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Section 337/ITC Litigation

Steptoe has more than 35 years of experience litigating, settling, and winning Section 337 cases, and it has paid dividends for our clients. Since 2004, Steptoe lawyers have won every Section 337 case they have tried in front of the International Trade Commission (ITC), and our team has successfully represented both complainants and respondents in more than 115 cases overall. Steptoe's 337 lawyers are ranked by *Chambers* as leaders in International Trade, and the firm is consistently ranked by *IP Law & Business* as one of the most active before the ITC. Our cases have implicated the most complex technologies often involving more than a billion dollars in trade in a single case.

Understanding Our Clients' Needs

Steptoe handles a wide variety of cases that all have two things in common: short time lines and interacting issues. By partnering with our clients we gain an understanding of the complex issues that they are trying to remedy through their Section 337 case, while providing them an understanding of the public policy and procedural issues that influence the ITC and United States Trade Representative, and the policy implications of each client's particular case. To that end, we use all the resources of our firm to find the tipping point that leads to our gauge of success - obtaining a decision that meets our client's business needs.

These resources include utilizing our robust experience in government affairs and in the ITC. Partners at Steptoe that are integral to the Section 337 practice have served as a Deputy US Trade Representative - the office designated with responsibilities for Presidential review of final affirmative Section 337 decisions - as members of the executive committee for the ITC Trial Lawyers Association (ITCLA), and another as its former president. With this experience - which is enhanced with the technical knowledge and litigation skills of the patent lawyers who form the core of our litigation teams - Steptoe has been able to structure compelling arguments for clients that present challenging cases. At times, our lawyers have recast arguments to make them more accessible to the singular requirements of the ITC, and to ITC Commissioners. At other times, when the public interest is considered, our government affairs group has been able to reach out to elected representatives to brief them about our matters, often with favorable results. In the example of a recent case, Steptoe was enlisted to defend a client that had suffered a ruling that declared that the client was in violation of Section 337. Our Section 337 lawyers were assisted by members of our government affairs and litigation groups in a multi-pronged effort to craft a rebuttal so compelling that the ITC not only reversed the initial ruling, but terminated further proceedings, resulting in a total victory for the client.

Our lawyers have experience with the entire range of unfair import practices including:

Section 337/ITC Litigation

- Patent infringement
- Trademark and counterfeiting
- Copyright infringement
- Trade dress and trade secret misappropriation
- False labeling

Representative Matters

- *Certain Automotive GPS Navigation Systems, Components Thereof, and Products Containing The Same (2011) Inv. No. 337-TA-814* – Representing respondents **Hyundai Motor Company, Kia Motors Corporation, and Nissan Motor Co. Ltd.** against allegations of patent infringement by Beacon Navigation GmbH. The four patents at issue relate to Global Positioning System (“GPS”) technology. Beacon Navigation GmbH is seeking exclusion of cars containing infringing automotive GPS units from the United States, which could affect up to thirty percent of our clients’ US business.
- *Certain Devices for Improving Uniformity Used in a Backlight Module and Components Thereof and Products Containing The Same (2011) Inv. No. 337-TA-805* – Representing the **LG** respondents against allegations from complainant ITRI International Inc. of importation into the US and sale of certain devices for improving uniformity used in a backlight module which are used in display devices, such as digital televisions and monitors.
- *Certain Motion-Sensitive Sound Effects Devices And Image Display Devices and Components and Products Containing Same (2011) USITC Inv. No. 337-TA-787* – Represented **Intec, Inc.** against allegations from complainant Ogma, LLC of patent infringement involving motion-sensitive sound effects devices which are used in, e.g., video games and other applications. The case settled favorably to Intec in a confidential settlement agreement.

