

[UPDATE: June 26, 2020]

Commission's Measures to Conduct Remote Section 337 Evidentiary Hearings Involving Confidential Business Information

The Commission is committed to protecting domestic industries against unfair methods of competition and unfair acts in the importation of articles into the United States and ensuring a fair proceeding for all parties consistent with the Administrative Procedure Act. To that end, it is the Commission's priority to implement a virtual solution for conducting hearings involving confidential business information ("CBI") as soon as possible. Below is an outline of the actions underway at the Commission and its progress towards implementing virtual hearings for matters involving CBI, which is expected within about a month.

Since the activation of the Commission's COVID-19 Action Plan in March, the Commission, in consultation with the Office of Administrative Law Judges, the Office of the General Counsel, the Office of the Secretary, the Office of the Chief Information Officer, and the Office of Unfair Import Investigations, has been actively exploring existing technological resources and researching other available options for acquiring a secure FedRAMP-certified video teleconferencing (VTC) software for Section 337 hearings involving CBI. The Commission does not currently have a VTC software solution that meets the necessary level of security for such Section 337 hearings. Already, several ALJs are conducting hearings telephonically or using GoToMeeting for conferences and hearings that do not contain CBI.

In an effort to begin holding hearings involving CBI, the Commission established a 337 Virtual Hearing Working Group. This group has worked diligently and carefully over the last several months to acquire a virtual solution for Section 337 hearings involving CBI, including undertaking the following actions:

- Conduct market research on numerous VTC software that may meet the needs of a Section 337 hearing and satisfy all applicable information technological and security standards;
- Research and review protocols and VTC software used by law firms, private companies, federal and state courts, and federal agencies;
- Seek feedback from attorneys, other ALJs, and Administrative Patent Judges who have participated in other virtual hearings on the effectiveness of various VTC software;
- Initiate development of internal guidelines and considerations for rules of procedure related to virtual hearings; and
- Develop technical requirements for any potential platform, in view of security requirements.

As a result of these efforts, we issued a solicitation to procure a secure FedRAMP-certified solution to conduct these virtual hearings. We expect to select and implement a solution within about a month.

Despite the complexities of conducting virtual hearings involving CBI, the Commission has expeditiously identified and developed solutions to address the challenges associated with implementation of a new platform, including security requirements, technical requirements, internal rules related to virtual hearings, and considerations related to capturing a clear and accurate record under the APA, while abiding by the many legal requirements of the federal government procurement process.

The Commission is committed to ensuring that any virtual solution that it employs protects CBI and is compliant with the Administrative Procedure Act. Once implemented, the Commission encourages interested person to provide any feedback as the Commission, parties, and the public navigate this new virtual landscape, as implemented by the individual ALJs.