ACT Association for Competitive Technology

The Honorable Lisa R. Barton
Secretary
United States International Trade Commission
500 E Street, S.W., Room 112
Washington, District of Columbia 20436

RE: Comment of Association for Competitive Technology on the Proposed Amendments to the Rules of Practice and Procedure Concerning Section 337 Adjudication and Enforcement, Docket No. MISC-051 (91 Fed. Reg. 23190)

Dear Secretary Barton:

The Association for Competitive Technology ("ACT") appreciates the opportunity to respond to the U.S. International Trade Commission's ("Commission") Notice of Proposed Rulemaking proposing amendments to its Rules of Practice and Procedure concerning section 337 adjudication and enforcement.[1] ACT strongly supports a requirement to disclose third-party litigation funding and urges the Commission to adopt such a rule without delay.

ACT is a global policy trade association for the small business technology developer community. ACT's members lead the development of innovative applications and products across consumer and enterprise use cases. The U.S. ecosystem ACT represents is valued at approximately $1.8 trillion and is responsible for 6.1 million American jobs, while serving as a key driver of the $8 trillion internet of things (IoT) revolution.[2] Our members include startups, app developers, and device manufacturers who own and use patented technologies and rely on a fair, predictable intellectual property system.

Small businesses that drive American technological leadership and job creation are frequent targets of abusive patent litigation, including litigation funded by undisclosed third parties. Unlike large corporations, our members lack the financial reserves to weather a protracted legal battle or the leverage to negotiate against the threat of an exclusion order that could wipe out their entire product line. When a small company defends itself against a Section 337 complaint it faces immense pressure to settle early, regardless of the case's merits, simply to avoid the existential cost of litigation.

The proposed rule is a critical step toward ensuring that the Commission's proceedings are transparent, fair, and free from the distorting influence of undisclosed third-party interests.

I. TPLF CAN BE A VALUABLE TOOL FOR SMALL BUSINESSES, BUT TRANSPARENCY IS ESSENTIAL

ACT recognizes that third-party litigation funding ("TPLF") can serve a legitimate and important function for small businesses. For many of our members, access to litigation funding can be the

[1] 91 Fed. Reg. 23190 (Docket No. MISC-051), Section 337 Adjudication and Enforcement, Notice of Proposed Rulemaking (Apr. 30, 2026).
[2] ACT | THE APP ASS'N, STATE OF THE APP ECONOMY (2022), https://actonline.org/wp-content/uploads/APP-Economy-Report-FINAL.pdf.

difference between enforcing their intellectual property rights and watching larger, well-financed competitors infringe with impunity. Small businesses should not be deprived of their day in court simply because they cannot afford the staggering costs of patent litigation.

As former U.S. Senator Patrick Leahy aptly explained, "Third-party litigation funding is not always problematic. For some, outside funding provides easier access to an expensive legal system. But problems arise when funders are able to influence litigation without revealing themselves."[3] Simply put, the very power of TPLF to enable small businesses also creates risks that demand transparency. When funding arrangements remain hidden, the potential for abuse multiplies.

ACT therefore strongly supports the Commission's efforts to propose a TPLF disclosure rule. Transparency in TPLF arrangements protects the integrity of Commission proceedings while preserving the benefits that legitimate funding can provide to small businesses. It ensures that small businesses defending against Section 337 complaints can understand the forces arrayed against them and make informed decisions about their legal strategy.

II. TPLF DISCLOSURE CLOSES A CRITICAL TRANSPARENCY GAP

The Commission's work directly impacts our members' ability to grow and create American jobs. The proposed rule reflects a growing consensus, including that of lawmakers,[4] federal courts,[5] and the Federal Civil Rules Advisory Committee,[6] that the participants and beneficiaries of litigation should be visible to the tribunals that adjudicate those cases.

The Commission currently does not require complainants to disclose whether third parties have a financial interest in or are exerting control over Section 337 investigations.[7] However, third-party funded patent litigation now accounts for a significant proportion of all patent litigation, with most large technology companies disclosing that more than half of patent suits filed against them involve confirmed or suspected third-party funding.[8]

Several federal district courts have recognized this trend and have begun requiring disclosure of third-party litigation funding. Chief Judge Colm Connolly of the District of Delaware has been a

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[3] Patrick Leahy, *Shine Light on Third-Party Litigation Funding of US Patents*, BLOOMBERG L. (April 28, 2023), https://news.bloomberglaw.com/us-law-week/shine-light-on-third-party-litigation-funding-of-us-patents.

