

ABOUT US

The Brattle Group provides consulting and expert testimony in economics, finance, and regulation to corporations, law firms, and governments around the world.

We combine in-depth industry experience and rigorous analyses to help clients answer complex economic and financial questions in litigation and regulation, develop strategies for changing markets, and make critical business decisions.

Our consultants and advisors are internationally recognized experts from both the public and private sectors and have participated in many high profile engagements over the past two decades.

For more information, please visit www.brattle.com.

PRACTICE OVERVIEW

The number of Section 337 investigations has more than doubled in the past three years. The International Trade Commission's (ITC's) fast pace and unique remedies in the form of import restrictions are making it an increasingly attractive forum, particularly in areas where immediate and effective relief is essential due to the rapidly changing nature of technology. The Brattle Group's combination of ITC litigation experience and state-of-the-art analytic capabilities provides our clients with the advantages needed to succeed in matters before the ITC.

Our Section 337 expertise benefits from the extensive institutional knowledge necessary in this specialized forum, coupled with relevant technical skills spanning our Intellectual Property, International Trade, and Telecommunications practices. Brattle's testifying experts include leading academics and industry experts, as well as a former Chief Economist and Director of Operations at the ITC.

We are known for providing rigorous and innovative solutions to complex problems, and the clear and effective communication of economic and financial reasoning to clients, judges, juries, and other decision makers. We have provided expert testimony on economic issues in numerous high-profile Section 337 matters, including the *Broadcom v. Qualcomm Matter* (Inv. No. 337-TA-543), *Certain Multimedia Display and Navigation Devices and Systems* (Inv. No. 337-TA-694), and most recently *Certain Microprocessors, Components Thereof, and Products Containing Same* (Inv. No. 337-TA-781).



OUR FOCUS

- ◆ Domestic Industry Requirement
- ◆ Nature and Scope of Remedy
- ◆ Impact of Remedy on Public Interest
- ◆ Temporary Relief Investigations
- ◆ Misappropriation of Trade Secrets
- ◆ Breach of Contract
- ◆ False Advertising

OUR FOCUS

DOMESTIC INDUSTRY REQUIREMENT

Our team has conducted rigorous economic and financial analyses to evaluate whether a complainant's investments are sufficient to establish that a domestic industry exists. *The Brattle Group* has worked on behalf of both complainants and respondents to:

- ◆ Determine the complainant's domestic investments in plant and equipment and in the employment of labor and capital
- ◆ Determine the complainant's domestic investment in exploitation of the asserted patents, including engineering, research and development, and other investments such as sales, service, and customer support
- ◆ Identify the complainant's domestic licensing activities related to the asserted patents
- ◆ Evaluate the nexus between the complainant's investments and the asserted patents

The ITC's recent decision in *Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same* (Inv. No. 337-TA-694) addressed the extent to which a complainant can establish a domestic industry based solely on U.S. investments in licensing. *The Brattle Group* represented the complainants in this matter and, as a result, has in-depth knowledge of the decision and the impact it will have on litigation at the ITC.

NATURE AND SCOPE OF REMEDY

If the ITC finds a violation of the statute, it may issue an order to the U.S. Customs and Border Enforcement to exclude the infringing articles, and any downstream products containing the infringing articles, from entry into the United States. The ITC may also issue cease and desist orders to the respondents, requiring them to stop selling any infringing articles that have already been imported into the United States. We have provided expert testimony and assisted clients in evaluating the nature and scope of the remedy sought, including whether downstream products containing infringing articles should be excluded as part of any remedy based on evaluation of factors set out in the *Certain Erasable Programmable Read-Only Memories (EPROMs)* case.

IMPACT OF REMEDY ON PUBLIC INTEREST

Public interest factors can override the finding of a violation of Section 337 at the ITC. Upon finding a violation, the ITC considers the impact that exclusion orders would have upon 1) public health and welfare, 2) competitive conditions in the U.S. economy, 3) the production of like or directly competitive articles in the United States, and 4) U.S. consumers. The ITC weighs these factors against the public interest in protecting U.S. intellectual property rights by excluding infringing imports. We have assisted our clients in addressing these issues using in-depth research, sophisticated economic modeling, and financial analysis.

ADDITIONAL AREAS

While Section 337 investigations at the ITC mostly involve claims regarding intellectual property rights, other forms of unfair competition involving imported goods, such as misappropriation of trade secrets, breach of contract, and false advertising, may also be asserted. Additionally, antitrust claims related to imported goods may be addressed. *The Brattle Group's* extensive antitrust and intellectual property expertise is valuable in such engagements.

REPRESENTATIVE EXPERIENCE

Certain Microprocessors, Components Thereof, and Products Containing Same (Inv. No. 337-TA-781)

On behalf of respondents Intel, HP, and Apple over patents related to energy-conditioning architecture for microprocessors, *The Brattle Group* prepared an expert report analyzing the four public interest factors to evaluate the impact of the proposed remedy on the U.S. public interest. Nobel Laureate Dr. Joseph E. Stiglitz provided an expert report as well as deposition and hearing testimony in this matter.

