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Current Trends in U.S. Patent Litigation: How to Succeed in “Rocket Docket” Courts, The ITC, and Arbitration

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Note: Intellectual Property Department Chairman, and Special Counsel, respectively, at Cadwalader, Wickersham & Taft LLP, New York, New York. This article provides general information and should not be used or taken as legal advice for specific situations, which depend on the evaluation of precise factual circumstances. The views expressed are those of the authors and should not be attributed to Cadwalader, Wickersham & Taft or its clients.

Defending a charge of patent infringement in U.S. courts has never been easy, but recent trends in U.S. patent litigation have significantly increased the pressure on accused infringers. Patent owners now tend to concentrate infringement filings in a relatively small number of U.S. district courts because they are perceived to be more favourable to patent owners than accused infringers. These courts are often called “rocket dockets” because of the speed with which they move cases to trial, and/or because they have instituted local rules for patent cases that are favoured by patent owners. There has also been a dramatic increase in the number of infringement complaints filed in the U.S. International Trade Commission which, much like “rocket docket” courts, moves extremely quickly. In both instances, the speed of the proceeding increases the burden on accused infringers because it tends to place the accused in a reactive mode rather than a proactive mode. However, because patent disputes are increasingly international in nature, companies are turning to WIPO arbitration to avoid traditional litigation all together.

This article will explore how accused infringers can most effectively respond if they are sued in a “rocket docket” district court or in the ITC, and how they can benefit from WIPO arbitration procedures.

“Rocket Dockets”: What Every Defendant Should Know

Popular Jurisdictions Among Patent Owners

The laws governing the place (i.e., “venue”) where U.S. patent infringement suits can be filed are very liberal, allowing patentees to file suit anywhere in the U.S. where the infringer’s products are sold or used. Not surprisingly, patentees tend to file complaints in courts which they perceive will be more advantageous for them than the accused infringer. In recent years, this has resulted in more cases being filed in courts that push cases to trial relatively quickly. These courts are commonly called “rocket dockets”. Four “rocket docket” jurisdictions especially favoured by patent owners are the Eastern District of Virginia, the Western District of Wisconsin, the Eastern District of Texas, and the Middle District of Florida. (Other courts sometimes considered “rocket dockets” include ones like the

Northern District of California that have local patent rules providing a rigorous schedule for claim construction/*Markman* hearings and trial which patentees also seem to favour.)

The numbers explain why these “rocket docket” courts are popular among patent owners. The average time from filing-to-trial of patent cases in U.S. district courts is between 2.5 and 3.5 years, while the average time to trial is significantly shorter in the Western District of Wisconsin (0.67 years), the Eastern District of Virginia (0.96 years), the Middle District of Florida (2.0 years), and the Eastern District of Texas (2.13 years). (See endnote 1.) While a faster time-to-trial might theoretically decrease the cost of litigation, it imposes significant pressure on the accused infringer, who is forced to develop its infringement, validity and all other defences under very tight time constraints.

“Rocket Docket” Defence Strategies

Lack of Personal Jurisdiction

Defendants sued in “rocket docket” courts often have little or no connection with the judicial district in which the suit is filed (recall, the choice is made by the patentee). Because of the potential difficulties the defendants might have to endure in “rocket docket” courts, they should immediately analyse whether there is a basis for seeking dismissal of the case on grounds of lack of personal jurisdiction.

In the U.S., there is no general or federal statute governing personal jurisdiction for patent cases. Instead, courts look to the “long arm statute” of the state where the district court is located. For example, the U.S. District Court for the Eastern District of Texas would look to the Texas long arm statute to determine whether it can exercise jurisdiction over the defendant. Because long arm statutes vary from state-to-state, defendants, once sued, should carefully analyse the long arm statute of the state in which the court sits to determine whether there is a basis to challenge the personal jurisdiction alleged in the complaint and move for dismissal. Even if the state long arm statute is satisfied, the court’s exercise of jurisdiction must still comply with the “due process” clause of the U.S. constitution. This is a fact-intensive issue that must be evaluated by the defendant’s counsel on a case-by-case basis.

Foreign defendants should be aware of Rule 4(k)(2) of the Federal Rules of Civil Procedure. This rule provides that if a foreign defendant is not subject to personal jurisdiction in any state in the U.S., the defendant can nonetheless be sued for a claim that arises under U.S. federal law (e.g., patent infringement) in any U.S. federal court if the defendant’s aggregate contacts with the U.S. as a whole are sufficient to make it fair and reasonable to subject the defendant to suit in the U.S. If a plaintiff attempts to use this rule to obtain

jurisdiction over a foreign defendant in a “rocket docket” court, the defendant should consider conceding the existence of personal jurisdiction in a different, more appropriate, forum and then move to transfer as discussed immediately below.

