

## ARTICLE

# Why Recent ITC Rulings Are Good News for SEP Owners and the Commission

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The US International Trade Commission (ITC) has always been an effective forum for patent cases due to the injunctive-style relief it provides. Standard-essential patent (SEP) owners have known this for years.

Although the ITC has not granted an import ban for a SEP owner since the 2013 *Samsung v Apple* ITC investigation, SEP owners continue to file complaints there. Recent ITC rulings confirm that SEP owners can still prevail and potentially obtain injunctive-style relief.

After the Supreme Court's 2006 decision in *eBay*, US district courts rarely grant injunctive relief to patent owners. SEP owners have an even higher hill to climb as compared with other patent owners.

Since SEP owners are often required to license their SEPs on fair, reasonable and non-discriminatory (FRAND) terms, US courts have found that money damages are adequate to compensate SEP owners for infringement, making injunctive relief unavailable.

In contrast, the ITC has only injunctive-style remedies in the form of exclusion orders against imported goods, and cease-and-desist orders against sales of imported goods in the US, making it an attractive forum for SEP owners seeking injunctive relief as part of their overall litigation strategy.

In this article, we will examine the ITC's role in SEP disputes and the potential impact of its recent decisions on companies dealing with international trade issues in industries where SEPs are common.

We also touch on other issues that might affect SEP cases in the ITC, including the impact of the Trump administration's pro-patent rights stance and the recent issues in caseload and processing times at the ITC.

## ITC's role in SEP disputes

The ITC has broad *in rem* jurisdiction over articles imported into the US. Foreign manufacturers or importers of infringing goods are often beyond the *in personam* jurisdiction of US courts.

The ITC, however, merely exercises jurisdiction over the goods themselves when they are imported, and can therefore exercise far-reaching authority over both domestic and international respondents.

Because manufacturing of standards-compliant products (eg, smartphones, tablets) and components often occurs overseas, the ITC provides an attractive avenue for SEP owners to enforce their patents.

Cases involving SEPs have been litigated at the ITC for years, including cases brought by [InterDigital](#) in 2007 and 2013; [LG](#) in 2017; [Ericsson](#) in 2015, 2022, and 2023; and [Nokia](#) in 2023. So far, the ITC has permitted all the SEP-based cases to go forward.

In 2013, [Samsung](#) successfully obtained an ITC exclusion order against [Apple](#) in ITC Inv. No. 337-TA-794 based on a SEP, marking the only time an ITC investigation based on SEPs resulted in a finding of violation and issuance of a remedy. The Obama administration, however, later disapproved of that ITC order at the presidential review stage.

Up until this year, all the other SEP cases at the ITC either resulted in settlements prior to a final decision, or were decided adversely to the patent owner for reasons unrelated to the SEP nature of the case (for example, because the patents were not infringed or were invalid).

As a result, the Commission as a whole has only had to decide whether to issue a remedy based on a SEP once, and in that case it issued its standard injunctive-style remedy.

More recently, several cases have come very close to final decisions, with ALJ (administrative law judge) decisions going in favour of the SEP owners. Nokia asserted SEPs against [Amazon](#) in two recent ITC investigations (337-TA-1379 and 337-TA-1380).

In those cases, two different ALJs (Judges [Cameron Elliot](#) and [Doris Hines](#)) found infringement of at least one of the asserted patents; considered and rejected Amazon's FRAND and standards body defences; and recommended exclusion orders.

In one of those cases, the Commission reviewed the ALJ's decision and asked the parties to answer various questions addressing FRAND issues and defences and public interest considerations. However, [Nokia and Amazon settled their global patent dispute](#) (in March 2025) before the ITC could issue a final decision.

In another recent case that Ericsson brought against [Motorola](#) (337-TA-1375), Judge [MaryJoan McNamara](#) found Ericsson's SEPs valid and infringed. In that case, public interest issues were delegated to the ALJ, and Motorola characterised its FRAND defences as public interest issues.

Before the ALJ was able to issue her recommendation on remedy and public interest, the parties moved to suspend the procedural schedule, stating that they had [reached an agreement](#) (in April 2025).

It seems likely that the ITC ALJs' decisions in each of those cases (that the SEPs were valid and infringed and, in two of the cases, that the accused infringer's FRAND defences were not convincing) led to settlements between the parties.

The Commission signalled its willingness to issue an exclusion order to enforce SEPs, and the ALJs appear willing to decide in favour of SEP owners on the merits of the patent issues as well as the usual FRAND defences.

