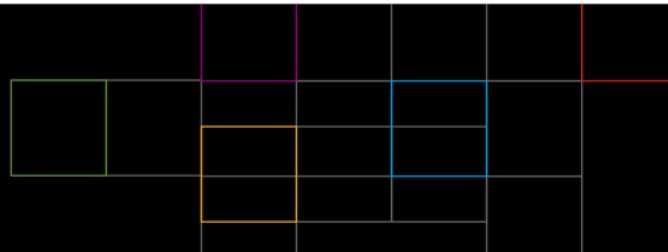


Patent Litigation Solutions at the U.S. International Trade Commission

Thomas L. Jarvis

ITC Practice Chair
Winston & Strawn

February 24, 2022



USA Patent System

Executive



Congress



Judiciary



Court Appeals
Federal Circuit



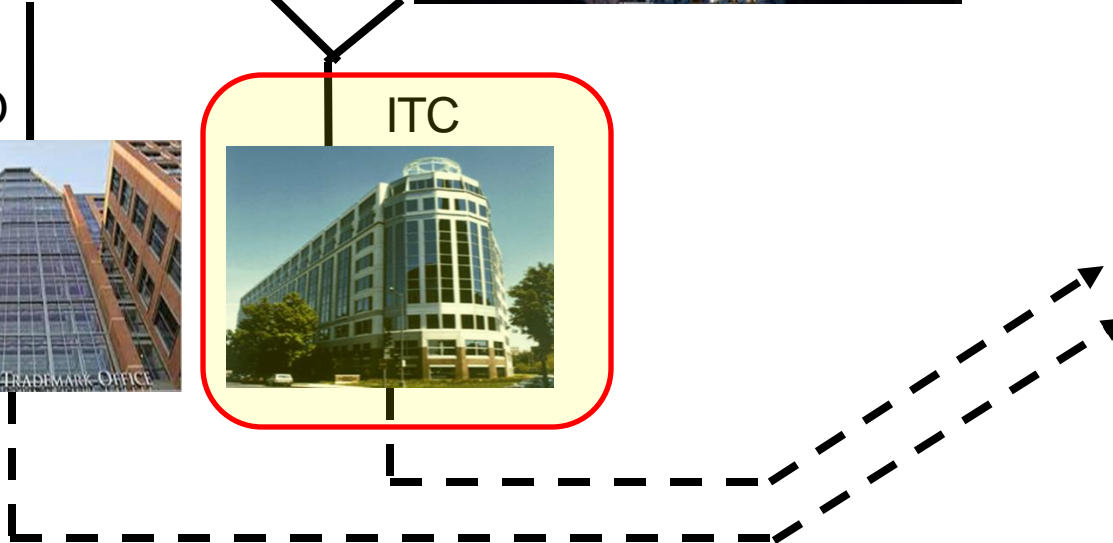
U.S. District Courts



PTO



ITC



U.S. International Trade Commission 500 E Street, Washington D.C.



ITC Jurisdictional Authority

1. ITC has jurisdiction over **manufacturers and distributors** of goods sold for importation into USA, **importers**, and those who **sell after importation**
2. ITC nation-wide personal jurisdiction
3. ITC *in rem* jurisdiction over imported products
4. ITC reaches entire supply chain:
 - Licensee inducing third-party infringement
 - Third-party infringer selling for importation to USA
 - Importer
 - USA retailer selling infringing products

Three Elements of § 337 Violations at ITC

§ 337 (B): Infringement of intellectual property rights

Products can be excluded from the U.S. if:

1. The products **infringe a valid U.S. IP right**, and
2. The products are **imported**, and
3. A U.S. **domestic industry** is using the IP right—
companies based in USA or abroad that invest in
domestic industry can qualify and file ITC complaints

Famous Japanese Headquartered Companies That Filed ITC Cases

Sony (8 cases)

Furuno (2)

Canon (7)

NEC (1)

Sharp (4)

Ajinomoto (1)

Epson (3)

