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ITC Opens More Infringement Probes Into New IP Matters

By **Adam Lidgett**

Law360 (March 24, 2026, 4:53 PM EDT) -- The U.S. International Trade Commission has launched more infringement investigations over patents and other intellectual property that have not been in dispute there before, a trend attorneys say could be tied to a decision broadening who can get imports blocked as well as changes at the U.S. Patent and Trademark Office that limit patent challenges.

Trial consulting company DOAR Inc. surveyed investigations at the ITC in 2025 and released a report Thursday, showing 46 investigations instituted under Section 337 of the Tariff Act of 1930, which bans the importation of products that violate intellectual property laws. That number is in line with historical averages, after a dip in the number of cases to 37 in 2023, according to DOAR.

The report showed there was a bump in the number of cases involving new intellectual property being seen on the ITC's docket.

Thirty-five of the 46 investigations launched in 2025 involved IP the commission hasn't seen before, making it 76.1% of all the investigations instituted. That was an increase from 57.7% in 2024 and about 73% in 2023, according to the data.

"It's something if we continue to see it year over year, that might be a pattern that we'll dig into more deeply," Jeremy Scholem, director at DOAR, told Law360. "It's more something we've seen in the data in the past two to three years together with the rebound of ITC activity."

Scholem said it has been fairly common for similar patents to come back before the ITC multiple times.

He said the same patent will often be litigated several times if the cases target small competitors, which sometimes change their names and reappear later. That creates "a Whack-a-Mole process," Scholem said.

The uptick in these kinds of cases at the ITC has come around the same time as the Federal Circuit's March 2025 decision favoring eyelash extension maker Lashify Inc., in which it broadened which companies have standing to block imports that infringe their intellectual property, according to Stephanie L. Roberts, a Morgan Lewis & Bockius LLP partner who focuses on ITC cases.

One of the ways IP owners can establish domestic industry is by a "significant employment of labor or capital," which the ITC has long said can't include marketing costs. But the Federal Circuit disagreed last year, saying costs like sales, marketing and warehousing must count too.

Roberts said the Lashify decision has made the ITC more available to entities that normally or previously wouldn't have been able to establish domestic industry.

"So I think the broadening of the expenses that can be considered in domestic industry is helping drive entities to the ITC where they maybe wouldn't have gone before," she said.

What drives upticks in new matters at the ITC has typically been a new generation of products flooding the market, such as in the 5G, solar energy or e-cigarette sectors, according to Levi Snotherly & Schaumberg PLLC principal Rett Snotherly, who has worked as a senior investigative attorney in the ITC's Office of Unfair Import Investigations.

"It's somewhat predictable," he said.

But Snotherly also highlighted the Lashify decision, saying the decision could have led to the increase in new IP matters at the ITC.

There also has been an unprecedented number of denials by the USPTO to institute petitions challenging patents at the Patent Trial and Appeal Board over the past year.

Both the USPTO changes and the Lashify decision are important to look at when viewing what's happening at the ITC, according to Michael David, co-chair of Latham & Watkins' ITC practice.

"Those two items together, I think, tend to be viewed as favorable to patent holders, which may account for the increase in new filings at the ITC over the last year" involving new IP, he said.

Veronica Ascarrunz, a partner at Perkins Coie LLP, said now patent owners know that their patents are likely not going to be invalidated at the PTAB, so they could be more emboldened to make patent claims.

"Patent holders are therefore getting some confidence from that and being less reluctant to bring patent cases in general," she said.

But it may be too early to tell if the Lashify decision has had any real effect on the increase at the ITC, according to Robert T. Vlasis III, who co-leads the ITC practice at Mintz Levin Cohn Ferris Glovsky and Popeo PC.

"We have not seen significant movement on this front, at least not an observable one — yet," he said in an email to Law360. "Given the length of time for initial determinations, the impact will take some time to observe."

Vlasis added, however, that now is "a generally favorable time for patentees at the ITC," and "the revised procedures at the PTAB, combined with Lashify, indicate expanded and potentially more successful opportunities at the ITC."

"There may also be a perception that the administration is in an 'America-first' mindset, which would favor domestic patent holders and domestic industries, though that's likely less relevant at the ITC given its independent nature," he said.

Joshua Newcomer, a McKool Smith principal who works on ITC matters, also said district courts are less favorable now to litigants hoping to get injunctive relief. He said the uptick in new cases at the ITC "reflects a recognition that the ITC is a forum available to new entrants, not just the typical players there."

Electronics patent owners have long come to the ITC, but some filings outside that realm have included shapewear garments and child car seats, Newcomer said.

The Trump administration's tariffs also have disrupted the trade side of business, which has caused companies to reevaluate how they're handling disputes, according to Jamie Underwood, who also co-leads Latham's ITC practice.

She said "there may be other levers that need to be pulled in order to meet business goals," pointing out that businesses may be facing supply chain issues or cost issues as a result of the tariffs.

"So the things that were working before may not be working now," Underwood said.

One of those levers would be litigation, she said, adding that "Section 337 injunctions can provide sweeping market protections."

--Additional reporting by Ryan Davis, Theresa Schliep and Dylan Moroses. Editing by Adam LoBelia.

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