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A Brief Primer:  
Section 337 Actions Before  
The International Trade Commission

# Section 337 – Subject Matter

- A trade law statute – 19 U.S.C. § 1337
  - Originally enacted in 1930
  - Prohibits unfair competition in the importation of articles
- Provides ITC authority to hear and resolve IP disputes over
  - Patent
  - Trademark
  - Copyright
  - Trade dress
  - Trade secret
- Provides ITC authority to handle other unfair competition claims
  - Gray market goods
  - Antitrust

# Section 337 – Unique Requirements

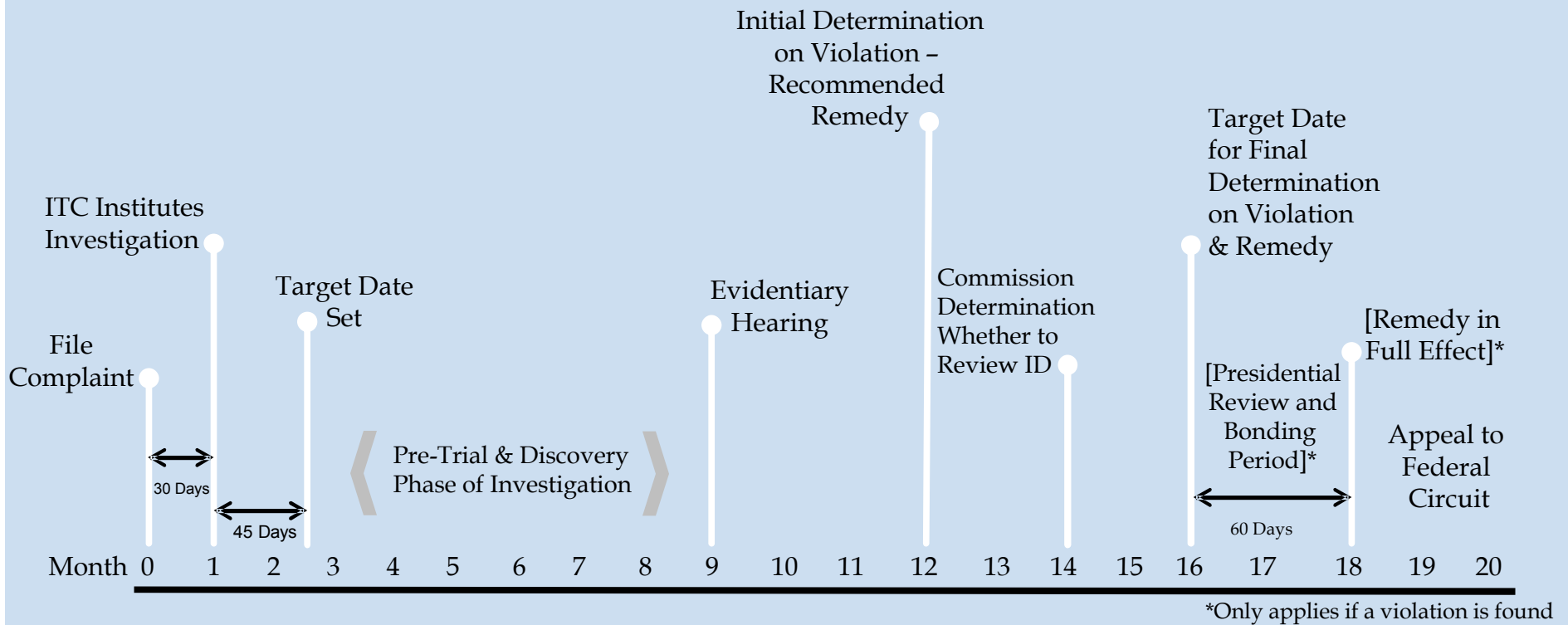
- Jurisdiction
  - Premised on importation
- Domestic Industry
  - An industry in the U.S. relating to the patent
  - Must either exist or be in the process of being established
- Complaint
  - More than a notice pleading

## Section 337 – Remedies

- No monetary damages available
- Exclusion order
  - Bans importation of infringing articles into the U.S.
- Cease and desist order
  - Directed to domestic activities and sales of already-imported products
  - Has been applied to importation of software

# Lifecycle of a Typical Section 337 Investigation

Based on a 15 month target date (typical range is 15 - 18 months)



# Section 337 – Remedial Orders And Enforcement

- **Exclusion order**
  - **Implemented and enforced by U.S. Customs and Border Protection**
- **Cease and desist order**
  - **Enforced by Commission through monetary sanctions**
- **Sanctions for violation of orders**
  - **\$100K per day or twice value of imported goods**
- **Enforcement before ITC**
  - **Formal enforcement complaint at ITC (19 C.F.R § 210.75(b))**
  - **Advisory opinion process (19 C.F.R. § 210.79)**
- **177 Ruling Process (19 C.F.R. § 177) before Customs**
  - **Ex parte procedure**
  - **Used for re-designs**