Transfer To Another Court

Even if the requirements for personal jurisdiction in a “rocket docket” court are satisfied, a defendant can request that the case be transferred to a different, more neutrally perceived court on the grounds that it is a more convenient forum. The relevant statute (28 U.S.C. §1404(a)) leaves transfer motions to the discretion of the court in which the case was originally filed, taking into account “the convenience of the parties and witnesses,” and “the interest of justice”. Such motions have the best chance of success where the dispute has no meaningful connection with the forum, for example, where the accused product has been sold throughout the entire country and the only connection between the suit and the “rocket docket” district is that a relatively few sales have been made there.

Within the last two years, the U.S. Court of Appeals for the Federal Circuit has taken the step of ordering judges in the Eastern District of Texas (probably the most popular “rocket docket” forum) to transfer five different cases to other courts. In each of those cases, neither the plaintiff nor the defendant had a meaningful connection with the Eastern District of Texas, whereas the transferee district was the site of either manufacturing facilities, documents, or witnesses who were likely to testify at trial. The Federal Circuit’s willingness to review district court orders denying transfer should make “rocket docket” courts more receptive to transfer motions in the future.

Currently, there is legislation pending before the U.S. Congress (the Patent Reform Act of 2010 (S. 515)) which includes a provision to make it easier for defendants to transfer cases from districts that lack meaningful connection to the underlying patent dispute. As noted above, the current law leaves the decision within the discretion of the district judge – i.e., the judge “may” transfer the case for the convenience of the parties and witnesses, and in the interest of justice. 28 U.S.C. § 1404(a). The proposed new statute, which would apply only to patent cases, provides that the court “shall” transfer the case upon a showing that another venue is “clearly more convenient” for the parties and witnesses, and that the transfer is in the interest of justice. S. 515 § 8.

Stay For Reexamination

Another option for a defendant sued in a “rocket docket” court is to file a request for reexamination of the asserted patent(s) in the U.S. Patent and Trademark Office, then seek a stay of the infringement suit while the reexamination is completed. (For the period 1991-2010, such stay motions had a success rate of 59.7% in U.S. courts overall, 36% in the Eastern District of Texas, 50% in the Eastern District of Virginia, and 67% in the Western District of Wisconsin.) Reexamination can be either “*ex parte*”, in which the requester does not participate in the process after filing the initial request for reexamination, or “*inter partes*”, in which the requester may respond to papers filed by the Examiner and the patent owner. Although the “*inter partes*” reexamination offers the advantage of participation throughout the proceeding, the requester is estopped from later asserting in court that the claim is invalid on any ground that the requester raised or could have raised during the reexamination. 35 U.S.C. § 315(c). Consequently, the “*ex parte*” approach remains favoured because there is no estoppel effect if validity of the claim is ultimately confirmed.

While over 90% of reexamination requests are granted, only 12% of *ex parte* reexaminations result in cancellation of all claims; 23% result in all claims being confirmed; and 65% result in the claims being amended. (See endnote 2.) The average pendency of an *ex parte*

reexamination is 25.4 months. (See endnote 3.) The average pendency of an *inter partes* reexamination is 35.9 months. (See endnote 4.)

Reexamination can be helpful to a defendant even if the patent is not invalidated or narrowed. If the PTO issues preliminary office actions rejecting the patent claims, the defendant can often use them to induce the plaintiff to settle the case on more favourable terms for the defendant. Further, if the motion to stay the infringement case is denied, reexamination may be useful in forcing a patent owner with limited resources to fight on two fronts.

Making The Best Of “Rocket Docket” Courts If Litigation Cannot Be Avoided

If motions to dismiss for lack of personal jurisdiction, to dismiss on any of the other grounds set forth in Rule 12(b) of the Federal Rules of Civil Procedure, to transfer to another court, or to stay the case while the asserted patent is under reexamination are not practical or are denied, the defendant will have to litigate in the “rocket docket” court selected by the plaintiff. There are several things a defendant in this position can do to increase its chance of success.

