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Two ITC Investigations Highlight Different Avenues for Early Disposition

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In May of 2022, there were six new complaints filed at the ITC, including complaints filed by: Hand Held Products, Inc. and Honeywell International Inc. (*Certain Barcode Scanners, Scan Engines, Mobile Computers with Barcode Scanning Functionalities, Products Containing the Same, and Components Thereof*, Inv. No. 337-TA-1317; *Barcode Scanners, Scan Engines, Mobile Computers with Barcode Scanning Functionalities*, Inv. No. 337-TA-3623); Innovamed Health LLC and Precision Holdings USA Inc. (*Certain Pneumatic Compression Devices and Components Thereof*, Inv. No. 337-TA-1316); Advanced Micro Devices, Inc. and ATI Technologies ULC (*Certain Graphics Systems, Components Thereof, and Digital Televisions Containing The Same*, Inv. No. 337-TA-1318); Sonrai Memory Limited (*Certain Laptops, Desktops, Mobile Phones, Tablets, and Components Thereof*, Inv. No. 337-TA-3621); and Club-Conex, LLC (*Certain Universal Golf Club Shaft and Golf Club Head Connection Adaptors, Certain Components Thereof, and Products Containing the Same*, Inv. No. 337-TA-3622). The Commission also instituted three new investigations in May 2022.

This ITC wrap-up focuses on orders that highlight avenues for an early ruling at the ITC in two investigations: *Certain Digital Set-Top Boxes and Systems and Services Including the Same* (Inv. No. 337-TA-1315) and *Certain Electronic Exercise Systems, Stationary Bicycles and Component Thereof and Products Including Same* (Inv. No. 337-TA-1305). Specifically, the 1315 Investigation relates to the 100-day program, and the 1305 Investigation relates to the ITC's pilot program for interim initial determinations.

Certain Digital Set-Top Boxes and Systems and Services Including the Same, Inv. No. 337-TA-1315—Denying Request for 100-Day Program

In *Certain Digital Set-Top Boxes and Systems and Services Including the Same* (Inv. No. 337-TA-1315), the proposed respondents—Comcast, Charter, and Altice—submitted a letter requesting that the Commission use the Early Disposition Program to determine, under 19 C.F.R. § 210.10(b)(3), whether complainant has demonstrated a cognizable domestic industry. Under the rule, the Commission “may order the administrative law judge to issue an initial determination within 100 days of institution of an investigation as provided in § 210.42(a)(3) ruling on a potentially dispositive issue as set forth in the notice of investigation. The presiding administrative law judge is authorized, in accordance with § 210.36, to hold expedited hearings on any such designated issue and also has discretion to stay discovery of any remaining issues during the pendency of the 100-day proceeding.” In the 1315 Investigation, the Commission denied the proposed respondents’ motion for entry into the early disposition program to determine whether there was a domestic industry for complainant’s digital set-top box patents, ruling that the information in question was not obtainable in sufficient time: “The Commission has determined not to use the Early Disposition Program for this investigation. It appears that certain information may not be

obtainable in time to be used in a 100-day proceeding.” Comm’n Order at 1. Here, because the complainant is relying on a licensee to satisfy the domestic industry requirement, this circumstance presumably contributed to the Commission’s conclusion that certain information may not be obtainable in time for use in a 100-day proceeding.

The 100-Day Program was introduced in 2013 as a pilot program. The program authorizes the Commission to identify potentially dispositive issues and direct the ALJ to rule on these dispositive issues within 100 days from institution of the investigation. *See* United States International Trade Commission, “Pilot Program Will Test Early Disposition of Certain Section 337 Investigations” (June 24, 2013), 19 C.F.R. § 210.10(b)(3), also available at https://www.usitc.gov/press_room/featured_news/pilot_program_will_test_early_disposition_certain.htm. The 100-Day Program is reserved for fully dispositive issues (*i.e.*, those that will be dispositive of the entire investigation, not just certain patents), and those matters that are capable of being adjudicated in 100 days.

