

May 19, 2014

The Honorable Irving A. Williamson  
Chairman  
U.S. International Trade Commission  
500 E Street, SW  
Washington, DC 20436

**Re: Commission FY2015 Budget and Space for Section 337 Investigations**

Dear Chairman Williamson:

I write on behalf of the American Intellectual Property Law Association (“AIPLA”) in connection with the Commission’s recently released “Budget Justification for its Fiscal Year 2015.”

AIPLA is a national bar association with approximately 15,000 members who are primarily lawyers in private and corporate practice, government service, and the academic community. AIPLA represents a wide and diverse spectrum of individuals, whose companies and institutions are involved directly or indirectly in the practice of patent, trademark, copyright, and unfair competition law, as well as other fields of law affecting intellectual property. Our members represent both owners and users of intellectual property

AIPLA considers the U.S. International Trade Commission (“ITC” or “Commission”), with its enforcement authority under Section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, to be very important for protecting intellectual property rights in the United States. Investigations under Section 337 are critical to effective border enforcement of U.S. intellectual property rights and to U.S. economic competitiveness. We therefore strongly support the continued expeditious, fair, and efficient administration of Section 337 at the ITC.

To that end, we also support the continued commitment of the resources needed for the Commission to properly and efficiently administer Section 337 investigations. We understand from the Commission’s recently released “Budget Justification for its Fiscal Year 2015” that consideration is being given to a proposed new lease for the ITC that could involve a significant reduction of space and associated resources that are currently devoted to supporting Section 337 investigations. The Commission notes in its Budget Justification document that the requirements for a new agency lease could involve reducing its space “by about 40 percent, resulting not only in less office space, but also fewer courtrooms.” Budget Justification FY 2015 p. 8. Such a reduction in space for the agency’s Section 337 activities would seriously impair the Commission’s ability to carry out its statutory obligation to complete Section 337 investigations “at the earliest practicable time” and “promot[ing] expeditious adjudication.” 19 U.S.C. § 1337(b)(1).

In our view, the current work space devoted to Section 337 activities is needed, and there should be no reduction in physical resources available for Section 337 administration. This includes the space available to the ITC Administrative Law Judges and the Commissioners themselves, their support staffs, the ITC Office of Unfair Import Investigations (“OUII”), and the ITC Dockets staff. Nor should there be any reduction in the number or size of the courtrooms in which Section 337 investigations are heard.

With the increase in Section 337 investigations in the mid-2000s, the availability of adequate courtroom space was a significant constraint on the expeditious and efficient prosecution of Section 337 investigations, which resulted in significant delays in the completion of a number of investigations. The Commission was eventually able to secure funding for a third courtroom, which opened in 2012. (H. Report 112-169 112th Congress (2011-2012)). The need for this third courtroom has not diminished, and there appears to be no prospect that it will. Even with this newly built third courtroom, courtroom space at the Commission remains at a premium. AIPLA therefore believes that any new lease for the agency must provide for the continued availability of at least three courtrooms devoted to Section 337 investigations.

The Administrative Law Judges and their staff currently operate in what can only be described as modest, if not cramped, quarters, which on a per capita basis are a fraction of the space provided to federal district court judges who hear similar cases. As the Commission is well aware, in recent years it has been able to fund an increase in the number of ALJs to the needed complement of six full-time judges. It also added a second attorney-advisor for each ALJ. This increase in the number of and in the support for ALJs has been essential to the expeditious and effective adjudication of Section 337 investigations. It was only a few years ago that investigations were being inordinately delayed for lack of an adequate number of ALJs to decide them. But with the growth in the number of investigations undertaken, the Commission must also provide adequate space for the judges and their staff to carry out their case responsibilities. The space now available for the ALJs is adequate at best; a reduction in space would substantially hamper the future administration of Section 337.

In addition, reducing the Commission’s space would likely have an adverse impact on the Office of Unfair Import Investigations (OUII). The OUII plays an important role in helping to manage some of the more complex investigations at the Commission. It also plays an often essential role with respect to the important public interest, domestic industry and remedy issues that must be addressed in most Section 337 investigations. Although OUII no longer participates in all Section 337 investigations, it continues to participate in the more significant cases and it is important that it continue to be able to do so. The OUII already operates in cramped conditions with limited space for the lawyers and support staff and very limited space for documents and exhibits. Space is necessary, for instance, to house the extensive confidential business information that parties and third parties to Section 337 investigations submit to the ITC and that must be safeguarded properly to carry out the agency’s investigations. Moreover, the OUII has very limited conference space. OUII has frequent meetings with outside counsel who are considering filing Section 337 complaints with the Commission, and with parties in active Section 337 proceedings, and such space is needed as well for internal meetings. Conference

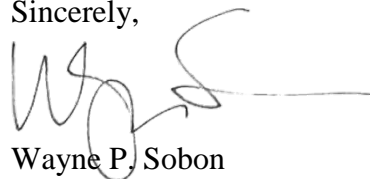
room space is therefore vital for OUII to fulfill its obligations. The current space is already less than adequate.

Other entities within the Commission are also essential to Section 337 investigations. The Office of General Counsel, the Commissioners' offices, the agency's IT functions, as well as the Secretary's offices and ITC docket services would all be adversely impacted by a reduction in space. AIPLA believes that these offices and associated space must also be maintained to avoid impeding the ability of the Commission to administer Section 337 investigations efficiently and expeditiously.

Finally, we understand that some have suggested that the ITC relocate to a suburban location. AIPLA believes that it is very important that the ITC's location remain conveniently located for parties, counsel, as well as the ITC's external customers such as the USTR and Congress.

In sum, AIPLA strongly encourages the Commission to continue to provide the various Commission entities involved in the implementation of Section 337 with adequate space and resources to fully, efficiently, and effectively carry out their responsibilities. In particular, the AIPLA strongly encourages the Commission to ensure that any new lease for the Commission provides sufficient space in a suitable location to continue performing its important role in protecting U.S. intellectual property.

Sincerely,



Wayne P. Sobon  
President

American Intellectual Property Law Association

cc: Hon. Dean A. Pinkert, Commissioner  
Hon. David S. Johanson, Commissioner  
Hon. Meredith Broadbent, Commissioner  
Hon F. Scott Kieff, Commissioner  
Hon. Rhonda K. Schmidlein, Commissioner  
Steve McLaughlin, Chief Administrative Officer