- Immediately interview, select, and retain experts (technical, patent-law [if appropriate], damages, etc. (whether as testifying or consulting)) to work closely with trial counsel to develop the core theories and themes for the case, and, ultimately, to prepare expert reports for testimony at trial.
- Immediately issue a “litigation hold” directing employees to preserve and collect all documents, materials and electronically stored information relevant to the law suit; review all collected documents for attorney-client privilege and preparation of a privilege log.
- Develop and implement an aggressive plan to obtain discovery from the patent owner and, if relevant, from third parties who may have information concerning prior art.
- Remain focused on key defences of non-infringement, invalidity, unenforceability, and damages; abandon defences with low impact or little chance of success; avoid distraction by tangential issues; it will likely waste time and resources.
- Commit to devote significant time and resources to prepare for trial, and plan trial strategy/themes in conjunction with discovery so discovery is focused on trial evidence.
- Adopt an aggressive and proactive litigation posture.
- Seek an early claim construction hearing, i.e., a “*Markman*” hearing; this provides an opportunity to educate the judge and focus the court on the patent rather than the accused product; further, a favourable ruling can limit the scope of the patent and position the case for possible disposition by summary judgment. *See, e.g., TM Patents, L.P. v. IBM Corp.*, 97 Civ. 1529 (CM) (case whittled down until “there [was] not very much to try” (136 F. Supp. 2d at 224) through the use of aggressive discovery and innovative dispositive motion strategies); 72 F. Supp. 2d 370 (S.D.N.Y. 1999) (favourable *Markman* rulings); 121 F. Supp. 2d 349 (S.D.N.Y. 2000) (summary judgments dismissing patents following *Markman* rulings); 136 F. Supp. 2d 209 (S.D.N.Y. 2001).
- Work early in the case to identify defences that can be presented in motions for summary judgment, then aggressively gather evidence to support such motions. *See, e.g., Man Roland Inc. v. Goss International Americas, Inc. and Heidelberger Druckmaschinen AG*, 2006 U.S. Dist. LEXIS 27923; 2006 U.S. Dist. LEXIS 25769; 2006 U.S. Dist. LEXIS 36386; 2007 U.S. Dist. LEXIS 18112; (D.N.H. 2007) (dismissing eleven counterclaims); *Hakim v. Cannon Avent Group*, 2005 U.S. Dist. LEXIS 16827; 2005 U.S. Dist. LEXIS 16833 (W.D. La. 2005) (one asserted patent not infringed and another invalid).

- Challenge the plaintiff's damages claim. The Federal Circuit has recently increased its scrutiny of damage awards by district courts. E.g., *Lucent Technologies v. Gateway*, 580 F.3d 1301 (Fed. Cir. 2009). Accordingly, defendants should challenge the plaintiff's theory of damages and expose any assumptions that are not rigorously supported. Challenges to the plaintiff's damage theories will be even more important if the Patent Reform Act of 2010 is enacted. It would require judges to scrutinise the parties' damage theories before allowing them to be presented at trial, and allow summary judgment on damages if either party's contentions lack evidentiary basis.
- Challenge the plaintiff's request for a permanent injunction. In *eBay Inc. v. MercExchange LLC*, 547 U.S. 388 (2006), the Supreme Court ruled that a patent owner who obtains a final judgment of infringement is not automatically entitled to an injunction against continued infringement. To obtain such relief, the plaintiff must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." A defendant sued in a "rocket docket" court – or any court, for that matter – should aggressively seek fact and expert discovery concerning each of these factors.

The U.S. International Trade Commission: Another "Rocket Docket" Forum

A Forum of Growing Importance

The International Trade Commission ("ITC") is an agency of the U.S. government that provides relief against unfair trade practices, which include the importation into the U.S. of a product that infringes a U.S. patent or was made by a process claimed in a U.S. patent. Like "rocket docket" courts, the ITC moves very quickly: it requires the typical patent investigation to be concluded 12 to 15 months after the investigation is instituted. In recent years, U.S. patent owners have increasingly elected to file suit against foreign infringers in the ITC rather than in U.S. district courts for at least three reasons. First, the ITC provides relief that is not always granted in U.S. district courts: upon a finding of infringement, the ITC will order the U.S. Customs Service to block the entry of the infringing product into the U.S. It can also issue a "cease and desist order" prohibiting the use or sale of infringing products already present in the U.S. Second, there is no need to obtain personal jurisdiction over the accused infringer. Rather, the ITC exercises jurisdiction over the accused products – so-called "*in rem*" jurisdiction. Third, because patent cases make up a large part of its case load, the ITC has a reputation for expertise in patent law.

