

CLIENT ALERT

ITC Proposes Comprehensive Changes to its Rules of Practice and Procedure

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On July 12, the International Trade Commission (ITC) issued a comprehensive proposal to overhaul its rules of Practice and Procedure. The ITC's proposal is aimed at streamlining Section 337 investigations and clarifying existing ambiguity in the rules. If adopted as proposed, the most significant changes would affect written discovery, depositions, pre-institution amendments and petitions for review.

The Commission proposes the following discovery changes:

- **Interrogatory Limits.** A party will be limited to serving 175 interrogatories, including all sub-parts.
- **Ten-Day Period to Respond and Object to Deposition Notices.** A party would have ten days to respond and object to a notice of deposition. The current ITC Rules are silent regarding responding to notices of deposition, which, in the words of the Commission, "leads to last minute disputes among the parties about the scope of topics upon which the corporate designee will testify."
- **Limits on the Numbers of Depositions.** Complainants would be limited to no more than 5 fact depositions per respondent or 20 in total, whichever is greater. Respondents would likewise be limited collectively to 20 fact depositions. The number of depositions may be increased on written motion to the presiding administrative law judge for good cause shown.

The ITC's proposed rules also seek to codify several current best pleading practices:

- **Pleading Domestic Industry.** A complainant would be required to plead with particularity whether it alleges a domestic industry exists or that one is in the process of being established, although the proposed rule does not specify what level of detail is necessary to satisfy this heightened pleading standard. The ITC states, however, that this amendment is in keeping with the Commission's fact pleading requirements and serves to provide the Commission and the public with notice of the manner in which the complainant believes it satisfies the requirements of Section 337.
- **Type of Exclusion Order.** A complainant would be required to state whether it is requesting a general exclusion order, a limited exclusion order and/or a cease and desist order.
- **Specific Identification of Accused Products.** The complainant would be required to identify the accused products with a clear statement to put the public on notice of the type of products involved. Generalized titles will still be permitted (e.g., "*Certain Communication Devices ...*"), but the complaint must provide greater detail identifying the specific products that are accused in plain English, such as mobile devices or tablets. This detailed description will appear in the subsequent Federal Register notice requesting public interest comments, as well as in the notice of investigation and will therefore dictate the scope of products encompassed by the investigation.

Finally, the proposed rules would change pre-institution amendments and petitions for review:

- **Pre-Institution Amendments.** While pre-institution amendments are allowed under the current rules, the Commission's proposed rule would authorize the Commission to consolidate related investigations, the presiding ALJ to consolidate related investigations if both are before the same ALJ, and the chief ALJ to consolidate related investigations if they are before different ALJs and both ALJs agree that consolidation is appropriate. The proposed rule change would also provide that if a complainant "significantly" amends a complaint prior to institution, such as to add new respondents, assert new patents or add new patent claims, the amendment will restart the normal 30-day process for determining whether to institute the investigation.
- **Petition for Review Page Limits.** In an effort to forestall what it considers "attempts by parties to evade the page limits for petitions for review and responses thereto" by referring to previously filed pleadings, the Commission proposes to explicitly limit these filings to 100 pages. All arguments not contained within the petition or response would be waived.

The remaining rule changes address minor issues including methods of filing and service, computation of time, correcting previous typographical errors in the rules, and conforming the existing rules affected by the proposed changes. The complete Federal Register Notice can be found at <https://www.federalregister.gov/articles/2012/07/12/2012-16603/rules-of-general-application-adjudication-and-enforcement>. The public is invited to comment on these proposed changes until September 10, 2012.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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