

Intellectual Property Practice Before the ITC: Overview and Current Trends

Developed with the KCMBA Patent/Trademark/Copyright Committee

Thursday, June 1, 2017 • 3:00 – 4:45 PM

KCMBA Conference Center

Credit: Missouri – 2.0 / Kansas – 2.0

Cost: KCMBA Member - \$70 / Non-Member - \$110

DESCRIPTION

Section 337 (19 U.S.C. § 1337) is a trade statute that protects U.S. industries and the American public from a range of unfair acts relating to the importation of products into the United States. The statute is administered by the U.S. International Trade Commission (ITC), an independent, quasi-judicial executive branch agency.

Section 337 makes it unlawful, among other unfair acts, to import an article into the United States that infringes a valid and enforceable U.S. intellectual property right (IPR). A successful complainant is typically awarded an exclusion order blocking the importation of infringing goods. The ITC may also issue cease and desist orders, which prohibit respondents from distributing, advertising, or selling infringing articles in their U.S. inventory. These robust remedies, along with various other advantages of litigating before the ITC, have made Section 337 a powerful tool for U.S. IPR owners seeking to curtail unfair foreign competition.

This program will provide an overview of Section 337 and the ITC. In particular, the presenters will discuss the prima facie elements of a Section 337 violation, the inner-workings of the ITC, and current hot topics in Section 337 litigation. The presenters will also offer practical insights and suggestions for litigating before the ITC. The program is highly relevant to IP practitioners and is also applicable to international trade lawyers and commercial litigators.

SCHEDULE

2:45 PM	Check-in
3:00 PM	Overview of Section 337 and the U.S. International Trade Commission Beau Jackson, <i>Adduci, Mastriani & Schaumberg, LLP</i>
3:40 PM	Q&A
3:50 PM	Break
3:55 PM	Perspectives and Practice Tips on Litigating a Section 337 Case Panel Discussion Kyle Elliott, <i>Spencer Fane</i> Adam Seitz, <i>EriselP</i> John D. Garretson, <i>Shook, Hardy & Bacon L.L.P.</i> Larry Askew, <i>General Counsel of Sizewise Rentals, LLC</i> Moderator: Beau Jackson, <i>Adduci, Mastriani & Schaumberg, LLP</i>
4:45 PM	Adjourn to Networking Reception

*Course materials will be provided in electronic format only and are accessible with your laptop, tablet or other mobile device during the event. Final course materials will be sent via email when size permits and posted prior to the event at kcmba.org. **Parking will be validated at the event.** **On-site registrations are welcome; however, seating and/or meals cannot be guaranteed unless you pre-register.

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4 WAYS TO PRE-REGISTER:

1. Online at kcmba.org
2. Mail completed registration form with payment to KCMBA, Two Pershing Sq., 2300 Main St., Suite 100, Kansas City, MO 64108.
3. Fax (816) 474-0103
4. Phone (816) 474-4322

Parking is available in the Two Pershing Square parking garage and will be validated at the event. Visit kcmba.org/parking for directions and a map.

Cancellations received 48 hours or more prior to the start of an event may receive a refund minus a \$25 processing fee, or a credit voucher in the full amount of the fees paid which will be valid for one year from the date of the event.

Substitutions for paid registrations are accepted. Credit vouchers are transferable.

No shows will not receive a refund or credit voucher. A request for refund due to emergency or hardship must be received in writing no more than 30 days after the event date.

Special accommodations may be made by contacting KCMBA at (816) 474-4322 prior to the program date.

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Larry Askew, *Sizewise Rentals, LLC*

Larry has nearly 20 years of experience in a diverse set of law and compliance categories. As the Sizewise Executive Vice President, General Counsel and Chief Compliance Officer, Larry oversees all aspects of the Sizewise Family of Companies' legal and compliance work. He manages key accreditation and compliance matters, having developed the company's formalized compliance program. Larry directs a committee of Sizewise stakeholders to comply with Medicare, FCPA, HIPAA, Anti-Trust and other statutory-driven compliance requirements.

Beyond his day-to-day work on Sizewise as it is today, Larry was instrumental in putting together the mergers and acquisitions of Sizewise independent distributors and consolidating the business in 2007 as part of a major 351 acquisition.

When Larry was Senior Vice President and Corporate Counsel for World Technologies, Ltd, he was responsible for overall strategic direction of company operations, compliance policy planning and implementation, strategic partnerships, product marketing and management oversight of independent sales representatives covering the U.S., Canada, Israel, India and the U.K. Larry also managed sourcing and independent contract manufacturers in Japan, South Korea, China and India. He developed domestic and international strategic alliances, and implemented an ITAR compliance program, handling all export/import compliance.

Larry began his career in the Office of U.S. Senator Nancy Landon Kassebaum in Washington, D.C., where responsibilities included briefing the Senator and Labor Counsel on various labor-related issues including current criticisms of the Fair Labor Standards Act; proof-reading and revising the Workforce Development Act of 1995; conducting legal research and writing memoranda in the area of labor law; writing constituent letters; attending legislative mark-ups and hearings. Later, Larry was an attorney at Gepford Law Group where he managed key practices areas such as corporate/business startups, government litigation, merchandising practices act enforcement, bankruptcy/debtor's rights, FD CPA, FCRA, minor criminal, unemployment and general civil. Larry also held positions as a Law Clerk in Illinois and Missouri at Scholz, Loos, Palmer, Siebers & Duesterhaus, and with Dennis W. Smith.

