

Patent Litigation 2020: Advanced Techniques & Best Practices

LIVE WEBCAST

October 21, 8:30 a.m. – 5:00 p.m. CT

LIVE WEBCAST

November 2, 8:30 a.m. – 5:00 p.m. ET

Whether you represent potential plaintiffs or defendants in patent litigation, you must be up-to-date on the current state of the law and able to quickly develop successful litigation strategies and tactics. Outside and in-house lawyers with national reputations in patent litigation will offer guidance on preparing for, managing and trying bench and jury patent trials, and the program as a whole will furnish comprehensive coverage of every phase of these patent matters. Judges will provide their insights on the conduct and management of patent litigation, in addition to sharing practical guidance for litigants.

THE AGENDA

PATENT LITIGATION – THE YEAR IN REVIEW: CASE LAW DEVELOPMENTS AND PATENT LITIGATION METRICS AND ANALYTICS INCLUDING NUMBER OF FILINGS, VENUES, SUCCESS RATES, AND COST OF LITIGATION

This session will provide a review of the significant district court, appellate court, ITC, and Patent Office decisions of the past year, as well as an analysis of how these cases comport with or change existing jurisprudence. In addition, this session will review statistical aspects of patent litigation, including number of filings, venues where patent litigations are filed, time to resolution, success rates, and data concerning the cost of litigation. Where available, data concerning differences in venues will be presented.

THE ROLE OF PATENTS AND PATENT LITIGATION AS PART OF A CORPORATE BUSINESS STRATEGY

Patent may have drastically different functions and values for different companies in different industries or at different stages of their existence. Patents do not mean the same thing to start-ups as they do to established companies. Some industries are more litigation-intensive than others. Non-practicing entities are more active in some industries than in others. This session will provide an overview of the many considerations in obtaining, maintaining and asserting patents as part of a corporate business plan. This session will cover such topics as managing costs, tactical and strategic decisions in asserting and defending against patents and managing the risks associated with patent litigation. A panel of inside and outside counsel will discuss the many factors that need to be considered in managing patents and patent litigation in today's business world.

PATENT LITIGATION AS VIEWED FROM THE BENCH – HOW DISTRICT COURTS HANDLE PATENT LITIGATION AND WHY IT ISN'T THE SAME EVERYWHERE

Despite a national set of patent laws, case law, the Federal Rules of Civil Procedure and Federal Rules of Evidence, patent litigation is not conducted the same way in every jurisdiction and sometimes, not even in the same jurisdiction. Some district courts have local patent rules, some do not. Local patent rules differ, for example as to the conduct of claim construction proceedings. A panel of judges from different jurisdictions will discuss a wide range of issues and procedures and explain the rationale for how they handle patent cases. Topics will range from issues arising at the earliest stages of a case, such as motions for transfer, to stay or to dismiss, claim construction, fact and expert discovery, all the way through pre-trial procedures and the conduct of trials. Attendees will have the opportunity to ask questions of the judges.

MAKING THE TECHNICAL ISSUES OF A PATENT CASE COME TO LIFE: EFFECTIVE OPENING STATEMENTS THAT TELL A PERSUASIVE STORY TO THE TRIER OF FACT

Winning patent trials requires the presentation of a persuasive, compelling, provable, and understandable story to the trier of fact, whether a jury or a judge. Development of the story and its themes begins during discovery when the evidence of what happened is revealed. Experienced lawyers use discovery to modify, develop or change the themes as more evidence emerges. Those themes are often tested in jury research where the story, evidence, demonstrative exhibits, and even witnesses are presented to mock jurors or judges. Ultimately, that story

is told to the trier of fact in an opening statement. This session will include a live demonstration of openings in a patent jury trial followed by commentary and a discussion led by an experienced jury consultant.

CLAIM CONSTRUCTION IN THE TWENTY PLUS YEARS SINCE THE MARKMAN DECISION – THE MOST IMPORTANT ISSUES IN MOST PATENT CASES

Since the U.S. Supreme Court decision in *Markman v. Westview Instruments, Inc.*, 517 U.S. 370 (1996), the separate, and often early, claim construction proceeding has dramatically altered patent litigation. Early focus on claim construction begins even before litigation commences when a plaintiff must confront the issue of whether the claims properly construed define patentable subject matter, are infringed, are valid over the prior art and sufficiently definite and enabled. For a potential defendant confronted with a possible litigation, the claim construction analysis affects its strategy, whether to seek relief before the Patent Office, file a declaratory judgment in a jurisdiction of its choosing or move to dismiss. This session will cover the rules of claim construction, use of experts, the role, if any, of fact discovery, and include a demonstration of a claim construction argument.

ETHICS IN PATENT LITIGATION – JURY RESEARCH INCLUDING USE OF SOCIAL MEDIA

Jury trials present unique ethical issues which have been compounded by social media and internet searches. This year's ethics session will focus on some of these issues, including the limits of jury research in the trial venue, research into Internet usage by potential jurors and the use of social media to learn more about a potential or actual juror. Differences in rules in different jurisdictions, and even in the same jurisdiction, will be discussed, such as the ABA Model Rule of Professional Conduct 3.5(b), 7.1 and Rule 8.4, Illinois Rule of Professional Conduct 3.5(b) and 8.4, Florida Rule 4-3.5(d) and Virginia Rule 3.5(a). Issues relating to Internet usage by potential or actual jurors to learn more about the litigation, as well as the use of social media to influence public perceptions of parties, the litigation or even lawyers and law firms, will also be covered. The session will include a review of recent case law and ethics opinions, such as the ABA's 2014 *Formal Opinion* 466 and the New York County Lawyers' Association 2011 *Formal Opinion* No. 743, on the use of social media to conduct research on potential jurors.

October 21

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