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For the second time in 2025, the U.S. Patent and Trademark Office (USPTO) and the Department of Justice's Antitrust Division (DOJ) have teamed up to weigh in on how patent remedies should be handled. First, they filed a joint statement in a district court case to weigh in on preliminary injunctions. And now they have submitted a pointed directive to the International Trade Commission (ITC): exclusion orders should be the default, and the public interest exception should be applied only after a full determination of infringement and validity.

The ITC's Unique Role: Exclusion Orders as the Remedy

The ITC is an independent, nonpartisan federal agency with a singular power in patent disputes: it can issue exclusion orders that bar the importation of infringing products into the U.S. Unlike district courts, which can award damages and issue injunctions, the ITC's remedy is almost exclusively exclusionary. This makes the ITC a critical venue for patent holders, especially those facing foreign competition who want to keep infringing goods out of the U.S. market.

The Agencies' Position: Merits First, Exceptions Later

In their joint comment[1] on the public interest in an investigation regarding dynamic random access memory (DRAM) devices, the USPTO and DOJ make their stance clear. They argue that the public interest overwhelmingly favors robust enforcement of valid patent rights, particularly at the border. Public interest factors such as public health, competitive conditions, and consumer welfare should not be used as preliminary barriers to enforcement. Instead, these factors should only be considered after the ITC has determined that a patent is valid and infringed, and even then, only in truly extraordinary circumstances. The agencies emphasize that public interest exceptions are meant to be narrow, reserved for rare situations where the evidence clearly justifies withholding an exclusion order.

This is not a call for a new rule but an argument clarifying how the law is meant to work. The agencies cite statutory language, historical precedent, and prior ITC practice to support their view. Their filing is a reminder to the ITC: do not let public interest arguments derail enforcement before the merits are decided.

A Subtle but Striking Contrast

In the district court context, the agencies' message[2] was clear: courts should be willing to issue preliminary injunctions even before a full trial on the merits. The idea is that waiting too long could irreparably harm the patent holder, especially when monetary damages are allegedly hard to quantify.

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But at the ITC, the agencies take a different tack. Here, they urge the ITC not to weigh public interest exceptions until after infringement and validity have been determined, essentially, after a trial on the merits. The public interest, in their view, is best assessed once the facts are settled, not as a hurdle at the outset.

It is an interesting contrast: in one setting, early action is encouraged to protect patent rights; in the other, restraint is advised until the case is fully developed. The two approaches, though, share a common theme: patents should be respected, and enforcement should be robust. The agencies are clearly signaling that the value and power of patents are on the rise, whether in federal court or before the ITC.

Final Thoughts

If the ITC and district courts follow the agencies' lead, the value of patents as enforcement tools and negotiation assets will likely rise. Exclusion orders and preliminary injunctions may become more attainable, increasing both the leverage of patent holders and the risks for alleged infringers. In today's climate, with innovation and competition at the forefront, the USPTO and DOJ are making their priorities clear: patents matter, enforcement matters, and public interest exceptions should remain just that, narrow exceptions and not the rule.

Footnotes

1 *https://www.justice.gov/atr/media/1419496/dl* (Joint Comment on the Public Interest of the United States Patent and Trademark office and the United States Department of Justice, November 25, 2025).

2 *https://www.justice.gov/atr/media/1404506/dl* (Statement of Interest of the United States of America, June 6, 2025).

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