

New Procedures May Lure More Patent Lawsuits to Massachusetts

By Joel Leeman

The judges of the federal district court in Massachusetts have recently adopted new procedures that will control the litigation of patent infringement cases in the Commonwealth.

Bromberg & Sunstein attorneys played an essential role in establishing the procedures. Lee Bromberg, as President of the Boston Patent Law Association, organized and chaired a task force which presented the rule to the Court and urged its adoption. Erik Belt, an active member of the task force, was a principal draftsman. The new rule provides a logical framework for patent cases which makes Massachusetts an attractive venue for patent litigants who have a choice of jurisdictions in which to try their disputes.

New Rule 16.6, introduced November 4, is notable for its rigorous regulation of the pre-trial discovery process that accounts for the vast majority of time and expense that patent suits consume. Among other things, parties must try to agree on:

a. When to exchange their initial positions on infringement and patent invalidity;

b. When and how the court will conduct the Markman hearing, the often-critical pre-trial hearing in which the judge construes disputed claim terms of the patent in suit; and

c. Appropriate limits on electronic discovery, which has quickly become one of the more expensive components of all civil litigations.

In a National Law Journal article in November that recognized his role, Bromberg explained that “the whole idea was to provide more certainty and uniformity in the District of Massachusetts than we’ve had in the past.”

Quite a few other federal courts that are well-known magnets for patent lawsuits – such as the Eastern District of Virginia, the Northern District of California, and the Eastern District of Texas – have long had similar rules for such cases.

Even within the District of Massachusetts, some judges already followed procedures much like those embodied in the new rule. A formal rule extends the procedures to all patent suits filed in Massachusetts and, says Bromberg, gives litigants the certainty they crave. ✧