Section 337/ITC Litigation

- *Certain Protective Cases and Components Thereof (2011), USITC Inv. No. 337-TA-780* – Represented respondent **AliBaba** against allegations from complainant Otter Products LLC, of patent infringement involving protective cases for electronic devices such as smartphones and tablet computers. The case terminated based on a successful settlement agreement. Additionally represented Cellairis Franchise and Global Cellular after taking over from prior counsel and negotiated a successful settlement agreement.
- *Certain Electronic Digital Media Devices and Components Thereof (2011) USITC Inv. No. 337-TA-796* – Representing respondent **Samsung** against allegations brought by Apple Inc. of patent infringement related to mobile phone handsets and tablet computers.
- *Certain Electronic Devices, Including Wireless Communication Devices, Portable Music And Data Processing Devices, And Tablet Computers (2011) USITC Inv. No. 337-TA-794* – Representing complainant **Samsung** to assert the infringement of five patents related to certain electronic devices, including smart phones, portable music and data processing devices, and tablet computers.
- *Certain Game Devices, Components Thereof, and Products Containing Same (2011) USITC Inv. No. 337-TA-757* – Represented **Datel Design & Development, Inc., Datel Design & Development Ltd., Datel Direct Ltd., Datel Holdings Ltd., and Datel Electronics Ltd.** against allegations of patent infringement involving wireless video game controllers. The case terminated based on withdrawal of the complaint by Microsoft after Discovery.
- *Certain Semiconductor Chips and Products Containing Same (2011) USITC Inv. No. 337-TA-753* – Representing respondent **Seagate Technology** against allegations brought by Rambus Inc. of patent infringement involving six patents covering memory controller and chip-to-chip interface technologies.

Section 337/ITC Litigation

- *Certain Gaming and Entertainment Consoles, Related Software, and Components Thereof* (2010) USITC Inv. No. 337-TA-752 - Representing complainant **Motorola Mobility, Inc.** to assert infringement of six patents owned by Motorola against Microsoft Corporation's Xbox gaming devices, related software, and components. The Administrative Law Judge's Initial Determination found a violation based on infringement by Microsoft's Xbox gaming devices of four of the asserted patents. The ALJ recommended that the Commission issue a limited exclusion order, precluding Microsoft from importing into the United States the infringing Xbox gaming devices, associated software, and components thereof. The ALJ also recommended that the Commission issue a cease-and-desist order precluding Microsoft from undertaking domestic activities with respect to the infringing products. The Commission may review the Initial Determination and recommendations and will issue a Final Decision later this year.
- *Certain Mobile Devices And Related Software* (2010) USITC Inv. No. 337-TA-750 - Representing respondent **Motorola**, a leader in the telecommunications industry, against allegations by Apple, Inc. of patent infringement with regard to smart phone devices. A Final Decision is pending.
- *Certain Wireless Communication Devices, Portable Music And Data Processing Devices, Computers and Components Thereof* (2011) USITC Inv. No. 337-TA-745 - Representing complainant **Motorola Mobility, Inc.**, to assert the infringement of nine patents related to smart phone devices against Apple, Inc. Awaiting the initial determination.
- *Certain Mobile Devices, Associated Software, and Components Thereof* (2010) USITC Inv. No. 337-TA-744 - Represented respondent **Motorola Mobility, Inc.**, a leader in the telecommunications industry, against allegations of patent infringement with respect to nine patents owned by Microsoft Corporation. Microsoft withdrew its allegations as to two of the patents-in-suit prior to the evidentiary hearing in recognition of Motorola's defenses. An Initial Determination issued by the Administrative Law Judge subsequently held that Motorola's products did not infringe six of the seven remaining Microsoft patents. The Final Decision of the Commission affirmed the outcome of the ALJ's Initial Determination, finding non-infringement of six patents and a violation based on one patent pertaining to ActiveSync exchange protocols relating to Outlook calendar meeting requests.

