

# ITC Temporarily Rescinds Remedial Orders Based On District Court Invalidity Judgment

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In yet another twist in the saga of *Certain Beverage Brewing Capsules, Components, Thereof, and Products Containing Same*, Inv. No. 337-TA-929, the U.S. International Trade Commission (ITC) has issued an [order](#) temporarily rescinding the extant remedial orders in that investigation pending appeal of a district court judgment finding the claims of the patent-in-suit invalid. The ITC cites its 2011 decision in *Certain Composite Wear Components and Products Containing the Same*, Inv. No. 337-TA-644 as involving analogous facts.

Interestingly, last year the ITC had refused a petition to rescind the remedial orders in this investigation despite the same district court's ruling that the petitioning respondent (who had defaulted in the ITC) did not infringe the patent. The district court case then proceeded through trial and the claims involved in the ITC investigation were found invalid. The proceeding drew the ire of the district court judge, who awarded attorney fees against the patent owner (the ITC complainant), finding, among other things, that the patent owner had maintained its invalidity defense in bad faith "largely [as] a charade used for the purpose of extending the life of" the ITC remedial orders. *Eko Brands, LLC v. Adrian Rivera Maynez Enterprises, Inc. et al*, [2-15-cv-00522](#) (WAWD 2018-07-13, Order).

**Takeaway:** While the one-of-a-kind facts of this case likely diminish its importance as precedent, it is still a timely reminder that the ITC will rescind its remedial orders in the face of a district court invalidity judgment. It also is a good reminder of the potential perils of defaulting in the ITC as a cost-saving measure. While the respondent ultimately gained some measure of vindication, it had to engage in a lengthy district court battle to achieve it.

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