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U.S. ITC Section 337 Litigation Practice 美国专利申请 美国ITC337条款下的权利维护

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ITC Section 337 Litigation Practice

美国国际贸易委员会337条款诉讼实务

- The US International Trade Commission (ITC) 美国国际贸易委员会 (ITC)
 - **Purpose:** Conduct investigations into allegations of certain unfair practices in import trade, and declare the infringement of IPRs and unlawful practices
目的：对所被控的某些不公平进口贸易行为进行调查，判断侵犯知识产权和非法行为
 - **Who can file:** any owner or licensee who hold US IPRs, no need to be a US company or business entity
谁可以申诉：任何美国专利权的持有者或专利被许可人，无需是美国公司或商业实体
 - **Who can be sued:** manufacturers, US distributors, importers of products into U.S.; many ITC cases brought against Chinese companies (90% patent infringement cases: 40% settled, 45% tried before ALJ; patentee/complainants have about 45% chance to win)
谁可被起诉：制造商、美国经销商、向美国进口产品的进口商；许多ITC案是针对中国公司（90%的专利侵权案：40%和解了，45%在行政法官前开庭审理；专利被授予人/申诉者有45%的胜诉机率）
 - **Faster than a civil lawsuit**
比民事诉讼程序快些

- **Procedures for Section 337 (ITC) Cases: 337条款案例的程序**
 - Initiated by the Commission following a properly filed complaint, assigned Administrative Law Judge (ALJ) to preside over the proceedings
在收到提出的合法申诉后，由委员会发起，指定的行政法官 (ALJ)主持案件处理过程
 - ITC staff's roles: discuss prospective complaint, and advise Commission regarding the discussion for the complaint
ITC员工的角色：讨论申诉、就申诉的讨论向委员会提出建议
 - Procedure Rules (FRCP) and ALJ's Ground Rules
程序规则(FRCP美国联邦民事诉讼规则)和行政法官的基本规则
 - Investigation Phase: Documents, Depositions
调查阶段：文件、证词
 - Formal evidentiary hearing on the merits of a Section 337 case before presiding ALJ
行政法官按照337条款举行正式的听证会
 - Initial Determination (ID) by the ALJ
行政法官的初决(ID)
 - The Commission may or may not review the ID; if not, ID becomes final determination of the Commission
委员会可能或不会复审行政法官的初决；如果不复审，行政法官初决就成为委员会的终决。

- **Remedies for Section 337 (ITC) Cases: 337条款的救济措施：**
 - Cease and Desist Order 停止和终止令
 - Commission's Exclusion Order 委员会的排斥禁令
- **ITC Decisions: ITC决定：**
 - Enforced by the US Customs Service by barring entry of goods into the US
由美国海关来具体实施禁止货物进入美国
 - Appeal Commission orders to the US Court of Appeals for the Federal Circuit
就委员会的决定可向美国联邦巡回上诉法院提起上诉

- **Unique Characteristics of Section 337 (ITC) Cases: 337条款案件的特色**
 - **Jurisdiction:** nationwide discovery, in rem, no venue fights;
司法管辖权：全国范围调查，对物的管辖，无地点之争。
 - **Broad discovery:** no limits on depositions, few limits on interrogatories; claim construction in district court is binding in the ITC case, but claim interpretation in ITC is not binding in the district court
广泛的取证：对录取证词没有限制，对书面质询取证有很少的限制；联邦地方法院关于权利要求的解释对于ITC有约束力，但ITC对权利要求的解释对于联邦地方法院无约束力。
 - **Effective Protective Order:** high degree of protection for confidential information, etc.
有效的保护令：对机密信息高度保护
 - **Experienced Judges**
资深法官

- **Understanding ITC Exclusion Orders 理解ITC排斥禁令**
 - When ITC determines Section 337 violation, an exclusion order will issue
当ITC 确定了违反337条款，就要颁发排斥禁令
 - Exclusion order will bar entry of infringing good into the U.S.
排斥禁令将禁止侵权产品进入美国
 - Enforced by the U.S. Customs Service (USCS)
由美国海关 (USCS) 强行实施
 - ITC consults with the USCS to provide language that can be understood and readily enforced
ITC与美国海关商议提供确定禁令中的语言以便于理解和执行
 - Scope: Exclusion orders can be general or limited
范围：排斥禁令可以是广泛的或者有限的
 - Duration: Exclusion orders can be enforced indefinitely
有效期：排斥禁令可以无限期实施下去
 - Limits: Cannot be enforced on articles imported by or for the use of the United States Government
限制：不可用于美国政府进口或使用的物品。

