



2023 in Review:  
**Key ITC Insights**

# ITC 337 Investigations

While 2023 was a down year in terms of filed complaints, we believe it was an outlier with significant reason to reassess the viability and effectiveness of the ITC for 2024. We project that this decrease is a low point in the multi-year decline in activity for the venue. The 1276 Investigation involving Masimo and Apple shows that the ITC is a viable path to enforcing acts of unfair competition, and we expect the impact of this ruling to reinvigorate the venue in 2024.

WIT's inaugural ITC report, *2023 in Review: Key ITC Insights*, provides a comprehensive look at 2023's activities and trends at the ITC. In building industry-specific teams to address the unique needs of 337 Investigations, WIT closely monitors the ITC and the technology at issue in the complaints. This report examines the key insights from that process that we think will be of interest, highlighting the technologies at issue and year-over-year trends in filings, including the number of truly "new" investigations.

When it comes to ITC statistics, data is typically fractured and spread across multiple resources. To address this, WIT's ITC Practice Team gathered data directly from EDIS and IDS, with our team reviewing each matter to offer our clients exclusive insights on ITC Investigations filed in the calendar year 2023.

## Investigations at a Glance

2023 marked a significant downturn in overall numbers, with a total of 37 filed investigations, down from 54 the prior year. WIT also examines each new filing for whether the ITC has previously seen any of the IP involved, resulting in a revised count of only 27 "new" investigations. A notable observation

is that despite the low overall number of investigations, the number of non-patent unfair acts that were claimed this year was equal to or higher than last year (depending on the specific act). As proposed legislation looks to expand on unfair competition and trade secret claims in the ITC, the use of these claims as a basis this year is of great interest.

Additionally, WIT looked at each investigation to group them by our own assessment of the corresponding technology area and create expert teams to address pain points in these sectors. We created proprietary categorizations that offer a more nuanced look at ITC matters when compared to the ITC's broader classifications in IDS and found that the most active areas focused on WIT's key teams including networking/wireless and life sciences.

Finally, we examine the distribution of matters among the venue's current Administrative Law Judges. In subsequent reports, we will focus on each ALJ, providing a detailed view of the investigations and focus areas for each judge while highlighting their behaviors and backgrounds. This series will be bi-monthly and begin with ALJ Bhattacharyya.

# ITC Fast Facts

## 2023 Investigations by the Numbers

### TIMING

Time to Institution:	<b>34 Days</b>
Postponement to Institution Granted:	<b>5 Inv.</b>
Time to Target Date:*	<b>533.12 Days</b> <b>17.51 Months</b>
Time to Final Initial Determination:*	<b>407.21 Days</b> <b>13.38 Months</b>

\*Including amendments to date

### PUBLIC INTEREST

Investigations with Respondent Public Interest Comments:	<b>18</b>
Investigations with Complainant Replies to Public Comments:	<b>16</b>
Average Time to Complainant Response:	<b>3.59 Days</b>

### COMPLAINTS

Investigations with Amended Complaints:	<b>2</b>
Investigations with Supplements to Complaint:	<b>26</b>

### REQUESTS TO DENY INSTITUTION

Requests:	<b>6</b>	Granted:	<b>0</b>
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### TEMPORARY RELIEF REQUESTED

