

BARTKO ZANKEL BUNZEL UPDATE

NORTHERN DISTRICT OF CALIFORNIA AMENDS PATENT LOCAL RULES TO FOCUS UPON DAMAGES

By Paul Schuck

The Northern District of California has announced an amendment of its Patent Local Rules, effective immediately. Most of the changes pertain to damages calculations, generally requiring earlier disclosure of the parties' positions. The effect of the changes may be to expedite resolution of many patent cases.

Specifically, Patent L.R. 3-1 is amended to require "a non-binding, good-faith estimate of the damages range expected for the case along with an explanation for the estimates" to be provided at the Case Management Conference. Prior to this change, patent plaintiffs often did not provide damages estimates until expert discovery, late in the litigation.

Patent Local Rule 3-1, governing Infringement Contentions, is modified to require disclosure of the dates infringement is alleged to have occurred. Patent L.R. 3-2 is modified to require that the document production accompanying Infringement Contentions include documents regarding both ownership of the asserted patents and licenses or other documents that will be used to support the damages claims. Defendants must now provide damages related documents (including any licenses that are alleged to be relevant) with their Invalidity Contentions under amended Patent L.R. 3-4.

Finally, the amendment creates Patent L.R. 3-8 which requires disclosure of "Damages Contentions" 50 days after service of Invalidity Contentions. Patent L.R. 3-9 calls for the defendant to provide a "Response to Damages Contentions" 30 days later. These disclosures are new to the rules and require parties to provide damages information much earlier than they have traditionally. There are other, minor changes to the Rules. For example, the time for disclosure of Advice of Counsel under Rule 3-7 is reduced from 50 to 30 days.

Collectively, the amendments to the Patent Local Rules may accelerate resolution of patent cases in the Northern District. By requiring disclosure of damages information and positions early in the case, patentees will have a better understanding of the value of their claims and defendants will understand their risks much sooner, expediting settlement. Quicker resolution of patent cases, and the commensurate reduction in resources spent, will benefit both the Courts and the litigants.

Paul Schuck is a principal in Bartko, Zankel, Bunzel & Miller PC. He represents plaintiffs and defendants in patent, trade secret and other intellectual property litigation.