

The Litigator & Corporate Counsel Forum on

# Managing Complex ITC LITIGATION

Advanced Strategies for Effectively Asserting Your IP Rights  
and Overseeing High Stakes Section 337 Investigations

First time on  
the West Coast!



October 18 & 19, 2011 | Sheraton Fisherman's Wharf | San Francisco, CA

## Benchmark your ITC litigation strategies:

*Paul H. Roeder*  
Senior Counsel, Intellectual Property,  
Litigation Manager, **Hewlett-Packard**

*Alex Rogers*  
Senior Vice President & Legal  
Counsel, **Qualcomm**

*Andy Culbert*  
Associate General Counsel  
**Microsoft Corporation**

*Alf Andersen*  
Assistant General Counsel  
**Epson America**

*Ronald Antush*  
Global Head of Litigation, Legal  
& Intellectual Property, **Nokia**

*Tim Lynch*  
Managing Director, IP Transactions  
Vice President, **Eastman Kodak**

*Marta Beckwith*  
Director, Legal Service, **Cisco Systems**

*Pete Roossien*  
Director of Litigation  
**Freescale Semiconductor**

*Walter Peake*  
Vice President and General Counsel  
**Lutron Electronics**

*Catherine Lacavera*  
Director, Litigation, **Google**

*Anthony Kahng*  
Senior Patent Counsel, Director  
**Samsung Electronics America**

*Chris Parry*  
IP Litigation Counsel, **Broadcom**

*Liqiu Li*  
Head, Legal Department  
**Actions Semiconductors**

## Hear from the ITC Bench, Chairman and the Office of Unfair Import Investigations

### The Use of Markman Hearings, Witnesses Statements and Live Testimony at the ITC



*Hon. Paul J. Luckern*  
Chief Administrative Law Judge  
U.S. International Trade Commission



*Hon. Charles E. Bullock*  
Administrative Law Judge  
U.S. International Trade Commission



*Hon. E. James Gildea*  
Administrative Law Judge  
U.S. International Trade Commission

### The Evolution of the ITC as a Forum for Patent Infringement Litigation



*Deanna Tanner Okun*  
Chairman  
U.S. International Trade Commission

### Update on OUII's Involvement in Section 337 Investigations



*Lynn I. Levine*  
Director  
Office of Unfair Import Investigations  
U.S. International Trade Commission

## This exclusive litigation event will provide attendees with advanced insights on:

- Litigating with **NPEs** and responding to the evolving **domestic industry requirement**
- Keeping within your **litigation budget** while meeting the unique demands of **international e-discovery at the ITC**
- Determining **whether the ITC is the best forum** for asserting your IP rights
- **Selecting** the optimal ITC trial team **and managing outside counsel**
- Positioning your case as a **complainant or intervenor** and effectively defending an investigation as a **respondent**

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## ITC CONFERENCE ADVISORY BOARD:

Comprised of a select group pre-qualified industry leaders, *American Conference Institute's ITC Advisory Board (ITCAB)* was created to provide insight on emerging ITC topics as well as litigation and enforcement trends. The **ITCAB** also provides guidance on the overall direction of the conference program and identification of relevant speakers and industry leaders.

### Meet the ITCAB:

*Brian Busey*  
President, ITCTLA  
Partner  
**Morrison & Foerster LLP**

*Juliana M. Cofrancesco*  
Attorney Advisor  
**U.S. International Trade  
Commission**

*David L. Cohen*  
Senior Litigation Counsel  
Legal & Intellectual Property  
**Nokia**

*James B. Altman*  
Immediate Past President,  
ITCTLA, Member, **Foster,  
Murphy, Altman & Nickel, PC**

*Sturgis M. Sobin*  
Partner  
**Covington & Burling LLP**

*David Djavaheerian*  
Senior Director, IP Litigation  
**Broadcom Corporation**

In direct response to your requests for an event specifically geared towards the needs of West-Coast based in-house counsel and private practice attorneys engaged in ITC litigation, ACI is pleased to offer the *Litigator & Corporate Counsel Forum on **Managing Complex ITC Litigation***. Building on the great success of our annual *Expert Forum on **ITC Litigation & Enforcement*** and in light of the ITC's growing use by companies, both foreign and domestic, **this exclusive ITC Litigation** conference has been specifically designed for mid- to senior-level in-house counsel and private practice attorneys who are looking to benchmark with a senior-level group of your peers regarding the most effective ITC litigation strategies.

