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Patently Enabled March 2025 – Keys to Successfully Litigating on a Tight Budget

Key Takeaways

- The key to successfully litigating on a tight budget is focus on the issues that truly matter.
- Early claim construction wins and targeted summary judgment can significantly reduce case scope and cost.
- Disciplined discovery strategies prevent opponents from driving unnecessary expense.
- Choosing a litigation team aligned with your budget is critical to success.

The key to successfully litigating on a tight budget is focus. The scope of a patent case is a major factor in its cost, and limiting that scope requires focusing attention and budget on the most important issues. Identifying and analyzing those issues early takes work but can be invaluable. An extensive analysis of potential claims and defenses should be performed at the outset of the matter, and retaining an expert early can help further build the case. To the extent feasible, all remaining case noise should be ignored. It is always easier and safer to keep everything in play until a decision must be made, but that approach is rarely affordable on a tight budget.

Many courts require early exchanges of infringement, invalidity, and claim construction contentions so that the court can hold an early claim construction hearing, often referred to as a Markman hearing. A claim construction hearing is one where the court resolves the parties' disputes over the meaning of patent claim terms. If claim construction goes your way, it may be worth considering whether to file a summary judgment motion soon thereafter, even if success would only reduce the number of issues in the case. Where claim construction deadlines are far away, it may also be worth considering whether the court allows early summary judgment motions that depend on claim construction issues. Courts have discretion to construe claims before and after the formal claim construction process occurs, including when resolving summary judgment motions.

Just because you are focused on what matters does not mean your opponent will be. Opposing parties may attempt to make the case more complex if they see a benefit in doing so. In that situation, the best course of action is often to let the opposition go astray and not follow. If they ask for the world in discovery, give it. Modern eDiscovery tools allow parties to substantially limit the amount of information that must be reviewed before producing requested discovery. It is important not to allow the opposing party to pull the case into months of meaningless meet-and-confer discussions that add cost without advancing resolution.

Discovery is another area where discipline is essential. If you cannot afford to sift through tens or hundreds of thousands of documents fishing for something useful, simply do not. With respect to the discovery that truly matters, there are typically about thirty documents that will actually be important at trial or on summary judgment. Many of those documents will be known to the attorneys or clients in advance. The goal should be to target the information you know you will need, rather than attempting to collect everything that might possibly be relevant.

If there is a real concern about knowing what to ask for, as opposed to general anxiety caused by not asking for everything, an early deposition can be an effective solution. Simply asking some questions first can save hundreds of thousands of dollars by bringing the most important documents and issues into focus.

Finally, before engaging litigation counsel, it is important to ask not only about qualifications, but also about what else the attorney is working on and whether your budget aligns with what they have actually charged in similar matters. If an attorney is handling a number of larger cases and generally charges more for cases of your type, it is worth considering how your case will be prioritized. Asking for examples of matters that were successfully litigated under a tight budget can provide valuable insight into whether expectations are realistically aligned.