Working with Experts in ITC Investigations

Unlike other types of litigation, such as district court cases, an ITC investigation moves on a much faster, more compressed schedule. It often reaches a remedy in about a year rather than several years, with broad discovery beginning early and expert work developing quickly. The ITC does not award monetary damages; its primary remedy is an exclusion order directing U.S. Customs and Border Protection to block infringing imports from entering the United States. By contrast, district courts may award damages, fees, and ongoing royalties, but are more likely to stay proceedings pending inter partes review or other Patent Office challenges.

Practical Implications for Expert Engagement

EARLY IDENTIFICATION

Expert identification may begin roughly three months after filing. Conflict clearance, availability, and engagement terms should be addressed early.

SHORT REPORT-TO-REBUTTAL WINDOW

Initial and rebuttal reports may fall within the same general month range. Rebuttal planning should begin while affirmative reports are being finalized.

COMPRESSED ENDGAME

Expert depositions and the discovery cutoff may follow quickly. Deposition prep and hearing prep may need to overlap.

Expert Work at a Glance

01	IDENTIFY & ENGAGE	Conflicts, credentials, retention, document access
02	FRAME ISSUES	Technical and economic theories, claim construction support, discovery priorities
03	DEVELOP OPINIONS	Data review, testing, analyses, fact-witness coordination, working sessions
04	REPORTS & REBUTTAL	Initial reports, critiques of opposing opinions, rebuttal reports, exhibits
05	DEPOSITION & HEARING	Deposition preparation and testimony, hearing preparation, demonstratives, live testimony

**All timing is approximate and may vary by investigation, administrative law judge, procedural schedule, asserted issues, discovery needs, and early resolution.*
**Expert involvement may begin before institution and often accelerates sharply as reports, depositions, and the evidentiary hearing approach.*

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Typical ITC Phases & Expert Touchpoints

	Phase	What Happens	Common Expert Involvement
1	**Complaint Filing & Pre-Institution** *MONTH 0*	Complaint is filed; the requested investigation and asserted intellectual-property theories are framed.	Conflict checks; define preliminary scope; reserve availability.
2	**Institution & Early Case Strategy** *BEGINNING OF INVESTIGATION*	The investigation begins and the procedural schedule starts to take shape.	Finalize engagements; onboard experts; confirm workstreams; provide pleadings, technical materials, and initial data; set recurring working cadence.
3	**Fact Discovery & Claim Construction** *EARLY-TO-MID INVESTIGATION*	Documents, written discovery, depositions, source materials, technical records, and financial information are developed; claim construction issues move toward Markman.	Review discovery; identify evidentiary gaps; support technical issue development; assist with deposition themes; conduct analyses or testing.
4	**Expert Disclosures** *MID-INVESTIGATION*	Parties identify the experts expected to offer testimony and exchange required disclosure information, including qualifications, subject matter, and areas of anticipated testimony.	Finalize expert lineup; coordinate CVs, prior testimony materials, disclosures, and engagement documentation; confirm opinion scope and hearing availability; begin preparing for formal report deadlines.
5	**Initial Expert Reports** *APPROX. MONTH 7*	Parties exchange affirmative expert opinions and supporting analyses.	Develop opinions; validate methodology; draft and revise reports; organize exhibits and source support; coordinate across expert disciplines.
6	**Markman Hearing** *MID-TO-LATE INVESTIGATION*	The administrative law judge addresses disputed claim-construction issues that may shape the technical case.	Support claim-construction positions; prepare technical explanations or declarations if requested; assess implications for opinions, testing, and report strategy.
7	**Rebuttal Expert Reports** *APPROX. MONTHS 7-8*	Experts respond to opposing opinions, assumptions, methods, and conclusions.	Analyze opposing reports; identify methodological disputes; prepare rebuttal opinions; update calculations and exhibits.
8	**Expert Depositions & Discovery Cutoff** *APPROX. MONTH 8*	Experts are deposed and the expert record closes.	Deposition preparation; mock questioning.
9	**Pre-Hearing & Evidentiary Hearing** *APPROX. MONTH 11*	Witness statements, exhibits, demonstratives, motions, and hearing presentation are finalized.	Prepare direct and cross-examination; refine demonstratives; coordinate logistics; support counsel during hearing; provide live expert testimony.
10	**Post-Hearing / Commission Review** *POST-HEARING*	The record moves through post-hearing briefing and Commission processes; resolution may also occur earlier.	Potential supplemental support, briefing assistance, remedy-related analysis, or follow-on consultation, depending on the matter.

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