

Client Alert

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New Fast Track in East Texas Offers Parties the Chance to Accelerate Patent Cases

By Joe Kanada and Colette Verkuil

On February 25, 2014, Chief Judge Leonard Davis of the Eastern District of Texas issued General Order 14-3, which allows for a "Track B" accelerated discovery schedule in patent infringement lawsuits.

The parties must jointly elect the Track B schedule before the last defendant has answered or moved to dismiss. The court can also order the parties to participate. Under the Track B schedule, the parties must disclose their infringement and invalidity theories and good-faith damages estimates within roughly three months of the defendants answering or moving to dismiss. Interrogatories, requests for production, and requests for admission are limited to five per side before the case-management conference.

The Track B schedule may facilitate early dispositive motion practice or settlement negotiations, and may result in shorter times to trial. Overall, General Order 14-3 has the potential to reduce litigants' costs significantly.

The notable deadlines of the Track B accelerated discovery schedule are summarized below.

| Deadline | Event |
|---|--|
| 14 days after all defendants answer or move to dismiss | <ul style="list-style-type: none"> Plaintiff must serve Infringement Contentions. Plaintiff must produce all licenses or settlement agreements relating to the asserted patents. |
| 30 days after Infringement Contentions are disclosed | <ul style="list-style-type: none"> Parties must make Initial Disclosures per Fed. R. Civ. P. 26(a)(1). Defendants must produce summary sales information for the accused products sold in the United States, including quantity and revenue of sales. |
| 14 days after summary sales information is disclosed | <ul style="list-style-type: none"> Plaintiff must disclose a non-binding good faith estimate of expected damages and the damages calculation methodology used. |
| 14 days after expected damages are disclosed | <ul style="list-style-type: none"> Defendants must serve Invalidity Contentions. |
| 5 days after Invalidity Contentions are disclosed | <ul style="list-style-type: none"> Parties shall provide notice to the Court so that the Court can set a case management conference. Until the case management conference, discovery is limited to 5 interrogatories, 5 requests for production, and 5 requests for admission per side. |

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Contact:

Joe Kanada

(650) 813-5925

ikanada@mofo.com

Colette Verkuil

(650) 813-5990

cverkuil@mofo.com

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