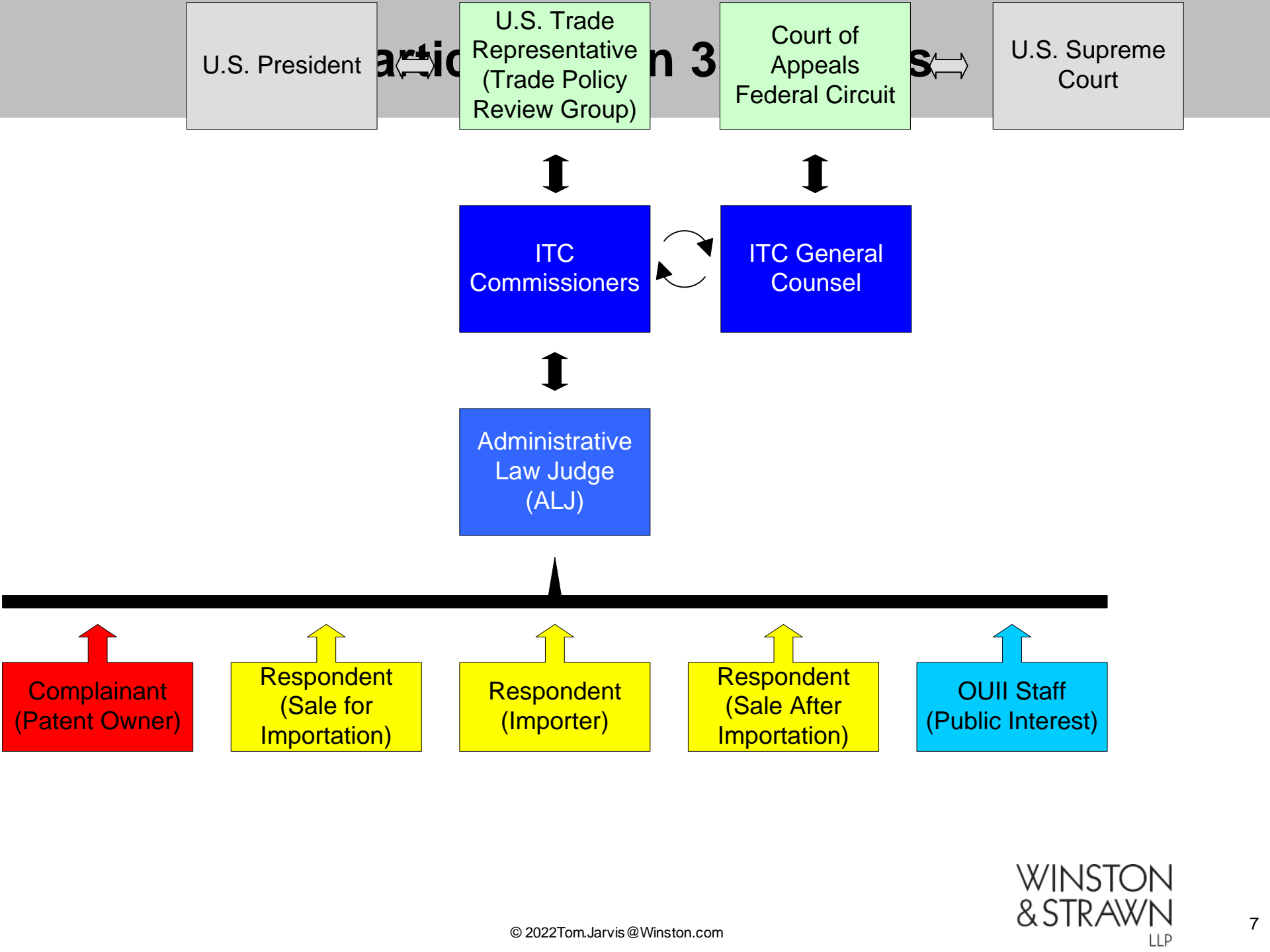
Toyo Tire (1)

FujiFilm (3)

Elpida Memory (1)

Hitachi (2)

Maxwell (1)



U.S. President

U.S. Trade Representative
(Trade Policy Review Group)

Court of Appeals
Federal Circuit

U.S. Supreme Court



ITC Commissioners

ITC General Counsel



Administrative Law Judge (ALJ)



Complainant
(Patent Owner)

Respondent
(Sale for Importation)

Respondent
(Importer)

Respondent
(Sale After Importation)

OUII Staff
(Public Interest)