- **General Exclusion Orders 普遍排斥令**

- Broad relief 广泛的救济措施
- Excludes and bars importation of all infringing articles from any source
排斥并阻止进口任何来源的各种侵权物品
- When pattern of infringing products is imported from multiple sources, ITC can issue general exclusion order
当侵权产品是从多种渠道进口时，ITC可颁布普遍排斥禁令
- Goods of a party not named in ITC proceeding can be barred
某一方在ITC诉讼程序中没有列明，其产品也会被禁止进口
- Permits complainant to avoid multiple litigations against multiple infringers
避免针对多个侵权人的多个侵权的起诉
- Must show pattern of infringement and business conditions suggesting that foreign manufacturers other than respondents may attempt to import infringing goods
必须举出侵权的方式和商业情形来说明除了被告之外的外国制造商有可能企图向美国进口侵权货物

- Limited Exclusion Orders 有限排斥令
 - Narrower relief than general exclusion orders
比普遍排斥禁令所提供的救济措施面要窄
 - Directs specific exclusion of all infringing articles from a specified company (a respondent in the ITC proceeding)
针对某一特定公司的所有侵权产品的禁止进口的决定
(该公司在ITC诉讼中是一名被告)

- Prior to imposing any Exclusion Order, the ITC:
在强行实施任何排斥禁令前，ITC要
 - Considers the effect of such an order on:
考虑排斥禁令对以下方面产生的影响：
 - The US public health and welfare,
美国公共健康与福利
 - Competitive conditions in the US economy;
美国经济中的竞争环境
 - The production of like or directly competitive articles in the US;
在美国类似或有直接竞争的产品
 - US consumers
美国消费者

- Continued violations of an exclusion order can be remedied

继续违反排斥禁令可以有如下强制措施：

- Seizure and forfeiture of subsequent shipments of goods can be ordered by the ITC for repeated attempts by a company to import infringing goods
ITC可下令收缴和没收多次企图将侵权产品进口的公司的货物

- Exclusion Orders do not apply to 排斥禁令不适用于
 - Articles imported by and for the use of the United States Government, or
美国政府进口的为政府所使用的物资
 - Imported for, and to be used for, the United States with the authorization or consent of the Government
美国政府授权或认可的为美国进口的或用于美国的物资
- However, reasonable and entire compensation for infringement can be obtained

In an action before the US Court of Federal Claims

然而，可以在美国联邦诉讼法庭提出起诉获得合理的和完全的补偿

- Exclusion Orders Should be Specific 排斥禁令应当具体
 - Identify Specific Relief 确定具体的救济措施
 - Identify IP 确定相应的知识产权
 - Patents 专利
 - Trademarks 商标
 - Copyrights 版权
 - Identify specific infringing articles and products 确定具体的侵权物品和产品
 - Limited to Duration of IP rights 知识产权的期限

- IP Owner will request the broadest possible exclusion order; may reach beyond items that truly infringe
知识产权持有人可要求得到最大范围的排斥禁令；可能影响到没有真正侵权的产品
- A Target / Respondent must participate in the case to argue for a fair exclusion order, limited to infringing products only
调查对象/被告必须参与该案以求得到合理的仅限于侵权产品的排斥禁令
- At the very least, hire US counsel to negotiate a fair exclusion order in early settlement
至少，应聘请美国律师来通过协商取得一个公平的排斥禁令

- **Know Your Competitors' IP** 了解你竞争对手的知识产权
 - Patents, Trademarks, Copyrights
专利、商标、版权
 - Understand the Scope of IP rights
了解知识产权范围
 - Monitor Your Competitors' IP
监测你的竞争对手的知识产权
 - Pending Published US applications
已经公开的美国申请
 - Litigation Involving IP
涉及知识产权的诉讼

