



## 901 Tailoring Patent Suit Costs: Can You Control Them?

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Session 901

**TAILORING PATENT SUIT COSTS:  
CAN YOU CONTROL THEM?**

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**PLAINTIFF/COMPLAINANT:  
PRE-FILING COST CONSIDERATIONS**

“THE SPORT OF KINGS”...OR IS IT?

- Patent Litigation Costs Through Trial Are Very High
- Most Patent Cases Settle Prior To Trial - - Often Shortly After Markman Order Is Issued
- Nature of Cases Vary (Bet-The-Company Litigation, Disruption to Competitors Business, etc.)
- Have Patents Been Litigated Before?

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**PLAINTIFF/COMPLAINANT:  
PRE-FILING COST CONSIDERATIONS**

**FIRST THINGS FIRST....**

- **Proper Rule 11 Analysis Can Be Expensive**
  - Locating And Purchasing Target Parts
  - Reverse Engineering (device, component, program, etc.
    - Chipworks, Semiconductor Insights, etc.
  - Analysis of Parts and Patent Claim Chart



**PLAINTIFF/COMPLAINANT:  
PRE-FILING COST CONSIDERATIONS**

**IS IT WORTH PURSUING....?**

- **Potential Damages**
  - Get Rough Damages Calculation (DataQuest, etc)
  - Are Your Products Marked? When was notice given?
- **Permanent Injunctions**
- **Most Important: Your Company's Exposure**
  - Put Patent(s) at Risk
  - Patent Infringement Counterclaims



### **PLAINTIFF/COMPLAINANT: PRE-FILING COST CONSIDERATIONS**

- “Cease and Desist” Letters
  - Provides Notice for Damages Purposes If Products Are Not Marked
  - May Avoid Litigation Altogether (but not likely)
  - Who Should Send It?
  - Get Input from Outside Law Firm (DJ Action, Request to License vs. Preliminary Injunctions, etc)



### **PLAINTIFF/COMPLAINANT: PRE-FILING COST CONSIDERATIONS**

- SELECTING THE FORUM
  - ITC?
    - “Fast Track Enforcement”
    - No Damages Awarded
  - District Court? Where?
    - Rocket Docket Venues
  - Mediation?
  - Remember: The More Time Available for the Litigation, the Higher the Cost Will Be



**PLAINTIFF/COMPLAINANT:  
PRE-FILING COST CONSIDERATIONS**

- **SELECTING A FIRM**
  - Does Firm Have ITC practice? Does Firm Have Local Office?
  - Negotiate Rates and Fees/Costs
  - Billable Hour Representation? Consider Alternate Fee Arrangement
  - Initially Use “Cheaper” Firm to Start (IP Boutique) and Bring in Litigation Counsel As Case Progresses
  - Ask Firm to Prepare A Budget



**PLAINTIFF/COMPLAINANT:  
PRE-FILING COST CONSIDERATIONS**

- **MANAGING MANAGEMENT'S  
EXPECTATIONS**
  - Make Sure You Get Management Buy-in
  - Have Outside Counsel Meet with and Present To Management
  - Consider Bi-weekly Meetings With CFO, CEO, Etc.



**PLAINTIFF/COMPLAINANT:  
PRE-FILING COST CONSIDERATIONS**

- **HIDDEN COSTS....**
  - Disruption to Business – Diverted Human Resources
    - In-house Lawyers Interviewing Employees
    - Employees Pulled Away To Assist with Rule 11 Analysis
    - Employees' Time Spent Being Deposed, Attending Trial, etc.
    - Document Collection



**DEFENDANT/RESPONDENT:  
INITIAL COST CONSIDERATIONS**

- Opinions of Counsel
  - Non-infringement; and/or
  - Invalidity
- Notice Issues
  - When Did You Receive Notice
- Counterclaims/countersuit
  - Prior Art Searching
- Similar Considerations Discussed Above
  - Exposure to Company, Disruption, etc.