Take advantage of this rare opportunity to **learn how your peers** are addressing current issues impacting on ITC investigations *that have evolved in recent months*, including –

- The increasing use of the ITC as the forum of choice for **NPEs alleging IP infringement**
- Unique ITC litigation issues involving **patents essential to a standard**
- The effectiveness of the ITC as a forum for **enforcing life sciences and non-orange book listed pharmaceutical patents**

Hear directly from *senior staff at the International Trade Commission* regarding –

- OUII's expected involvement in Section 337 investigations in light of recent proposals
- ITC ALJ's current thinking on Markman Hearings and their use in Section 337 investigations
- The evolution of the ITC as a forum for patent infringement litigation

Also take advantage of this opportunity to hear from a **U.S. District Court judge** experienced in overseeing IP infringement cases as well as the IPR Branch, **U.S. Customs and Border Protection** on enforcement of ITC exclusion orders:

*Hon. Jeremy Fogel\**  
District Judge  
**U.S. District Court for the  
Northern District of California**

*Dax Terrill*  
Attorney Advisor  
**IPR Branch, U.S. Customs  
and Border Protection**

Don't miss this opportunity to learn how to best navigate the complexities of litigation at the **U.S. International Trade Commission**, from a faculty of experienced, senior-level in-house counsel and ITC practitioners.

Register today to attend this industry-leading event by calling **888-224-2480**, faxing your registration to **877-927-1563**, or registering online at **www.ITCLitigationCA.com**

*\* denotes invited speaker at the time of print*

*Here's what past attendees of ACI's flagship ITC litigation Conference have to say:*

**"Overall excellent presentations. A great opportunity to candidly discuss cutting edge issues with Commission staff."**

– Kenyon & Kenyon LLP

**"The conference was excellent."**

– Bracewell & Giuliani LLP

**"Very informative."**

– Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

## WHO YOU WILL MEET

*U.S.-based and foreign in-house corporate counsel responsible for IP and litigation within the industries:*

- Consumer electronics
- Computer hardware
- Telecommunications
- Life sciences

*Private practice attorneys specializing in:*

- Section 337 investigations and litigation
- IP litigation
- Patent prosecution
- International trade
- Customs and imports
- IP transactions

## Interactive Working Group Session

8:30 am – 11:30 am (Registration Begins at 8:00)

### A Primer on Section 337 Investigations and Litigation: What In-House Counsel & Their Advisors Need to Know

*Juliana Cofrancesco*

Attorney Advisor  
U.S. International Trade Commission (Washington, DC)

*Catherine Lacavera*

Director, Litigation, Google, Inc. (Mountain View, CA)

*Chris Parry*

IP Litigation Counsel, Broadcom Corporation (Irvine, CA)

*Stefani Shanberg*

Partner, Wilson Sonsini Goodrich & Rosati (Palo Alto, CA)

The ITC has quickly become the forum of choice for litigating high-stakes patent infringement suits. Providing a fast-paced forum for companies looking to quickly bring to a resolution the controversial issue of U.S. patent rights related to imported products, Section 337 offers a great benefit for patent holders while also creating tremendous hurdles for those on the opposing side. A niche area of practice for both in-house counsel and private practice attorneys alike, one must come to the ITC well-equipped to face the myriad of procedural and litigation challenges presented by litigation under Section 337 in order to obtain the best results.

Designed specifically for in-house counsel and private practice attorneys new to the world of ITC litigation, this intense working group session will provide attendees with a comprehensive, soup-to-nuts overview of how to effectively navigate a Section 337 investigation and the litigation that follows. A rare opportunity to benchmark with and learn from in-house counsel and private practice attorneys experienced in representing parties on all sides of an ITC case, attendees of this interactive session will walk away with a comprehensive knowledge of how to navigate the ITC in the context of a Section 337 investigation. You will find this session invaluable for getting up to speed on how investigations and litigation at the ITC works, while also maximizing your opportunity to engage in the advanced discussions that will be the hallmark of the main conference.