Certain Baseband Processor Chips and Chipsets, Transmitter and Receiver (Radio) Chips, Power Control Chips, and Products Containing Same, Including Cellular Telephone Handsets (Inv. No. 337-TA-543)

Brattle was retained by respondent Qualcomm during the Presidential Review period to analyze the economic effects of the exclusion order issued by the ITC banning the importation of all new wireless broadband handset models that contained Qualcomm chipsets infringing Broadcom's asserted patents. Nobel Laureate and *Brattle* principal Daniel McFadden submitted a paper analyzing the same.

Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same (Inv. No. 337-TA-694)

Counsel for Garmin, the respondents in this case, retained *The Brattle Group* to evaluate the economic prong of the domestic industry requirement. We prepared a rebuttal report evaluating the complainant Pioneer's investment in exploiting the asserted patents. In this landmark decision, the ITC determined that Pioneer's U.S. licensing activities were insufficient to establish domestic industry and terminated the investigation with a finding of no violation by Garmin.

Certain Universal Serial Bus ("USB") Portable Storage Devices, including USB Flash Drives and Components Thereof (Inv. No. 337-TA-788)

In this investigation, Trek 2000 International Ltd. filed a Section 337 complaint alleging that respondents, including Imation, IronKey, Kingston, and Verbatim, had engaged in unfair acts related to the importation and sale of certain portable storage devices. *Brattle* was retained by counsel for the complainant and submitted an expert report evaluating the economic prong of the domestic industry. *Brattle* academic advisor Dr. Robert Rogowsky provided an expert report as well as deposition testimony in this matter. The investigation was terminated as the parties entered into a settlement agreement.

Certain Flash Memory Chips and Products Containing the Same (Inv. No. 337-TA-735)

In a patent infringement dispute over certain flash memory chips and products containing the same, counsel for respondents Samsung, Apple, Nokia, PNY Technologies, RIM, and Transcend Information retained *The Brattle Group* to analyze economic issues related to the scope of remedy. We prepared an expert report and rebuttal reports evaluating whether the respondents' downstream products such as mobile phones, digital music players, Blu-ray players, USB devices, digital cameras, tablets, portable computers, televisions, and various other consumer electronics incorporating allegedly infringing chips should be excluded as part of the proposed remedy. The investigation was terminated as the parties entered into a settlement agreement.

PRACTICE AREA CONTACTS

The Brattle Group

ECONOMIC AND FINANCIAL EXPERTS



Principal

Dr. Coleman Bazelon is an expert in regulation and strategy in the telecommunications sector. He has consulted and testified on behalf of clients in numerous telecom matters, ranging from wireless license auctions, spectrum management, and competition policy, to patent infringement, wireless reselling, and broadband deployment. He frequently advises regulatory and legislative bodies, including the U.S. Federal Communications Commission and the U.S. Congress.

Dr. Bazelon holds a Ph.D. and M.S. in Agricultural and Resource Economics from the University of California at Berkeley and a Diploma in Economics from the London School of Economics.

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**Academic
Advisor**

Dr. Robert A. Rogowsky is an academic advisor to *The Brattle Group*, a Professor of Trade and Development at the Monterey Institute of International Studies in California, and an Adjunct Professor of Trade and Commercial Diplomacy at Georgetown University School of Foreign Service. He spent two decades at the U.S. International Trade Commission, where he served as Chief Economist from 1995 to 1999, and as the Director of Operations from 1992 to 2010. During his tenure as Director, he directed the offices responsible for Section 337 enforcement, trade negotiation analysis and support, and antidumping and countervailing duty investigations. Previously, he was the Acting Executive Director at the Consumer Product Safety Commission and Deputy Director of the Bureau of Consumer Protection for the Federal Trade Commission.

Dr. Rogowsky holds a Ph.D. and M.A. in Economics from the University of Virginia.



Senior Associate

Dr. Pallavi Seth is an expert in intellectual property litigation and Section 337 investigations. She has directed numerous high-profile projects and prepared testimony on a range of Section 337 matters including evaluating the economic prong of the domestic industry requirement, determining the nature of remedy, evaluating EPROMs factors to determine exclusion of downstream products, and analyzing the impact of remedy on the public interest. Most recently, she assisted counsel for respondents Intel, Apple, and HP in evaluating the impact of an exclusion order on public interest in *Certain Microprocessors, Components Thereof, and Products Containing Same* (Inv. No. 337-TA-781). Her industry expertise includes high-tech and consumer products such as semiconductors, flash memory devices, liquid crystal display panels, smartphones, and computers, in addition to financial institutions and gaming industries.

Dr. Seth holds a Ph.D. in Economics from Boston College.

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