June 29, 2026

The Honorable Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street SW, Room 112
Washington, D.C. 20436

Re: Comment on the International Trade Commission's Notice of Proposed Rulemaking on Section 337 Adjudication and Enforcement (Docket No. MISC-051), 91 Fed. Reg. 23190 (Apr. 30, 2026)

Dear Secretary Barton:

The ITC Modernization Alliance (ITCMA)[1] is a coalition of leaders in the technology, telecom, and automotive industries dedicated to modernizing the International Trade Commission (ITC or Commission) and promoting trade practices that safeguard American industry, workforce, and consumers. The ITCMA advocates for legislative, regulatory, legal, and other policy changes to the section 337 process at the ITC to maximize U.S. innovation and economic progress. As some of the world's largest patent holders, and with experience as parties to ITC proceedings, ITCMA members strongly believe in the core purpose of the ITC, and appreciate the opportunity to provide input on targeted ways to support that purpose.

ITCMA submits these comments in response to the ITC's April 30, 2026 Notice of Proposed Rulemaking (NPRM), which sets forth proposed amendments to the ITC's Rules of Practice and Procedure concerning section 337 adjudication and enforcement.[2] As set forth in the NPRM, "[t]he intended effect of the proposed amendments is to require disclosure of information by the parties and intervenors in section 337 investigations and ancillary proceedings before the Commission regarding entities that have an ownership or a financial interest in the investigation."[3] ITCMA strongly supports amending the Rules of Practice and Procedure in order to achieve this intended effect, as it will bring much-needed transparency to the presence of third party litigation funding in section 337 proceedings. Amending the rules for this purpose is also necessary for the ITC to carry out its functions and duties under section 337, consistent with the Commission's rulemaking authority under section 335. While ITCMA strongly supports amending the rules, we are also providing feedback on targeted amendments to better tailor the rules for the intended effect.

ITCMA Strongly Supports Disclosure Rules for Section 337 Proceedings

ITCMA strongly supports amending the Rules of Practice and Procedure to require disclosure of information regarding entities that have an ownership or financial interest in a section 337

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[1] A list of ITCMA members is available at http://itcmodalliance.org.
[2] Section 337 Adjudication and Enforcement, 91 Fed. Reg. 23190 (proposed Apr. 30, 2026) (to be codified at 19 C.F.R. Part 210).
[3] *Id.*

investigation, as doing so will bring much-needed transparency to the presence of third-party litigation funding in section 337 proceedings. ITCMA previously submitted a comment to the Commission encouraging the inclusion of a rule requiring such disclosure.[4]

The prevalence of litigation funding in U.S. patent proceedings has steadily increased in recent years. In 2021, 29% of all commitments by third-party litigation funders – or $812M – was used to fund patent litigation; in 2022, $672M was put toward patent litigation, comprising 21% of all commitments.[5] This significant usage is expected to grow. As a result of these funding commitments, a large percentage of patent litigation is now financed. A study found that at least 30% of all patent litigation in 2020 received financing, up from almost none just fifteen years before.[6] But this is just based on data that was pieced together – the lack of transparency means that 30% is the floor, and the percentage is likely higher.

This data gap, and the challenge in understanding whether third party litigation funding is involved in a particular case – or the overall extent to which it is being leveraged in U.S. patent proceedings – was recognized in a 2022 study conducted by the U.S. Government Accountability Office.[7] That study outlined approaches for bringing greater transparency to the use of third-party litigation funding across a number of areas. For federal court proceedings, the experts interviewed in the study recommended the disclosure of such funding in individual cases.[8] Amending the Rules of Practice and Procedure will address this data gap and bring transparency to section 337 proceedings before the Commission.

The Proposed Rules Are Necessary and Beneficial

Amending the Rules of Practice and Procedure to bring transparency to third party litigation funding is necessary for the Commission to carry out its functions and duties under section 337, consistent with the Commission's rulemaking authority under section 335. Amending the rules will provide numerous benefits including assessing conflicts, promoting clarity, and increasing transparency.