Topics of discussion will include:

- Initiating an action as a complainant
- Positioning your case as a respondent or intervenor
- Outlining business activity that qualifies for domestic industry treatment – Non-Practicing Entities (NPEs) or Patent Assertion Entities (PAEs) - review of the FTC's findings relevant to ITC litigation in its March 2011 report, "The Evolving IP Marketplace"
- Discussing public interest and how to argue the relevance of it in your case
- The evolving role of OUII in Section 337 investigations
- Ensuring successful claim construction and summary determination
- Downstream products, re-designs and work arounds – how requirements for downstream relief have evolved post-Kyocera
- Confronting the unique challenges posed by ITC litigation with foreign parties
- Going to hearing at the ITC
- Overview of various Administrative Law Judge (ALJ) ground rules

- Seeking early case termination through settlement negotiation and license/royalty agreement terms
- Seeking review of ALJ decisions by the Commission and successfully appealing Section 337 determinations to the Court of Appeals of the Federal Circuit (CAFC)

#### 12:00 Registration for Main Conference Begins

#### 12:30 Co-Chairs' Opening Remarks

*Anthony Kahng*

Senior Patent Counsel, Director  
Samsung Electronics America, Inc. (Washington, DC)

*Brian Busey*

President, ITCTLA  
Partner, Morrison & Foerster LLP (Washington, DC)

#### 12:45 ITC vs. Federal District Court: Weighing the Costs and Benefits of Asserting Your IP Rights at the ITC

*Hon. Paul J. Luckern*

Chief Administrative Law Judge  
U.S. International Trade Commission (Washington, DC)

*Hon. Jeremy Fogel\**

District Judge  
U.S. District Court, Northern District of California  
(San Jose, CA)

*Maureen F. Browne*

Partner, Covington & Burling LLP (Washington, DC)

- Which types of IP are most ripe for litigation at the ITC vs. at the federal district court – patent vs. copyright vs. trademark
- Weighing costs and goals in ITC vs. federal district court litigation
  - evaluating filing and jurisdictional requirements – deciding where to sue and making a preliminary assessment of available validity and infringement proceedings
  - identifying the objective of the case – why are we suing and what are we seeking?
  - conducting an infringement analysis to determine your position prior to engaging in litigation
- Contrasting available remedies for IP disputes – knowing how each remedy may or may not meet your case objectives – damages, exclusion order, cease and desist order
- Assessing the likelihood of obtaining an injunction post-*eBay*
- Considering the timing of pursuing ITC and federal district court litigation, separately and/or simultaneously
- Evaluating the demands related to timing, motion practice and discovery at the ITC vs. at federal district court – understanding how the same procedure may differ in each forum
  - claim construction and Markman
  - discovery timelines and the jurisdiction of the court
  - unique issues when litigation includes foreign parties

#### 1:45 NPEs and PAEs at the ITC: Litigation Tactics for Responding to the Evolving Domestic Industry Requirement

*Paul H. Roeder*

Senior Counsel, Intellectual Property Litigation Manager  
Hewlett-Packard Company (Palo Alto, CA)

\* denotes invited speaker at the time of print

**Anthony Kahng**  
Senior Patent Counsel, Director  
Samsung Electronics America, Inc. (Washington, DC)

**Chris Parry**  
IP Litigation Counsel, Broadcom Corporation (Irvine, CA)

**Stephen R. Smith**  
Partner, Cooley LLP (Reston, VA)

**Brian Busey – Panel Moderator**  
President, ITCTLA  
Partner, Morrison & Foerster LLP (Washington, DC)

- Meeting the technical and economic prongs for establishing domestic industry
- Evaluating the business practices of NPEs and PAEs to satisfy the domestic industry requirement – identifying what type(s) and level of activity is sufficient?
  - defining “substantial investment” and the threshold for “licensing activity” that will satisfy the economic prong
  - pending or threatened litigation – does it qualify?
  - legal fees arising from litigation – are they sufficient?
  - license agreements – how many and what type?
- Lessons learned from recent and pending cases and investigations evaluating the domestic industry requirement
  - ITC determinations – *Certain Multimedia Display and Navigation Devices and Systems, Certain Video Game Systems and Controllers, Coaxial Cable Connectors*
  - Federal Circuit court decisions – *In re Microsoft Corp., Spansion Inc. v. Int’l Trade Comm’n*

