Client Alert

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Massachusetts' New Local Rule Promises Efficient Patent Trial Resolution

Given a jury pool populated with well-educated and technology-savvy citizens, a surplus of colleges and universities from which qualified and experienced local experts can be drawn and a vibrant and growing local technology sector, Massachusetts has long been among the more attractive venues in the country for patent infringement litigation. Despite these advantages, though, the Massachusetts patent infringement docket has lagged far behind the most popular courts, such as the Eastern District of Texas and the Northern District of California. By adopting a new local rule for the administration of patent cases, the US District Court for the District of Massachusetts has identified and addressed one of the main reasons for that discrepancy: efficiency. As of today, June 1, 2018, Massachusetts now has a local rule that mandates procedures to ensure a swift resolution of patent infringement trials.

In the District of Massachusetts, the court will now be required to schedule a trial within 24 months of the initial scheduling conference, which itself is usually scheduled within three months of the filing of the complaint. In order to achieve such a speedy trial, the new local rules also mandate far more rapid progress through important patent trial benchmarks:

- Within 21 days of the initial scheduling conference, the patentee must produce infringement claim charts identifying each accused product or method and the patent claims that each product or method allegedly infringes, along with an element-by-element description of how each element of each asserted patent claim is found in each accused product or method;

- In that same time, the patentee must also produce both the documented history of each asserted patent's application before the US Patent and Trademark Office, along with nonprivileged laboratory notebooks and other documents concerning the conception and reduction to practice of the patented product or method;

- Likewise, within 21 days of the initial scheduling conference, the accused infringer must produce technical documents, source code and samples of the accused products, along with noninfringement and invalidity claim charts;

- Notably, both the preliminary infringement claim charts submitted by the patentee and the preliminary noninfringement and invalidity contentions may be amended or supplemented only by leave of the court upon a showing of good cause, ensuring that the initial disclosures are meaningful;

- Claim construction (aka Markman) hearings in which the scope and meaning claims of the patent are argued by the parties, which used to have no predictable timeline, must now be held within nine months after the initial scheduling conference. The close of fact discovery must now be set at the later of 15 months after the initial scheduling conference or 60 days after the court's ruling on claim construction, and expert discovery must close by the later of 18 months after the initial scheduling conference or 90 days after the close of fact discovery; and

- In order to ensure that the claim construction hearing itself proceeds efficiently, the new rule also mandates that the hearing is to proceed on attorney argument only, and that live witness testimony may not be presented without the court's approval.

Other parts of the rule remove points of contention that have, in the past, interfered with the orderly advancement of patent infringement cases. For example, a default protective order is automatically in place to help facilitate early disclosure, and the requirements for parties relying upon an advice of counsel defense to accusation of willful infringement are detailed in the rule.

With these new procedures in place, Massachusetts promises to be among the most efficient venues in the country for the resolution of patent infringement disputes. This, along with the scientific and technological savvy of its jurors, should make Massachusetts a top choice for any newly filed patent litigation.

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