Procedures Differ From District Courts

Unlike an action in a district court, an ITC investigation does not commence upon the filing of the patent owner's complaint. Rather, the ITC reviews the complaint and then decides whether to institute an investigation. This typically occurs 30 days after the complaint is filed. The ITC then serves the complaint on the party accused of infringement (the "respondent"). Another significant difference from district court actions is that the complainant and the respondent are not the only parties: an independent office within the ITC, the "Office of Unfair Import Investigations", participates as a party to represent the public interest.

Once the investigation is instituted, it is assigned to an Administrative

Law Judge ("ALJ") who presides over discovery, motion practice, and trial. Discovery is extremely fast-paced. The ALJ will generally schedule a trial to commence 9 months after the investigation is instituted. Unlike district courts, there are no juries in the ITC and trials typically last no more than 1 to 2 weeks. After the trial, the ALJ issues an "initial determination" setting forth the ALJ's opinion on the merits of the investigation. This initial determination becomes the "final determination" of the ITC if the Commissioners do not elect to review it within 60 days. If the Commissioners elect to review the ID, they can affirm, modify, or reverse it. After the ITC renders its final determination, the matter is referred to the President of the United States, who can review the ITC's final determination only on the issue of the public interest. Parties can appeal final determinations of the ITC to the Federal Circuit, the same court that hears appeals from patent cases in U.S. district courts.

Winning Strategies For Respondents

A company that finds itself the respondent in an ITC investigation can take several steps to increase its chance of success.

Make Maximum Use Of The 30-Day Pre-institution Window

As noted above, there is a 30-day period between the filing of the complaint and the formal institution of the investigation by the ITC. The tight deadlines set by the ITC's regulations and the ALJ's ground rules are calculated from the date of institution. This means that the respondent has 30 days to "catch-up" to the complainant and prepare its case plan and its defences before the clock starts running. (Because the complainant has spent many months preparing its infringement and domestic industry cases, and likely has consulted with the ITC Staff Counsel, it has a distinct advantage going into the investigation.) It is critical to make the maximum use of this 30-day period.

A particularly good use of the pre-institution period occurred in Investigation No. 337-TA-568, in which we prepared a motion for summary determination that all of the accused activities were exempt from infringement liability under 35 U.S.C. § 271(e)(1). We filed the motion within days after the institution of the investigation, and the motion was granted after a short period of discovery.

Other actions respondents should take during the pre-institution period include:

- Prepare discovery requests to serve on the complainant.
- Collect and review respondent's documents in anticipation of complainant's discovery requests, including reviewing the documents for relevance and privilege.
- Interview and retain experts; work with experts to develop domestic industry, invalidity and non-infringement defences.
- Coordinate with co-respondents, if any.
- Begin preparing a response to the complaint (boilerplate defences are not sufficient; there is a higher pleading standard than in district court).
- Consider whether early motions for summary determination would be useful, and, if so, begin preparing the evidentiary bases for those motions.
- Immediately work on possible design-around products for possible introduction into the proceedings as a "hedge" against a potential finding that the originally accused products infringe.

Seek Early Hearing on Claim Construction

Although ALJs are not required to hold a pretrial hearing on the construction of the asserted patent claims (a "*Markman*" hearing), such hearings are becoming increasingly common. The ground rules and practice procedures of the ALJ assigned to the investigation should be reviewed to determine whether the ALJ has held an early *Markman* hearing. To provide the maximum benefit,

the hearing should be scheduled early enough in the investigation so that the ALJ can issue a ruling on the disputed claim terms before the start of expert discovery, and before the deadline for filing motions for summary determination (at least 60 days before trial).

An early *Markman* hearing can encourage or facilitate the early resolution of the investigation. If the ALJ construes the claims in a manner that is helpful to the respondent, the complainant might be encouraged to withdraw its complaint or settle on terms which allow the respondent(s) to continue importing products. More significantly, a favourable *Markman* ruling might provide grounds for the respondent to file a motion for summary determination that, under the ALJ's construction, the asserted claims are invalid, not infringed or lack domestic industry. At the very least, such a motion is likely to streamline the trial. Even an unfavourable *Markman* ruling can benefit a respondent by showing that the respondent is not likely to prevail and that it should pursue settlement or a design-around prospect. (See endnote 5.)