### 3:15 Afternoon Refreshment Break

### 3:30 OUII Keynote Address: Update on OUII’s Involvement in Section 337 Investigations

**Lynn I. Levine**  
Director, Office of Unfair Import Investigations  
U.S. International Trade Commission (Washington, DC)

Hear directly from the Director of the Office of Unfair Import Investigations as she provides insight into investigative attorney involvement in Section 337 investigations under the new staffing models being tested at the Commission with regard to OUII’s participation. Take note as Ms. Levine discusses how these models are being implemented to optimize OUII’s resources and “specific expertise” so that you can better predict how OUII’s differing levels of participation may impact your case. Attendees will be provided with the opportunity to pose questions during a moderated Q&A segment at the conclusion of the presentation.

### 4:00 Initiating an ITC Action and Positioning Your Case as a Complainant

**Walter Peake**  
Vice President and General Counsel  
Lutron Electronics Co., Inc. (Coopersburg, PA)

**Jim Adduci**  
Partner  
Adduci, Mastriani & Schaumberg, L.L.P. (Washington, DC)

- How to craft a well-formulated ITC complaint
  - deciding what issues can and must be litigated within the constraints of the 337 process

- assessing how many parties, patents, claims (defenses) are too many
- anticipating defaulting respondents – how to address once it happens
- understanding fact pleading vs. notice pleading
- fulfilling Rule 210.12 requirements & procedures for filing complaints – supplementation and amendment
- Pre-filing due diligence and case preparation
  - understanding jurisdictional allegations required for particular remedies
  - identifying appropriate remedies
  - anticipating potential issues that should be addressed in the complaint
- What to expect once a case is filed and keeping track of your procedural schedule

### 5:00 Defensive Litigation Strategies for Respondents and Intervenor

**Marta Beckwith**  
Director, Legal Service, Cisco Systems, Inc. (San Jose, CA)

**Sean Cunningham**  
Partner, DLA Piper (San Diego, CA)

- Meeting Section 210.13 requirements for responses
- Identifying faulty complaints
- Obtaining dismissal or withdrawal of complaints
- Dealing with intervention - real party in interest vs. limited purpose
- Knowing when to work cooperatively with other companies vs. when to explore other options as a party to the litigation
- Understanding discovery implications on discovery obligations for respondents vs. intervenors
- Considering the potential for post-order assertion of defenses

### 5:45 Conference Adjourns to Day Two

### 5:45-6:45 Cocktail Reception Hosted by:



### Continuing Legal Education Credits

Accreditation will be sought in those jurisdictions requested by the registrants which have continuing education requirements. This course is identified as nontransitional for the purposes of CLE accreditation.

ACI certifies that the activity has been approved for CLE credit by the New York State Continuing Legal Education Board in the amount of 13.0 hours. An additional 3.5 credit hours will apply to workshop A participation and an additional 4.0 credit hours will apply to workshop B and C participation.

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You are required to bring your state bar number to complete the appropriate state forms during the conference. CLE credits are processed in 4-8 weeks after a conference is held.

ACI has a dedicated team which processes requests for state approval. Please note that event accreditation varies by state and ACI will make every effort to process your request.

Questions about CLE credits for your state? Visit our online CLE Help Center at [www.americanconference.com/CLE](http://www.americanconference.com/CLE)

8:30 Co-Chairs' Remarks

8:35 **Chairman's Keynote Address: A View from the Chairman's Office on the Evolution of the ITC as a Forum for Patent Infringement Litigation**

*Deanna Tanner Okun*  
Chairman  
U.S. International Trade Commission (Washington, DC)

9:20 **Ensuring Effective Discovery Management: How to Meet Unique ITC Demands within Your Litigation Budget**

*Hon. Charles E. Bullock*  
Administrative Law Judge  
U.S. International Trade Commission (Washington, DC)

*Pete Roossien*  
Director of Litigation, Freescale Semiconductor (Austin, TX)

*Kent R. Stevens*  
Special Counsel  
Cadwalader, Wickersham & Taft LLP (Washington, DC)