[4] *See e.g.*, Litigation Transparency Act, H.R. 1109, 119th Cong. (2025), Litigation Funding Transparency Act, S. 3826, 119th Cong. (2026), Protecting TPLF From Abuse Act, H.R. 7015, 119th Cong. (2026), Protecting Our Courts from Foreign Manipulation Act, H.R. 2675, 119th Cong. (2025) (recently proposed legislation on TPLF disclosure, demonstrating a trend toward favoring disclosure); H.R. Rep. No. 119–272, at 109 (2025)(expressing concern that lack of uniform TPLF requirements create opportunities for foreign adversaries to advance commercial and military goals against the U.S. and directing the Department of Justice to complete a threat assessment).

[5] *See e.g.*, Standing Order Regarding Third-Party Litigation Funding Arrangements (D. Del. Apr. 18, 2022); N.D. Cal. Civ. Local Rule 3-15; D.N.J. Civ. Local Rule 7.1.1.

[6] ADVISORY COMM. ON CIV. RULES, REPORTER'S MEMORANDUM ON THIRD-PARTY LITIGATION FUNDING, at 183 (Oct. 24, 2025), https://www.uscourts.gov/sites/default/files/document/2025-10_civil_agenda_book_final_10-14.pdf.

[7] Notice of Proposed Rulemaking, *supra* n. 1.

[8] U.S. GOV'T ACCOUNTABILITY OFF., GAO-25-107214, INFORMATION ON THIRD-PARTY FUNDING OF PATENT LITIGATION (2024).

leader in requiring transparency in the context of TPLF.[9] Judge Connolly's standing orders requiring disclosure of third-party litigation funding have had dramatic results. In one notable instance, VLSI, a Fortress Investment-backed company that spent 3.5 years litigating patent infringement claims against Intel in Delaware, chose to dismiss its claims rather than reveal its ownership structure.[10] As Judge Connolly explained, his orders were an attempt to address potential "abuse of our courts" and concerns about the "lack of transparency as to who the real parties before the Court are, about who is making decisions in these types of litigation."[11]

The experience in Delaware is not an outlier. Empirical research has demonstrated that TPLF disclosure requirements significantly reduce the incidence and average length of non-practicing entity ("NPE") litigation in courts that require such disclosures.[12]

III. TPLF DISCLOSURE ADDRESSES NATIONAL SECURITY CONCERNS

Requiring TPLF disclosure will addresses serious national security concerns. The House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party has recommended that Congress "[d]etermine, and then establish, what guardrails are needed to address the possibility of foreign adversary entities obtaining sensitive IP through funding third party litigation in the United States."[13]

The risks are not hypothetical. Bloomberg has reported that PurpleVine IP of Shenzhen, China, is financing intellectual property lawsuits in U.S. federal courts.[14] Thanks to Judge Connolly's disclosure order, it was revealed in one such case that two former in-house lawyers had stolen privileged and confidential analyses of patents that were sent to both PurpleVine and its associated law firm, and PurpleVine had used that information in deciding to fund the case.[15] Foreign-sourced TPLF poses significant risks to U.S. national security by allowing foreign actors to exert undisclosed influence in the American legal system. The proposed rule would help