Section 337/ITC Litigation

- *Certain MLC Flash Memory Devices and Products Containing Same (2009)*, USITC Inv. No. 337-TA-683 – Represented respondents **Sony Corporation** and **Sony Electronics Inc.** in an action involving certain flash memory devices including MP3 players, solid state flash drives, digital video cameras, cellular telephone handsets, and flash memory cards.
- *Certain Cold Cathode Fluorescent Lamp ("CCFL") Inverter Circuits and Products Containing Same (2009)*, USITC Inv. No. 337-TA-666 – Represented respondent **Microsemi Corporation** against claims by O2 Micro International Ltd. and O2 Micro Inc. that a violation of Section 337 existed based on infringement of one or more claims of four patents. The investigation was terminated as to Microsemi Corporation following a finding of no violation.
- *Certain Semiconductor Integrated Circuits and Products Containing Same (2008)*, USITC Inv. No. 337-TA-665 – Represented respondent **Seagate Technology** against allegations by Qimonda AG of patent infringement with regard to semiconductor integrated circuit chips and downstream products containing those chips. The ITC found in Seagate's favor that the patents were invalid, not infringed and that Qimonda had no domestic industry. In a Rule 36 affirmance, the Federal Circuit rejected Qimonda AG's appeal and affirmed the ITC's ruling that found Seagate and LSI did not infringe Qimonda AG's patents and that Qimonda did not have a domestic industry.
- *Certain Flash Memory Chips and Products Containing Same, (2008)*, USITC Inv. No. 337-TA-664 – Represented respondents **Sony Corporation** and **Sony Corporation of America** against allegations by Spansion, Inc. of patent infringement by Sony products incorporating flash memory devices (e.g., USB flash drives, personal computers, MP3 players, etc.).
- *Certain Tunable Laser Chips, Assemblies and Products Containing Same (2008)*, USITC Inv. No. 337-TA-662 – Represented complainant **JDS Uniphase Corporation**, a California-based company and leading provider of optical products for the telecommunications industry, to assert the infringement of patents involving tunable laser chips used to transmit optical data signals at various wavelengths. Case was terminated based on settlement agreements with the respondents taking limited licenses.

Section 337/ITC Litigation

- *Certain Prepregs, Laminates, and Finished Circuit Boards (2008)*, USITC Inv. No. 337-TA-659 – Represented respondent **Guangdong Shengyi Sci. Tech Co., Ltd.** against allegations from complainant Isola USA Corporation, of patent infringement involving a process for manufacturing the base materials for printed circuit boards (PCBs), used to direct electrical signals in advanced electrical equipment. The complaint was withdrawn after all respondents except Shengyi signed consent orders or settlement agreements. Shengyi remained free to continue selling its products.
- *Certain Variable Speed Wind Turbines and Components Thereof (2009)*, USITC Inv. No. 337-TA-641 – Represented respondents **Mitsubishi Heavy Industries, Ltd.**, et al., in an action involving three patents owned by General Electric on wind turbines. The ITC found in Mitsubishi's favor that the patents were not infringed and that there was no domestic industry and that one patent lacked proper inventorship.
- *Certain Short-Wavelength Light Emitting Diodes, Laser Diodes and Products Containing Same (2008)*, USITC Inv. No. 337 – TA – 640 – Represented **Toshiba Corporation** against allegations of patent infringement involving a process for making wide-band gap semiconductors capable of emitting certain wavelengths of light. Many respondents settled; however, the complaint against Toshiba was withdrawn just prior to trial.
- *Certain Hard Disk Drives, Components Thereof, and Products Containing the Same (2007)*, USITC Inv. No. 337-TA-616 – Represented respondent **Toshiba America Information Systems** against allegations of patent infringement for a process involved in making hard disk drives. The complaint was withdrawn by the complainant prior to trial.
- *Certain Buffer Systems and Components thereof used in Container Processing Lines (2007)*, USITC Inv. No. 337-TA-609 – Represented **KHS USA, Inc.** and **KHS AG** against allegations of patent infringement involving a patent on accumulation or buffer tables used as a component of bottling plant conveyor systems. The investigation was terminated based on a settlement and license agreement entered into by KHS.

