

Attorneys Chastened By Fed. Circ.'s ITC Mixed Deadline Ruling

By **Theresa Schliep**

Law360 (January 12, 2026, 9:59 PM EST) -- A Federal Circuit decision concluding that certain mixed rulings from the U.S. International Trade Commission can generate different appeal deadlines, even when issued in the same document, is a reminder of just how strict courts can be when handling unclear appeal due dates, attorneys told Law360.

Until Thursday's precedential opinion from the Federal Circuit panel in *Crocs v. International Trade Commission*, it wasn't clear that divergent appeal deadlines could emerge from mixed ITC decisions that are made in the same document. But the court found that a single document can result in one deadline for challenging a finding of no violation of Section 337 of the Tariff Act of 1930 and another for challenging limited exclusion orders, which are subject to a presidential review period that essentially delays the 60-day appeal window.

This outcome caught the attention of ITC attorneys, who say it answers a question that needed clarity. It should also encourage attorneys to assume the worst when it comes to courts' interpretation of deadlines, they added.

"The lesson here is to pick the earliest worst-case scenario deadline for yourself," Lisa Kattan, chair of the ITC practice group at Baker Botts LLP, told Law360. "Stick to that one if there's anything that's unclear about when something should be filed."

And with the court also finding that *Crocs* forfeited its right to argue that equitable tolling can provide some flexibility on the deadline, since the company didn't sufficiently advance that argument in its opening brief, the opinion is an example of one of the plentiful hazards facing litigants at the ITC and beyond, according to Matt Rizzolo of Morgan Lewis & Bockius LLP.

"This whole case is generally a cautionary tale," he said.

In its decision, the three-judge panel deemed untimely *Crocs*' appeal of the ITC's decision finding that three companies did not violate Section 337 by infringing any trademarks on its "classic clog" shoes with their footwear imports. The deadline for that finding was Nov. 13, 2024, but *Crocs* didn't file its appeal until Dec. 22.

The clock started running on the window for that appeal even though it hadn't started on the second component of the ITC's ruling that entered a limited exclusion order against four companies that didn't respond to the proceedings and were found in default. That finding is subject to a 60-day period of

presidential review, after which the countdown begins.

The Federal Circuit panel cited a 1986 decision called *Allied v. U.S. International Trade Commission*, in which the court likewise said a similarly mixed ITC decision generated different deadlines due to a presidential review period that applies to limited exclusion orders, but not to findings of no violation. The court used that reasoning years later in another case, *Broadcom v. International Trade Commission*, which the panel also relied on Thursday.

The panel said it was unconvinced by Crocs' argument that there can't be this split deadline when both findings were made in a single document, titled "Notice of Final Determination and Commission Opinion." This argument "merely elevates form over substance," the Federal Circuit said.

"Even Crocs seems to concede that if the commission had issued two different writings — even if those orders came out on the same day — then under our court's precedent, the time period to file a notice of appeal would be different for the two sets of respondents," it said.

Attorneys say the concise, 13-page opinion is instructive for practitioners trying to meet deadlines and fully appreciate the nuances of ITC practice. Gwendolyn Tawresey of Troutman Pepper Locke LLP said the outcome of the case doesn't completely comport with how the Federal Circuit approaches district court appeal deadlines, when the court will often "talk about the dangers of piecemeal appeals."

Attorneys might be better off risking admonishment from the court when filing an appeal too early, considering those consequences are less severe than those for missing a deadline, she added.

"It's a reminder to practitioners to appeal early and often because the penalties if you appeal too early are nothing," Tawresey said. "If you appeal too late, you know your appeal is dismissed."

Kattan noted one counterintuitive outcome from this ruling: Even if there are two deadlines and two notices of appeal for these kinds of ITC determinations, that doesn't mean the Federal Circuit will address them separately.

"The irony here is if they had gotten the date right, it would have been consolidated anyway, and it would have all been one big appeal," she said.

The opinion also contains lessons for attorneys to ensure the adequacy of their initial pleadings. For instance, the panel said Crocs hadn't made enough of an argument that the deadline wasn't jurisdictional or that equitable tolling applied. But Tawresey noted that Crocs did cite a U.S. Supreme Court opinion called *Harrow v. Department of Defense* from 2024 that found that deadlines like the one at issue are not jurisdictional.

"I wish the Federal Circuit had given more information about why it found this argument waived," she said, adding that "from an outside perspective, it is discussed in the briefs."

--Editing by Adam LoBelia.