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[9] Standing Order Regarding Third-Party Litigation Funding Arrangements (D. Del. Apr. 18, 2022).
[10] Scott Graham, *VLSI Drops Claim Amid Transparency Demands*, Law.com (Dec. 28, 2022), https://www.law.com/delbizcourt/2022/12/28/theyve-had-enough-of-judge-connolly-vlsi-drops-claim-amid-transparency-demands/.
[11] Nimitz Techs. LLC v. CNET Media, Inc., No. 21-1247-CFC, 2022 U.S. Dist. LEXIS 215395, at *3 (D. Del. Nov. 30, 2022).
[12] Luke Martin & Natalie Berfeld, *Do TPLF Disclosure Requirements Deter Patent Trolls?*, Law & Econ. Ctr. at George Mason U. Scalia School of L. Rsch. Paper Series 3–4, Forthcoming (Nov. 2024), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5040291 (finding NPE plaintiffs dropped from 47.4% to 35.5% following the disclosure requirement in Delaware, suggesting "the imposition of a TPLF disclosure mandate significantly decreases the attractiveness of filing a TPLF-funded patent case in jurisdictions having a TPLF disclosure mandate.").
[13] House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *Reset, Prevent, Build: A Strategy to Win America's Economic Competition with the Chinese Communist Party* 21 (Dec. 12, 2023), https://selectcommitteeontheccp.house.gov/ sites/evo-subsites/selectcommitteeontheccp.house.gov/files/ evo-media-document/reset-prevent-build-scc-report.pdf.
[14] Emily R. Siegel, China Firm Funds US Suits Amid Push to Disclose Foreign Ties, Bloomberg L (Nov. 6, 2023), https://news.bloomberglaw.com/business-and-practice/china-firm-funds-us-lawsuits-amid-push-to-disclose-foreign-ties; *see also* U.S. Chamber of Commerce, *Grim Realities: Debunking Myths in Third-Party Litigation Funding* (Aug. 2024), https://instituteforlegalreform.com/wp-content/uploads/2024/08/TPLF-Research-Grim-Realities-Aug.-2024.pdf
[15] *Id.*

address these concerns by requiring disclosure of entities that provide funding for Section 337 investigations, including foreign entities.

IV. SPECIFIC COMMENTS ON THE PROPOSED RULE

ACT supports the proposed rule and stands with the Commission in its efforts to provide clarity about the entities whose rights are genuinely at issue as well as promote transparency. To ensure the final rule fully achieves these purposes, ACT offers the following specific comments:

A. The Rule Should Apply Disclosure to All Parties and Should Be Made on the Public Record

The proposed rule would require complainants, respondents, and intervenors to file disclosure statements, including in enforcement actions, petitions to modify or rescind remedial orders, and advisory opinion proceedings. ACT supports this broad application. Knowing the real parties in interest and those controlling the litigation will aid parties, the Commission, and the public in determining whether there are any public interest concerns with an investigation, ensuring a complainant is truly the patentee entitled to bring the investigation alone, aiding in the efficient administration of the investigation, and facilitating settlement discussions.

ACT also recommends that disclosure statements be made on the public record. The transparency purposes of the proposed rule are best served by public disclosure. Knowledge of the real parties in interest and the funding sources of an investigation is relevant not only to the Commissioners and Administrative Law Judges but also to proposed respondents, the public, and those considering whether to participate in the proceeding. Placing the identity, business address, and place of formation of each interested entity on the public record without exposing competitively sensitive material will broadly benefit the public interest, and such information should not be considered confidential business information by the Commission.

B. The Rule Should Capture All Entities with a Sufficient Interest

ACT is mindful of the need to avoid imposing undue burdens on small businesses. However, we are concerned that the proposed rule's language—requiring disclosure of any entity that "provides funding specifically for the section 337 investigation"—may not be sufficient to encompass every relevant entity that has a financial interest in, or the ability to direct or control the investigation, whether directly through agreement with the complainant or indirectly through agreement with legal counsel. ACT recommends that the Commission confirm that third parties that fund, direct, or exercise control over an investigation through the asserting party's counsel are within the scope of this rule, which would help ensure that the rule appropriately captures entities with a financial or strategic interest in the investigation regardless of whether their involvement is structured directly through the complainant or indirectly through counsel or other intermediaries. The Commission should aim to forestall creative arrangements that shield *de facto* TPLF from its disclosure rule.

ACT supports the Commission's proposal to require disclosure of "any entity, not including natural person(s), owning its stock" as a reasonable starting point. However, we encourage the

Commission to adopt a materiality threshold for this ownership disclosure requirement, consistent with the approach taken in Federal Rule of Civil Procedure 7.1. Under that rule, a nongovernmental corporate party must identify "any parent corporation and any publicly held corporation owning 10% or more of its stock." Adopting a 10 percent threshold would focus the disclosure obligation on ownership interests of a magnitude likely to present meaningful conflict or transparency concerns, while avoiding the burden of requiring parties to identify every mutual fund, ETF, or institutional investor with a de minimis ownership stake. This is particularly important for small businesses, which may have complex or diffuse ownership structures that would make blanket disclosure unnecessarily burdensome. The Commission should follow the approach of the Federal Rules and ensure that its disclosure requirements are both effective and appropriately tailored to avoid imposing undue costs on parties.

