

Significant Third-Party Discovery Too Complex for ITC Early Disposition Program

Article By:

Jay H. Reiziss

The US International Trade Commission (ITC) denied a proposed respondent's request to use the early disposition program to determine whether a complainant met the domestic industry requirement in a Section 337 investigation. The ITC concluded that the issues proposed for resolution were too complex to be decided within 100 days of institution because significant third-party discovery was likely necessary. *Certain Video Processing Devices, Components Thereof, and Digital Smart Televisions Containing Same*, Comm'n Order, USITC Inv. No. 337-TA-1222 (Oct. 14, 2020).

The early disposition program aims to limit unnecessary litigation and save time and resources for litigants and the ITC by resolving obvious and fatal deficiencies in a complainant's case before the parties embark on a full Section 337 investigation. The program provides for an initial determination by the presiding administrative law judge within 100 days of institution on potentially dispositive issues. The administrative law judge may hold expedited hearings and stay discovery of any other issues during the pendency of the 100-day proceeding. The ITC has indicated that appropriate issues for resolution include domestic industry, importation, standing and patent subject matter eligibility.

Complainant DivX, LLC, a video software technology company, relied on its licensee's assembly of smart TVs in the United States to satisfy the domestic industry requirement. Proposed respondent Realtek Semiconductor Corporation, a chipmaker for consumer electronics, argued that DivX would be unlikely to meet the domestic industry requirement because DivX's licensee stopped identifying several of its products as "Assembled in the USA" to avoid deceiving consumers in connection with a petition filed before the Federal Trade Commission. Realtek also argued that DivX could not identify smart TVs as the domestic industry product for purposes of the economic prong and a different video processor product for purposes of the technical prong. Realtek sought to resolve these issues through the early disposition program, and DivX opposed. Although neither party raised the issue of third-party discovery, the ITC denied Realtek's request because such discovery was likely necessary, making adjudication within 100 days impracticable.

Practice Note: The ITC places great emphasis on the expeditious adjudication of Section 337 investigations because of the ITC's statutory mandate to complete them at the earliest practicable time. The early disposition program builds on that mandate and can provide an even speedier timeframe by streamlining and resolving dispositive issues within 100 days of institution. A proposed respondent should consider requesting early disposition for clear weaknesses in a complainant's

case where the issue to be decided is not complex and does not require significant discovery. While the ITC does not grant use of the early disposition program often, where it has done so, several cases have ended with withdrawal of the complaint or termination before a hearing.

© 2025 McDermott Will & Emery

National Law Review, Volume X, Number 296

Source URL: <https://natlawreview.com/article/significant-third-party-discovery-too-complex-itc-early-disposition-program>