

OCEAN TOMO

# ITC 337 INVESTIGATIONS



An increasing number of 337 investigations are being filed at the International Trade Commission (ITC). While the majority of those investigations involve allegations relating to patent or trademark infringement, the ITC is also becoming an effective forum for litigating disputes stemming from claims of trade secret misappropriation, false advertising, and even antitrust issues. A detailed understanding of the economic considerations underlying a 337 investigation is critical to ensuring a successful result. From establishing the threshold domestic industry requirement to examining potential remedies, bond amounts and the impact of an exclusion order on the public interest, each case requires careful evaluation of a wide variety of economic issues that can directly impact the outcome of an investigation.

Ocean Tomo's financial experts have significant experience with 337 investigations involving issues of patent infringement, trademark infringement and trade secret misappropriation. Our experts go beyond a simple accounting to gain a comprehensive understanding of industry considerations that may bear on issues such as the significance of domestic investments, the applicability of potential remedies, or the impact of an exclusion order on the public interest. We have assisted counsel in every stage of a 337 investigation, from acquiring products and evaluating domestic industry and public interest considerations prior to filing, through assisting with settlement negotiations prior to the issuance of a Final Determination.

In connection with our work in 337 investigations, our experts have gained significant experience evaluating issues relating to the economic prong of domestic industry, general exclusion orders, commercial significance of inventories, bond amounts, economic harm, commercial success, licensing issues, and public interest considerations. The scope and breadth of Ocean Tomo's experience with 337 investigations is reflected in the number of investigations it has been involved with and the variety of issues on which it has opined. Examples of 337 investigations involving Ocean Tomo's experts include:

In the Matter of Certain  
Personal Transporters,  
Components Thereof, and  
Packaging and Manuals  
Thereof, and Certain  
Personal Transporters and  
Components Thereof

Investigation No.  
337-TA-1007/1021

Patent and Trademark  
Infringement Involving  
Self-Balancing Electric  
Scooters

Report, Deposition, and  
Hearing Testimony

Segway, and its parent company Ninebot, brought suit against several respondents who were accused of importing infringing one-wheel and two-wheel self-balancing electric scooters. Ocean Tomo offered testimony related to the existence of a domestic industry, the appropriate remedy and bond, and the commercial success of the patented and accused products. Complainants prevailed on its trademark infringement claims and, consistent with the opinions offered by Ocean Tomo, the ALJ found the existence of a domestic industry and recommended cease and desist and limited exclusion orders. Those findings were later affirmed by the Commission's final determination.

In the Matter of Certain Botulinum Toxin Products, Processes for Manufacturing or Relating to Same and Certain Products Containing Same

Investigation No. 337-TA-1145

Trade Secret Misappropriation Involving Botulinum Toxin Products (BOTOX®)

Report, Deposition, and Hearing Testimony

Medytox brought suit against several respondents who were accused of importing botulinum toxin products that misappropriated certain manufacturing related trade secrets. Ocean Tomo offered testimony related to the existence of a domestic industry and whether any such domestic industry would be destroyed, or substantially injured, by the importation of the infringing products. Consistent with Ocean Tomo's opinions, the Commission found that the domestic industry requirement had been satisfied and that respondent's importation and sale of the infringing botulinum toxin product threatened to destroy, or substantially injure, Medytox's domestic industry and/or domestic industry products.

In the Matter of Semiconductor Chips with Minimized Chip Package Size and Products Containing Same (III)

Investigation No. 337-TA-630

Patent Infringement Litigation Involving the Packaging of DRAM Chips

Report, Deposition, and Hearing Testimony

Tessera brought suit against several respondents who were accused of importing infringing DRAM chips. Ocean Tomo offered testimony that the majority of units sold in or imported into the U.S. by respondents were purchased from suppliers or subcontractors directly licensed by Tessera, and thus licensed. The ALJ, in agreement with Ocean Tomo, found that all chips purchased by Defendants from Tessera's licensees were authorized. Thus, because Tessera's rights in those chips were exhausted, none of Tessera's patents had been infringed. Consistent with those findings, the Commission's final determination found that there was no violation of Section 337.

