



SECTION 337 STATISTICS: NUMBER OF SECTION 337 INVESTIGATIONS BROUGHT BY NPES (UPDATED ANNUALLY)

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Updated: 1/22/21

No commonly accepted definition of an NPE exists. For analytical purposes, the Commission has gathered data using the following categories [1]:

- *Category 1 NPEs.* Entities that do not manufacture products that practice [2] the asserted patents, including, e.g., inventors who may have conducted R&D or built prototypes but do not make a product covered by the asserted patents and therefore rely on licensing to meet the domestic industry requirement; research institutions, such as universities and laboratories, that do not make products covered by the patents, and therefore rely on licensing to meet the domestic industry requirement; start-ups that possess IP rights but do not yet manufacture products that practice the patent; and manufacturers whose own products do not practice the asserted patents.
- *Category 2 NPEs.* Entities that do not manufacture products that practice the asserted patents and whose business model primarily focuses on purchasing and asserting patents.

Number of Section 337 Investigations Brought by NPEs (Updated Annually)

Calendar Year	Total # Invs.	Non-NPE Invs.	Category 1 NPE	Category 2 NPE
5/16/2006 through 12/31/2006	15	14	1	0
2007	35	30	4	1
2008	41	34	6	1
2009	31	23	4	4
2010	56	46	6	4
2011	69	56	4	9
2012	40	27	6	7
2013	42	33	3	6
2014	39	36	0	3
2015	36	34	0	2
2016	54	49	4	1
2017	59	49	7	3
2018	50	43	6	1
2019	47	40	4	3
2020	48	38	7	3

[1] The Commission's categories draw from the analysis and definitions adopted by the Federal Trade Commission. See Federal Trade Commission, *The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition* at 8 n.5 (March 2011); Federal Trade Commission, *Patent Assertion Entity Activity* at 15-17 (October 2016).

[2] To “practice” the patent in the context of section 337 means that a product exists that satisfies at least one claim of each patent asserted in the investigation.

Source: *USITC, Budget Justifications, FY 2008–FY 2016*; *USITC, Performance and Accountability Report, FY 2006–FY 2010*; *USITC, Annual Performance Report, FY 2011–FY 2012*; *USITC, Annual Performance Plan FY2014–2015 and Annual Performance Report, FY 2013*; *USITC, Annual Performance Plan FY 2015–2016 and Annual Performance Report, FY 2014*; *USITC, Year in Review, for Fiscal Years 2006–2010*; *U.S. International Trade Commission FY 2011 At A Glance*; *U.S. International Trade Commission FY 2012 At A Glance*; and *U.S. International Trade Commission FY 2013 At A Glance*; the USITC's Electronic Docket Information System (EDIS); USITC, 337Info.

A flowchart is provided [here](#) demonstrating decision points employed by the Commission in classifying an entity as a Category 1 NPE, as a Category 2 NPE, or non-NPE solely for purposes of the statistics provided here.

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