepreneurs, start-ups, inventors, venture capital firms, and universities that are making discoveries, building brands, and creating inventions that impact our daily lives.

For more information about the firm and our services, visit [sternekeessler.com](https://www.sternekeessler.com) or follow us on [LinkedIn](#) to get the latest news and updates in IP.

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**Sterne, Kessler, Goldstein & Fox PLLC**

1101 K Street NW, 10th Floor

Washington, DC 20005