



**Buchanan  
Ingersoll &  
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## **US International Trade Commission: What to Expect After the Complaint is Filed**

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# What Happens Next After Complaint is Filed?

- Soon after receipt of Complaint, ITC will publish Notice asking for comments on public interest within 8 days. 19 CFR § 210.8(c)(1)
- Within 30 days, ITC will review Complaint and decide whether to institute an investigation, i.e. start the case. 19 CFR § 210.10(a)
  - Expect institution, the Complaint has likely already been vetted with ITC
- ITC will examine Complaint and may require supplementation. 19 CFR § 210.9
- ITC will serve Complaint on Respondents and their embassies. 19 CFR § 210.11
- Case will begin to proceed quickly



# Quick Pace/Key Events

- **Administrative Law Judge (“ALJ”) will be assigned to administer and decide case**
  - In addition to Complainant and Respondent, OUII Attorney Staff may participate
- **Expect a Hearing within 10 months**
- **Discovery etc. completed prior to Hearing**
  - Fact Discovery (Documents, Written Discovery, Depositions)
  - Expert Discovery (Technical Expert, Financial Expert)
- **ALJ’s Initial Determination Within a few months after Hearing**
- **Final Review by ITC “Target Date” about 16 Months from Complaint**
- **60 Day Presidential Review Period and Possible Appeal**



# First Steps After Institution

- **Written Discovery Served Right Away**
- **Responses due in only 10 days**
- **20 days – Response to Complaint Due**
- **Scheduling Order Setting Quick Deadlines**
- **Respondents Begin Developing Defenses Immediately**
- **Complainants Pursue Discovery to Further Develop Claims**



# Sample Schedule after Response to Complaint

Exchange/Respond to Written Discovery and Exchange Documents	Month 1-2
File identification of expert witnesses, including their expertise and curriculum vitae	Month 3
Exchange list of claim terms to be construed*	Month 3
Exchange of proposed claim constructions*	Month 3
Initial deadline for responses to contention interrogatories on issues for which the responding party bears the burden of proof	Month 3
Meet and confer to discuss and limit number of disputed claim terms*	Month 3
Initial Markman briefs*	Month 4
Rebuttal Markman briefs*	Month 4
Submission of joint proposed claim construction chart*	Month 4
Initial deadline for responses to contention interrogatories on issues for which the responding party does not bear the burden of proof	Month 4
Joint Tutorial <sup>1</sup> and Markman hearing*	Month 5
Submission of updated joint proposed claim construction chart*	Month 5
File notice of prior art	Month 5
Cut-off date for supplements to contention interrogatories on issues for which the responding party bears the burden of proof, and on public interest issues (if applicable)	Month 5
Cut-off date for supplements to contention interrogatories on issues for which the responding party does not bear the burden of proof	Month 5
Fact discovery cut-off and completion	Month 6
Deadlines for motions to compel fact discovery	Month 6
Exchange of initial expert reports (identify tests/surveys/data)	Month 6



# Sample Schedule Cont.

File tentative lists of witnesses a party will call to testify at the hearing, with an identification of each witness' relationship to the party	Month 6
Exchange of rebuttal expert reports	Month 6
Expert discovery cut-off and completion	Month 7
Deadline for motions to compel expert discovery	Month 7
Deadline for filing motions for summary determination	Month 7
Exchange of exhibit lists among the parties	Month 7
Submit and serve direct exhibits, with physical exhibits available - Complainant(s) and Respondent(s)	Month 7
Submit and serve direct exhibits, with physical exhibits available – Staff	Month 7
Submit and serve rebuttal exhibits, with rebuttal physical exhibits available – all parties	Month 8
File pre-trial statements and briefs – Complainant(s) and Respondent(s)	Month 8
File pre-trial statement and brief – Staff	Month 8
Deadline to file motions in limine	Month 9
File responses to motions in limine	Month 9
Pre-trial conference	Month 10
Hearing	Month 10
File initial post-trial briefs and final exhibit lists	Month 11
File reply post-trial briefs	Month 11
Initial Determination	Month 13
Target date for completion of investigation after ITC Commissioner's Review	Month 15/16



# Judges



**CLARK S. CHENEY**  
*CHIEF ADMINISTRATIVE LAW JUDGE*



**MARYJOAN MCNAMARA**  
*ADMINISTRATIVE LAW JUDGE*



**CAMERON ELLIOT**  
*ADMINISTRATIVE LAW JUDGE*



**MONICA BHATTACHARYYA**  
*ADMINISTRATIVE LAW JUDGE*



**BRYAN F. MOORE**  
*ADMINISTRATIVE LAW JUDGE*





# Discovery

## Discovery Examples:

- Interrogatories and requests for admissions
- Technical documents (including emails)
- Documents concerning domestic industry
- As many as 20 fact depositions per side
- Prior Art
- Expert reports and deposition





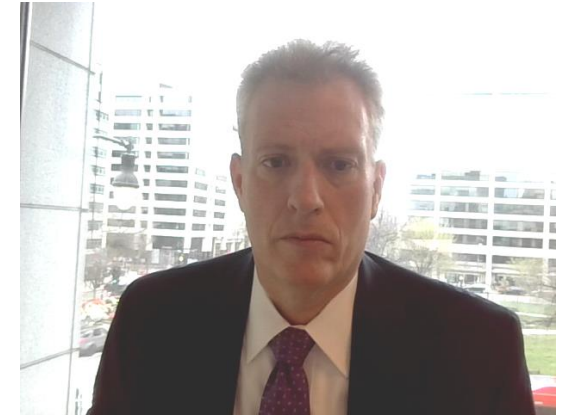
# Key Claim Elements That Must be Proven

- **Importation**
- **U.S. Domestic Industry**
  - Technical Prong
  - Economic Prong
- **Unfair Act i.e. infringement**
  - Defenses: Non-infringement/Invalidity
- **Remedy**



# Remedies

- *NO \$\$ Damages*
- **Exclusion Order**
  - Limited (limited to specific parties)
  - General (excludes all goods including third parties)
  - Customs to Enforce
- **Cease and Desist Order**
  - Prevents U.S. Respondents from continuing infringement
- **Settlement**



# ITC Differences from U.S. District Court

- In Rem (multiple respondents)
- Exclusion Order/C&D is powerful but No Damages
- No Counterclaims
- ALJs' patent experience
- Bench Hearing, No Jury
  - Focus on substantive patent issues, not jury themes
- Speed





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