

PATENT LITIGATION: A VIEW FROM THE BENCH

Panelists:

Chief Administrative Law Judge Charles Bullock (ITC)

US District Court Judge John Lifland (D.NJ – Ret.)

US District Court Judge Maryellen Noreika (D.Del.)

Moderator:

Steven Rizzi (King & Spalding)

Thursday, September 19, 2019

LOCAL PATENT RULES & STANDING ORDERS

- DISTRICT OF NEW JERSEY LOCAL PATENT RULES
 - Local Civil Rule 9.3 – Applies In All Patent Litigations
 - Default Attorney’s Eyes Only Confidentiality Order Applies Until Confidentiality Order Entered
 - Disclosure Of Asserted Claims and Infringement Contentions, including Claim Charts (14 days after Initial Scheduling Conference)
 - Non-Infringement Contentions (45 days after Infringement Contentions)
 - Invalidity Contentions (45 days after Infringement contentions – same time as Non-Infringement Contentions)
 - Response To Invalidity Contentions (15 days after Invalidity Contentions)

LOCAL PATENT RULES & STANDING ORDERS

- DISTRICT OF DELAWARE DOES NOT HAVE LOCAL PATENT RULES
- JUDGES MAY HAVE STANDING ORDERS OR INDIVIDUAL PRACTICES GOVERNING PATENT CASES
- JUDGE NOREIKA HAS MODEL PATENT SCHEDULING ORDERS FOR ANDA CASES & NON-ANDA CASES IN SEPTEMBER 2019
 - Non-ANDA Model Order Includes Default for (a) plaintiff to provide infringement contentions and (b) defendant to provide invalidity contentions
 - No default provision for non-infringement or validity contentions

ITC RULES CREATE EXPEDITED TIMETABLE FROM FILING OF COMPLAINT TO FINAL DECISION

- INITIATION DECISION WITHIN 30 DAYS OF FILING COMPLAINT
- 100 DAY ORDERS MAY EXIST
- TARGET DATE FOR COMPLETION MUST BE SET TO BE WITHIN 16 MONTHS OF INITIATION
- DISCOVERY & MOTION RESPONSES DUE WITHIN 10 DAYS
- TRIAL ORDINARILY 8-9 MONTHS AFTER INSTITUTION
- INITIAL DECISION BY ALJ TYPICALLY 11-12 MONTHS AFTER INSTITUTION
- COMMISSION REVIEW OF INITIAL DECISION TO BE COMPLETED WITHIN 16 MONTHS OF INSTITUTION

SECTION 101 DETERMINATIONS

- CHIEF JUDGE STARK OF THE DISTRICT OF DELAWARE JUDGES HAS INSTITUTED “SECTION 101 DAYS”
- BACK-TO-BACK HEARINGS IN MULTIPLE CASES ON SECTION 101 MOTIONS TO DISMISS
- PARTIES MAY SUBMIT EXPERT DECLARATIONS IN SUPPORT OR OPPOSITION
- SHORT ORAL ARGUMENT IN MORNING
- DECISIONS ANNOUNCED FROM BENCH IN AFTERNOON

