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IP Litigation Before the ITC

Enforcing Exclusion Orders

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Enforcing Exclusion Orders

- Exclusion Orders Typically Drafted in Broad Terms:
  - Items "that infringe claim(s)" of the asserted patents
  - May be "limited" to imports from specified manufacturers
  - May be "general" as to the all such items
  - May include "downstream products," e.g., DVD players with infringing chips
  - May include "certification" provision
- Enforcement Left to Customs and Border Protection ("CBP)

CBP Enforcement Actions

- CBP Understanding of Order and Goods Excluded
  - Meetings with Parties
  - Contact w/ ITC if necessary
- Develop "Field Instructions" to Ports of Entry
- Advising field – ports – about the Order
- Monitor enforcement

Meeting with CBP

- Ex Parte
- Often initiated by Customs
- Critical step for both Complainant and Respondent
- Timeliness is critical
- Post-meeting briefs are helpful

CPB Contact with Commission

- Clarify language of order
- Certification provisions
- Technical questions
- Ex parte