Avoid Becoming an ITC Target

避免成为ITC调查对象

- **Consult U.S. IP Counsel, Investigate Competitors' IP**
向美国知识产权律师咨询、调查竞争对手的知识产权
 - Conduct IP Due Diligence for All Transactions
对所有交易进行知识产权方面的尽职调查
 - Joint Ventures, Cooperative Development Agreements, Mergers, Acquisitions, Investments
合资公司、合作发展协议、合并、并购、投资
 - How Safe is Your Company's Investment?
你公司的投资有多安全？
 - Conduct IP Clearance Searches
进行知识产权不侵权检索
 - Patent and Trademark
专利和商标
 - Takes 2-3 Weeks, Costs \$2-5k per Search
需2-3周，每份检索需2-5千美元。

Avoid Becoming an ITC Target

避免成为ITC调查对象

- **Design Around Any US Patents** 设计时要避免侵犯任何美国专利
- **Avoid Literal Infringement**
 - 避免直接侵权
 - Consider Doctrine of Equivalents
考虑等同原则
 - US Courts recognize that “Designing around patents is ... one of the ways in which the patent system works to the advantage of the public in promoting progress in the useful arts, its constitutional purpose.” *Slimfold Mfg. Co. v. Kinkead Industries, Inc.*, 932 F.2d 1453, 1457 (Fed. Cir. 1991).
美国法庭认识到“绕开专利的设计是...专利制度促进有用技术的发展，为公众利益服务，体现宪法的目的。” *Slimfold 制造公司. v. Kinkead 工业公司.*, 932 F.2d 1453, 1457 (Fed. Cir. 1991).

- Obtain IP Clearance Opinions 获得不侵权法律意见
 - Mitigate Risks
降低风险
 - Can Protect Against Willful Infringement Damages in Litigation
可以在诉讼中抗辩故意侵权的指控

Avoid Becoming an ITC Target

避免成为ITC调查的对象

- Increase Your Company's IP
增加贵公司的知识产权
 - Use as Leverage in Negotiations
在协商中作为谈判的筹码
 - File Infringement Actions Against Aggressor
对侵权者提起诉讼
 - Use as Cross-Licensing in Settlement Negotiations
在协商中提出交叉许可

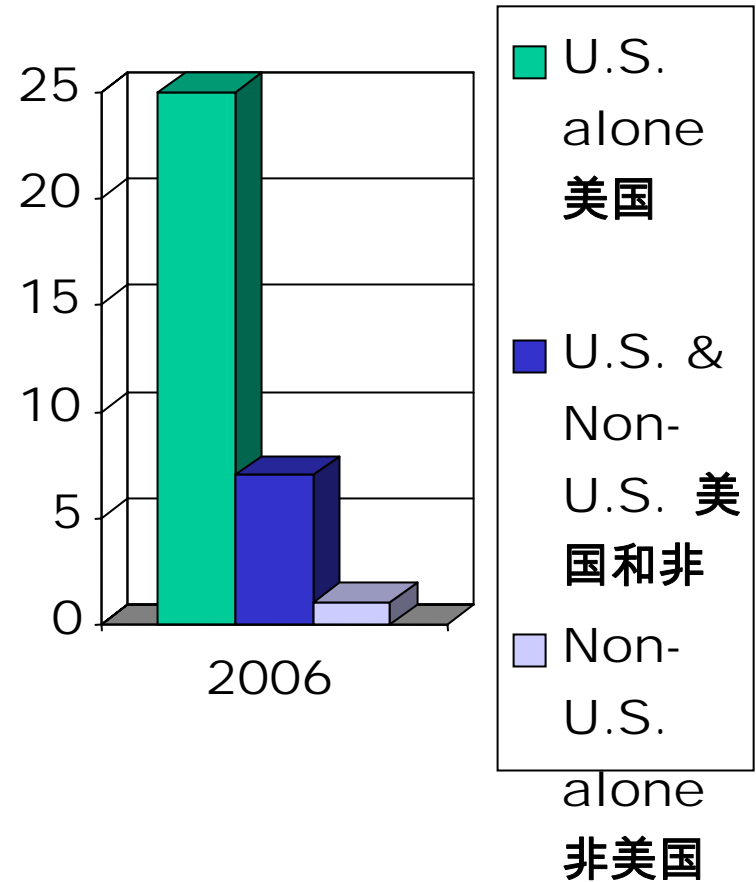
Overview of ITC Cases in 2006: 2006年ITC案例回顾

