AMERICAN CIVIL ACCOUNTABILITY ALLIANCE

June 29, 2026

The Honorable Lisa R. Barton
Secretary to the Commission
U.S. International Trade Commission
500 E Street SW
Washington, DC 20436
Rule: Section 337 Adjudication and Enforcement, Docket No. MISC-051

Dear Secretary Barton:

The American Civil Accountability Alliance (ACAA) respectfully submits this comment regarding the U.S. International Trade Commission's proposed revisions to the Rules of Practice and Procedure concerning Section 337 adjudication and enforcement.

ACAA is a nonprofit organization dedicated to preserving Americans' ability to pursue justice and defend their rights through the legal system. We are concerned that the Commission's proposed disclosure requirements could make it more difficult for American inventors, entrepreneurs, and other litigants to access the resources they need to protect their intellectual property rights while providing limited corresponding benefit.

As you know, the U.S. International Trade Commission (ITC) plays an indispensable role in protecting American inventors and small businesses threatened by foreign intellectual property theft. By issuing exclusion orders, the Commission can stop infringing products at the border before they enter the U.S. market, protecting both Americans' IP rights and the investments, jobs, and businesses built around them.

However, accessing that injunctive relief is not always straightforward for innovators -- particularly for smaller companies competing against state-funded foreign manufacturers and multinational corporations. Proving infringement and obtaining an exclusion order at the ITC often costs millions of dollars. As a result, many legitimate rights holders rely on outside sources of capital to pursue meritorious claims.

These arrangements, known as third-party litigation financing, are often misunderstood, but they are fundamentally simple. Third-party funders provide capital that allows smaller companies and independent innovators to pursue claims they otherwise could not afford to bring. In exchange, they receive a share of any recovery if the claim succeeds.

Without access to outside financing, many innovators would have no meaningful ability to enforce their constitutionally protected IP rights against larger and better-funded competitors. For foreign infringers, in particular, it is often trivial to evade IP enforcement actions that stop short of affecting imports.

Unfortunately, the Commission's proposed disclosure requirements for litigation funding threaten to curtail companies' access to this important financial resource. The proposed rule change would require litigants to disclose the identity, business address, and place of formation of any entity that provides funding for a Section 337 investigation, along with the nature of the terms and conditions of any right that entity holds to approve litigation or settlement decisions.

The risk of disclosure could create new business and regulatory uncertainty for litigation financing providers and discourage them from providing even small amounts of funding. That would make it harder for smaller companies and innovators to secure the resources they need to seek justice and protect their hard-earned intellectual property rights.

The inventors and businesses that bring complaints to the ITC may have many types of financing, including loans, capital investments, joint venture arrangements, and others. Third-party litigation funding is just one means among many that inventors and businesses use to finance their operations, and lawsuits brought against patent infringers are just another means of running a business successfully. There is no reason to regard litigation funding with suspicion or to subject it to special regulations from which other forms of financing business needs are exempt.

The proposed change would also establish a legal asymmetry that threatens American competitiveness. While large corporations can often fund litigation internally or draw on extensive corporate resources, and foreign manufacturers may benefit from substantial government support, smaller innovators typically have no comparable options. By placing the burden of disclosure on small and independent innovators and increasing the risk that these innovators must fund their defenses alone, the rule change would weaken fairness in the justice system and tilt the playing field toward foreign infringers.

There are potential constitutional problems as well. In cases such as NAACP v. Button, 371 U.S. 415 (1963), and NAACP v. Alabama, 357 U.S. 449 (1958), the Supreme Court has recognized that financial support for litigation is a form of political expression that is protected by the First Amendment and threatened by compelled disclosure. In other words, a disclosure regime that unduly prevents parties from obtaining lawful support for litigation risks undermining Americans' constitutional rights.

Finally, it is not clear that the proposed rule change is necessary. Section 337 proceedings already include strong safeguards against potential abuse and foreign manipulation, such as requiring companies to demonstrate their investment in American industry and to comply with discovery obligations. The Commission also has the authority to request additional information when warranted. Given these existing safeguards, we urge the Commission to be cautious about imposing new disclosure obligations absent a clearer showing of need.

In short, while the potential benefits of broader disclosure requirements are speculative, the potential harms are clear. By discouraging third parties from providing litigation funding to meritorious cases, the proposal could make it more difficult for American innovators to defend their intellectual property, weaken enforcement against foreign infringers, and ultimately reduce access to justice for inventors and companies with fewer financial resources.

The ITC has long served as one of the most effective guardians of American innovators confronting unfair foreign competition. We urge the Commission not to enact disclosure rules that would inadvertently make it harder for American inventors and businesses to secure the justice they deserve.

Thank you for the opportunity to submit these comments. We welcome any opportunity to engage further on this issue.

Sincerely,

American Civil Accountability Alliance