*Paul F. Brinkman – Panel Moderator*  
Partner, Alston & Bird LLP (Washington, DC)

- Complying with procedural rules governing discovery at the ITC
- Understanding the limits of a Protective Order and determining whether or not evidence obtained in the context of one action can be used to
  - pursue discovery in another action or country
  - used as evidence in a parallel or separate but related suit in another venue
- Tackling e-discovery during an ITC investigation – how to limit “fishing expeditions”
- In-house strategies for limiting business interruption during the discovery process
- Preparing your staff for a deposition
- Sophisticated case budgeting for ITC cases - tips for conducting effective discovery without expounding your entire litigation budget
  - how to keep your outside counsel on track and pursue only what's needed
  - focusing your budget on patents that are most relevant to the case and critical to your business
  - overview of fee arrangements, best practices/models that have worked
- Ensuring the corporate interest is conveyed when corporate representatives are excluded from confidential sessions

10:30 Morning Refreshment Break

10:45 **View from the ITC Bench: Judicial Perspectives on the Use of Markman Hearings, Witnesses Statements and Live Testimony at the ITC**

*Hon. Paul J. Luckern*  
Chief Administrative Law Judge  
U.S. International Trade Commission (Washington, DC)

*Hon. Charles E. Bullock*  
Administrative Law Judge  
U.S. International Trade Commission (Washington, DC)

*Hon. E. James Gildea*  
Administrative Law Judge  
U.S. International Trade Commission (Washington, DC)

*Marcia H. Sundeen – Panel Moderator*  
Partner, Kenyon & Kenyon LLP (Washington, DC)

During this session hear directly from Administrative Law Judges at the International Trade Commission regarding their views on the use of Markman Hearings. Learn what the Judges thoughts are regarding claim construction in the context of expert discovery, how the procedure should and can be used to assist in narrowing issues by summary determination, as well as the ultimate impact on claim construction of the issuance of a Markman ruling as a non-final Order. Additionally, take note as the Judges provide insights on the use of live testimony and witness statements during the evidentiary hearing and at trial. Attendees will be provided with the opportunity to pose questions during a moderated Q&A segment at the conclusion of the panel.

12:00 **Protecting the “Crown Jewels”: Ensuring ITC Protective Orders Adequately Shield Software Source Code**

*Thomas L. Jarvis*  
Partner  
Finnegan, Henderson, Farabow, Garrett & Dunner, LLP

- Amending protective order to address software “source code” inspection and access - petitioning for additional security and safeguard protections
- Limiting opposing party review of source code - denoting who can have access, time limits on access and the number of copies permitted
- Seeking the non-disclosure of source code at trial
- Understanding how the opposing party's product/technology works - revisiting theories of infringement/non-infringement once the source code has been reviewed

12:30 Networking Luncheon for Attendees and Speakers

1:45 **How to Successfully Oversee a Section 337 Investigation Involving Foreign Parties**

*Sturgis M. Sobin*  
Partner, Covington & Burling LLP (Washington, DC)

- Litigating against and representing foreign parties before the Commission who may not have in-house counsel
- Understanding the differences in litigating with a foreign party as a complainant, respondent or intervenor
- How to address and accommodate cultural and language differences
- Coordinating ITC, District Court and other foreign proceedings
- Unique discovery issues that arise in the context of ITC investigations involving foreign parties - knowing when and how depositions of foreign witnesses can be taken, what to plan ahead for and when
- Considering the impact on your litigation budget – how it will change once foreign parties are involved
- Ensuring compliance with protective orders

2:15 **Selecting and Managing Outside Counsel in Section 337 Litigation**

**Marta Beckwith**

Director, Legal Service, Cisco Systems, Inc. (San Jose, CA)

**Alf Andersen**

Assistant General Counsel  
Epson America, Inc. (Long Beach, CA)

- How to structure an effective case team and build a “dream team” to accomplish your litigation objective
- Addressing representation and conflicts issues within the ITC bar post-Kyocera
- Weighing the pros and cons of retaining local counsel
- Seeking out competent ITC litigation counsel who are both knowledgeable and in tune with the inner workings of the ITC
- Learning to delegate while still maintaining control – knowing when to use your own judgment even when counsel advises you to the contrary