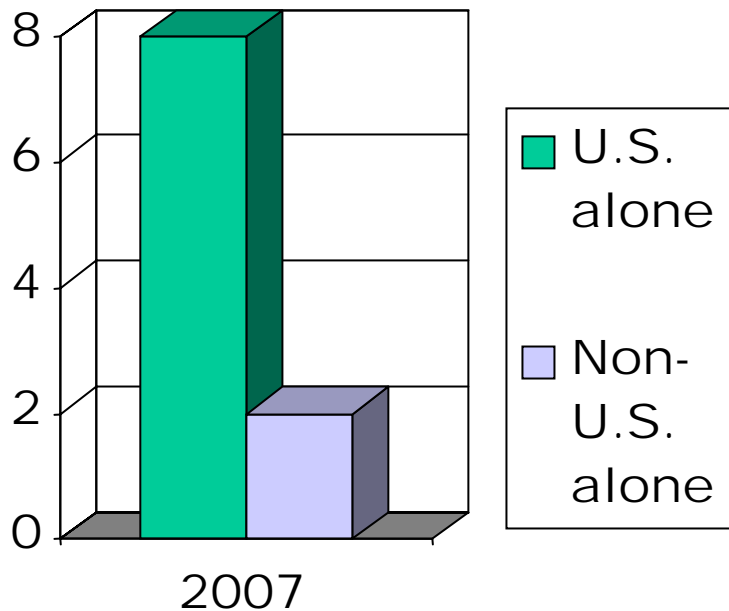
Who Files ITC Cases? 谁发起ITC案例？

- In 2006, 33 new cases were initiated with the ITC.

在2006年，ITC受理了33例新案例

- 25 brought by U.S. companies alone
25例由美国公司提出
- 7 brought by a U.S. company together with a company headquartered outside the U.S.
7例由美国公司和总部在美国境外的公司提出
 - Including: Japan, Korea, Singapore, Taiwan
包括：日本、韩国、新加坡、台湾
- 1 brought by a non-U.S. company alone
1例由非美国公司单独提出
 - Taiwan 台湾





- Between January and April 1, 2007, 10 new cases have been initiated with the ITC.
在2007年1月和4月间，ITC受理了10例新的案例。
 - 8 brought by U.S. companies alone
8例由美国公司提出
 - 2 brought by non-U.S. companies
2例由非美国公司提出
 - Japan 日本

Overview of ITC Cases in 2006-2007:

2006-2007年ITC案例回顾

Who is an ITC Target? 谁是ITC的调查对象?