At a fundamental level, disclosure will allow the Commission to accurately assess conflicts. Beyond this purpose, disclosure is needed to ensure fairness to the parties in a dispute, which is a fundamental right of American jurisprudence. A party has a right to know who the real opposing party is, and to understand whether the complainant possesses all substantive rights needed to adjudicate the conflict. Issues like proper standing, and whether the respondent may have a license to the patent in question due to another party's involvement or control of the patents, are critically important for fairness.

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[4] Comments of ITC Modernization Alliance on Notice of Proposed Rulemaking, Practice and Procedure: Rules of General Application, Safeguards, Antidumping and Countervailing Duty Investigations, and Section 337 Adjudications and Enforcement, 89 Fed. Reg. 22012 (Mar. 28, 2024), submitted May 20, 2024.
[5] At least 25% of NPE litigation in 2021-23 was caused by Litigation Investment Entities (LIEs) (Feb. 21, 2023), available at https://www.unifiedpatents.com/insights/2023/2/21/litigation-investment-entities-the-investors-behind-the-curtain.
[6] Korok Ray, Third-Party Funding of Patent Litigation: Problems and Solutions (June 1, 2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4125510.
[7] THIRD-PARTY LITIGATION FINANCING: Market Characteristics, Data, and Trends (Dec. 2022), available at https://www.gao.gov/assets/gao-23-105210.pdf.
[8] *Id.* at 17.

An understanding of any third party litigation funding in a dispute is also necessary in order to assess the effect of an exclusion order on "the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers."[9] This "public interest" requirement cannot be properly assessed without knowledge of who has a beneficial interest in an investigation, including whether the proceeding is being funded by foreign interests, and awareness of potential national security concerns that may arise if a ban is put into place.

The importance of greater transparency in section 337 investigations at the Commission has been consistently recognized in the congressional appropriations process as well. In the report accompanying the House Commerce, Justice, Science, and Related Agencies Appropriations Bill for Fiscal Year 2027, the Appropriations Committee expressed "concer[n] that the parties appearing in Section 337 investigations may not be the parties with a beneficial interest in such investigations," and "direct[ed] ITC to submit a report no later than December 31, 2027, on how in fiscal year 2027, ITC implemented measures to ensure disclosure of any party with a beneficial interest in each Section 337 investigation, including the identity, business address and, place of formation of any party that provides funding for some or all of the fees or expenses of any Section 337 investigation."[10] Amending the Rules of Practice and Procedure to require party transparency will address this perennial and pressing concern and align with congressional intent.

Adjustments to the Proposed Rule Can Better Tailor It for the Intended Effect

The Commission has requested feedback on a number of aspects of the proposed rules to obtain stakeholder input on how best to scope these requirements. The questions posed in the NPRM are outlined below along with suggestions from ITCMA on potential targeted amendments to better tailor the proposed rule for the Commission's intended effect. ITCMA also provides suggestions below for additional items to be included in the amended rules.

- Whether proposed § 210.14a(a)(1) should require disclosure of entities owning a party's stock only after a particular percentage of ownership is reached? ITCMA suggests that proposed § 210.14a(a)(1) be revised to include a threshold percentage of ownership of 10% or more, aligned with Federal Rule of Civil Procedure 7.1(a)(1).

- Whether proposed § 210.14a(a)(2) should apply to respondents and intervenors or just to complainants and whether there is enough clarity about entities that have a legal right to bring a section 337 investigation particularly for claims under section 337(a)(1)(A) to be able to comply? ITCMA suggests that the rule apply to complainants as well as to respondents and intervenors and does not see any issues with entities being able to comply with the requirements.

- Whether definitions of certain terms would be useful and any proposals for such definitions? To provide the necessary clarity for compliance, it would be useful to include definitions for

[9] 19 U.S.C. 1337(d)(1).
[10] Commerce, Justice, Science, and Related Agencies Appropriations Bill, 2027, H. Comm. on Appropriations, 119th Cong., 2d Sess. 2 (Full Committee Print 2026), https://docs.house.gov/meetings/AP/AP00/20260513/119282/HMKP-119-AP00-20260513-SD002.pdf.

any key terms in the rule, which can be better assessed once the language has been finalized.

- Whether the disclosures required should differ for investigations under section 337(a)(1)(A) as opposed to 337(a)(1)(B)– (E)? ITCMA suggests the same disclosures for these investigations.

