

5 KEY TAKEAWAYS

Considering the Alternatives: A Primer on the ITC

Most companies think of the ITC as a place to file patent infringement lawsuits, particularly on high-tech products. However, as is shown by the ever-increasing number of filings there, the ITC is useful in a number of other situations, and can be used to address infringement of copyrights, trademarks, trade dress, and trade secrets, not just patents. In addition, it is the only U.S. forum where an IP rights holder can obtain a General Exclusion Order—an order barring all infringing products from entering the United States, regardless of whether the makers or sellers were party to the ITC investigation, or even known.

Kilpatrick Townsend partner Aarti Shah provides the following situations where you should consider using the ITC to seek a remedy:

1

When fighting fakes, counterfeits, and knockoffs—the General Exclusion Order is powerful relief against these.

2

When obtaining an injunction is crucial—the ITC does not apply the *eBay* factors and thus rights holders who demonstrate a violation do not have to clear this additional hurdle.

3

When speed is crucial—in ITC investigations the trial is held within 10 months of the complaint being filed, and the final orders go into effect in 16 months or less. In addition the ITC does not stay its proceedings for IPRs so there are no IPR-related delays.

4

For cases involving medical or pharmaceutical cases—last year almost 1 out of every 5 of ITC investigations involved products in these categories and their share of the docket has been rising steadily.

5

For cases involving many small, widely located infringers whom it might be hard to join in a single action due to venue issues—the ITC's jurisdiction is nationwide and can address all imported products, regardless of where in the United States the individual infringers are located.

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