

## §210.11

the motion must be withdrawn along with the complaint, and the complainant must serve copies of the notice of withdrawal on all proposed respondents and on the embassies that were served with copies of the complaint and motion pursuant to §210.54.

(b) An investigation shall be instituted by the publication of a notice in the FEDERAL REGISTER. The notice will define the scope of the investigation and may be amended as provided in §210.14 (b) and (c).

(c) If the Commission determines not to institute an investigation on the basis of the complaint, the complaint shall be dismissed, and the complainant and all proposed respondents will receive written notice of the Commission's action and the reason(s) therefor.

### §210.11 Service of complaint and notice of investigation.

(a)(1) Notwithstanding the provisions of §210.54 requiring service of the complaint by the complainant, the Commission, upon institution of an investigation, shall serve copies of the complaint and the notice of investigation (and any accompanying motion for temporary relief) upon each respondent and the embassy in Washington, DC of the government of each foreign country represented by each respondent. All respondents named after an investigation has been instituted and the governments of the foreign countries they represent shall be served as soon as possible after the respondents are named.

(2) The Commission shall serve copies of the notice of investigation upon the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other agencies and departments as the Commission considers appropriate.

(b) With leave from the presiding administrative law judge, a party may attempt to effect personal service of the complaint and notice of investigation upon a respondent, if the Secretary's efforts to serve the respondent by certified mail have been unsuccessful. If the party succeeds in serving the respondent by personal service, the party must notify the administrative law

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judge and file proof of such service with the Secretary.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53119, Oct. 12, 1995]

### Subpart C—Pleadings

#### §210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of §201.8 of this chapter and §§210.4 and 210.5 of this part, the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint;

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;

(3) Describe specific instances of alleged unlawful importations or sales, and shall provide the Tariff Schedules of the United States item number(s) for importations occurring prior to January 1, 1989, and the Harmonized Tariff Schedule of the United States item number(s) for importations occurring on or after January 1, 1989;

(4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act of 1930;

(5) Include a statement as to whether the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, or mask work, under section 337(a)(1) (B), (C), or (D) of the Tariff Act of 1930, include a description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established, including the relevant operations of any licensees. Relevant information includes but is not limited to:

(A) Significant investment in plant and equipment;

(B) Significant employment of labor or capital; or

(C) Substantial investment in the exploitation of the subject patent, copyright, trademark, or mask work, including engineering, research and development, or licensing; or

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A) (i) or (ii), include a description of the domestic industry affected, including the relevant operations of any licensees; or

(iii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition or unfair acts that have the threat or effect of restraining or monopolizing trade and commerce in the United States under section 337(a)(1)(A)(iii), include a description of the trade and commerce affected.

(7) Include a description of the complainant's business and its interests in the relevant domestic industry or the relevant trade and commerce. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject intellectual property; and

(8) If the alleged violation involves an unfair method of competition or an unfair act other than those listed in paragraph (a)(6)(i) of this section, state a specific theory and provide corroborating data to support the allegation(s) in the complaint concerning the existence of a threat or effect to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to restrain or monopolize trade and commerce in the United States. The information that should ordinarily be provided includes the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-

loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other pertinent data.

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent—

(i) The identification of each U.S. letters patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. letters patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. letters patent;

(iv) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent), and each foreign patent application that has been denied corresponding to each involved U.S. letters patent, with an indication of the prosecution status of each such foreign patent application;

(v) A nontechnical description of the invention of each involved U.S. letters patent;

(vi) A reference to the specific claims in each involved U.S. letters patent that allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act of 1930, or the process under which such article was produced;

(vii) A showing that each person named as violating section 337 of the Tariff Act of 1930 is importing or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. letters patent. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. letters patent to a representative involved domestic article or process and to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process

under which such article was produced; and

(viii) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act of 1930, or of the process utilized in producing the imported article, and, when a chart is furnished under paragraph (a)(9)(vii) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(10) Contain a request for relief, and if temporary relief is requested under section 337 (e) and/or (f) of the Tariff Act of 1930, a motion for such relief shall accompany the complaint as provided in §210.52(a) or may follow the complaint as provided in §210.53(a).

