



## US International Trade Commission Experience

Our litigation team has a long track record of success with Section 337 investigations at the International Trade Commission (ITC) – we have served as lead counsel in more than 30 cases at the ITC in the last 20 years. We have a deep bench of lawyers with first-chair trial experience at the ITC. And we have been fortunate to be recognized by clients and industry leaders, including *Chambers USA*, for our experience.

### ADVANTAGES

- Speedy proceedings: Pursuant to Section 337, the ITC must conclude each investigation and make its determination “**at the earliest practicable time,**” and all proceedings should be conducted “**expeditiously.**”
- Broad jurisdiction: The ITC has **in rem jurisdiction** over imports and nationwide subpoena power.
- Agency Expertise: Disputes tried to Administrative Law Judges with deep **IP law expertise** gained from a steady docket of resolving Section 337 Investigations.

### UNIQUE FEATURES

- Detailed documentation and cost: An ITC complaint **must include file history, patent assignments, certified copies of the patent, and claim charts** showing that the accused article infringes a representative claim of each asserted patent.
- Office of Unfair Import Investigations: A staff attorney may be appointed as an independent party to the Investigation to represent the public interest.
- Preclusive effect: ITC final decisions in patent-based 337 Investigations do not have **preclusive effect** in US district courts, but can be used as evidence.
- In 2022, the Federal Circuit affirmed 100% of appeals of ITC decisions.



In the last 20 years, we won **21 out of 22** cases that reached a final determination and did not settle at the ITC.

**“An IP practice of international renown that represents clients in the full range of contentious IP proceedings and has a formidable record before the ITC.”**

— *Chambers Global 2022*

## REPRESENTATIVE EXPERIENCE

- Won a complete victory for **Apple, HP, and Intel** against X2Y Attenuators, after X2Y asserted six patents and sought to exclude all Intel microprocessors and the Apple and HP computers that contain them from the US market (billions of dollars of products). After extensive discovery, X2Y dropped three patents, and the case went to trial on the remaining three. The ALJ found all three patents not infringed and two invalid, and the Federal Circuit affirmed.
- Won a complete victory for **Skyworks Solutions, Inc.** against Bell Semiconductor LLC, which had alleged our client's chips infringed patented technology "crucial to meeting the aggressive demands of modern ICs." By Markman, we had so thoroughly debunked this claim that the Chief ALJ questioned Bell: "I am puzzled that at this stage of the investigation you don't know your infringement theory." Conceding defeat, Bell withdrew its complaint shortly thereafter.
- Obtained a significant victory for **The Chamberlain Group** when the ITC determined that Nortek Security & Control's competing barrier operators infringe our client's patent. The ITC issued exclusion and cease and desist orders against all infringing Nortek products, successfully concluding a four-year long dispute.
- Achieved a historic victory for **Apple** against Samsung when the President vetoed an ITC order that otherwise would have excluded certain Apple products. The President cited significant public interest concerns with the ITC's issuance of an exclusion order based on a patent Samsung declared essential to a standard.
- Successfully represented **CSL Behring** against Bioverativ, which had alleged that CSL Behring's innovative hemophilia B treatment, Idelvion®, infringed patents directed to methods of administering products. After we achieved a Markman decision in which the ALJ adopted CSL Behring's positions and found Bioverativ's claims "non-sensical," Bioverativ withdrew its complaint, and the Investigation was terminated.
- Won a complete trial victory for **MediaTek** against Freescale Semiconductor in a case that had been all but lost before MediaTek turned to WilmerHale. In a prior ITC investigation, the ALJ had found Freescale's patent valid and infringed but required the complaint to be refiled on a technicality. We then took over MediaTek's defense and proved Freescale had no domestic industry, the claims were invalid, and MediaTek's chip did not infringe.
- Won a complete victory for **Intel, Dell, HP and HPE**, defeating R2 Semiconductor's attempt to exclude our clients' products. The Chief ALJ initially found noninfringement of all asserted claims, and we then won on multiple IPR petitions, which the Federal Circuit affirmed, resulting in the cancellation of all claims of the asserted patent.

## RECOGNITION

- **The American Lawyer** named WilmerHale the 2023 "IP Litigation Department of the Year." The firm has been named a winner or a finalist for this biennial award nine times since 2004.
- **Law360** has named WilmerHale the "Technology Group of the Year" four times and the "IP Group of the Year" five times.
- **Chambers and Partners** consistently ranks WilmerHale in the USA and Global editions as a US leader in the IP and International Trade: Intellectual Property (Section 337) categories.
- **U.S. News & World Report** named WilmerHale the 2022 and 2021 Patent Law Firm of the Year and 2018 IP Litigation Firm of the Year in addition to consistent Tier 1 ranking.
- **Managing IP** has selected WilmerHale "Patent Disputes Firm of the Year" eight times since 2013 and has continuously ranked the firm among the top firms for ITC litigation since 2019.
- **Legal 500** has ranked the firm in the "Top Tier" for intellectual property since 2011.

### For more information, please contact:

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