File Early Motions for Summary Determination

In the ITC, respondents can serve motions for summary determination any time after the publication of the Notice of Investigation in the Federal Register, i.e., the formal institution of the investigation, and no later than 60 days before trial. See, e.g., *In The Matter Of Certain Personal Watercraft and Components Thereof*, Inv. No. 337-TA-452, Order Nos. 32, 37, 42, 77, and 80 (2002) (dismissal of complaint as to six of eleven asserted patents).

Motions for summary determination on key issues such as non-infringement, invalidity, and lack of domestic industry have the potential to dispose of the entire investigation, or at least entire patents when more than one patent is being asserted. Summary determination motions can be beneficial even if they are denied. An ALJ who denies a motion for summary determination must issue an order setting forth which facts are genuinely in dispute and which are without substantial controversy. The facts without substantial controversy are deemed established for future proceedings in the investigation. Thus, even if the motion is denied, it can streamline the trial by eliminating the need to prove various facts.

Consider Filing Independent Complaints in ITC, District Court, or Foreign Court

Counterclaims asserted in the ITC must be immediately removed to district court. Therefore, respondents with patents of their own that can be asserted against the complainant should consider filing their own complaint in the ITC or in a district court (preferably, a "rocket docket" court). If they have appropriate foreign patents, they should also consider filing a complaint in a fast-track foreign court (e.g., Germany or Holland), or with a foreign customs authority (e.g., Japan). This strategy may shift the momentum and place the original complainant at risk and increase the respondent's bargaining leverage to negotiate an acceptable settlement.

Prepare For A Fast-Paced Battle

Once an ITC investigation is instituted, there is little prospect of having the investigation stayed, or of transferring the dispute to a slower-paced forum. Thus, even more so than in a "rocket docket" district court, the respondent must move quickly and aggressively. We recommend the following:

- In a multi-respondent case, consider a joint defence, or common interest sharing agreement, which may help distribute workloads while achieving cost-efficiencies.
- Stay on top of defensive discovery: issue early litigation holds, challenge overbroad discovery requests and safeguard highly confidential information, e.g., source code.
- Plan to pursue an aggressive discovery plan against the complainant.
- Immediately pursue design-arounds and consider placing

them into the investigation.

- Plan early for remedy issues such as Customs certifications.
- Signal that you are prepared and willing to go to trial.

WIPO Arbitration: An Attractive Alternative To Litigation

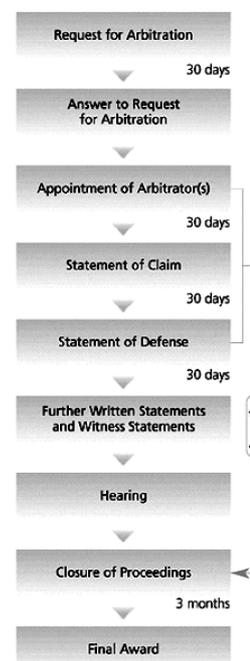
The World Intellectual Property Organization ("WIPO") administers an arbitration programme that is growing as an alternative to traditional litigation, particularly when the dispute involves patents in two or more countries. Our extensive experience in WIPO arbitrations has demonstrated that it offers many important efficiencies and advantages.

Why WIPO Arbitration Is Attractive

To understand why WIPO arbitration is so attractive to companies facing a multi-national patent dispute, consider the alternative: separate litigations in individual countries. This process is often slow, expensive, uncertain, and can produce inconsistent results. It also requires coordination and management of counsel in multiple individual countries. The situation is even more complicated in countries (e.g., Europe) that require separate court cases for infringement and for validity issues. The intrusive, expensive, and time consuming discovery process in U.S. courts is another reason why more and more companies try to avoid litigation.

The WIPO arbitration process avoids these disadvantages. All evidence on infringement, validity, and damages with respect to all patents from all countries is presented at a single hearing before a single tribunal of arbitrators under a single set of rules. Accordingly, a party needs only a single team of counsel. The process is administered by an experienced case manager at WIPO headquarters in Geneva. Arbitrators are screened by WIPO for technical and legal expertise, and the parties can select arbitrators with specific technical expertise or legal/business experience in the field of the dispute. Separate arbitrators can decide European and U.S. issues. The process is strictly confidential. Moreover, the process moves relatively quickly and predictably.

PRINCIPAL STEPS IN WIPO ARBITRATION



How to Set up a WIPO Arbitration

Parties can agree to participate in a WIPO arbitration after a dispute arises or, more commonly, by including an arbitration clause in their initial agreement. The clause generally includes language such as:

“Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to the WIPO Arbitration and Mediation Center to be finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [a sole arbitrator]. The place of arbitration shall be [location]. The language to be used in the arbitral proceedings shall be [English]. The dispute, controversy or claim shall be decided in accordance with [Applicable Country’s] law.”

