Course Description

This course provides an in-depth examination of the U.S. International Trade Commission and its adjudication of patent litigation disputes under Section 337 of the Tariff Act of 1930. The course will focus on all aspects of litigation at the ITC, from the institution of an investigation under Section 337 through the Commission’s review of an Administrative Law Judge’s decision, as well as key Federal Circuit decisions involving the ITC. Students will not only learn the unique procedures of the ITC, but will also be exposed to policy considerations and the practical application of U.S. patent law in ITC investigations. Patent Law I is a prerequisite for this course.

Grading

This course is a writing course. There will be 3 short written assignments over the course of the semester, due at dates indicated in the syllabus or provided in class. Your final grade for the course will be based on the written assignments, each worth 33%, and may be adjusted one increment up or down (e.g. B to B- or A- to A) based on class participation.

Course Assignments

PATENT LITIGATION AT THE ITC: A PRACTITIONER’S GUIDE (2016)

Classes 1 and 2: Introduction (08/18/2016 and 08/25/2016)

- Current 19 U.S.C. § 1337
- *Amgen v. ITC*, 902 F.2d 1532 (Fed. Cir. 1990)
Class 3: The Complaint (09/1/2016)


- *Certain Wireless Devices with 3G Capabilities & Components Thereof*, Inv. No. 337-TA-800, Complaint (July 26, 2011) (SKIM complaint and exhibits)

- 28 U.S.C. § 1659 (district court stay)

- 19 C.F.R. § 210.19 (third-party intervention)

- *Certain Microelectromechanical Systems (“MEMS Devices”) and Products Containing the Same*, Inv. No. 337-TA-876, Order No. 6, (May 21, 2013)

- *Certain Garage Door Operators Incl. Components Thereof*, Inv. No. 337-TA-459, Order No. 7 (Nov. 20, 2001)

- *Certain Audio Processing Hardware and Software and Products Containing the Same*, Inv. No. 337-TA-949, ID, Order No. 8 (June 11, 2015)

Class 4: Discovery (09/8/2016)


Class 5: Practical Discovery Skills and Depositions (09/15/2016)

- Deposition Fact Pattern and practicum
Classes 6 and 7: Domestic Industry (09/22/2016 and 09/29/2016)

- Economic Prong (Class 6 – 9/22/16)


  - *InterDigital Communications., LLC v. ITC*, 707 F.3d 1295 (Fed. Cir. 2013) (denying rehearing *en banc* and holding 337(a)(3)(C) can be satisfied without products practicing licensed patents)

  - *Motiva, LLC v. ITC*, 716 F.3d 596 (Fed. Cir. 2013) (affirming that filing date of complaint is relevant date for determining economic prong and finding litigation costs not sufficient on facts)

  - *Microsoft v. ITC*, 731 F.3d 1354 (Fed. Cir. 2013) (complainant must provide evidence that its substantial domestic investment relates to an actual article that practices the patent)


- Technical Prong (Class 7 – 9/29/16)

  - *Lelo, Inc. v. ITC*, 786 F.3d 879 (Fed. Cir. 2015)

- Technical Prong (Class 7 – 9/29/16)

• **Certain Video Graphics Display Controllers and Products Containing Same**, Inv. No. 337-TA-412, ID, at 1-24, (May 17, 1999) (DI product practices valid claim of asserted patent)

• **Certain Semiconductor Chips with Minimized Chip Package Size & Prods. Containing Same**, Inv. No. 337-TA-432, Order No. 13, ID (Jan. 24, 2001) (DI claim can be different from infringement claim)

• **Certain Soft-Edged Trampolines and Components Thereof**, Inv. No. 337-TA-908, Comm. Op., May 1, 2015 (tech prong and invalid claims)

DISTRIBUTE DI SUMMARY DETERMINATION FACT PATTERN AT CLASS 6

**Classes 8 and 9: Summary Determination, Importation, Infringement (10/6/2016 and 10/13/2016)**

• **Importation**

  • **Certain Electronic Devices, Including Wireless Communication Devices, Portable Music & Data Processing Devices, & Tablet Computers**, Inv. No. 337-TA-794, Order No. 85 (June 1, 2012) (also used for Summary Determination) (denying MSD of importation because infringement not shown)


• **Infringement**


  • **Suprema, Inc. v. ITC**, 796 F.3d 1338 (Fed. Cir. 2015) (en banc) (timing of direct infringement in induced infringement claims)

  • **Clear Correct Operating, LLC v. ITC**, 810 F.3d 1283 (Fed. Cir. 2015) (rehearing en banc denied at 819 F.3d 1334 (Fed. Cir. 2016)
•  Global-Tech Appliances, Inc. v. SEB. S.A., 131 S. Ct. 2060 (2011)

DOMESTIC INDUSTRY SUMMARY DETERMINATION DUE – CLASS 8

Classes 10 and 11: Remedy and Bonding (10/20/2016 and 10/27/2016)


•  Certain Personal Data and Mobile Communications Devices & Related Software, Inv. No. 337-TA-710, Additional Views of Commissioner Pinkert on Remedy and the Public Interest (Dec. 29, 2011) (same as above)

•  Kyocera v. ITC, 545 F.3d 1340 (Fed. Cir. 2008) (holding LEO cannot apply to downstream products)

•  Spansion, Inc. v. ITC, 629 F.3d 1331 (Fed. Cir. 2010) (balancing benefit of protecting IPR against PI factors)


•  Class 11: Pre-Hearing MILS and other Hearing Issues

DISTRIBUTE MILS FACT PATTERNS AT END OF CLASS 11

Class 12: Guest Speaker (11/3/2016)

Class 13: Enforcement (11/10/2016)

• Funai Electric Co. v. CBP, 645 F. Supp. 2d 1351 (CIT 2009)

• Hyundai Electronics Industries. Co. v. ITC, 899 F.2d 1204 (Fed. Cir. 1990) (certification requirements)

• Vastfame Camera, Ltd. v. ITC, 386 F.3d 1108 (Fed. Cir. 2004) (non-parties affected by GEO)

Class 14: Contingent Make-up Day/Overflow Day (11/17/2016)

- MILS DEADLINE AND DISCUSSION