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Federal Circuit Clarifies Appealable Subject Matter from the ITC**INTELLECTUAL PROPERTY CLIENT ALERT**

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For more information, contact your Patton Boggs LLP attorney or the authors listed below.

Richard Oparil
roparil@pattonboggs.com

Kevin Bell
kbell@pattonboggs.com

Matthew Laskowski
mlaskowski@pattonboggs.com

WWW.PATTONBOGGS.COM

The Federal Circuit recently clarified the scope of review that the Court affords appeals from the International Trade Commission (ITC). In *General Electric Co. v. U.S. Int'l Trade Comm'n*, No. 2010-1223 (Fed. Cir. Feb. 29, 2012), the court addressed what issues are appealable from ITC proceedings.

GE alleged a violation of Section 337 for several patents related to connecting wind turbines to a power grid. Jurisdiction in the ITC requires both an investigation of the patents as well as whether or not the patents are practiced by domestic industry. The full ITC Commission made its determination based on a domestic industry question, which did not require the full ITC Commission to consider an administrative law judge's initial determinations on various other separate issues.

The ITC argued that the only issues subject to appeal were those decided by the full ITC Commission. Specifically, the full ITC Commission had held "that when the full Commission does not review an issue that it noticed for review, that issue is removed from access to judicial review." The Federal Circuit, however, rejected this argument, and ruled that "issues decided by initial determination and not substantively reviewed by the full Commission are deemed determinations of the Commission ... and entitled to appeal".

As such, the Federal Circuit has determined that all rulings in front of the ITC, whether or not reviewed by a full Commission, are appealable. The availability of review of all issues raised before the ITC should be considered by all parties having actions before the ITC.

The Federal Circuit decision is available at
<http://www.cafc.uscourts.gov/images/stories/opinions-orders/10-1223.pdf>