Almost any agreement related to intellectual property can include a WIPO arbitration clause. Examples include: patent/utility model licences; settlement agreements; trademark licences; distribution contracts; joint venture agreements; research and development contracts; technology-sensitive employment contracts; and sports marketing agreements.

Winning Arbitration Strategies

There are several steps a party can take to increase the likelihood of a successful outcome in arbitration. In our experience, the following are particularly useful.

Identify and Retain Experts at Earliest Possible Time

As in district court and ITC litigation, retaining experts at the earliest possible time is critical to success in arbitration. Experts are usually needed to help a party develop the core theories of its case, e.g., its validity and infringement positions. Experts are also helpful in suggesting subjects upon which a party should pursue discovery. Further, the early retention of experts allows them more time to develop and refine any tests or analysis they undertake, making it more likely that their conclusions will survive attacks by your adversary. Of course, it is important to retain experts with the best credentials available to increase the weight of their testimony and to avoid challenges to their competence.

Request Early Claim Construction Hearing

An early claim construction hearing is helpful for all parties in an arbitration, but especially for the accused infringer. A definitive ruling on claim construction provides the foundation for a party’s infringement and validity arguments. Claim construction may have a large impact on damages as well. Further, the experts testifying on behalf of a party will have to conform their arguments to the arbitrator’s construction of the asserted claims. Thus, obtaining a ruling on claim construction at an early date allows more time for developing a party’s positions on the key issues.

Insist on at Least Limited Discovery

Although not as extensive as in U.S. district court or ITC litigation, discovery is available in WIPO arbitrations. Parties should use the WIPO discovery procedures to their benefit. For example, it is useful to take the deposition of individuals who submit written witness statements. Interrogatories focused on the basis for key statements in the other party’s pleadings are helpful as well. It is important to adhere strictly to the discovery deadline.

Use Post-Hearing Briefing Effectively

After the hearing before the arbitrators, the parties have the opportunity to summarise the facts and applicable law in post-hearing briefs. These briefs are extremely important. Parties should make every effort to make them cogent and convincing. The briefs submitted after an arbitration hearing should generally be at the same level of sophistication as post-trial briefs submitted to a court, since the arbitrators are experienced attorneys and/or judges.

Conclusion

Although the fast pace of litigation in “rocket docket” courts and the ITC is a formidable challenge to any defendant, we have found through experience that the strategies discussed above can significantly improve the likelihood of a favourable result. Our experience has also taught us that WIPO arbitration can be an efficient and cost-effective alternative to litigation.

Endnotes

1. Lemley, Mark A., Where to File Your Patent Case. Stanford Public Law Working Paper No. 1597919. Available at SSRN: <http://ssrn.com/abstract=1597919>.
2. United States Patent and Trademark Office, *Ex Parte* Reexamination Filing Data – June 30, 2010. Available at: http://www.uspto.gov/patents/stats/Reexamination_Information.jsp.
3. *Id.*
4. United States Patent and Trademark Office, *Inter Partes* Reexamination Filing Data – June 30, 2010. Available at: http://www.uspto.gov/patents/stats/Reexamination_Information.jsp.
5. On July 22, 2010, the full Commission issued a Notice to review the claim construction rulings rendered in Investigation No. 703, and particularly “the question of the legal authority for addressing the issue of claim construction as a matter for summary determination and treating the claim construction ruling as an initial determination under the Commission’s rules of practice and procedure as currently written.” When issued, the Commission decision in Investigation No. 703 should be consulted, as it may likely affect claim construction procedures going forward.

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C A D W A L A D E R

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Cadwalader's Intellectual Property Group is a full-service IP practice which handles trials and litigation in complex patent and trade secret matters in federal courts, patent trials in the ITC and in WIPO proceedings, and also provides a broad range of counseling on all IP issues, including formal opinions, licensing, due diligence in corporate transactions and bankruptcy procedures, patent and trademark acquisition and prosecution, along with trademark infringement and trade dress/anti-counterfeiting enforcement actions. Cadwalader's IP practice is built around a large and growing number of nationally and internationally recognised lawyers, who have been consistently recognised by the leading peer-review ranking guides such as "Chambers", "Best Lawyers", "Benchmark Litigation", "Legal 500" and "Super Lawyers".