Section 337/ITC Litigation

- *Certain Endoscopic Probes for Use in Argon Plasma Coagulation Systems (2006)*, USITC Inv. No. 337-TA-569 – Represented respondents **Canady Technology LLC** and **Canady Technology Germany GmbH** against allegations of patent and trademark infringement with regard to medical devices. After trial, the complainant's patent was found not to be infringed by Canady and there was also a finding of no domestic industry. The ALJ thus found no violation and this decision was affirmed by the Commission. The Commission decision was affirmed on appeal by the Federal Circuit.
- *Certain Foam Footwear (2006)*, USITC Inv. No. 337-TA-567 – Represented respondent **Australia Unlimited** against allegations of trade dress and design patent infringement related to foam shoes. Succeeded in having trade dress allegations dismissed and negotiated a settlement based on cross-licensing of design patents.
- *Certain Devices for Determining Organ Positions and Certain Subassemblies Thereof (2005)*, USITC Inv. No. 337-TA-555 – Represented **Resonant Medical Inc.** in this matter involving alleged patent infringement. Investigation terminated on the basis of a settlement agreement which permitted a start-up company respondent to continue selling the accused complex medical device.
- *Certain Laminated Floor Panels (2005)*, USITC Inv. No. 337-TA-545 – Achieved a 337 victory for **Yekalon Industry, Inc.**, in this wood flooring investigation. The Administrative Law Judge found that the new product design developed by the Steptoe team with the client during the early part of the investigation did not infringe the three patents. This non-infringing product allowed Yekalon to continue selling in the US market when other respondents' products were excluded.
- *Certain Weather Stations and Components Thereof (2005)*, USITC Inv. No. 337-TA-537 – Successfully defended respondent **Hideki Electronics** in this patent-based investigation, which was terminated due to a withdrawal of the complaint.
- *Certain Digital Image Storage and Retrieval Devices (2004)*, USITC Inv. No. 337-TA-527 – On behalf of complainant, **Ampex Corp.**, obtained an initial licensing fee of \$40 million, and an agreement for continuing licensing payments from Sony Corp., settling ITC action and federal court suit over digital camera image-related patents. An additional complaint against Sanyo on the same patents was settled by Sanyo taking a license prior to institution of the investigation.

Section 337/ITC Litigation

- *Certain Point of Sale Terminals and Components Thereof (2004)*, USITC Inv. No. 337-TA-524 – Represented respondent **Lipman USA** and **Lipman Electronic Engineering** against allegations of patent infringement on point of sale terminals (e.g., for swiping credit cards). Succeeded in forcing patent owner to withdraw complaint and persuaded the Administrative Law Judge to issue a seven figure sanction against the complainant.
- *Certain Ink Markers and Packaging Thereof (2004)*, USITC Inv. No. 337-TA-522 – Obtained a general exclusion order for all ink markers and packaging that infringe or are confusingly similar to **Sanford's** trademarks or trade dress for SHARPIE® ink markers.
- *Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices (2004)*, USITC Inv. No. 337-TA-494 – Represented respondents **American Products Company, Inc.**, **Equus Products, Inc.**, **GR Motorsports, Inc.**, and **Hiper Industries, Inc.** against claims of registered trademark infringement, common law trademark infringement, and trade dress infringement by Auto Meter Products, Inc. Succeeded in having the investigation terminated as to these respondents based on settlement agreements. A limited exclusion order and cease and desist orders were issued against the remaining respondents.
- *Certain Bearings and Packaging Thereof (2003)*, USITC Inv. No. 337-TA-469 – Represented SKF USA in this investigation related to alleged infringement of registered and common law trademarks, dilution of trademarks, and various acts in violation of the Lanham Act.

Noteworthy

- Ranked, *Chambers Asia 2010 - 2011* — International Trade: International Firms
- Ranked, *Chambers Global 2010 - 2012* — International Trade: Intellectual Property; Section 337 (US)
- Ranked, *Chambers USA 2009 - 2011: America's Leading Business Lawyers* — International Trade: Intellectual Property; Section 337 (Nationwide)
- *Chambers* Names Steptoe 337 Attorneys Schill and Kipel Leaders in International Trade

Section 337/ITC Litigation

- Steptoe Listed in Top 10 ITC Firms for 2008 by *IP Law & Business*
- Steptoe attorneys have handled more than 115 Section 337 cases
- Steptoe cited as a leader in 337 litigation in New Math: More Foreign Companies Take Advantage of the ITC, June 2006, *IP Law & Business*
- Steptoe attorneys have more than 35 years of experience handling Section 337 cases