Jamie McDole in Law360 on the ITC as a Potent Patent Venue

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Law360 quoted Haynes Boone Partner Jamie McDole on an increase in patent cases at the U.S. International Trade Commission.

Law360 reported that the number of patent cases the ITC instituted climbed to 60 last year, according to a report from legal analytics firm Lex Machina. This was an 11 percent increase from 2016, when the commission rebounded after a recent lull to institute the most patent cases since 2011. ...

According to *Law360*, those who practice before the ITC attributed patent owners' interest in the commission to a combination of factors. Certain things, such as the ITC's speedy proceedings and the powerful remedies it offers in terms of injunctive relief, have long been reasons to consider filing at the commission.

But there are other, more recent factors that could help explain the rising demand. Attorneys pointed to a U.S. Supreme Court decision in May that restricted where patent lawsuits can be filed, limiting patent owners' ability to seek out preferred district courts.

Another is that the ITC has demonstrated an unwillingness to put cases on hold if an accused infringer challenges the patent at the Patent Trial and Appeal Board. This is in contrast to district court, where judges will frequently stay litigation pending a decision from the board. ...

Money damages are not an option at the ITC, a bipartisan, quasi-judicial agency focused on trade. The sole remedy the commission offers if patent infringement is found is an order banning imports of the infringing product into the U.S. But these orders can pack a powerful punch.

"Companies ... have litigation funds they keep, they can pay the money," said Jamie McDole of Haynes Boone. "It's the inability to make and sell a product that I think is most concerning to defendants. Having that injunction in the ITC is still a significant hammer that a plaintiff can bring." ...

Excerpted from *Law360*. To read the full article, click here. (Subscription required)

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