

ITC OPENS THE DOOR WIDER TO NON -PRACTICING ENTITIES**by Salina Hamilton*

In a recent ruling, the International Trade Commission permitted a non-practicing entity to rely on the activities of its licensee to establish the “economic industry” prong of the domestic industry requirement. In Investigation 337-TA-1025, Complainant Silicon Genesis Corp alleged that Respondent Soitec, SA, infringed its patents for silicon-on-insulator wafers. After conducting a full evidentiary hearing, ALJ Mary Joan McNamara found that Silicon Genesis had satisfied the “economic prong” of the domestic industry requirement through the significant investments in equipment, research, and development by Silicon Genesis’s licensee—SunEdison Semiconductor Ltd.—which was neither a respondent nor a complainant in the ITC investigation. Though the ITC has long recognized that a licensee’s activities can be used to satisfy the domestic industry requirement, this recent ruling opens the door wider to NPEs by providing a potential backdoor into the ITC for NPEs who would otherwise be barred by lack of a domestic industry. It also serves as a warning to licensees that could be dragged into the discovery process of costly ITC investigations by their NPE licensors in order to establish the economic prong of the domestic industry requirement. As such, it should be a point of careful consideration for attorneys when drafting patent licenses for either NPEs or their licensees or when drafting ITC complaints.

Read more [here](#).

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