



ARE Patent Litigation Alert: Eastern District of Texas Adopts An Optional Track B Case Management Procedure

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Chief Judge Davis of the United States District Court for the Eastern District of Texas (“EDTX”) has issued General Order 14-3, which creates an optional “Track B” case management schedule to expedite patent infringement litigation. Track B is an alternative to “Track A,” the procedure established by the EDTX Patent Local Rules. This development is significant because the EDTX is a popular forum for patent cases, and is typically a leader in developing procedures for handling patent cases. Judge Davis’ Order follows from the growing national discussion and awareness of the significant costs of patent litigation and the rise of non-practicing entities.

The EDTX Track B schedule is designed to foster disclosure of the most important substantive aspects of the parties’ positions so that both sides, and the Court, can make an early determination of the merits before the Initial Patent Case Management Conference. In particular, Track B provides for expedited infringement and invalidity contentions, the early production of licensing and settlement agreements, summary sales information of the accused products, and a good faith damages estimate. When a case is designated as a Track B case, the following deadlines are applicable:

1. Infringement contentions and licensing and settlement agreements shall be produced by the patent owner within 14 days of all defendants filing an answer or motion pursuant to Fed. R. Civ. P. 12(b)(6).
2. Initial disclosures and summary sales information of the accused products are due within 30 days of service of the infringement contentions.
3. A good faith damages estimate by the patent owner is due within 14 days of service of the initial disclosures.
4. Invalidity contentions are due within 14 days of service of the good faith damages estimate.
5. Notice of readiness for the Initial Patent Case Management Conference is due within 5 days of service of invalidity contentions.
6. At least 14 days before the Conference, parties shall confer pursuant to Fed. R. Civ. P. 26(f), and at least 7 days before, the parties shall file a joint discovery plan.
7. Prior to the Initial Patent Case Management Conference, discovery is limited to 5 interrogatories, 5 requests for production, and 5 requests for admission per side.

During the Initial Patent Case Management Conference, the parties and the Court, in light of these substantive initial disclosures, will be able to have a meaningful discussion regarding related cases, consolidation, discovery limitations, document production, the applicability of



EDTX Model Orders, claim construction schedule, mediation, expedited trial, and discovery disputes. Failure to comply may lead to sanctions.

In contrast to the default EDTX local rules, or “Track A,” Track B requires early substantive disclosure, which is intended to foster cost-effective case management and resolution of patent cases. It is contemplated that the early disclosure of infringement contentions, invalidity contentions, and licensing, sales, and damages information will place the parties in a better position to realistically value their respective cases.

An open question remains as to how widespread Track B implementation will be. Specifically, Track B will only apply by mutual agreement of the parties or by Court order. If one party objects to Track B treatment, the other will need to convince the Court that it should apply.

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