

SECTION 337



Whether acting for complainants or respondents, Husch Blackwell's Section 337 team brings together a powerful collection of attorneys focused on intellectual property, administrative law, and international trade. Having handled dozens of matters before the U.S. International Trade Commission (ITC), we understand the essential elements of a successful Section 337 action in this specialized venue, where cases move significantly faster than standard federal litigation and follow unique processes and procedures. Our team has handled Section 337 cases spanning a wide variety of products, industries, and technologies, thus becoming very well-versed in the substantive and procedural peculiarities of the ITC.

Moreover, our Section 337 knowledge does not end at the ITC: our attorneys have extensive experience handling enforcement matters before U.S. Customs & Border Protection and policy issues before the U.S. Trade Representative and Congressional committees. We also work closely with seasoned economic experts, whose testimony on issues such as domestic industry and public interest can be crucial to obtaining a favorable result.

Section 337 actions typically involve a company seeking injunctive-like trade remedies in connection with one or several of the following areas:

- Patent infringement
- Copyright infringement
- Trademark/trade dress/false advertising/Lanham Act claims

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- Unfair competition or antitrust claims

Given the breadth of the ITC's scope and jurisdiction, as well as the expansive economic impact of its decisions, it is important for all market participants to anticipate the offensive and defensive strategies available.

We assist clients in developing their broader trade, intellectual property, and commercial strategies and are equally skilled in asserting or defending against claims when litigation is inevitable. Our team also excels at using key inflection points in ITC proceedings to fashion favorable settlements when ending the litigation is of primary importance.

Representative Experience

Successfully represented the complainant, Ventria Bioscience Inc., in Certain Plant-Derived Recombinant Human Serum Albumins & Products Containing Same, Inv. No. 337-TA-1238, a case involving patent infringement and false designation of origin against a Wuhan, China-based competitor (a company founded by a former employee of Ventria) and its U.S. distributors. The case went to trial in November 2021. In September 2022, the ITC found all respondents in violation of Section 337 and issued remedial orders that exclude the infringing and mislabeled products from the U.S. market. This high-profile case dovetails with broader policy issues between the U.S. and China relating to trade and intellectual property; as such, it attracted attention from the media and from many bipartisan elected officials and trade groups.

Successfully represented leading inflatable products

company as a Section 337 complainant, obtaining ITC consent orders that completely bar the accused products from the U.S. market. Certain Inflatable Products With Tensioning Structures & Processes for Making the Same, Inv. No. 337-TA-1009.

Represented semiconductor technology company as successful complainant in a precedential Section 337 bond forfeiture proceeding. In the first such proceeding in more than a decade, the client fully recouped the bonds posted by respondents in relation to exclusion and cease and desist orders. Certain Semiconductor Chips With Minimized Chip Package Size, Inv. No. 337-TA-605.

Representing the complainants in Certain Marine Air Conditioning Systems, Components Thereof, and Products Containing the Same, Inv. No. 337-TA-1346.

Representing respondent the Calico Group in Certain Oil-Vaping Cartridges, Components Thereof, and Products Containing the Same, Inv. No. 337-TA-1286, a case involving virtually all key cartridge suppliers in the fast-growing cannabis vaping industry. The case went to trial in August 2022 and in February 2023, the presiding judge issued a decision finding no violation on multiple independent grounds (no infringement, invalidity, unenforceability, no domestic industry).

Successfully represented Laird Connectivity Inc., a respondent in Certain UMTS and LTE Cellular Communication Modules & Products Containing the Same, Inv. No. 337-TA-1240. The case went to trial in October

2021. In July 2022, the Commission found no violation on multiple, independent grounds—a complete victory. This complex case involved five allegedly standard-essential patents owned by the European conglomerate Philips, where the issue of public interest was delegated to the presiding judge.

Successfully represented multiple respondents in Certain Portable Battery Jump Starters and Components Thereof, Inv. No. 337-TA-1256. The complainant withdrew all allegations against clients and dismissed them with no settlement payment, despite the case proceeding against most other respondents. This sprawling case involved virtually the entire industry for lithium ion battery jump starters.

Successfully represented a Brazilian respondent in Certain Casual Footwear and Packaging Thereof, Inv. No. 337-TA-1270, obtaining a quick dismissal and avoiding substantial litigation expenses.

Successfully represented Confirm Biosciences, Inc., a respondent in Certain Gabapentin Immunoassay Kits and Test Strips, Components Thereof, and Methods Therefor, Inv. No. 337-TA-1239, obtaining a favorable settlement that resulted in an early dismissal for the client.

