



Patent Rights and Imported Goods

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Protection of intellectual property rights is a top priority for the United States as far back as the First Congress. U.S. patent laws are designed to encourage innovation in U.S. citizens by protecting the financial benefits resulting from new ideas. However, concerns over Section 337 of the 1930 Tariff Act, which outlines the framework for patent adjunctions, were recently raised as it seems that section 337 may be in conflict with U.S. international obligations.

Section 337 focuses on imported goods, which some argue is inconsistent with the General Agreement on Tariffs and Trade (GATT) basic principle of "national treatment." Rather than requiring monetary damages, exclusion orders are issued to prevent importing products infringing on another companies products, limited only to specific items in specific companies. GATT was replaced by the World Trade Organization (WTO) in 1995 but so far has not been required to modify or eliminate section 337.

Investigations under section 337 usually take 12-18 months. The team of patent lawyers provided by the United States International Trade Commission (USITC) and the investigative attorneys of the Office of Unfair Import Investigations (OUII) ensure well-informed, quality and consistent legal determinations, in addition to considering if the exclusion order would harm public interest. 15-20 percent of all U.S. patent trials have been in USITC courtrooms as the USITC's reputation of the most highly specialized and prolific patent court in the country grows.

The current system is effective, managed with developed expertise, and works fairly well at curbing infringement by imports. Conclusively, it seems that the requested changes to section 377 would not be worth the time, effort or political costs.

Source: Daniel R. Pearson, "Patent Rights and Imported Goods," Cato Institute, September 15, 2015.