Requests:	<b>1</b>	Granted:	<b>0</b>
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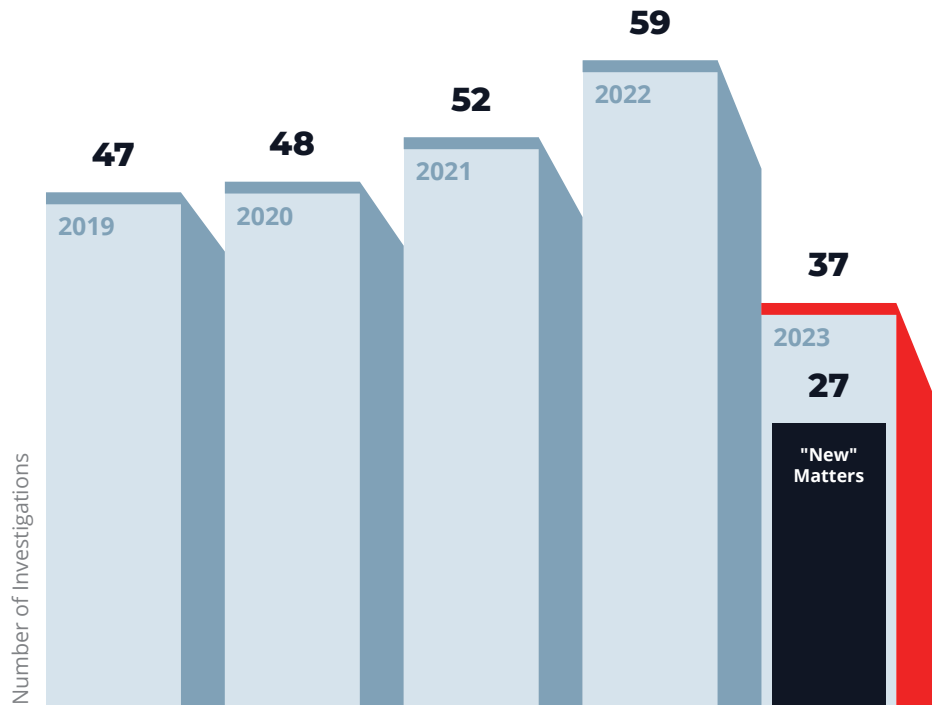
### 100 DAY REVIEW

Case Number	100 Day Basis	Granted
337-TA-1389	Obviousness (Double Patenting)	No
337-TA-1383	Economic Prong	No
337-TA-1384	Standing (Patent Ownership)	No
337-TA-1373	Standing (Patent Ownership)/Technical Prong	No
337-TA-1367	Economic Prong	No
337-TA-1356	Economic Prong	No

# Investigations Instituted Each Year

## “New” Investigations

WIT monitors whether cases involve intellectual property previously litigated at the ITC. Last year, WIT classified 27 out of 37 investigations as "new," indicating that the intellectual property in question had not been the subject of prior ITC investigations. When narrowing the scope to the 32 patent-specific matters, only 23 qualified as "new" under this standard.



Additionally, as of the date of this report, the data shows:

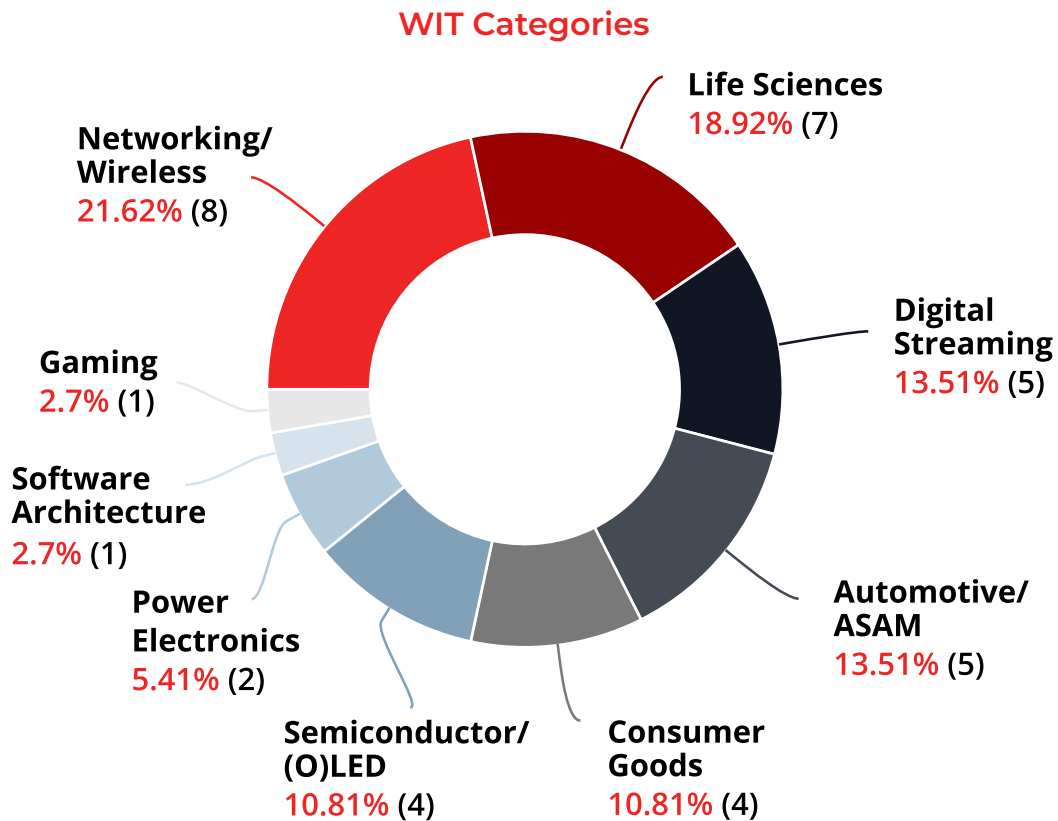
**10** of the **37** have **0** associated district court matters