Represented non-party Nidec Motor Corporation, a key component supplier to the Ocado/Tharsus respondents, when they were subpoenaed by complainant AutoStore in Certain Automated Storage and Retrieval Systems, Robots, & Components Thereof, Inv. No. 337-TA-1228.

Successfully represented two respondents in Certain Electronic Candle Products and Components Thereof, Inv. No. 337-TA-1195. Expeditiously negotiated favorable settlement and distribution agreements, leading to clients' early dismissal from the case and avoidance of substantial litigation expenses.

Successfully represented two respondents in Certain Child Carriers & Components Thereof, Inv. No. 337-TA-1154. Took the case through trial and prevailed on all key issues before the judge: asserted patent found not infringed by both existing and redesigned products, patent invalidated, and patent found unenforceable due to inequitable conduct. Complainant did not even seek Commission review and the investigation was terminated with a finding of no violation. This complete ITC victory also led to the patent holder withdrawing its parallel district court action.

Successfully represented both respondents in Certain Strength-Training Systems & Components Thereof, Inv. No. 337-TA-1135. Protected client's ability to keep accused products in the U.S. market for as long as possible before accepting a consent order to preserve costs, and soon thereafter obtained revocation of the consent order based on successful outcome in parallel district court proceeding (final judgment of non-infringement).

Represented subpoenaed non-party in Certain Wireless Mesh Networking Products & Related Components Thereof, Inv. No. 337-TA-1131.

Successfully represented a respondent in Certain Taurine

(2-Aminoethanesulfonic Acid), Inv. No. 337-TA-1146. The complainant withdrew all claims and voluntarily terminated the case without obtaining any relief or settlement.

Successfully defended pharmaceutical manufacturer in Certain Clidinium Bromide & Products Containing the Same, Inv. No. 337-TA-1109. This unique case involved allegations that client's generic drug was marketed unfairly. The case was placed in the ITC's "100-day program" on the issues of domestic industry and injury, and the complainant withdrew the case on the first day of the hearing, thus terminating the proceeding without obtaining any relief or settlement.

Represented the primary respondent in Certain Industrial Automation Systems & Components Thereof, Inv. No. 337-TA-1074.

Represented leading consumer and medical mattress suppliers as successful respondents in Certain Air Mattress Systems & Components Thereof, Inv. No. 337-TA-971. The ITC found no violation as to one patent and declined to issue remedies as to another patent due to public interest concerns – further, the ITC later vacated the infringement finding as to the second patent. In a related case against the same clients (Inv. No. 337-TA-999), the complainant withdrew all claims and voluntarily terminated the case without obtaining any relief or settlement.

Represented the world's top mobile chipset supplier as the complainant in an extremely high-profile case, Certain Mobile Electronic Devices & Radio Frequency & Processing

Components Thereof, Inv. No. 337-TA-1065.

Represented world's top mobile chipset supplier as respondent in Certain Graphics Processors, DDR Memory Controllers, and Products Containing the Same, Inv. No. 337-TA-1037. Effective discovery strategy and motions practice helped lead to favorable pretrial settlement.

Represented the world's top mobile chipset supplier as successful respondent in Certain Consumer Electronics & Display Devices With GPUs, Inv. No. 337-TA-932. The judge found no violation and recommended no remedies against client even in the event the Commission were to find a violation. The full ITC decided not to review the case, thereby upholding the judge's determinations.

Successfully represented cable set-top box supplier as respondent in Certain Digital Video Receivers & Hardware & Software Components Thereof, Inv. No. 337-TA-1001. In a precedential decision, the ITC found no violation against client due to lack of infringement at the time of importation.

Represented respondents in Certain Acousto-Magnetic Electronic Article Surveillance Systems, Inv. No. 337-TA-904. Defeated complainant on key motions, leading to a favorable pre-trial settlement.

Represented respondents in Certain Paper Shredders, Inv. No. 337-TA-863, a complex case involving allegations of trade secret misappropriation. Defeated the complainant on key pre-trial motions, leading to a favorable settlement.

Represented the complainants in Certain DRAM and NAND

Flash Memory Devices, Inv. No. 337-TA-803. Defeated respondents' motion for summary determination that a domestic industry did not exist, helping lead to favorable pre-trial settlements with all respondents.

Represented a respondent in Certain Ground Fault Circuit Interrupters, Inv. No. 337-TA-739. Defeated complainant's motion for summary determination regarding domestic industry, leading to a favorable pre-trial settlement.

Represented multinational technology company as successful respondent in Certain Multimedia Display & Navigation Devices & Systems, Inv. No. 337-TA-694. In a landmark, precedent-setting decision, the Commission found no violation based, in part, on the complainant's failure to establish a domestic industry.