## Reviewing the complaint

- *Technical defects*
  - Correct parties named?
- *Substantive defects?*
  - Over/under inclusion of products identified?
  - Existence of Licensing Defense
  - Defects in patents asserted



## Responding to the Complaint

- *Reviewing the complaint*
- *Choosing Proper Defense Counsel*
  - Using existing vs. new firms
  - Pros and cons of using same firms used for Patent Prosecution



## Cost-effective use of Experts

- *Use of in-house Experts*
- *Use of inventor Experts*
- *Use of Outside Experts*



## Discovery and costs thereof

- *Reducing Discovery costs*
  - Pre-litigation preparation is helpful
  - Proper usage of Associates and Paralegals
- *Preventing Discovery Costs*
  - Keep records in a way making discovery practical and cheap
  - Using motions to limit discovery





## **Making Settlement Decisions**

- *When to consider settlement*
- *What price Settlement?*
- *Calculating all costs*
- *Using decision-tree analysis to make settlement decisions*



## **Costs of Trial**

- *Top Ten Trial Costs*



## **Costs of Appeal**

- Top Five Appeal Costs



## **Top Ten Tips to keep patent litigation costs down**

- Top Ten Tips to keep patent litigation costs down



## Billing Guidelines and Procedures

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## Overview

- Problem
  - Skyrocketing legal costs
  - Inefficient internal invoice review process
- Plan
  - Budget
  - Billing Standards and Guidelines
  - Strict Enforcement
- Implementation
  - Communication with Law Firms
  - Internal review procedures
- Advantages
  - Reduce legal costs by at least 15%
  - Better management of law firm product
  - More accurate forecasting
  - Increased efficiency and productivity

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### Problems

- High cost of outside legal services
  - High number of Managing Law Firms, Experts Vendors High number of Vendors High number of errors in bills
  - No billing guidelines
- Inefficiency of internal procedures Inefficient internal procedures
  - It currently takes 2 – 3 months to get an invoice reviewed and paid
  - Invoices require extensive amounts of time to adequately review



### Plan

- Budget
  - Budget will be prepared based on a spreadsheet Company A will provide Budget prepared based on a Company A spreadsheet template
  - Entire case budget from Law Firms at the beginning of the case established at the beginning of the case
  - Monthly budget to be presented on a provided on a quarterly Expert and Vendor Budgets included in case budget basis
    - basis
    - Block billing prohibited
    - Travel time paid at half the normal rate
    - Clerical/Administrative tasks not reimbursed
    - Disbursements/Expenses must meet a stringent 'reasonable' standard
    - Expert and Vendor Budgets included in case budget



## Plan

- Billing Guidelines
  - Block billing prohibited
  - Travel time paid at half the normal rate
  - Travel time between offices not reimbursed
  - Clerical/Administrative tasks reimbursed at reduced rate
  - Disbursements/Expenses must be reasonable
  - Rate reduction for non-legal tasks
- Strict Enforcement
  - Budget
  - Guidelines
  - Violations will cause the entire invoice to be REJECTED!

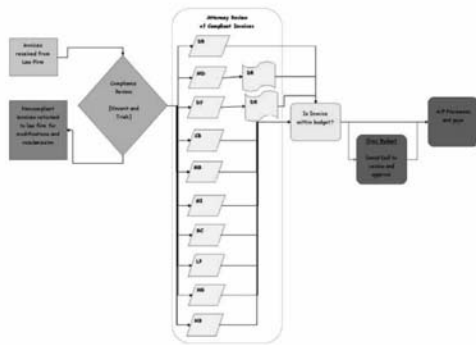


## Implementation

- Initial implementation
  - Meet with Law firms to get buy-in
  - Meet with Law firms to communicate guidelines
  - Set date to begin applying guidelines
- Available Tools
  - Legal Payables Spreadsheet
  - Legal Analysis database
  - WebReq
- 6-month review
  - Compare law firm invoices with invoices prior to new procedures
  - Revise guidelines as necessary
  - Revise internal procedures as necessary



### Implementation



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### Implementation

- Internal procedures
  - Compare invoice to budget
  - Invoices over budget will be returned to the law firm for explanation and resubmittal
  - Compliance Review
  - Invoices with non-compliant items will be returned to the law firm for correction and resubmittal
  - Compliant invoices passed to first attorney with compliance report for review and approval (Webreq)
  - Invoices over budget to David Dull for review and approval
  - Invoices within budget – notify David Dull
  - Invoices to Financing for payment

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## Implementation

- Compliance Review
  - Options
    - E-billing vendor (DataCert, Examen, etc.)
      - Cost – approximately \$10K/month (1% invoices)
    - Manual review
      - Extremely time-consuming and would, most likely, require additional labor resources
  - Internal legal invoice analysis database
    - Invoices received in tab-delimited format and dropped into database
    - Compliance report printed for each invoice to be attached to invoice for review

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## Advantages – The Final Product

