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The Power of Process Patents at the International Trade Commission

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The U.S. International Trade Commission (ITC) has a long reach over proprietary processes performed in foreign countries. Owners of patents covering, for example, methods for making a chemical material used to make other end products, may find that U.S. district courts are not entirely suitable venues for enforcing those patented rights against competitors that manufacture products entirely outside the United States. The presumption is that U.S. laws, including laws relating to intellectual property, do not apply to actions and actors outside the United States.

In the Process Patents Amendments Act of 1987, ever, Congress extended the jurisdiction of federal courts to cover patented processes practiced abroad, where the resulting product is imported into the United States. For this purpose, Congress established Section 271(g), which provides in relevant part that “[w]hoever without authority imports into the United States or sells or uses within the United States a product which is made by a process patented in the United States shall be liable as an infringer.” But Section 271(g) has safe harbor/defense provisions. Even if a process patent could be asserted in a district court complaint, the plaintiff may have a hard time serving that complaint on the foreign company that does not have any locations in the United States. The plaintiff may also have a hard time finding more than circumstantial evidence of infringement prior to filing a complaint in a district court, potentially inviting complicated early motion practice in a district court case.

This does not mean that a patent owner is without remedy against a foreign manufacturer that imports goods into the United States that are manufactured using a patented process. A more suitable venue may be the ITC, and patent owners (as well as potential infringers that import goods made using processes covered by U.S. patents) would be wise to remember the extensive authority of this administrative body to grant injunctive relief precluding the importation of infringing goods.

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