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Insight

More Patent Cases, Backlogs, and Trump to Keep ITC Busy in 2026

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The International Trade Commission will have an active 2026 managing its docket of patent cases due to expanded access for patent owners and operational delays.

Two 2025 decisions by the US Court of Appeals for the Federal Circuit have relaxed domestic industry requirements, which likely will send more patent cases to the ITC involving smaller companies and those that manufacture products abroad.

A backlog created by the 43-day government shutdown will require the ITC to balance new complaints and pending investigations that have been awaiting hearings and resolution since early October.

Presidential review of exclusion orders may become more common given the Trump administration's focus on finding new levers for increasing investment in the US. As a result, patent owners seeking relief at the ITC face potential uncertainty, and there might be an increase in lobbying efforts during the presidential review period.

Developments in domestic industry analysis. When a party requests an investigation at the ITC for patent infringement, it must prove a “domestic industry” for the patented product exists or is in the process of being established. This requires meeting both the “technical prong” and an “economic prong” of the domestic industry requirement.

For the technical prong, the patent owner must show there is an “article” that practices at least one claim of each asserted patent. For the economic prong, the patent owner is required by statute to show that the patented article is part of a US industry with (1) significant investment in plant and equipment; (2) significant employment of labor or capital; or (3) substantial investment in the patent’s exploitation, such as investment in engineering, research and development, or licensing.

In *Wuhan Healthgen Biotechnology Corp. v. International Trade Commission*, the Federal Circuit affirmed the ITC’s finding that a domestic industry existed and met the economic prong, rejecting arguments that the investments were too small to be significant. The court emphasized that small market segments can still satisfy the domestic industry requirement, and that the analysis should be holistic and context-dependent, rather than based on rigid dollar thresholds.

In *Lashify, Inc. v. International Trade Commission*, the Federal Circuit held that a patent owner can satisfy the economic prong through substantial investments in sales, marketing, warehousing, quality control, and distribution—even if the patent owner’s product is manufactured entirely overseas. As a result, a domestic industry may be established based on significant US activities required to sell products domestically.

Wuhan expands access to the ITC to companies that have smaller overall investments in the US and champions a more holistic approach to the domestic industry requirement. *Lashify* expands access to the ITC to companies that manufacture overseas but have substantial or significant investments in the US related to sales, marketing, warehousing, quality control, and distribution.

These cases combined provide new opportunities for companies to review their domestic operations and assess eligibility for ITC enforcement as part of a patent enforcement strategy. Overall, these decisions are likely to result in more patent owners filing actions at the ITC in 2026.

The recent government shutdown further amplified this trend. With the ITC’s regular operations suspended, staff unavailable, and filings paused from October through mid-November, pending investigations were stalled and hearings were rescheduled. Now that the ITC is operational again, it will need to address a backlog of complaints and pending investigations.

Impact of presidential review. Patent owners who secure a final determination from the ITC may encounter an enforcement hurdle: the potential for involvement by the Trump administration.

Every ITC decision that results in an exclusion order or cease-and-desist order is subject to a 60-day period of presidential review. During that time, the president, acting through the Office of the US Trade Representative, can review the decision and potentially veto its remedial orders.

Although such vetoes have been rare, the current administration could take a different approach to evaluating remedial orders. The Trump administration may be more willing to override a remedial order and consider other factors during presidential review. This could lead to increased lobbying of the administration by those potentially subject to exclusion and hoping for a presidential veto.

This possibility creates some uncertainty in ITC enforcement but is unlikely to dissuade companies from pursuing relief at the ITC unless the administration shows an intent to use the possibility of an exclusion order and/or presidential veto as negotiating leverage with companies.

The expansion of access to the ITC by the Federal Circuit and the backlog created by the government shutdown suggests that 2026 will be a busy year for the ITC. Companies considering intellectual property enforcement against foreign manufacturers should carefully consider whether the changes provide new opportunities to seek relief at the ITC as part of an enforcement strategy.

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