- Asian companies: 亚洲公司

- 9 cases against China**

- 9例针对中国**

- 5 cases against Hong Kong**

- 5例针对香港**

- 4 in 2006; 1 in 2007
2006年4例 ; 2007年1例

- 3 cases against Taiwan**

- 3例针对台湾**

- 7 cases against Japan**

- 7例针对日本**

- 6 in 2006; 1 in 2007
2006年6例 ; 2007年1例

- 6 cases against South Korea**

- 6例针对南韩**

- 3 in 2006; 3 in 2007
2006年3例 ; 2007年3例

- 1 case against Singapore**

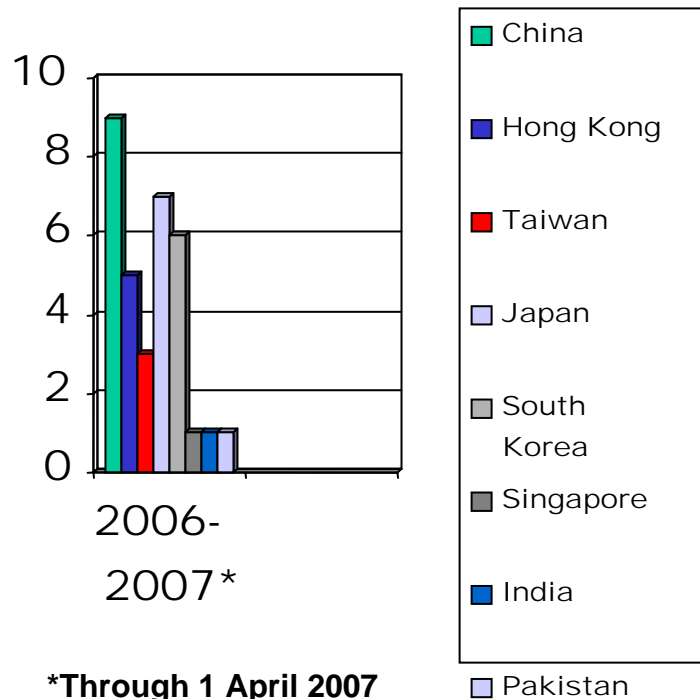
- 1例针对新加坡**

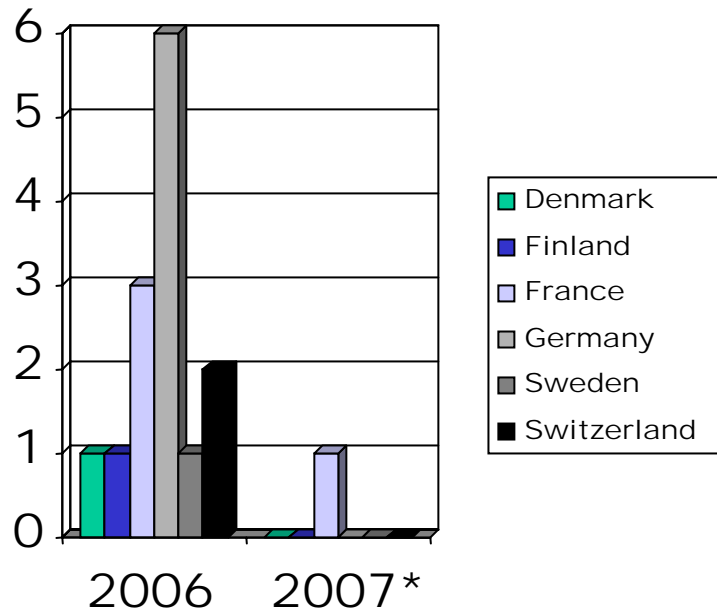
- 1 case against India**

- 1例针对印度**

- 1 case against Pakistan**

- 1例针对巴基斯坦**



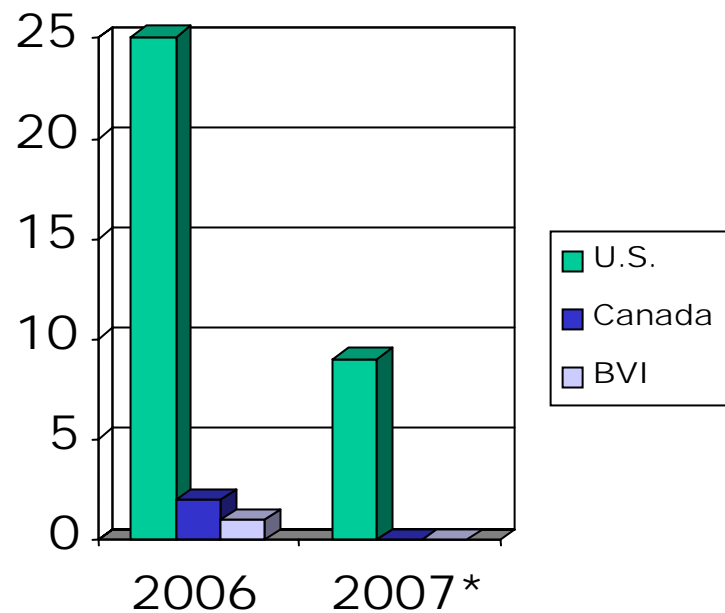


*Through 1 April 2007

- European companies: 欧洲公司
 - 1 case against Denmark
1例针对丹麦
 - 1 case against Finland
1例针对芬兰
 - 4 cases against France
4例针对法国
 - 3 in 2006; 1 in 2007
2006年3例；2007年1例
 - 6 cases against Germany
6例针对德国
 - 1 case against Sweden
1例针对瑞典
 - 2 cases against Switzerland
2例针对瑞士

