

## Survey Planning and Design Document

### Survey of the Section 337 Mediation Program

The U.S. International Trade Commission (USITC) is implementing a survey to gather participant feedback on the effectiveness of the Mediation program for Section 337 studies and cases.

#### A. The Survey Population

This will be a voluntary, web-based survey. The survey population will include parties that have taken their case to mediation. The link will be sent to participants in mediation and the USITC mediation program.

#### B. Field Testing

In April 2015, the USITC field tested the survey with regard to scope and clarity of questions. Individuals with the organizations presented below were identified as participants for field testing of the survey.

Name	Organization	Email Address
Michael R. Franzinger	Sidley Austin LLP	<a href="mailto:mfranzinger@sidley.com">mfranzinger@sidley.com</a>
Mark L. Hogge	Dentons	<a href="mailto:Mark.hogge@dentons.com">Mark.hogge@dentons.com</a>
Gary M. Hnath	Mayer Brown	<a href="mailto:glnath@mayerbrown.com">glnath@mayerbrown.com</a>
John R. Fuisz	The Fuisz-Kundu Group LLP	<a href="mailto:jfuisz@fuiszkundu.com">jfuisz@fuiszkundu.com</a>
G. Brian Busey	Morrison & Foerster	<a href="mailto:gbusey@mofo.com">gbusey@mofo.com</a>
Daniel Schaal	Hogan Lovells LLP	<a href="mailto:Daniel.schaal@hoganlovells.com">Daniel.schaal@hoganlovells.com</a>
Thomas L. Jarvis	Winston & Strawn	<a href="mailto:tjarvis@winston.com">tjarvis@winston.com</a>

Comments on the survey were received from Gary M. Hnath and G. Brian Busey. Below is a table providing the comments and actions taken in response to the comments.

Field tester	Recommendation	Comment/solution
Gary M. Hnath	<p>I would ask specifically</p> <ol style="list-style-type: none"> <li>1. whether participation in the mediation program should be mandatory and a short explanation for the response;</li> <li>2. how can the Commission encourage more frequent use of the mediation program (or increase the effectiveness of the program);</li> <li>3. whether there are cases where you believe mediation could have been used effectively, but was not, and what could have been done to encourage the use of mediation in those cases.</li> </ol>	<ol style="list-style-type: none"> <li>1. Added this as Question 11.</li> <li>2. Added this as Question 13.</li> <li>3. Added this as Question 12.</li> </ol>
G. Brian Busey	<ol style="list-style-type: none"> <li>1. suggest changing "unfair act" to "alleged unfair act" for more neutral appearance</li> <li>2. suggest revising the question re source of mediators so that the response can be a mixture of mediators from the ITC roster and outside sources; in one case with many respondents we used multiple mediators on two Coasts.</li> <li>3. for the question regarding "What alleged unfair acts?" suggest that the response allow for combinations of types such as patent and trade</li> </ol>	<ol style="list-style-type: none"> <li>1. Modified Question 4 to reflect this.</li> <li>2. This question was already a multiple-answer question ("(check all that apply)")</li> <li>3. This question was already a multiple-answer question. "(Check all that apply)" was</li> </ol>

	<p>secrets</p> <p>4. the question regarding "mediation resulted in unfair act being..." is confusing. Try asking "the mediation resulted in investigation being.... 1. settled, 2. terminated by other than settlement 3. modification or clarification of alleged unfair acts, or 4. no change"</p> <p>5. in my experience with mediation in ITC cases, the mediation often does not immediately produce settlement. However, sometimes the mediation plants the seeds for a later settlement. To obtain the full picture, you may want to ask whether even if the mediation did not lead to an immediate settlement or resolution, "did the mediation in your view contribute to later resolution or settlement?" if so, how long after the mediation did that occur</p>	<p>added to make this more clear.</p> <p>4. Updated the wording in Question 7 to reflect this.</p> <p>5. Added this as Question 10.</p>
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### C. Reported Burden and Projected Cost

The reporting burden is estimated to be:

Total number of survey participants:	(No.)	Not to exceed 100
Frequency of response:	(No.)	1
Average completion time per survey:	(hours)	0.25
Total burden:	(hours)	25 hours
Total cost:	(dollars)	\$8,750 (25 hours X \$350 per hour)

Note: The hourly cost estimate reflects the average billable hour for an attorney working on an intellectual property matter.