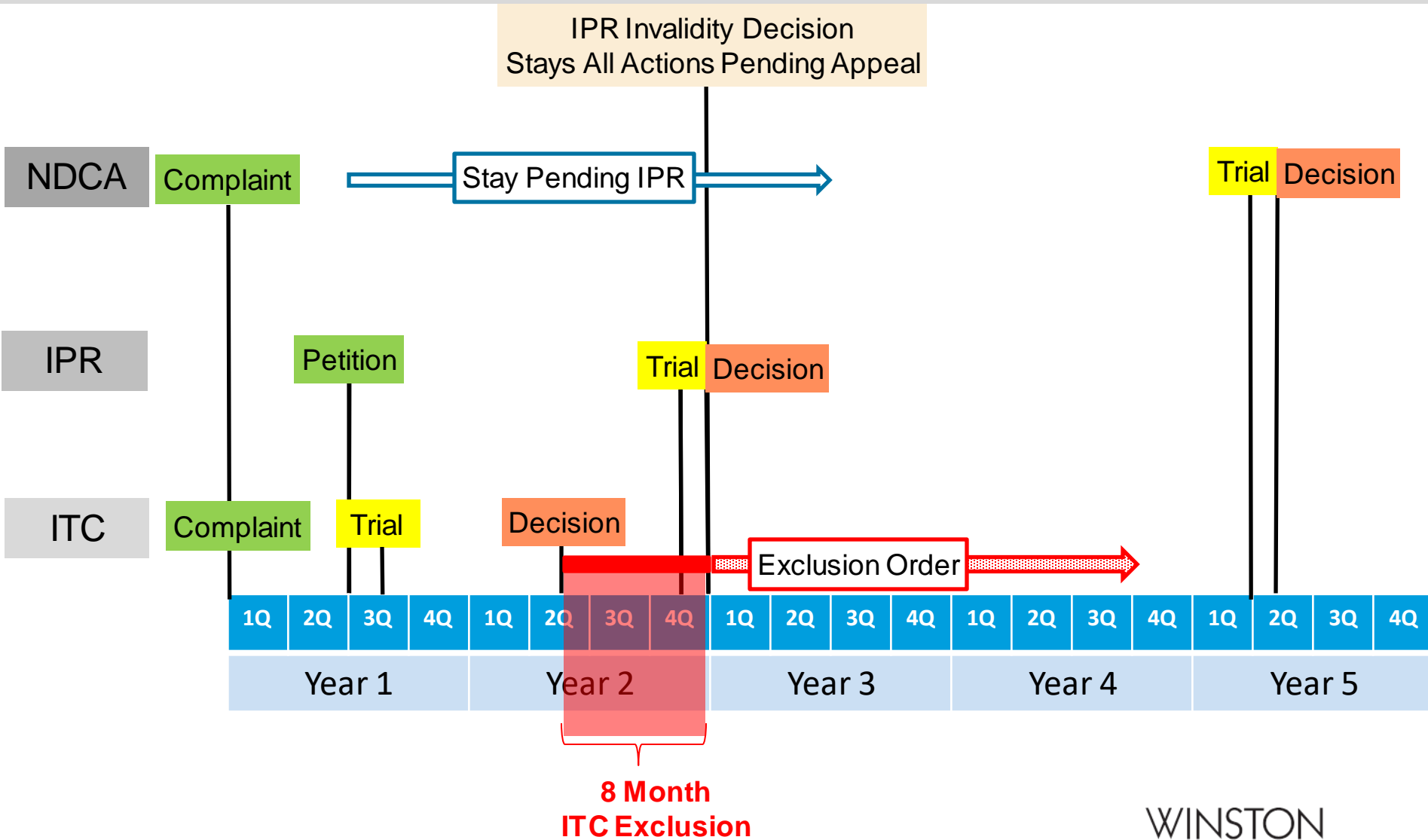
Remedial Orders

1. **Limited Exclusion Orders** prohibit importation of all infringing goods made by a respondent in the case
2. **General Exclusion Orders** prohibit importation of infringing goods made by anyone if source of goods is difficult to identify or if necessary for an effective remedy
3. **Cease & Desist Orders** prohibit activity within the USA involving previously imported infringing inventory
4. **“All Infringing Products”**
 - a. District Court injunctions limited to litigated products
 - b. ITC orders cover “all infringing products”
5. No monetary damages

Speed

1. Temporary Exclusion Order (TEO) Proceedings
 - A. TEO hearing in about 45 days, TEO in 90/250 days
 - B. Rare: ALJs encourage early trial rather than TEO
2. Permanent Exclusion Order Proceedings
 - A. Discovery as soon as ITC institutes investigation
 - B. Trial about 9 months after institution
 - C. ALJ decision about 12 months after institution
 - D. ITC final decision about 16 months after institution
3. Stay Pending IPR or Pending Appeal Are Rare

Competing Procedural Schedules



Questions / Answers

Thomas L. Jarvis, Partner
Chair, ITC Practice Group
Winston & Strawn LLP
1902 L Street, NW
Washington, D.C. 20036

Direct Dial: +1.202.282.5324

Email: tjarvis@winston.com



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