**7** of the patent infringement investigations have no related district court matters

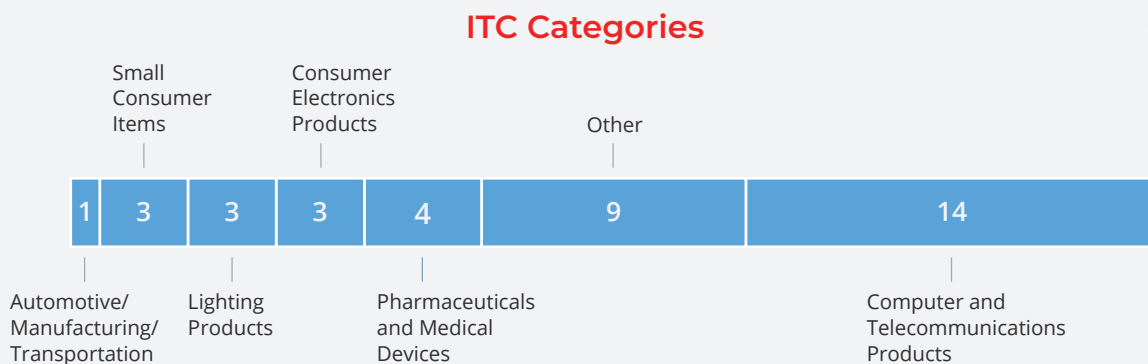
# Complaints Categorized by WIT Technology Focus

## Deep Dive

WIT's primary purpose in diving deeper into the ITC docket is to monitor and predict the technical and industry experts who would be most useful to our clients. In doing so, our team looked at all the investigations to group them by our own assessment of the corresponding primary technology area.