Larry earned his Juris Doctor at Creighton University School of Law and is a member of the Missouri and Kansas Bar. His undergraduate work was at Culver-Stockton College, where he graduated with a Bachelor of Science in Business with minors in law and literature. Larry also volunteered with associations such as the Volunteer Income Tax Assistance Program, Environment Law Society and Business Law Association and was awarded with the Wood Citizenship Award and the Clough Excellence in Leadership Award.



Kyle Elliott, *Spencer Fane*

Kyle Elliott helps his clients obtain patent, trademark, and copyright protection for their innovative products and services, so they can secure exclusive rights gaining a competitive advantage. Concentrating on electrical, computer, mechanical and chemical technologies, Kyle has extensive experience working with a broad range of products including aerospace fasteners, oil well drilling bits, transformers, vision systems, encryption software, UAV control systems, advanced polymer coatings and bio-fuels.

Once obtained, Kyle helps clients enforce their patents, trademarks, and copyrights against infringers, so they can preserve their competitive advantage in the marketplace and profit from their innovations and development efforts. He also helps clients defend their products and services from accusations of infringement by competitors and trolls, so they can continue offering profitable and rightful services and products.

As a certified mediator who assists litigating parties with resolution of disputes over patents, trademarks, unfair competition and copyrights, he helps clients bring closure to their disputes and return their focus and resources to their businesses. With over two decades of Intellectual Property experience, Kyle has developed case theories for accused infringers resulting in many settlements for no money and many settlements for less than the expected cost of litigation.



John D. Garretson, *Shook, Hardy & Bacon L.L.P.*

John Garretson's national patent litigation and counseling practice focuses on pharmaceuticals, biotech, medical devices and information technology. He has successfully handled cases in federal courts across the country, including more than a dozen trials and appeals to the Federal Circuit, and has first-chaired

cases for both domestic and international clients. He is a co-author of "U.S. Patent Litigation — 150 Questions and Answers," published in Japan, and is a contributing author to Patent Resources Group's "Pharma and Biotech Strategies — Hatch-Waxman and Litigation" (2011). He is frequently quoted in industry publications such as *Law360*, *Genetic Engineering and Biotechnology News*, *Ingram's* and *Inside Counsel* with respect to biotech, Food and Drug Administration and pharmaceutical patent issues.

Before his legal career, Mr. Garretson was a sailing, celestial navigation and coastal charting instructor at Culver Summer Naval School in Culver, Indiana. He also served as technical director and as a board member of the Georgetown Gilbert & Sullivan Society, a community musical theater group in Washington, D.C. A former trombonist, orchestra member and occasional jazz group musician, Mr. Garretson sang baritone in the University Glee Club of New York City, a men's choral group that gives concerts in the United States and internationally. In addition, he is a member of the Samaritan's Circle for the New York City Rescue Mission, a ministry and shelter that reaches out to New York City's homeless population.



Beau Jackson, *Adduci, Mastriani & Schaumberg, LLP*

Beau Jackson is a partner at Adduci, Mastriani & Schaumberg, LLP, an international trade law firm based in Washington, DC and with a Kansas City office led by Beau. His practice focuses on Section 337 litigation, antidumping and countervailing duty investigations, all types of customs matters, and trade policy matters. He also advises clients on foreign investment issues, including the intellectual property aspects of such transactions.

Prior to joining AMS, Beau worked as a law clerk for the Subcommittee on Trade in the U.S. House of Representatives, and at the Office of the U.S. Trade Representative. Before law school, he served as a Peace Corps volunteer in the West African country of Cape Verde.



Adam Seitz, *EriseIP*

Adam Seitz is one of the founding members of Erise IP. His practice focuses on high technology, patent litigation, and post grant reviews. He has experience representing top tier clients in major pieces of litigation across the country and before the International Trade Commission. Adam also is registered to practice before the U.S. Patent and Trademark Office.

Among his trial experiences, Adam was lead trial counsel for Garmin in a patent infringement matter before the International Trade Commission that resulted in a complete victory for Garmin with a finding of no infringement on all three asserted patents. That decision was upheld on appeal to the full Commission, and is now being cited as the standard for how to assess a “domestic industry” in “licensing” cases before the ITC. Adam also served as first chair attorney for Garmin in a trade secret trial in the Western District of Virginia. Adam served as second chair in a trademark infringement matter for Coca-Cola that resulted in a defense verdict of no infringement after a two-week trial. During this trial, Adam successfully excluded one of the leading trademark survey experts under *Daubert*. It was the first time this expert had been excluded in his 20+ years of testifying. Adam also was part of the trial team for Sprint in a lawsuit asserting VoIP patents that obtained a verdict of \$69.5 million and a finding of willful infringement. This was the largest jury verdict in Kansas history and was selected as the 21st highest victory on the ALM Top 100 verdicts for 2007.

For his successes, Adam has received a number of awards. In 2013, Adam was selected as a “Super Lawyer” by the Missouri and Kansas Super Lawyers publication. Adam was one of only 19 attorneys in the Kansas City area selected for this honor. Prior to that, Adam was selected as a “Rising Star” for three years in a row (2010-2012). No more than 2.5 percent of the lawyers in the state are named to the Rising Star list. Adam was one of only eight IP attorneys in Kansas City to receive this recognition in 2011.