In the Matter of Certain Audio Players And, Controllers, Components, Thereof, and Products Containing the Same

Investigation No. 337-TA-1191

Patent Infringement Litigation Involving Music Streaming, Playback, and Distribution

Report, Deposition, and Hearing Testimony

Sonos brought suit against Google for infringing several patents relating to music streaming, playback and distribution. Ocean Tomo offered testimony relating to the existence of a domestic industry, remedy, and bond. Consistent with Ocean Tomo's opinions, the ALJ granted summary determination that the domestic industry requirement had been satisfied. That ruling was later affirmed by the Commission, which also affirmed Ocean Tomo's opinions relating to remedy and the amount of a bond.

In the Matter of Certain Pocket Lighters

Investigation No. 337-TA-1142

Patent Infringement Litigation Involving Disposable Lighters

Report and Deposition

BIC brought suit against several respondents who were accused of infringing certain trademarks relating to the well-known BIC lighter. Ocean Tomo offered testimony relating to the existence of a domestic industry, remedy, and bond. Consistent with Ocean Tomo's opinions, the ALJ granted summary determination regarding the existence of a domestic industry. The investigation later settled, prior to a hearing.



#### CONTACT

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Todd Schoettelkotte leads the Expert Opinion group. He is a Senior Managing Director in the Intellectual Property Disputes practice. Prior to joining J.S. Held, Todd was the President, Managing Director of IPFC Corp. Todd has more than thirty years of experience as a financial consultant in a variety of litigation matters and disputes, including intellectual property, breach of contract, business interruption, valuation, and general damage assessments. He has significant experience assisting companies with complex financial accounting and litigation issues across many industries. Todd works with clients on complex studies involving valuations, lost sales, lost profits, incremental profits, reasonable royalty, unjust enrichment, product line profitability, fixed and variable cost analysis, manufacturing, and marketing capacity, cost claims, company financial performance, and interest on damages.



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## About Ocean Tomo

Ocean Tomo, a part of J.S. Held provides Expert Opinion, Management Consulting, Advisory, and Specialty Services focused on matters involving intellectual property (IP) and other intangible assets. Practice offerings address economic damage calculations and testimony; business licensing strategy and contract interpretation; patent-focused business intelligence; portfolio development strategy; litigation support; trade secret reasonable measures; asset and business valuation; strategy and risk management consulting; merger and acquisition advisory; debt and equity private placement; and IP brokerage.

Our experts are routinely qualified in U.S. District Courts, U.S. Bankruptcy Courts, U.S. Tax Court, U.S. Court of Federal Claims, state courts, the U.S. Patent and Trademark Office Patent Trial and Appeal Board, international courts, and arbitration tribunals on questions relating to intellectual property economics. Our professionals have provided expert opinions on IP valuation, reasonable royalty, lost profits, price erosion, commercial success, corrective advertising, creditor allocations, Hatch-Waxman Act market exclusivity, business licensing terms including RAND obligations, venture financing, and equities of a potential injunction. The firm's experience extends to general business valuation and commercial disputes, domestic and foreign, as well as policy issues affecting international technology transfer and economic matters before the International Trade Commission.

Intangible assets comprise 90 percent of business value but are also subject to significant impairment due to enterprise and regulatory compliance risk. Our services are built upon more than three decades of experience assessing intellectual property in the most rigorous of venues. Our financial, market, scientific, and technical experts have deep experience with tangible and intangible assets protected by intellectual property. We bring a unique understanding of the contributory value of proprietary innovation to every engagement. This is the cornerstone of our business.

Subsidiaries of the firm include Ocean Tomo Investments Group, LLC, a registered broker-dealer.

As a part of J.S. Held, Ocean Tomo works alongside more than 1500 professionals globally and assists clients – corporations, insurers, law firms, governments, and institutional investors – on complex technical, scientific, financial, and strategic matters across all assets and value at risk.

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## About J.S. Held

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More than 1,500 professionals serve organizations across six continents, including 81% of the Global 200 Law Firms, 70% of the Forbes Top 20 Insurance Companies (85% of the NAIC Top 50 Property & Casualty Insurers), and 65% of the Fortune 100 Companies.

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