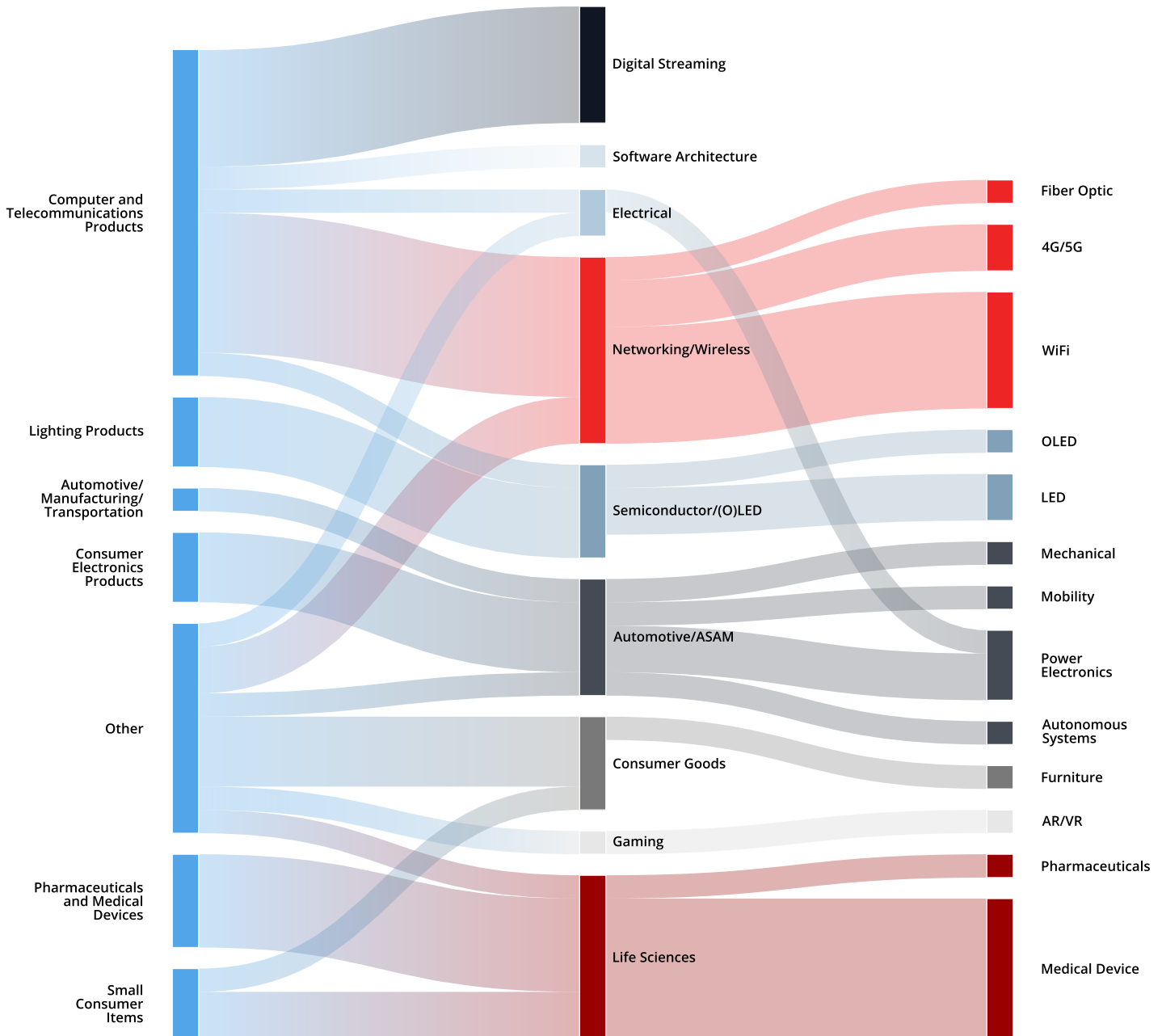


WIT's categorizations offer a more nuanced look at ITC matters with respect to emerging technologies when compared to the ITC's broad classifications, as shown below.



This chart shows both a further refinement of WIT's category analysis and how our definitions differ from the ITC's. Our refined categories directly reflect the industries served by WIT's specialized expert teams.

