

Non-Patent issue? Consider litigating at the ITC

Rubin Anders recently attended a [Goodwin](#) webinar where three of its senior IP litigators [Mark Davis](#), [PJ McCarthy](#) and [Ron Pabis](#) discussed the ITC'S broad powers against unfair trade practices. What does that mean for non-patent cases? A key takeaway is that the ITC is not just a patent venue as widely believed. In fact, there are several procedural advantages to litigating non-patent cases at the ITC:

SPEED



- Cases can take 12-18 months to complete. Useful when injury to brand reputation or price erosion is a concern
- District court cases can take 2-3 years just to go to trial

REMEDY



- ITC offers broader exclusion orders than District Courts
- General Exclusion Order can exclude all unfairly imported articles, not just those of the named respondent
- Cease and Desist Order can stop all sales-related activity in the US
- Possible to get injunctive relief without four-factor test established by [eBay v. Mercexchange](#)

IN REM JURISDICTION



- Jurisdiction is over importation to the United States in general
- No need to satisfy minimum contacts analysis or personal jurisdiction

IMPORTATION



- Complainant may act against an unlimited number of importers in one investigation

FOREIGN DISCOVERY



- Potential to act against several non-US importers, name them as respondents, and facilitate discovery without using an international body like the Hague

AVAILABILITY OF EARLY SUMMARY DETERMINATION



- Early Summary Determination is available at the ITC, but difficult to achieve

PRECLUSION



- Preclusive effect on District Court may be available in certain non-patent cases

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