- North American and Caribbean companies: 北美和加勒比公司：

- 34 cases against the U.S.
34例针对美国
 - 25 in 2006; 9 in 2007
2006年25例；2007年9例
- 2 cases against Canada
2例针对加拿大
- 1 case against the British Virgin Islands [BVI]
1例针对英属维京群岛[BVI]

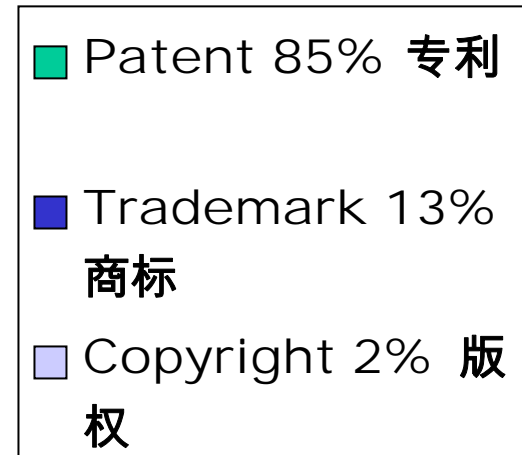
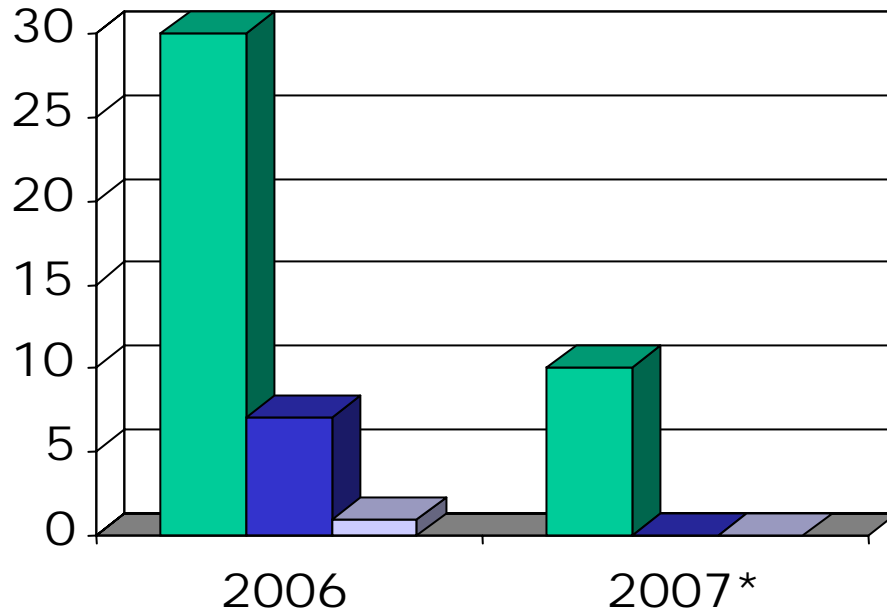


*Through 1 April 2007

- Non-U.S. companies were targets in 35 of 43 ITC cases from 2006-1 April 2007
非美国公司在2006-2007年ITC 的43个案例中占35个
- Of those, Asian companies were targets in 23 ITC cases
在这些案例中，亚洲公司是23个ITC案例中的调查对象
- Chinese, Hong Kong, and Taiwanese companies were targets in 17 ITC cases
中国、中国香港和台湾的公司占ITC案例17个

Types of IP Involved in ITC Cases Since 2006

2006年案的知识产权类型



*Through 1 April 2007

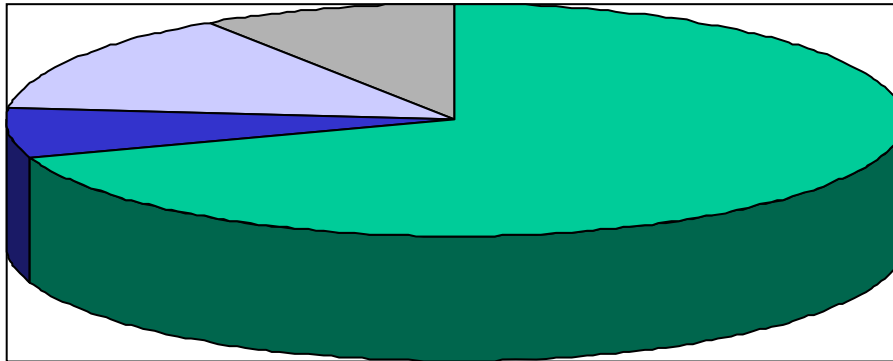
Types of IP Involved in ITC Cases Since 2006