At the same time, we appreciate the Commission's efforts to calibrate the rule to avoid capturing retail investors or routine commercial relationships. The proposed rule appropriately excludes personal loans, bank loans, insurance, and ordinary contingency fee arrangements with legal counsel. ACT supports these limited exclusions, which focus the disclosure obligation on categories of financial relationships likely to present real transparency concerns without sweeping in routine commercial or professional relationships.

Finally, ACT encourages the Commission to confirm that the disclosure obligation reaches entities that fund or control related litigation involving the same intellectual property. Section 337 complainants frequently pursue parallel district court actions, and a funder or controlling party in the related case holds the same interest in, and exercises the same influence over, the investigation. Such a confirmation would advance the Commission's goal of identifying the real parties in interest and would prevent circumvention of the rule.

C. The Rule Should Include a Continuing Duty to Update

ACT further recommends that the Commission include a continuing duty to update disclosure statements throughout the course of a Section 337 investigation. The proposed rule requires parties to file disclosure statements at the commencement of proceedings, but it does not explicitly address the obligation to supplement those disclosures when material changes occur. This gap is significant because funding arrangements can change during the pendency of an investigation—a funder may be added or replaced, ownership structures may shift, or new entities may acquire a financial interest in the outcome. Without a continuing duty to update, the Commission and the parties may be operating on outdated information that no longer reflects the true interests at stake in the proceeding. Requiring parties to supplement their disclosure statements within a reasonable time after a material change would ensure that the Commission's transparency objectives are met throughout the lifecycle of an investigation, not just at its outset.

The Commission should follow the approach taken in Federal Rule of Civil Procedure 26(e), which imposes a duty to supplement disclosures when a party learns that its prior disclosure is incomplete or incorrect. A similar requirement here would be consistent with the Commission's stated purposes of facilitating conflict evaluation, providing clarity about rights at issue, and promoting transparency to facilitate settlement.

D. The Rule Should Address Non-Compliance

ACT also recommends that the Commission explicitly address the consequences of non-compliance with the disclosure requirements. The proposed rule is silent on what happens when a party fails to file a required disclosure statement, submits an incomplete or misleading disclosure, or fails to supplement a disclosure when material changes occur. Without clear consequences, the rule's effectiveness depends entirely on voluntary compliance, which is insufficient to deter bad actors who have every incentive to keep their funding arrangements hidden. The Commission should make clear that it has the authority to sanction parties for non-compliance, including through evidentiary presumptions, adverse inferences, sanctions, or even dismissal of a complaint or termination of the investigation.

The Commission should also consider requiring parties to certify the accuracy and completeness of their disclosures, consistent with the certification requirements of Federal Rule of Civil Procedure 11, to ensure that parties take their disclosure obligations seriously. Explicit enforcement mechanisms will ensure that the rule achieves its intended purposes and that parties cannot evade transparency simply by ignoring their obligations.

V. CONCLUSION

ACT strongly supports the Commission's proposed amendments to 19 C.F.R. Part 210. The proposed rule is well-calibrated to its stated purposes, consistent with established federal court practice, and addresses critical transparency gaps that undermine the integrity of Section 337 proceedings. By requiring disclosure of entities with an ownership or financial interest in Section 337 investigations, including third-party litigation funders, the Commission will promote transparency, facilitate settlement, and protect the integrity of its proceedings.

ACT stands ready to collaborate with the Commission as it implements its final rule. By focusing on efficient and effective investigations, providing sound analysis on emerging challenges like TPLF abuses, and applying rigorous transparency requirements, the Commission can continue to protect U.S. industries, foster innovation, and bolster the success of American small businesses in the global marketplace.

Respectfully submitted,

Brian Scarpelli
Senior Global Policy Counsel

Amanda Guilardi
Intellectual Property Associate

Association for Competitive Technology (ACT)
1401 K St NW (Ste 501)
Washington, DC 20005
202-331-2130