- Whether disclosure of funding or necessary approval in related litigation is relevant and should be included in the disclosures required under proposed paragraphs (a)(3)(i) and (ii) of this section? Disclosure of funding or necessary approval in related litigation is highly relevant to the Commission's intended effect for the proposed amendments and should be included in the disclosures required under proposed paragraphs (a)(3)(i) and (ii). Litigation funding arrangements may be strategically structured in order to avoid disclosure in section 337 investigations while still being present for the overall patent litigation campaign, and with the outcome of the section 337 investigation still benefiting the funder. The existence of funding in related litigation is therefore just as relevant to the concerns raised in the NPRM, and its disclosure should be required.

- Whether there are other possible financial interests in section 337 investigations that are not required to be disclosed under proposed § 210.14(a)(1) through (3) that should also be subject to disclosure, and if so, details regarding the nature of such interests and how to define both the nature and holders of such interests? An emerging trend in litigation funding is for funders to enter into direct agreements with legal counsel, rather than the patent owner, and benefit from a contingency arrangement between counsel and the patent owner. Another emerging trend is for funders to provide funding for multiple litigations by a single law firm, sometimes in batches of ten or twenty cases, which also obscures the direct connection to any single case. These types of arrangements are just as relevant for achieving the Commission's intended effect of the proposed amendments, but may not be captured through a requirement for disclosure of "funding specifically for the section 337 investigation." ITCMA suggests that the proposed rule be amended to require disclosure of any entity with an interest in the outcome of the investigation, whether directly through agreement with the party or indirectly through agreement with legal counsel, and including agreements with legal counsel for multiple cases in multiple venues.

In addition to the input on the Commission's specific questions, ITCMA has the following suggestions to better achieve the Commission's intended effect for the proposed rule:

- The rule should require a brief description of the nature of the financial interest, similar to what is required under the disclosure requirement in the District of Delaware.[11] This would permit the Commission and the parties to better assess the financial arrangement and determine whether disclosure of the underlying agreement itself should be required.

[11] Standing Order Regarding Third-Party Litigation Funding Arrangements, Chief Judge Colm F. Connolly (D. Del. Apr. 18, 2022), https://www.ded.uscourts.gov/sites/ded/files/Standing%20Order%20Regarding%20Third-Party%20Litigation%20Funding.pdf.

- The rule should address what happens if a party does not comply with its requirements. With the rule's applicability to both the complainant as well as the respondent and intervenors, the penalty for non-compliance will likely differ based on the party. ITCMA suggests that the rule provide the Commission with explicit authority to compel supplementation and impose sanctions for nondisclosure, including evidentiary limitations, fee shifting, adverse inferences, protective-order restrictions, or dismissal in egregious cases involving concealment.

- The rule should set forth a continuing duty for the parties to supplement their disclosures if circumstances have changed. Given the dynamic nature of ownership and funding arrangements, claims may be assigned, capital refinanced, funder interests transferred, control rights amended, or new insurers may assume defense obligations during the course of a section 337 investigation. ITCMA recommends that the rule require supplementation within ten days of any material change, similar to the requirements of Federal Rule of Civil Procedure 7.1(b)(2). Relevant material changes could include new funding, refinancing, assignment of economic rights, acquisition of control rights, or newly discovered responsive information.

- The rule should include a reasonable inquiry and certification requirement to ensure that parties are undertaking the necessary diligence to determine whether any disclosure is required. The proposed rule only asks the party to state that the party is "not aware" of any needed disclosure, which can result in a party intentionally limiting its awareness of this information to circumvent the requirement. By including a reasonable inquiry and certification requirement, parties will be required to investigate, rather than disclose solely based on their own awareness.

Conclusion

ITCMA strongly supports the Commission's efforts to bring about party transparency in section 337 investigations. Amending the Rules of Practice and Procedure to require parties to disclose entities that have an ownership or a financial interest in the investigation is necessary for the Commission to carry out its functions and duties under section 337, and will provide numerous benefits. ITCMA suggests modifications and additions to the proposed rule to help it better achieve the Commission's intended effect. We look forward to the prompt publication of a final rule following the Commission's review of stakeholder comments.

Sincerely,

Sarah Beth Jansen

Sarah Beth Jansen
Executive Director