

The Advancing America's Interests Act

The Advancing America's Interests Act, introduced by Congresswoman Suzan DelBene (D-WA) and Congressman David Schweikert (R-AZ), would modernize the International Trade Commission's mandate to ensure it is properly used to protect the U.S. economy and American jobs, instead of being a forum for unnecessary and wasteful patent litigation games.

The Problem: The ITC Has Become A Forum For Abusive Patent Litigation

The International Trade Commission (ITC) was established to protect U.S. industry from unfair foreign competition. That goal may be even more important today given the increasingly intense competition we face with China and other global competitors. Unfortunately, patent licensing entities, which produce no goods or services, have used the ITC as a forum to file expensive patent cases against American companies. These entities are abusing the ITC legal process and its powerful ability to block products from entering the U.S. to shake down American companies in search of large multi-million-dollar payouts. Most of the time, the ITC litigation is duplicative of a parallel U.S. District Court proceeding. The result is that significant ITC resources are wasted on unnecessary and costly patent litigation that has nothing to do with protecting U.S. industry and American jobs from unfair foreign competition.

The Legislative Solution: Advancing America's Interests Act

It's time to ensure the ITC can focus on its core mission. The Advancing America's Interests Act would make common sense reforms to modernize the ITC's jurisdiction.

- Clarify a Common Sense "Domestic Industry" Standard. Under current law, a complainant in an ITC case must establish a U.S. domestic industry relating to a product covered by its patent, such as U.S. manufacturing or development. The ITC statute also allows a patent owner such as a university that licenses its invention for commercialization by others to qualify as a domestic industry. That historically was not a problem, but creative litigators have found a way to abuse that licensing standard by treating entities whose only industry is licensing (no research, development, or manufacturing) as legitimate complainants. The bill would clarify that in order for patent licensing activity to be used to establish domestic industry it must lead to the adoption and development of products that actually incorporate the patent. By tying domestic industry to product development, the bill ensures that the ITC protects the use of patents to innovate, not weaponizing patents against companies and people who independently created something.
- Eliminate the Abusive Practice of Domestic Industry by Subpoena. A troubling example of the games at the ITC is the so-called "domestic industry by subpoena." Complainants with no domestic industry of their own can use another company as their domestic industry by forcing the latter to take part in an investigation. The bill would eliminate the ability for a complainant to drag ("subpoena") an unwilling company in front of the ITC as its domestic industry.
- Put the Public Interest Back in the ITC. Since the ITC is not a court, but an agency charged with a broader public policy purpose, Congress wisely required the ITC to consider the public interest before excluding products from the U.S. market. But the last time the ITC used its public interest authority to decline to issue an exclusion order was in 1984. Under the bill, the ITC will be required to affirmatively determine that an exclusion order serves the public interest.
- Make the Early Decision Pilot Program Permanent. Making early rulings on dispositive issues, such as domestic industry or standing, can limit unnecessary litigation. The bill would codify a pilot program the ITC previously utilized successfully to identify such issues and make a ruling within 100 days, bringing the potential for early resolution to proceedings where it is merited.