自2006年起ITC案例中知识产权类型

- Patent Infringement 专利侵权
 - 30 cases in 2006
2006年30个案例
 - 10 cases as of 1 April 2007
2007年10个案例
- Trademark / Trade Dress Infringement
商标/产品包装外观侵权
 - 7 cases in 2006
2006年7例
- Copyright Infringement
版权侵权
 - 1 case in 2006
2006年1例

Types of Products Involved in ITC Cases Since 2006

自2006年起ITC案例中的产品类型



- Electronics 70%
电子
- Heavy Machinery
7% 重型机械
- Medical Device 医疗设备/
Pharma 医药 14%
- Other 9% 其他

Types of Products Involved in ITC Cases Since 2006

自2006年起ITC案例中的产品类型

1. Electronics 电子
 - Communications-related 通讯相关产品
 - 7 cases in 2006
2006年7例
 - 3 cases in 2007
2007年3例
 - Computer-related 计算机相关产品
 - 7 cases in 2006
2006年7例
 - 2 cases in 2007
2007年2例
 - General Electronics 通用电子
 - 10 cases in 2006
2006年10例
 - 1 cases in 2007
2007年1例

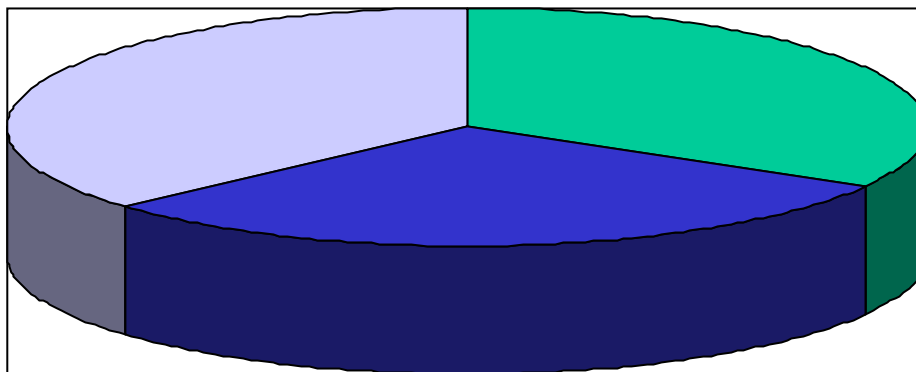
Types of Products Involved in ITC Cases Since 2006 自2006年起ITC案例中的产品类型

- Communications-Related (10 total) 通讯相关产品
 - Telecommunications Equipment 电子通讯设备
 - Portable Digital Media Players (2) 便携式数码媒体播放器 (2)
 - Wireless Communication Devices (2) 无线通讯器材 (2)
 - Mobile Telephones & Wireless Devices 移动电话和无线器材
 - Wireless Conference Calling Devices 无线电话会议器材
 - GPS Chips / Software GPS芯片/软件
 - Unified Communications Systems 统一通讯系统
 - 3G WCDMA Handsets 3G WCDMA手机

- Computer-Related (9 total) 计算机相关产品 (共9例)
 - NAND Flash Memory Circuits (2) NAND 闪存记忆电路
 - Scrolling Wheel / Computer Mouse 滚轮/计算机鼠标
 - Ink Cartridges 墨盒
 - Chemical Mechanical Planarization Slurries 化学机械研磨浆
 - Flash Memory Chips 闪存记忆芯片
 - Peripheral Devices 外设器材
 - Ink Jet Ink Supplies 喷墨式送墨器
 - Dynamic RAM Devices 动态RAM装置