- Reduce cost of outside legal services by 10 – 15%
- Reduce cost of cost savings outside legal services by 15-20%
  - Reduction in fees from outside counsel
  - Potential discounts for paying faster
- Increase efficiency and productivity
  - How this will save invoice review time Reduce invoice review time
  - More accuracy in forecasting
  - Manage and monitor law firm, experts and vendor activities

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## Litigation Budget Process

- Throughout matter, Company A and develop detailed monthly budget capturing:
  - Individual partner hours
  - Individual associate hours
  - Paralegal costs
  - Expert costs (liability, damages, consultants)
  - Vendors (electronic discovery, copying, imaging)
  - Court reporters
  - Travel
  - Courier
  - Court room technology (graphics, documents, display)
  - Jury consultants and mock hearings and trials
  - Additional Costs
- See Exemplary Budget & Headcount Spreadsheets



## Cost Containment Measures

- Company A Has Implemented a Wide Range of Cost Containment and Savings
  - Detailed billing guidelines
  - Detailed budgets and monthly or weekly tracking by biller
  - Law firm discounts – volume, preferred customer, early-pay, pre-pay
  - Rigorous review and mark down of vendor invoices
  - Alternative fee deals – Fixed, flat, discount + success fee, contingency
  - Bring work in-house – discovery support, TS & employment, technical
  - Monthly spending caps
  - Litigation tools – electronic discovery, imaging, copying, forensics
- We Are Also Considering Additional Prophylactic Measures:
  - Purchase orders
  - PARs
  - Second tier law firms
  - Bring significantly more work in-house – legal, and legal support
  - On-site Company A project management at providers location





Case:

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	TOTAL
<b>FEES</b>					
<b>Approved Law Firm Timekeepers</b>					
Partners					
Associates					
Paralegals					
<b>COSTS</b>					
<b>EXPERTS</b>					
Experts					
Court Appointed Technical Experts					
<b>VENDORS</b>					
Copy Vendors					
Electronic Vendors					

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Database Vendors					
Court Reporters					
Special Project Costs					
Discovery					
Hearings					
Paralegal Projects					
Other Expenses					
Travel					
Lodging					
Meals					
Misc.					
<b>TRIALS:</b>					
Court Room Tech					
Graphics					

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Mock Trial					
Jury Consultants					
Trial Related Expenses (Lodging, Hotel, Office space)					
<b>TOTAL</b>					

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Current Cost Containment Process	Benefits
Billing Guidelines	Broadcom Billing Guidelines establishes standard for reasonable billing practices, encourage accountability and decision making.
Budget Spreadsheet	Broadcom legal requires budgets for each matter, estimating fees and expenses for individual matters, projects and tasks.
Invoice Review	All legal invoices will be reviewed for compliance to Broadcom Billing Guidelines. All invoices are reviewed by 3 or more Broadcom Legal members.
Monitor of day to day strategy and legal projects	All legal projects will need to be approved by the Broadcom Legal i.e. document production, research, motions, etc.
Approved Times Keepers	Counsel should notify Broadcom legal in advance of names and hourly billing rates of the attorneys, paralegals and staff. Any changes should be discussed with Broadcom Legal. We prefer a core group on the case for continuity.
Monitor Costs	All cost approved by Broadcom Legal. Counsel should use diligent efforts to manage disbursements/expenses.
Vendor Invoices paid through Broadcom Finance	In the past, law firms will pay vendor invoices—without careful review or monitor. Currently, Broadcom pays invoices, but will seek law firm approval of the work done.
Experts work monitored by in House Legal Department	Same concept as above. Experts will need to submit a budget and approval of Broadcom Legal. All Expert works will be approved by law firm. Invoices will be paid by Broadcom Finance
Preferred Vendors List	Preferred rates from vendors: legal graphics, copy, electronic discovery, scan, deposition services, etc. Corporate rates and preferred pricing.

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Initial Law Firm Compliance Meeting	After engagement of law firm, Broadcom legal meets with firm regarding Billing Guidelines, preferred vendor lists, and budget process.
Broadcom In-house Paralegals	In-house paralegal will run large discovery projects along side the law firm. In the past, senior paralegal rates are over \$200.00/hr.
Electronic Discovery Process	Broadcom Legal establishes electronic discovery process/ database for discovery projects- instead of reviewing hard documents by attorneys. More efficient and less attorney and paralegal fees.
Document Management	Broadcom prefers documents to be sent and receive electronically. Electronic documents costs are less than hard copies—managing and handling hard copies.

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