3:00 **Afternoon Refreshment Break**

3:15 **Addressing Unique ITC Litigation Issues Involving Patents that Belong to a Standard**

**Alex Rogers**

Senior Vice President & Legal Counsel  
Qualcomm (San Diego, CA)

**Ronald Antush**

Global Head of Litigation  
Nokia Legal & Intellectual Property (Irving, TX)

- Discussing what public interest issues should be considered prior to institution of an ITC case involving declared essential patents
  - how should public interest issues be weighted?
  - what impact should public interest issues have on whether or not an exclusionary order is granted?
- Considering whether or not FRAND-compliant offers can/should impact the ITC’s issuance of traditional injunctive/exclusionary remedies
  - should the ALJ be required to consider and determine whether or not the Complainant has behaved in compliance with FRAND licensing commitments?
  - what weight should an ALJ give to a Respondent’s admitted compliance with a standard when assessing infringement of a declared essential patent?
- How should an ALJ receive evidence on what the SSO’s licensing commitments require?
- Delays and stays - should the ITC grant a stay or delay of entry of an exclusion order pending review by the Federal Circuit when an action involving an essential patent is at issue
- Understanding which types of licensing arrangements may/may not constitute per se misuse
  - examining the holding in *Princo Corp. v. Int’l Trade Comm’n* interpreting the patent misuse defense
- Addressing settlement of an ITC case involving IP that is deemed essential to a standard is involved

4:00 **Exploring ITC Litigation Resolution Mechanisms: Mediation, Settlement & ADR**

**Andy Culbert**

Associate General Counsel  
Microsoft Corporation (Redmond, WA)

**Tim Lynch**

Managing Director, IP Transactions, Vice President  
Eastman Kodak Co. (Rochester, NY)

**Ralph Mittelberger – Panel Moderator**

Counsel, Arent Fox LLP

- Considering whether or not the use of the ITC mediation program is a viable option for resolving the case
- Deciding when to make the offer to settle and seeking early case termination through the use of a license/royalty agreement
  - identifying the triggering points for settlement of an ITC case
  - knowing what the business drivers are for seeking settlement
- Securing a protective order to shield non-settling parties from receiving the financial details of the settlement
- Effectively employing ADR to resolve an international IP dispute and considering the impact on pending ITC or district court litigation

4:45

**Evaluating the Effectiveness of the ITC as a Forum for Enforcing Life Sciences and Non-Orange Book Listed Pharmaceutical Patents**

**James F. Hurst**

Partner, Winston & Strawn LLP (Chicago, IL)

- Evaluating the pros and cons of filing in federal district court vs. the ITC when pharmaceutical/life sciences patents are at stake
- Identifying circumstances that could be ripe for using the ITC as a tactical advantage
- Outlining jurisdictional advantages of pursuing litigation at the ITC as an innovator
- Weighing the benefits of the remedy provided to successful complainants at the ITC

5:15

**Conference Concludes**

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Drawing on our unparalleled depth and experience in intellectual property, international trade and government relations, clients turn to **Covington** for their bet-the-company ITC litigation. Our attorneys have appeared in over 70 Section 337 cases spanning more than 25 years, including some of the largest and most high-profile matters to have come before the ITC.

**FINNEGAN**

**Finnegan** is one of the largest intellectual property law firms in the world practicing all aspects of patent, trademark, copyright, and trade secret law. [www.finnegan.com](http://www.finnegan.com).

# Interactive Working Group Sessions

Thursday, October 20, 2011

9:00 am – 12:30 pm (Registration Begins at 8:30)

1:30 pm – 5:00 pm (Registration begins at 1:00 pm)

## B

### Enforcement of ITC Exclusion Orders at Customs: How to Ensure Effective Downstream Enforcement and Address Re-Designs, Work-Arounds and Downstream Products

#### *Dax Terrill*

Attorney-Advisor, Intellectual Property Rights and Restricted Merchandise Branch  
U.S. Customs and Border Protection (Arlington, VA)

#### *Alf Andersen*

Assistant General Counsel  
Epson America, Inc. (Long Beach, CA)

#### *Stuart P. Seidel*

Partner, Baker & McKenzie LLP (Washington, DC)

Enforcement of an ITC exclusion order does not automatically occur. Proactive involvement on the part of the complainant is required to ensure successful enforcement of and compliance with the Commission's orders. On the other hand, as a respondent you want to ensure that Customs authorities do not assume an overly broad interpretation of the exclusion order that may unlawfully prevent products not covered by the scope of the order from entering into the U.S.