### Category Breakdown

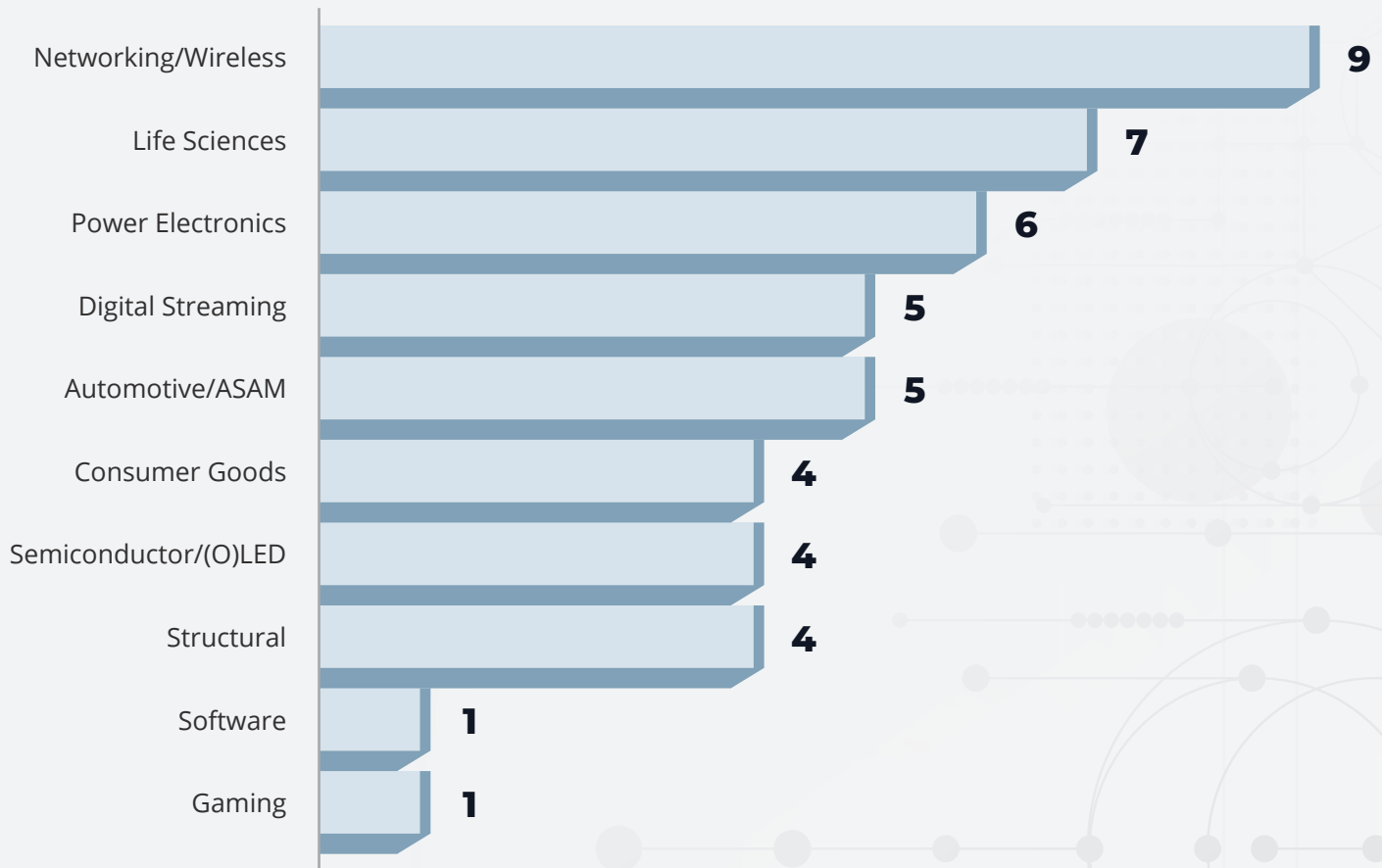


As an example, the 1363 investigation is directed towards LiDAR for use in automated driving. While the ITC categorizes it as "Other", we categorize it as Automotive/ASAM to better align with the specific technology area at issue.

# Complaints Categorized by WIT Technology Focus

## Overlapping Technologies

There were numerous investigations last year where different areas of technology were represented in the same investigation. The following shows the distribution of categories across 2023's matters where a single investigation may be represented in multiple categories.



To show how these groupings can overlap, WIT categorized the 1386 investigation as primarily a Networking/Wireless matter. But since there was a patent at issue on the structure of a laptop hinge mechanism, we gave this investigation a secondary category of Structural, which is a technology area that our Mechanical/Design experts can address.