- General Electronics (11 Total) 通用电子 (共11种)
 - Portable Power Stations 便携式发动机
 - Voltage Regulators 电压调节器
 - Nickel Metal Batteries 金属镍电池
 - Connecting Devices for Modular AC Units 模块交流电源连接器
 - Digital Multimeters 数码多用表
 - Switches 开关
 - Coupler Device for Power Supply Facility 供电设备连接装置
 - Digital Cameras 数码相机
 - Lighting Products 照明产品
 - Dimmers / Light Control Devices 明暗/光控装置
 - Rechargeable Lithium Batteries 可再充电的锂电池

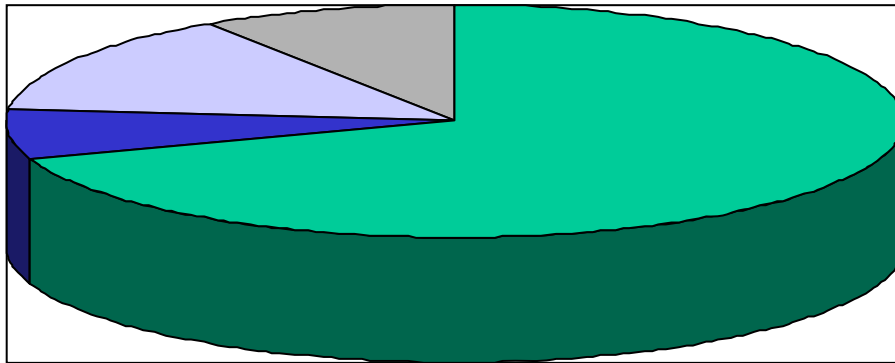
Types of Electronic Products Involved in ITC Cases Since 2006 自2006年起ITC案例中的电子产品类型



- Communications-Related 33% 通讯相关
- Computer-Related 30% 计算机相关
- General 37% 通用

Types of Products Involved in ITC Cases Since 2006

自2006年起ITC案例中的产品类型



- Electronics 70% 电子
- Heavy Machinery 7% 重型机械
- Medical Device / Pharma 14% 医疗器械/药
- Other 9% 其他

Types of Products Involved in ITC Cases Since 2006

自2006年起ITC案例中的产品类型

2. Heavy Machinery 重型机械

- 3 cases in 2006
2006年起3例
- 0 cases as of 1 April 2007
2007年0例
- Motors/Transmissions Systems, Hydraulic excavators, and Engines
发动机/传输系统、水力冲挖机和电机

3. Medical/Pharmaceutical 医/药

- 6 cases in 2006
2006年6例
- 0 cases as of 1 April 2007
2007年0例
- Recombinant Human Erythropoietin, Endoscopic Probes, L-Lysine Feed Products, Insulin Delivery Devices, Alendronate Salts, Invisible Dental Braces
再组人工血红蛋白、内窥镜探测器、L-赖氨酸饲料、胰岛素输送装置、阿仑膦酸钠、隐性的牙齿支撑架

4. Other Consumer Products 其它消费品

- 3 cases in 2006
2006年3例
- 1 case as of 1 April 2007
2007年1例
- Lighters, Stringed Musical Instruments, Bassinets,
Foam Footwear
打火机、弦乐器、摇篮、泡沫鞋

Since 2006,
There Have Been 43 New ITC Cases:
自从2006年起，有43例ITC案例

- **23 ITC Cases Were Filed Against an Asian Company**
23例针对亚洲公司的ITC案例
- **Chinese, Hong Kong, and Taiwanese companies Were Targets in 17 ITC Cases**
17列ITC案例目标是中国、香港、台湾公司
- **30 ITC Cases Involved Patent Infringement Claims**
30例ITC案例涉及专利侵权起诉
- **30 ITC Cases Involved Electronic-Related Products.**
30例ITC案例涉及电子相关产品
- **9 ITC Cases Involved Chinese, Hong Kong, and Taiwanese companies and Electronic-Related Products.**
9例ITC案例涉及中国、香港和台湾公司和电子相关产品

As of 1 April 2007,
There Have Been 10 New ITC Cases:
自从2007年起，有10例ITC新案例

- **9 ITC Cases Involved Electronic-Related Products**
9例ITC案例涉及电子相关产品
- **4 ITC Cases Involved Asian companies**
4例案例涉及亚洲公司
- **All 10 ITC Cases Involved Patent Infringement Claims**
所有10例ITC案例涉及专利侵权

U.S. ITC Section 337 Litigation Practice

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