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PATENT STRATEGIC MUSINGS – THE ITC

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OVERVIEW

1. What is the ITC?
2. Advantages of the ITC
3. Domestic Industry Requirement
4. Litigation Financing



WHAT IS SECTION 337?

(19 U.S.C. § 1337)

- Trade remedy to address unfair competition
 - Authorizes the ITC to investigate unfair methods of competition and unfair acts in the importation of articles into the United States
 - Enforced by U.S. Customs and Border Protection, a component of the U.S. Department of Homeland Security
- Examples of an “unfair act”:
 - Infringement of U.S. intellectual property rights (patents, trademarks, copyrights)
 - Over 90% of recent investigations involve U.S. patents
 - Trade secret misappropriation
 - Lanham Act claims (common law trademarks, trade dress, false advertising)
 - Other unfair competition (antitrust, false designation of origin, and others)

WHY COMPANIES CHOOSE THE ITC



REQUIREMENTS FOR FILING AN ITC ACTION

An Unfair Act in Connection with an Imported Article

- **Infringement** of a U.S. intellectual property right or other unfair act involving the imported article
- **Importation** into the United States, the sale for importation, or the sale within the United States after importation by the owner, importer, or consignee of the article
- **Domestic Industry** related to articles protected by a U.S. intellectual property right or targeted by the unfair acts—exists or is in the process of being established

Additional Element for Non-Statutory Unfair Acts

- **Injury** that the threat or effect of importation is to destroy or substantially injure a domestic industry, or prevent the establishment of such an industry

DOMESTIC INDUSTRY

➤ Statutory IP

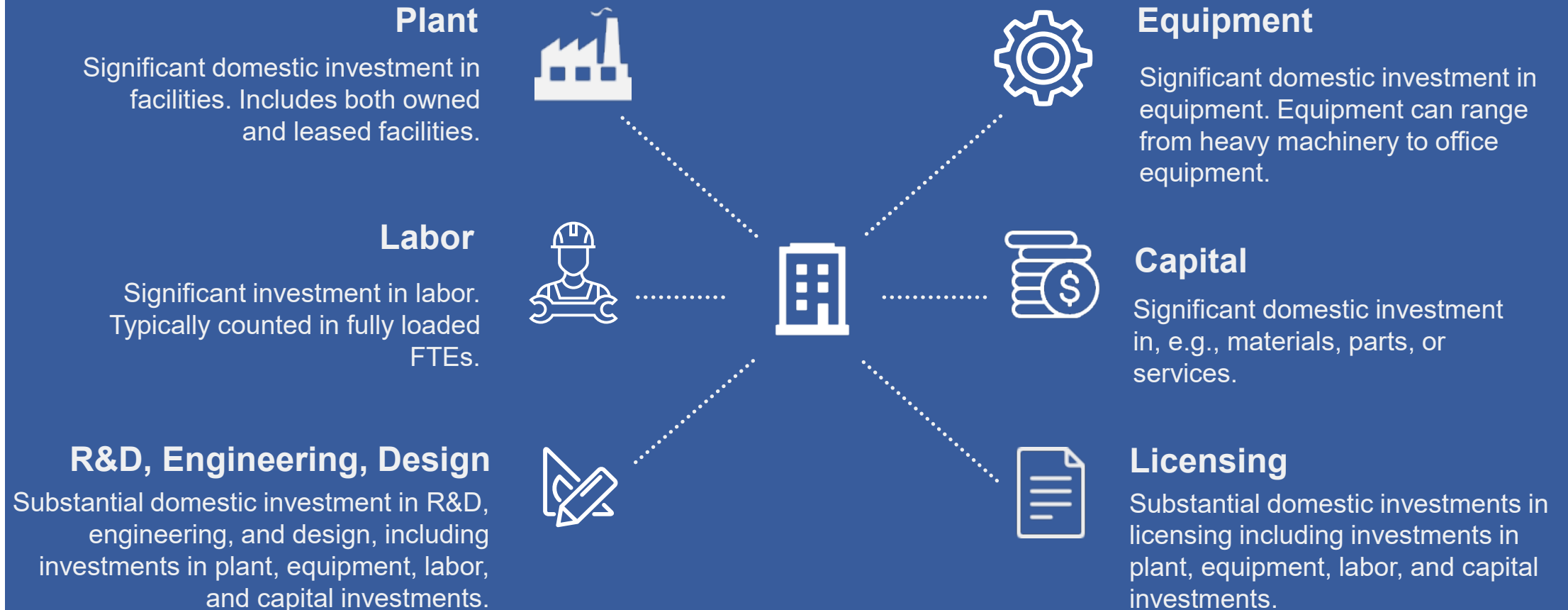
- **Technical Prong:** Articles must practice the IP asserted
 - Proof of “articles protected by the patent” is required to satisfy the technical prong
- **Economic Prong:** Domestic investments must relate to the protected articles
 - Investments must be “significant” or “substantial”
 - Domestic production/manufacturing not required

➤ Non-Statutory IP

- Injury and threat of injury to the domestic industry
- Defined the industry that is the target of the unfair acts

ECONOMIC PRONG: REQUIRED USE

Investments and Activities that Comprise an Economic Domestic Industry





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Evan is the Chair of Fabricant LLP's ITC practice. He focuses on Section 337 investigations before the ITC, counseling clients on the nuances of navigating fast-paced Section 337 litigation involving patents, trademarks, and trade dress, and other unfair acts.

Evan is recognized among the nation's top ITC Section 337 practitioners by Chambers USA and Chambers Global and has represented clients in ***more than thirty Section 337 investigations.***

He leverages his mechanical engineering background and experience as a primary examiner at the U.S. Patent and Trademark Office to litigate disputes across a wide variety of industries including LED lighting devices, mobile electronic devices and chipsets, data processing systems, semiconductors, lighting control devices, consumer electronics and accessories, shoes, household appliances, automotive, and various mechanical devices.

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