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June 29, 2026

The Honorable Lisa R. Barton  
Secretary  
U.S. International Trade Commission  
500 E Street SW  
Washington, DC 20436

**Re: Section 337 Adjudication and Enforcement; Proposed Rulemaking, Investigation No. MISC-051**

Dear Secretary Barton:

The Consumer Technology Association (CTA)<sup>®</sup> appreciates the opportunity to comment on the U.S. International Trade Commission's proposed amendments governing disclosure of ownership interests and third-party litigation funding in Section 337 proceedings.

CTA represents more than 1200 technology companies, the vast majority of which are startups and small businesses. Our members develop, manufacture, distribute, and sell innovative technologies that improve consumers' lives and strengthen America's economic competitiveness.

**I. CTA Supports the Commission's Transparency Proposal**

CTA strongly supports the Commission's proposal to require disclosure of ownership interests and third-party litigation funding in Section 337 proceedings. The proposed rule will bring much-needed transparency to the Section 337 process and will help ensure that the Commission, respondents, and the public understand who is directing, financing, and benefiting from these investigations.

The Commission's proposal also advances America's broader innovation and competitiveness interests. Patent assertion campaigns impose a significant tax on startups, small businesses, and technology companies that are developing products, creating jobs, and attracting investment.

Research by Professors James Bessen and Michael Meurer estimated that non-practicing entity litigation imposed approximately \$29 billion in direct costs on U.S. businesses in a single year, with small and medium-sized companies accounting for the majority of defendants (Bessen & Meurer, *The Direct Costs from NPE Disputes*, Boston University

School of Law, 2012). Professor Colleen Chien's survey of nearly 300 venture capitalists and venture-backed startups similarly found that 84 percent of venture capitalists believed patent assertion entities harmed innovation, while respondents reported that patent demands delayed hiring, product development, financing, and company growth (Chien, *Startups and Patent Trolls*, Santa Clara University School of Law, 2013).

More recently, research published by the National Bureau of Economic Research found that companies targeted by patent assertion entities experienced significant declines in innovative activity following litigation, concluding that these lawsuits divert resources away from research and development and toward legal defense (Cohen, Gurun & Kominers, *Patent Trolls: Evidence from Targeted Firms*, NBER Working Paper No. 20322, 2014).

At a time when the United States is competing to lead in artificial intelligence, semiconductors, quantum computing, and advanced manufacturing, policymakers should encourage investment in engineers, research and development, manufacturing, and commercialization, not opaque litigation strategies that divert scarce capital from American innovation.

Greater transparency will help ensure that Section 337 remains a tool for protecting legitimate intellectual property rights rather than a mechanism for anonymous litigation campaigns that undermine U.S. technological leadership. CTA supports adoption of the proposal and offers several targeted recommendations to further strengthen the rule.

## **II. Powerful Section 337 Remedies Require Full Disclosure**

The proposed rule is necessary and beneficial. The Commission cannot effectively carry out its responsibilities under Section 337 without visibility into the financial interests and funding arrangements that may influence litigation strategy, settlement decisions, or the broader objectives of a proceeding. The proposed rules will help identify conflicts of interest, promote clarity regarding the real parties in interest, and increase confidence in the integrity of the Commission's adjudicatory process.

Transparency is particularly important because Section 337 investigations provide powerful remedies, including exclusion orders that can significantly impact competition, supply chains, and consumers. Those powerful remedies make transparency even more important than in ordinary civil litigation. Parties invoking these remedies should disclose the financial interests that may influence the litigation.

## **III. Opaque Litigation Campaigns Harm American Innovators**

CTA has long supported strong intellectual property protections while opposing abusive patent litigation. America's patent system should reward invention, commercialization, and technological advancement. It should not facilitate opaque litigation campaigns designed primarily to extract settlements from productive companies.

CTA has opposed abusive patent litigation and the activities of patent assertion entities that use litigation as a business model rather than innovation. Too often, productive companies face costly legal campaigns brought by entities that develop no products, create no jobs, manufacture nothing, and generate revenue through litigation rather than innovation. These entities generate revenue not by inventing, building, or commercializing technology, but by asserting legal claims against those who do.

#### **IV. Disclosure Must Identify Who Funds, Controls, and Benefits**

Existing corporate disclosure requirements frequently fail to reveal the real parties in interest behind patent litigation. Patent assertion entities often rely on complex ownership structures, affiliated entities, funding arrangements, and other mechanisms that obscure who ultimately controls or benefits from a proceeding. The Commission's proposal represents an important step toward ensuring that parties, judges, and the public understand who is actually directing and financing Section 337 investigations.

Transparency also promotes meaningful settlement discussions. In some cases, entities that are not formally named parties may possess approval rights or other economic interests that influence litigation strategy or settlement decisions. Disclosure helps ensure that the Commission and parties understand who ultimately controls those decisions and whether additional stakeholders may affect the resolution of a dispute.

Patent assertion entities and other litigation-driven business models impose substantial costs on innovators, manufacturers, retailers, and startups. These costs divert resources away from research and development, hiring, investment, and product development. Greater transparency will help deter abusive practices and improve accountability.