Certain Electronic Exercise Systems, Stationary Bicycles and Component Thereof and Products Including Same, Inv. No. 337-TA-1305—Denying Request for Interim Initial Determination Program

In *Certain Electronic Exercise Systems, Stationary Bicycles and Component Thereof and Products Including Same* (Inv. No. 337-TA-1305), the respondents, Peloton, filed a motion seeking the entry of the investigation into the Commission’s interim initial determination pilot program to address whether the claims of asserted patent are directed to ineligible subject matter under 35 U.S.C. § 101. The complainant, iFit, opposed the motion. The respondent “anticipated that the requested stay would be only ‘minimally disruptive’ to the overall procedural schedule. Yet, [ALJ Shaw] concur[ed] with some of the concerns raised” by complainant. Specifically, ALJ Shaw found that “[f]or example, it appears that [respondents] may have miscalculated the effects on this investigation in the event that either the [ALJ] or the Commission does not find the asserted claims to be ineligible for patent protection under section 101, especially if discovery and procedural requirements relating to other issues have been halted.” The ALJ further noted that “[i]n its announcement of the pilot program, the Commission stated that it

expects that in the pilot program the interim initial determination issues will be case-dispositive or will resolve significant issues in advance of the main evidentiary hearing and could facilitate settlement or otherwise resolve the entire dispute between the parties. Among other things, the Commission has indicated that the presiding administrative law judge may determine to stay discovery on other issues during the interim ID process, taking into account the Commission’s obligation to complete investigations expeditiously and with a view toward avoiding extension of the target date.” Order No. 6 at 1-2.

The interim ID pilot program was introduced on May 12, 2021 and applies to all investigation instituted on or after that date. While similar to the 100-Day program, under the new pilot program, the ALJ has discretion to allow parties to file motions to put particular issues within the program, set a schedule that runs parallel to the investigation, and issue an interim ID no later than 45 days before the scheduled start of the main evidentiary hearing in the investigation, whereas it is the Commission rather than the ALJ who determines whether to enter an investigation into the 100-Day program, prior to institution.

Details of the interim ID pilot program follow:

- Presiding ALJs will be able to put issues within the program as they deem appropriate. It will be within each ALJ’s discretion to allow parties to file motions to put particular issues within the program that they believe will resolve the investigation expeditiously or facilitate settlement.
- The presiding ALJ will fully develop the factual record and arguments on the discrete issues within the program, including, as appropriate, through an evidentiary hearing and briefing on those issues.
- Interim IDs will be based on a full evidentiary record and all applicable legal standards and burdens of proof, including the requirements of the Administrative Procedure Act (APA).
- Interim IDs are to be issued no later than 45 days before the scheduled start of the main evidentiary hearing in the investigation.
- The presiding ALJ may determine to stay discovery on other issues during the interim ID process, taking into account the Commission’s obligation to complete investigations expeditiously and with a view toward avoiding extension of the target date.
- The presiding ALJ may also determine to place the remaining procedural schedule of an investigation on

hold while an interim ID is before the Commission, again taking into account the need to complete investigations expeditiously and avoiding an extension of the target date.

- Petitions for review of interim IDs will be due 8 calendar days after the interim ID issues; responses will be due 5 business days later.
- The Commission will normally determine whether to review an interim ID within 45 days of issuance, and resolve any review within another 45 days, but can set a different time frame for good cause.

See United States International Trade Commission, “Pilot Program Will Test Interim ALJ Initial Determinations on Key Issues in Sec. 337 Investigations,” May 12, 2021, also available at https://www.usitc.gov/press_room/featured_news/337pilotprogram.htm.

Conclusion

The Commission has introduced two avenues for respondents and proposed respondents to resolve matters prior to expending significant resources in litigation. To date, requests to use the 100-Day program have been granted just eight times, most of which were terminated before a ruling. The interim ID program has been used just once so far, in the related 337-TA-1291 and 337-TA-1292 Investigations, where Chief ALJ Cheney, *sua sponte*, decided to utilize the interim ID program, after the Commission denied respondents’ request to utilize the 100-day program to adjudicate on the economic prong of the domestic industry products. Although requests to use these recently-introduced programs are rarely granted, when granted, they provide an effective avenue to potentially resolve an entire investigation or a portion of it early on, to allow the parties to conserve resources.

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