# Investigations by Unfair Act Alleged

## Trend Overview

Outside of the obvious trend (fewer patent investigations), the below comparison of claimed unfair acts in 2022 and 2023 highlights that both the number of investigations not alleging any patent infringement remained the same and that the variety of non-patent unfair acts increased this year.

Investigation Type	2022	2023	Δ
Patent Infringement	54	32	(22)
False Advertising	1	4	3
False Designation of Origin	0	4	4
Trade Dress Infringement	0	4	4
Unfair Competition	2	3	1
Trademark Infringement	1	3	2
Trade Secret Misappropriation	3	1	(2)
Copyright Infringement	0	1	1

Additionally, as of the date of this report, the data shows:

Out of **32** patent-related investigations, **9** (28%) have faced IPR challenges from Respondents to date. These challenges involve **33** IPRs filed against **30** of the **35** patents at issue.

Approximately **3.19**:  
The average number of patents in matters with "Patent Infringement" in 2022

Approximately **3.69**:  
The average number of patents in matters with "Patent Infringement" in 2023



# Administrative Law Judge Assignments

## Trend Overview

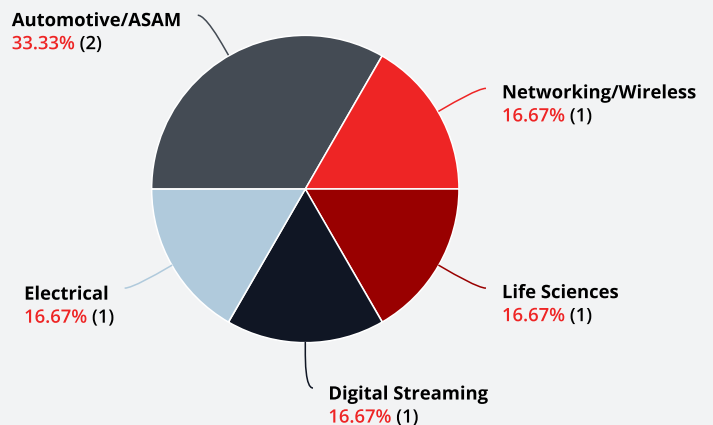
There are currently six Administrative Law Judges (ALJs) presiding over ITC proceedings with their own unique ground rules governing each investigation. CALJ Cheney and ALJ Elliot remain the ALJs with the most assignments from 2022 to 2023. The following shows the distribution of matters among the Commission’s current judges.

2022			2023		
12	21%	CALJ Cheney	14%	5	
12	21%	ALJ Elliot	22%	8	
9	16%	ALJ Bhattacharyya	16%	6	
8	14%	ALJ Moore	11%	4	
8	14%	ALJ McNamara	16%	6	
5	9%	ALJ Johnson Hines	22%	8	
3	5%	Withdrawn	0%	0	
1	2%	David Shaw			
<b>58</b>	WIT notes that there were three (3) post-institution ALJ reassignments in 2023.				<b>37</b>

## Coming Soon

Learn more about the ITC’s Administrative Law Judges in WIT’s ITC Report series. The subsequent reports will focus on each ALJ, providing a detailed view of the investigations and focus areas for each judge, highlighting their scheduling behaviors and backgrounds. This series of reports will be released bi-monthly, beginning with ALJ Bhattacharyya. Take a look at Judge Bhattacharyya’s 2023 assignments per WIT’s industry categorization.

WIT Categorization of ALJ Bhattacharyya's 2023 Assignments



## WIT's ITC Practice

**We have remained at the forefront of 337 Investigations by providing leading technical and industry experts for some of the ITC's most demanding proceedings.**

WIT is the leading agency representing testifying experts for matters involving advanced technologies and life sciences. Our experience in ITC matters is unmatched, backed by our involvement in 337 Investigations and by team members with direct experience in Commission proceedings. Our ITC Practice features a diverse group of technical and industry experts—from C-suite executives to technology specialists—who are dedicated to supporting our clients in complex matters.



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Contact WIT to learn more about our ITC Practice and how our experts can help your team prepare for a Section 337 Investigation.



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