For CTA's members, many of which are startups and emerging technology companies, these costs are particularly harmful. Smaller companies often face immense pressure to settle even weak claims because the cost of litigation can exceed the cost of settlement. Every dollar spent defending against opaque, litigation-driven claims is a dollar that cannot be invested in research, hiring, manufacturing, or the next generation of American innovation. Policymakers should encourage investment in invention and commercialization, not litigation strategies that drain resources from productive enterprises.

#### **V. Foreign Interests Should Not Remain Hidden**

CTA also notes growing concerns regarding foreign involvement in litigation funding and patent enforcement activities. Congress, federal agencies, and national security experts have increasingly examined whether foreign entities may use litigation funding arrangements to obtain leverage over U.S. companies or advance broader strategic interests.

These concerns underscore the importance of robust disclosure requirements that allow the Commission to understand who ultimately stands to benefit from a Section 337 proceeding.

Disclosure is particularly important where foreign entities may possess a direct or indirect financial interest in a proceeding. The Commission, respondents, and the public should be able to identify whether foreign investors, sovereign wealth funds, or foreign-affiliated entities stand to benefit from the outcome of a Section 337 investigation. At a time of intense global competition, transparency helps ensure that the Commission has visibility into the financial interests underlying proceedings that may affect American companies, consumers, and supply chains.

CTA further recommends that the Commission require disclosure of any foreign government, sovereign wealth fund, state-owned enterprise, or foreign-affiliated entity that directly or indirectly finances, controls, or stands to benefit financially from a Section 337 proceeding. The Commission should have visibility into significant foreign interests that may influence litigation strategy, settlement decisions, or the broader objectives of an investigation.

Comprehensive disclosure also promotes confidence in the integrity of the adjudicatory process. By providing greater visibility into the entities and individuals with significant financial interests in a proceeding, the proposed rule will assist the Commission in identifying potential conflicts of interest and ensuring that proceedings are conducted fairly and transparently.

## **VI. CTA Recommends Targeted Improvements to Strengthen the Rule**

While CTA strongly supports the proposed rule, several targeted revisions would improve its effectiveness.

First, proposed Section 210.14a(a)(1) should include a threshold ownership percentage before disclosure is required. CTA recommends a 10 percent threshold, consistent with Federal Rule of Civil Procedure 7.1(a)(1). This approach would focus disclosure obligations on meaningful ownership interests while avoiding unnecessary reporting burdens.

Second, CTA believes it would be beneficial for the Commission to define key terms within the regulation. Clear definitions will improve consistency and reduce uncertainty. The Commission should evaluate appropriate definitions once the final scope of the rule is established.

Third, the Commission should require disclosure of funding arrangements and approval rights associated with related litigation. Section 337 investigations are frequently part of broader domestic and international litigation campaigns. Funding arrangements may be structured at the portfolio, law firm, or campaign level rather than for a specific ITC investigation. The Commission should require disclosure of funding arrangements and approval rights associated with related litigation where the funder stands to benefit directly or indirectly from the outcome of the Section 337 proceeding. Otherwise, parties could evade disclosure through artificial structuring of funding agreements while preserving the very interests the proposed rule seeks to illuminate.

Fourth, the Commission should require disclosure not only of financial interests but also of material contractual rights that allow a non-party to influence litigation strategy, settlement decisions, licensing decisions, or other significant actions in a proceeding. In many cases, the most important question is not simply who is funding the litigation, but who controls it.

Fifth, CTA generally believes the categories of financial interests identified in the proposed rule are comprehensive. However, the rule should require parties to provide a brief description of the nature of any disclosed financial interest. A short description will provide the Commission and other parties with useful context regarding ownership interests, funding arrangements, approval rights, and other relationships that may influence the conduct of the proceeding.

CTA also recommends that parties disclose the underlying litigation funding agreement to the Commission and other parties, subject to appropriate protections for confidential business information. Disclosure of the agreement itself will provide the Commission with a more complete understanding of any control rights, approval rights, economic interests, or other provisions that may affect the conduct of the proceeding.

Sixth, and finally, the Commission should establish meaningful consequences for noncompliance. Transparency requirements are only effective if parties take them seriously. CTA recommends that the Commission authorize dismissal of a complaint where a party fails to comply with the disclosure requirements or knowingly provides incomplete or inaccurate information.

## **VII. Section 337 Should Protect Innovation, Not Secrecy**

Section 337 proceedings play an important role in protecting legitimate intellectual property rights. They must also operate with transparency, accountability, and confidence in the fairness of the process.

The Commission's proposal advances those goals and will help ensure that Section 337 remains a tool for protecting innovation, not a vehicle for obscuring the financial interests driving litigation. Section 337 should protect American innovation, not provide cover for anonymous litigation campaigns financed and directed by undisclosed interests. Greater transparency will strengthen confidence in the Commission's proceedings, support American innovators, and help ensure that capital flows toward research, investment, and technological leadership rather than abusive litigation.

Thank you for considering CTA's views. We look forward to continued engagement with the Commission on policies that protect innovation, strengthen transparency, and promote a fair and competitive intellectual property system.

Sincerely,

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Michael Petricone  
Senior Vice President, Government Affairs  
Consumer Technology Association

A handwritten signature in black ink, appearing to read "Ed Brzytwa". The signature is cursive and includes a Roman numeral "II" at the end, indicating a second name or title.

Ed Brzytwa  
Vice President, International Trade  
Consumer Technology Association