



January 14, 2011

The Honorable Marilyn R. Abbott  
Secretary  
U.S. International Trade Commission  
500 E Street SW  
Washington, DC 20436

**Re: U.S. International Trade Commission – Docket MISC 032**

Dear Secretary Abbott,

I write on behalf of Intellectual Property Owners Association (“IPO”) to comment on the Notice of Proposed Rulemaking (“NPRM”) published at 75 Fed. Reg. 60671 (Oct. 1, 2010). We appreciate the opportunity to share the organization’s thoughts with the Commission.

The stated purpose of the NPRM is twofold:

1. To aid the Commission in identifying investigations that require further development of public interest issues in the record; and
2. To identify and develop information regarding the public interest at each stage of the investigation.

Under the current rules, the parties typically are not to submit public interest information until after a violation has been found and after a remedy has been identified. The NPRM, however, requires a complainant, at the time it files the complaint, to provide specific details regarding the public interest, including how issuance of an exclusion order or cease and desist order could affect health and welfare in the United States, competitiveness in the United States, or production of like articles in the United States. The NPRM also includes a mechanism for the public and respondents to submit information at the outset of an investigation regarding the public interest. Further, after a recommended determination on remedy is certified by the ALJ, the NPRM directs the parties to an investigation to submit to the Commission any additional public interest materials. Finally, the NPRM provides that, should the Commission order an ALJ to take discovery on public interest, that ALJ would have full discretion as to the extent of such discovery.

IPO supports the intent of the NPRM inasmuch as the Commission is attempting to further its statutory obligation to consider the effect of any remedial relief granted in Section 337 investigations. There is concern, however, that the NPRM delegates a new public interest discovery obligation to the ALJs, who are already faced with challenging statutory and regulatory timelines in these investigations. In addition, IPO is also

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Eli Lilly and Co.

Vice President  
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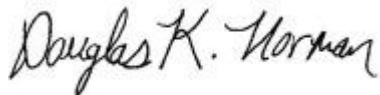
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## INTELLECTUAL PROPERTY OWNERS ASSOCIATION

concerned that the NPRM may interject public interest issues too early in an investigation, creating a situation in which the violation determination could be improperly influenced, or even driven, by public interest considerations. While it is important for the ITC to analyze the public interest in certain investigations, it is critical that any such analysis be done at the appropriate stage. Delegating the collection of evidence to the ALJs places a significant, and, in the vast majority of investigations, needless burden on them at a point when caseloads are growing and allowable target dates have lengthened. Such a burden could usurp precious time needed to develop the facts regarding a violation and open the door to discovery abuses, particularly with regard to third parties.

The success of the statute lies in the Commission's speedy and unbiased adjudication of the issues underlying violation. Thus, any rules changes should endeavor to preserve the Commission's efficient process for handling Section 337 investigations. If, after fully evaluating the issues raised above, the Commission determines to implement the NPRM or any similar rules changes creating new discovery obligations for ALJs regarding the public interest, IPO recommends that the Commission provide *specific* instructions to the ALJs to ensure that the collection of public interest information during the violation stage of an investigation remains focused and does not detract from efforts to obtain an expeditious and reliable merits determination.

Sincerely,

A handwritten signature in cursive script that reads "Douglas K. Norman".

Douglas K. Norman  
President