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, if practicable, the complainant shall submit both the domestic article and all imported articles that are the subject of the complaint.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. letters patent the following:

(1) Three copies of each license agreement arising out of each involved U.S. letters patent, except that, to the extent that a standard license agreement is used, three copies of the standard license agreement and a list of the licensees operating under such agreement will suffice;

(2) One certified copy of the U.S. Patent and Trademark Office prosecution history for each involved U.S. letters patent, plus three additional copies thereof; and

(3) Four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. letters patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the sub-

mission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a Federally registered trademark, one certified copy of the Federal registration and three additional copies, three copies of each license agreement (if any) concerning use of the trademark, except that if a standard license agreement is used, three copies of that agreement and a list of the licensees operating under it will suffice;

(e) *Additional material to accompany each complaint based on a non-Federally registered trademark.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a non-Federally registered trademark the following:

(1) A detailed and specific description of the alleged trademark;

(2) Information concerning prior attempts to register the alleged trademark; and

(3) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one certified copy of the Federal registration and three additional copies, three copies of each license agreement (if any) concerning use of the copyright, except that if a standard license agreement is used, three copies of that agreement and a list of the licensees operating under it will suffice;

(g) *Additional material to accompany each registered mask work-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of a semiconductor chip in a manner that constitutes infringement of a Federally registered mask work, one certified copy of the Federal registration and three additional copies, three copies of each license agreement (if any) concerning use of the mask work, except that if a standard license agreement is used, three copies of that agreement

and a list of the licensees operating under it will suffice;

(h) *Duty to supplement complaint.* Complainant shall supplement the complaint prior to institution of an investigation if complainant obtains information upon the basis of which he knows or reasonably should know that a material legal or factual assertion in the complaint is false or misleading.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994]

#### § 210.13 The response.

(a) *Time for response.* Except as provided in § 210.59(a) and unless otherwise ordered in the notice of investigation or by the administrative law judge, respondents shall have 20 days from the date of service of the complaint and notice of investigation, by the Commission under § 210.11(a) or by a party under § 210.11(b), within which to file a written response to the complaint and the notice of investigation. When the investigation involves a motion for temporary relief and has not been declared “more complicated,” the response to the complaint and notice of investigation must be filed along with the response to the motion for temporary relief—i.e., within 10 days after service of the complaint, notice of investigation, and the motion for temporary relief by the Commission under § 210.11(a) or by a party under § 210.11(b). (See § 210.59.)

(b) *Content of the response.* In addition to conforming to the requirements of § 201.8 of this chapter and §§ 210.4 and 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged in the complaint and notice, or if the respondent is without knowledge of any such fact, a statement to that effect. Allegations of a complaint and notice not thus answered may be

deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the involved article. Respondents who are importers must also provide the Harmonized Tariff Schedule item number(s) for importations of the accused imports occurring on or after January 1, 1989, and the Tariff Schedules of the United States item number(s) for importations occurring before January 1, 1989. Each response shall also include a statement concerning the respondent's capacity to produce the subject article and the relative significance of the United States market to its operations. Respondents who are not manufacturing their accused imports shall state the name and address of the supplier(s) of those imports. Affirmative defenses shall be pleaded with as much specificity as possible in the response. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S. letters patent, the respondent is encouraged to make the following showing when appropriate:

(1) If it is asserted in defense that the article imported or sold by respondents is not covered by, or produced under a process covered by, the claims of each involved U.S. letters patent, a showing of such noncoverage for each involved claim in each U.S. letters patent in question shall be made, which showing may be made by appropriate allegations and, when practicable, by a chart that applies the involved claims of each U.S. letters patent in question to a representative involved imported article of the respondent or to the process under which such article was produced;

(2) Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under paragraph (b)(1) of this section, the parts of such drawings, photographs, or other visual representations, should be labeled so that they can be read in conjunction with such chart; and

(3) If the claims of any involved U.S. letters patent are asserted to be invalid