

IP Cases In The Spotlight As ITC Adds 5 New Commissioners

By **Ryan Davis**

Law360 (July 24, 2026, 10:20 PM EDT) -- The Senate's confirmation of five new commissioners at the International Trade Commission, including two who were staffers on the intellectual property committees in Congress, could lead to a greater focus on IP cases at the commission and efforts to speed them up, attorneys say.

Senators **approved** all five of President Donald Trump's nominees this month by a voice vote, giving the ITC a full complement of six commissioners for the first time in nearly a decade. Prior to the vote, there had been only three commissioners at the ITC, two of whom will be replaced by new appointees.

Especially noteworthy for intellectual property attorneys is the fact that two of the new members have extensive IP experience from their time working in Congress. That is a background most previous commissioners have not had, although much of the ITC's work involves so-called Section 337 IP disputes, where commissioners decide whether to bar imports of infringing products.

David Foley is joining the ITC from his previous position as a senior special counsel on the House Judiciary Committee's IP subcommittee, while Peter-Anthony Pappas becomes a commissioner after serving as the IP policy director for the Senate Judiciary Committee.

"We are about to see a new era at the International Trade Commission," said Richard Sterba of Fish & Richardson PC. "It's an exciting time to be a Section 337 practitioner right now."

ITC commissioners can remain in their posts after their terms expire, until someone is nominated to replace them. Years went by without **anyone being confirmed** to the commission, which is why five seats were filled together, which is "an unprecedented amount of change," said Deanna Okun of Polsinelli PC, who was an ITC commissioner from 2000 to 2012.

"I think five new commissioners coming on at one time, regardless of their background, certainly to me signals there could be a significant amount of change in how the commission conducts its business," she said.

In addition to Foley and Pappas, the new commissioners are Brett Doyle, formerly an assistant U.S. Trade Representative for congressional affairs and who Trump has **named ITC chairman**; Samuel Negatu, who had been the director of government affairs at the Consumer Technology Association, a tech industry trade group; and Bart Thanhauser, who was previously a deputy assistant USTR for Southeast Asia and the Pacific.

No more than three commissioners can be members of one political party, and the ITC is now politically balanced. Doyle, Foley and Pappas are Republicans, while Thanhauser and Negatu, along with commissioner Jason Kearns, who has been on the ITC since 2018 and will remain as the sixth member, are Democrats. Doyle has been sworn in, while the other four new members have yet to be sworn in.

Speeding Up Cases

Foley attracted attention from IP attorneys when he said at the group's confirmation hearing that one of his goals will be for the commission to issue decisions in Section 337 cases **more quickly**.

Technology advances rapidly, so "getting decisions from the ITC closer to [the] speed of technology is absolutely vital," Foley told senators, adding that "I think that bringing an understanding of how important the IP rights of rightsholders [are] to the commission will allow me to understand how quickly movement needs to happen."

The ITC only provides prospective remedies, in the form of orders that prohibit imports of infringing products going forward, rather than past damages available in district court cases, so "the timing of when you get your exclusion order is really important, especially with tech," said Aarti Shah of Kilpatrick Townsend & Stockton LLP.

"Everything the commission does is very important, but having people there who specialized in IP and really care about it, hopefully will help them get additional resources if they need them," she said, like adding more attorney-advisers or other staff to help move cases along.

If the goal is to speed up resolution of IP disputes, the commissioners could also make the ITC's administrative law judges, who hear cases and make initial decisions that the commission reviews, adhere to tighter deadlines, Okun said. She also noted that in recent years, the commission has often extended its own deadlines for making final decisions, in some instances for many months, which the new commissioners could stop doing if they want to prioritize speed.

From the perspective of complainants, "delayed justice is detrimental," she said. "If you're trying to get an infringing product off the market, the fact that the commission delays a final decision, I think, is problematic."

Other attorneys said it could be challenging to speed up IP cases at the ITC, which already move at a much faster pace than district court, and often are resolved in around 18 months. Section 337 disputes can involve multiple companies and patents, and complex issues, like the requirement that complainants have a domestic industry, that are unique to the commission.

Rhonda Schmidlein of WilmerHale, an ITC commissioner from 2014 to 2025, said getting judges to set shorter target dates for decisions may be difficult since the deadlines are set based on how they need to manage their docket and the complexity of cases.

In addition, she noted that having a full slate of commissioners means they will need to go back and forth to reach agreements on the outcome and the language of opinions. There could be disagreements, and some commissioners may want to write separate views, so "having six commissioners actually can make decisions take more time, not less," she said.

Beau Jackson of Husch Blackwell LLP said ITC judges have very busy dockets, so the timeline for decisions could, at most, only be accelerated by a few months.

"I support the policy objective of providing genuine American industries with expeditious relief on unfair imports, but the reality is 337 cases already move quite fast," he said. "They're often very complex. So moving it from an 18-month timeline to a 15 or 16-month timeline, number one, may not be realistic and number two, it's not like that's changing things dramatically anyway."

IP Focus

Apart from the speed of resolving 337 disputes, the new commissioners may have other views on IP issues that could influence how cases are handled, though it remains to be seen how that will play out in practice, attorneys said.

Based on their background, "I think there is somewhat of a pro-IP perspective of most of these folks," Jackson said. "I think the innovation community should be somewhat encouraged by that."

"That's not to say that they're going to rule for complainants in every 337 case," he said. "I just think it shows that philosophically, there appears to be an appreciation of IP enforcement and innovation among these folks."

With the addition of two new commissioners from the IP committees in Congress, "I think that means

that protection of intellectual property rights is going to take a higher priority than perhaps it may have in the past," which could lead the ITC to devote more resources to IP cases, said Sterba of Fish & Richardson.

Shah of Kilpatrick Townsend said the commissioners coming from the IP world will likely be familiar with fields like standard essential patents and artificial intelligence, as well as patent law issues like validity, and that will give them a deep understanding of the technology and the impact of ITC's decisions.

Two issues the ITC deals with in IP cases that have recently gotten a good amount of attention are what it takes for complainants to comply with the rule for filing suit that they have a domestic industry of products protected by the patent, and whether an exclusion order barring imports of infringing products is in the public interest.

Former commissioner Okun said the five new members of the ITC "might come to the commission and be very interested in taking a fresh look" at issues like that, working with the ITC staff to review the statutes and how the courts have interpreted them, before reaching their own conclusions.

On the public interest issue, Okun suggested that the commissioners could consider holding public hearings before deciding whether to issue an exclusion order, something the ITC has done in the past, but that has become less common in recent years.

Former commissioner Schmittlein said there will be a learning curve for the ITC as five new people get up to speed and hire staff, while deadlines in cases keep coming.

The two commissioners with IP experience will "be able to hit the ground running a little quicker" in patent cases, but "we won't know until some decisions start coming out how they're going to address some of these issues in Section 337," she said.

--Additional reporting by Dylan Moroses. Editing by Emily Kokoll and Drashti Mehta.