

LELO, INC. v. INTERNATIONAL TRADE COMMISSION, Appeal No. 2013-1582 (Fed. Cir. May 11, 2015). Before Moore, Clevenger, and Reyna. Appealed from ITC.

Background:

Standard Innovation Corporation (SIC) filed a §337 complaint with the ITC against Lelo alleging infringement of SIC's patent. An ITC Administrative Law Judge (ALJ) determined that a §337 violation had not occurred because SIC failed to satisfy the domestic industry requirement of §337. SIC had argued that its U.S. purchase of four components of the patented device constituted a "significant investment in plant and equipment" or a "substantial investment in its exploitation," thus satisfying §337. The ALJ determined that the component purchases were neither "substantial" nor "significant" under §337.

The ITC reviewed and reversed the ALJ's determination. The ITC conceded that the purchases were a relatively modest proportion of domestic content, but determined that the contribution of the components from a qualitative standpoint was significant. The ITC thus found that SIC had satisfied the domestic industry requirement of §337. Lelo appealed.

Issues/Holdings:

Did the ITC err in finding that the qualitative factors alone are sufficient to satisfy the "significant investment" and "significant employment" requirements of §337? Yes, reversed.

Discussion:

A claimant asserting patent rights under §337 must satisfy the domestic industry requirement set out in 19 U.S.C. §1337(a)(3) by establishing, "with respect to the articles protected by the patent," that there is: (A) significant investment in plant and equipment; (B) significant employment of labor or capital; or (C) substantial investment in its exploitation, including engineering, research and development, or licensing.

The Federal Circuit looked to the plain language of the statute and determined that the terms "significant" and "substantial" refer to an increase in quantity. The Federal Circuit also determined that the term "investment" refers to an expenditure of money for income or profit. The Federal Circuit thus concluded that the statute requires a quantitative analysis when determining whether a claimant has made a significant or substantial investment with respect to the device protected by the patent. The Federal Circuit further noted that prior ITC §337 investigations confirm that the domestic industry analysis is quantitatively based and that qualitative data alone cannot satisfy the domestic industry requirement.

Agreeing with the ITC's finding that SIC's purchase of the components represented only a modest, or insignificant, investment, the Federal Circuit held that SIC did not satisfy any of prongs (A) through (C) of the domestic industry requirement. The Federal Circuit ruled that the ITC erred when it disregarded the quantitative data to reach its domestic industry finding based on qualitative factors.