Consequently, SEP owners will likely continue to use the ITC as part of a broader global strategy to seek relief and ultimately reach agreements with prospective SEP licensees.

## Impact on companies dealing with international trade

SEP owners seeking a strategy to counter imports of standard-compliant products will likely find the injunctive-style relief at the ITC a good way to encourage meaningful licence negotiations.

The Commission's historical treatment of complaints based on SEPs shows that a respondent cannot simply derail that complaint by arguing that the ITC's injunctive-style remedies are unavailable because the patents at issue are SEPs.

In the recent Nokia cases, the ALJs rejected several defences often raised in SEP cases. For example, both ALJs found that SEP owners are not required to offer rates comparable to patent pool rates because, as the ALJ held in Inv. No. 337-TA-1380, pool rates are generally not good data points for a bilateral negotiation.

A SEP owner is also free to offer preliminary offers that are not FRAND, as long as the final offer is FRAND. And both ALJs looked past the usual “patent hold-up” arguments and found that Nokia had engaged in good faith negotiations.

Indeed, the ITC has never found in complainants’ favour on the patent issues, but then declined to issue an exclusion order because of a FRAND defence, making the viability of those defences questionable.

## **Impact of the US presidential administration’s SEP stances**

The US government’s view on SEPs has shifted back and forth over the past several changes in administration.

The Obama Administration disapproved of Samsung’s remedy based on a SEP patent, directing the ITC to consider potential limits on injunctive relief for SEP owners, based on the joint US Patent and Trademark Office and Department of Justice, and the National Institute of Standards and Technology policy statement on SEPs (2019).

But also in 2019, the Trump Administration issued a policy statement asserting that injunctive relief and exclusion orders from the ITC should be “equally available” to SEP owners. The Biden Administration withdrew that policy but did not replace it with anything specific.

It is possible the second Trump Administration may reinstate its 2019 policy to strengthen the rights of patent holders. Regardless of the administration’s view of whether injunctive-style relief should be easier or more difficult, the ITC still seems willing to permit SEP owners to seek injunctive-style remedies.

## **ITC’s current caseload and processing time**

A recent [report](#) from WIT Legal said cases filed at the ITC have risen 41% from 2023 to 2024, while processing time for claims has shrunk from 407 to 240 days on average.

Those statistics do not tell the complete story, however. Filings with the ITC were historically low in 2023. So, the increase from 2023 to 2024 merely puts ITC filings back on par with the three years prior to 2023.

Still, it shows that the ITC remains a popular forum despite the dip in filings in 2023. As for the apparent shorter processing time, that data includes all ITC case terminations, from early settlements, defaults, and consent orders, all the way to final determinations after trial and Commission review.

The decrease noted by the WIT Legal report does not necessarily reflect a shorter processing time for contested cases that require a trial, but instead suggests that a higher percentage of cases in 2024 reached an early resolution than in the prior year.

According to the ITC’s own reported statistics, on average, the processing time for contested cases has remained rather steady at about 18 months for the past six fiscal years. Of course, since SEP owners are nearly always seeking an agreement, the fact that the ITC seems to be generating more early resolutions, including settlements, could be seen as an attractive trend.

Regardless, the ITC remains a popular and fast forum for even contested resolutions, let alone for resolutions that result from early settlements or other non-merits terminations. Obviously, complainants at the ITC have the obvious advantage of preparing their case strategy and developing their evidence prior to filing the complaint.

The fast schedule means less time and more pressure for respondents to formulate effective defences amidst a more compact discovery and trial schedule than most other US jurisdictions. This can be particularly challenging in cases involving SEP litigation given the complex technical and licensing issues that often arise.

It is critical to engage experienced counsel who have both prior ITC litigation experience and familiarity with the relevant standard, as well as effective strategies for SEP assertions and defences.

The shortened timeline at the ITC also means that attorneys working on the case must prioritise the issues involved in the SEP litigation and preferably narrow the disputes at the early stage of the case to make the case more manageable for both complainant and respondent.

## Conclusion

The ITC will likely remain a popular forum for SEP owners.

Recent decisions suggest that the ALJs will not derail cases based on SEPs and will look critically at the respondents' FRAND and licensing defences. As a result, injunctive-style relief will likely continue to be available for SEP owners, assuming they can prevail on the underlying patent issues.

The second Trump Administration may give further support to the ITC's general lack of hostility to SEP cases by restating its prior position that SEP owners should not face special hurdles.

Given the short processing time in the ITC, SEP owners should develop a clear case strategy prior to filing a complaint at the ITC, and respondents should be prepared to form effective defence strategies quickly once the complaint is filed.

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