Attend this session and gain practical strategies for addressing enforcement of ITC exclusion orders as you hear from CBP's IPR & Restricted Merchandise Branch on current initiatives currently being utilized to ensure effective enforcement of ITC orders at the border.

*Ensure that the time, money and resources spent litigating your case at the ITC does not go to waste.*

Take note and come prepared with your most pressing questions as the following topics of discussion are addressed during this practical and interactive working session:

- Understanding the role of the IPR Branch vs. local ports in enforcement of ITC exclusion orders
- Addressing downstream relief, re-designs and work arounds and the impact on the enforcement of exclusion orders
  - evaluating who constitutes a downstream manufacturer or distributor
  - how to deal with infringing components of a product that are only imported as part of a finished good
  - measuring the effectiveness of emerging theories concerning the use of re-designs or work-arounds to side-step downstream product classification – an analysis of recent cases
- Anticipating problems in Customs' enforcement of exclusion orders
  - implementing a plan early on to avoid and overcome technical difficulties in enforcement
  - transmitting documents from ITC to Customs
- Meeting with CBP officials and providing appropriate information and training on the goods that are the subject of the order
- Overview of Customs enforcement procedures and penalties
- Dealing with redesigns and design-arounds

## C

### FOCUS ON ASIA - Addressing Unique Challenges Posed by ITC Litigation Involving Parties Based in China, Japan, South Korea and Taiwan

#### *Liqiu Li*

Head, Legal Department, Actions Semiconductors (China)

#### *Ping Gu*

Partner, Unitalen (Shanghai, China)

#### *Richard de Bodo*

Partner, DLA Piper (Los Angeles, CA)

More and more often, Asian parties are appearing as active litigants in Section 337 investigations and litigation, which can pose unique challenges for the inexperienced ITC litigant. As most litigation that is brought before the ITC under Section 337 involves highly technical products commonly manufactured in countries like China, Taiwan, South Korea and Japan, it comes as no surprise that companies with operations based in these jurisdictions are beginning to more actively assert their IP rights as parties to an ITC investigation.

Nevertheless, given the various logistical, cultural and language barriers that are created by litigation between domestic and foreign parties, it is not always easy for parties on both sides to obtain the information required to most effectively and expeditiously resolve a case.

During this working group session, take note as counsel representing companies from local regions in Asia provide insight into how to most effectively engage in Section 337 litigation when an Asian party is involved.

Topics of discussion during this session will include:

- Advising Asian companies who do *or do not* have in-house counsel
- Addressing common discovery issues involving Asian parties
  - identifying and preparing key corporate personnel for deposition and trial testimony
  - complying with foreign legal restrictions on where depositions of Asian parties can be taken
- Accommodating cultural and language differences
- Methods for keeping the clients fully advised and establishing the attorney-client relationship
- Coordinating District Court and foreign proceedings in response to ITC investigations
- Initiating ITC actions on behalf of Asian companies
- Evaluating the impact on ITC litigation strategies of the increasing number and success of Asian parties
- Outlining Asian objections to 337 procedures
- Understanding the infrastructure necessary for an Asian company to advance an ITC case and satisfy its burdens of proof

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# Managing Complex ITC LITIGATION

Advanced Strategies for Effectively Asserting Your IP Rights and Overseeing High Stakes Section 337 Investigations



October 18 & 19, 2011 | Sheraton Fisherman's Wharf | San Francisco, CA

Gain firsthand insights from senior-level ITC officials and Administrative Law Judges

Deanna Tanner Okun, Chairman

Lynn I. Levine, Director, Office of Unfair Import Investigations

Juliana Cofrancesco, Attorney-Advisor

Hon. Paul J. Luckern Chief Administrative Law Judge

Hon. Charles E. Bullock Administrative Law Judge

Hon. E. James Gildea Administrative Law Judge

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