

Trips and Traps in the ITC's Rules and Procedures

November 6, 2014

The University of Texas at Austin, 19th Annual Advanced Patent Law Institute

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Section 337 Rules -- Basics

- Proceedings under 19 U.S.C. § 1337 (Section 337) are largely rules-based proceedings
- In addition to the governing statutes and interpretive case law, it is critical to understand the Rules
 - Commission Rules, 19 C.F.R. § 210
 - Most current version of Commission Rules located at:
<http://www.ecfr.gov/cgi-bin/ECFR?page=browse>
 - Each ALJ has his or her own set of Ground Rules issued as an Order at the outset of each investigation

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- Recent Changes to the Commission Rules, 19 C.F.R. § 210
 - Discovery Limits and Privilege
 - Requirements for Complaints
 - Terminations and Default of Investigations
 - Pilot program for early disposition of cases

- ALJ Ground Rules
 - Five different ALJs, each with their own Ground Rules
 - (sixth ALJ slot open following retirement of ALJ Gildea)

RECENT CHANGES TO THE COMMISSION RULES, 19 C.F.R. § 210

- Discovery Limits
 - Fact Depositions (Rule 210.28(a))
 - Interrogatories (Rule 210.29(a))
 - E-discovery (Rule 210.27(c))

- Claiming Privilege or Work Product (Rule 210.27(e))
 - Requirement to Log documents withheld as privileged or work product (210.27(e)(1))
 - Clawback (Rule 210.27(e)(2))
 - Agreement to waive requirements of (e)(1), with risks (Rule 210.27(e)(3))

- Discovery Limits

- Fact Depositions (Rule 210.28(a))

- (a) *When depositions may be taken.* Following publication in the FEDERAL REGISTER of a Commission notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. The presiding administrative law judge will determine the permissible dates or deadlines for taking such depositions. Without stipulation of the parties, the complainants as a group may take a maximum of five fact depositions per respondent or no more than 20 fact depositions whichever is greater, the respondents as a group may take a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, he or she may take a maximum of 10 fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. Each notice for a corporation to designate deponents only counts as one deposition and includes all corporate representatives so designated to respond, and related respondents are treated as one respondent for purposes of determining the number of depositions. The presiding administrative law judge may increase the number of depositions on written motion for good cause shown.

- Discovery Limits

- Fact Depositions. Unless otherwise stipulated:

- Complainant as a group: five/respondent or 20 total, whichever is greater
 - Respondents as a group: 20 total
 - Staff: 10 total
 - Corporate (30(b)(6)) depositions count as one, regardless of number of testifying representatives
 - Related respondents treated as one respondent
 - More depositions for good cause shown

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First appeared as part of the conference materials for the
19th Annual Advanced Patent Law Institute session
"ITC Tactics: Trips and Traps in the Rules and Procedures"