**GAO Says Customs Does Not Effectively Enforce Section 337 Exclusion Orders**

On November 19, 2014, the U.S. Government Accountability Office (GAO) released the report, *Intellectual Property: U.S. Customs and Border Protection Could Better Manage Its Process to Enforce Exclusion Orders.* The report reviews U.S. Customs and Border Protections (CBP) efforts to enforce Section 337 exclusion orders. Section 337 of the Tariff Act of 1930 allows U.S. patent holders file a lawsuit over patent infringement in a federal district court and then use Section 337 to bring a case over the same subject matter before the International Trade Commission (ITC). While the federal district court can award a monetary settlement to the patent holder, the ITC can take action to exclude imports of these products into the U.S. CBP is responsible for enforcing these exclusion orders.

The GAO finds that there are “significant” shortcomings of CBP’s management of exclusion orders. The report says CBP does not regularly review exclusion orders, nor does CBP establish time frames for implementing steps in the enforcement process:

*CBP’s management of its process for enforcing exclusion orders at the ports has weaknesses that result in inefficiencies and enforcement gaps. CBP does not routinely review exclusion orders to ensure that trade alerts exist for all ITC exclusion orders. In addition, CBP has not established a time frame for trade alert issuance in CBP’s guidance, which prevents management from monitoring timeliness in issuing trade alerts.*

The first fault the GAO finds is that CBP does not regularly review the ITC’s list of exclusions orders. Without identifying products that are barred for entry by the ITC, CBP cannot issue trade alerts with enforcement instructions in a timely manner. This increases the likelihood that infringing products could enter the U.S. Following is a quote from the report:

*CBP does not routinely review ITC’s list of exclusion orders or take other action to ensure that a trade alert has been posted to its intranet for each order. As a result of our audit, CBP reviewed ITC’s list of exclusion orders as of April 30, 2014, and reported that it had posted trade alerts for 83 of the 94 exclusion orders; however, it posted 17 of the 83 trade alerts after our request for data.*

Secondly, GAO says the Intellectual Property Rights (IPR) Branch of CBP has not established a time frame for issuing trade alerts. GAO says that the IPR Branch generally took anywhere from 2 days to about 3 months to post a trade alert. Without established time frames, CBP cannot

*CBP cannot monitor and assess its performance on timeliness, which increases the risk of enforcement gaps. The longer it takes the national targeting groups to receive trade alerts and develop targeting approaches that will identify shipments for examination at the ports, the greater the risk that infringing products covered by an exclusion order may be permitted entry into U.S. commerce.*

*CBP management cannot hold staff accountable for timely enforcement. Effective internal control, such as establishing time frames for performance, is a key factor in achieving agency missions and program results through improved accountability.*

Finally, the GAO makes three recommendations to CBP. The GAO says these recommendations will improve the capacity of the U.S. government to monitor and enforce compliance ITC exclusion orders:

* *Routinely ensure that trade alerts are posted on the CBP intranet for each exclusion order.*
* *Routinely identify any orders whose changed conditions merit a CBP request that ITC rescind them.*
* *Monitor timeliness by establishing time frames for issuing trade alerts for exclusion orders and reviewing performance against these standards.*