

Revolaze and the ITC

On August 15<sup>h</sup>, Revolaze filed patent infringement lawsuits against 17 importers of denim products. They followed this up on August 18<sup>th</sup> with a complaint against the same 17 importers requesting a 337 investigation from the US International Trade Commission (ITC). If successful, the 337 complaint could result in an exclusion order which would prevent the import of the infringing products into the US.

Revolaze manufactures laser etching technology for multiple uses including etching patterns in denim and denim abrasion technology that replaces the existing sandblasting and enzyme processing techniques used by the industry. They own 16 US patents on the technology and claim another 13 patents worldwide. I believe they have 9 additional US applications pending. I haven't seen the infringement or 337 complaints so I cannot definitively say which patents Revolaze is trying to enforce. However, if you want a feel for what is going on, I would start with their denim patents [6495237](#), [6807456](#), [6819972](#), [6858815](#) and then two of their broader patents [6140602](#) and [7699896](#).

So what specifically is a 337 complaint? The 337 complaint gets its name from the section of the original law that created it: [Section 337 of the Tariff Act of 1930](#). In this section, now also known as [19 USC §1337](#), unfair methods or unfair acts of competition are declared unlawful when they result in substantial injury to an industry, prevent the establishment of an industry or restrain or monopolize trade and commerce in the United States.

The law also prohibits the importation of articles that infringe on a US patent. This protection extends to articles that may not themselves infringe on a patent but were manufactured with a process that does infringe on a US patent. The law also prohibits import of articles that infringe on copyrights and trademarks as well as other forms of intellectual property protection. These protections apply when an industry exists within the United States that is related to the protected articles. The indicators that an industry exists are: significant investment in plant and equipment, significant employment of labor and capital, or substantial investment in its exploitation, including engineering, research and development, or licensing.

By law the ITC has to initiate an investigation on receipt of a complaint alleging a violation, It can also initiate an investigation on its own authority. If, after its investigation, the ITC determines that a violation has occurred it has three options: it can exclude the articles from entry, it can permit the articles to enter under bond, or it can issue a cease and desist letter. Normally the ITC excludes the articles from entry. The other options appear to be available for situations where the determinations aren't final, for example when a decision is under appeal or a consent order is agreed to.

One advantage of using a 337 proceeding to supplement an infringement lawsuit is that it is an expedited process. Typically, evidence is heard within a year and a decision is usually issued in 16 months. And because this schedule is statutory in nature defendants are less able to delay the proceedings through the use of indefinite extensions or other devices. However, a 337 proceeding only provides import relief. An infringement lawsuit is still required when a plaintiff wants monetary damages or an injunction against domestic infringement.

While 337 proceedings are well known in the electronics industries, their use in other industries, including textiles, has been limited. However, it is available to all US patent holders. And based on the reaction of the apparel industry to this case, it would seem to be a pretty powerful tool.

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