

# CLIENT ALERTS

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## The U.S. International Trade Commission Announces Section 337 Rule Changes

5.1.2018

The United States International Trade Commission ("USITC" or "Commission") has announced changes to its Rules of Practice and Procedure of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) cases. Section 337 investigations conducted by the USITC most often involve claims regarding intellectual property rights, including allegations of patent infringement and trademark infringement by imported goods.

These Section 337 rule changes, which are final, go into effect 30 days from publication in the *Federal Register*. Since September 2015 the USITC has been formulating its rule changes. The amended rules include: greater specificity in the scope of investigation notice provisions; more streamlined discovery and adjudication mechanisms attuned to the Federal Rules of Civil Procedure. Eleven (11) rules are changed by the final regulation (19 CFR Part 210). A summary of the revisions follows. The new rules are here: [https://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/misc-045\\_notice\\_04262018sgl.pdf](https://www.usitc.gov/secretary/fed_reg_notices/rules/misc-045_notice_04262018sgl.pdf)

First, Rule 210.16(f) clarifies the role of the administrative judge in determining the use of electronic service or other means to ensure safeguarding of documents and records.

Second, Rule 210.10(a)(6) specifies the requirements for the Commission to launch multiple related investigations of accused products.

Third, Rule 210.10(b)(1) is amended so that the notice of investigation provides greater detail of the accused products to be investigated.

Fourth, Rule 210.10(b)(3) sets forth a clearer deadline in an initial determination ruling on a possibly dispositive issue in a 100-day proceeding as well as clarifies expedited hearing and related discovery.

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Fifth, Rule 210.14(h) establishes when and how to end or "sever" an investigation of multiple investigations.

Sixth, 210.14(i), a proposed rule, is not a final rule.

Seventh, 210.15 clarifies what motions are accepted in pre-institution proceedings before the Commission.

Eighth, Rule 210.22, a proposed rule, is not a final rule.

Ninth, Rule 210.32(d)(1) directs the use of and timeframes respecting objections to and motions to quash subpoenas.

Tenth, Rule 210.42(a)(3), a proposed rule, is not a final rule.

Eleventh, Rule 210.43 specifies the timeframes of petitions for review of an initial determination ruling on a possibly dispositive issue and corresponding responses.

If you have any questions on this topic, please contact the author of this alert or visit him at the International Trademark Association's annual conference from May 19-22nd where he will be moderating the topic "The Nuts and Bolts of Utilizing U.S. Customs and Border Protection as a Cost-Containing Effective Tool."