



## **ARE Patent Litigation Alert: Judge Robinson of District of Delaware Implements Revised Patent Case Scheduling Order**

*April 2, 2014*

Author(s): Anthony F. Lo Cicero

(April 2, 2014) On March 24, 2014, Judge Sue L. Robinson of the United States District Court for the District of Delaware notified counsel of record on patent cases currently on her docket that she is implementing a revised patent case scheduling order. As a result of feedback gained through “lively and informative discussions” via the Court’s Patent Study Group (“PSG”), Judge Robinson has decided to change her process for patent cases in order to efficiently manage her patent caseload.

On her website, Judge Robinson has posted a revised Patent Case Scheduling Order (the “Order”) which she expects all non-ANDA patent cases to follow. In a letter to counsel, Judge Robinson acknowledges that some confusion will arise from these changes, but deems such modifications necessary given the changing nature of patent litigation and the feedback obtained from participants in the PSG. According to the Court’s website, the PSG was established to solicit input from in-house counsel and practitioners who regularly practice in the District of Delaware in order to identify best practices for the management of complex patent cases.

The Order provides definitive deadlines for all aspects of a patent litigation including various status conferences with the Judge. This development is significant because the District of Delaware is a popular and often favored forum for patent cases. Judge Robinson’s revised patent case scheduling order follows from the growing national discussion on patent litigation reform and the need to develop more efficient and streamlined procedures for handling patent cases. Judge Robinson’s revised Order may be the first of many such revisions by judges within the District of Delaware and elsewhere.

Judge Robinson’s revised Order includes the following significant procedural changes:

1. Overall management of discovery, including all discovery disputes, motions to dismiss, amend or transfer, will be referred to a Magistrate Judge;
2. Definitive deadlines are set in the Order for all aspects of the case, including infringement and invalidity contentions, damages theories, claim construction briefing and summary judgment briefing;
3. Issues of willfulness and damages are no longer automatically bifurcated from liability on infringement;
4. Each party must submit a proposed construction with respect to all claim terms in need of



- construction as “plain and ordinary” meaning is not sufficient;
5. Claim construction will occur, and be decided, prior to the commencement of expert discovery;
  6. No motions in limine shall be filed; instead, evidentiary issues will be addressed at the pretrial conference and during trial;
  7. No Daubert motions shall be filed unless discussed with the Court at an in-person status conference.
  8. At least three in-person status conferences are scheduled with the Court.
  9. All papers shall be electronically filed on or before 8:00 p.m. Eastern Time.

Judge Robinson’s revised Order, along with a redlined version showing such changes, are available on her website at <http://www.ded.uscourts.gov/judge/judge-sue-l-robinson>. We will closely monitor similar developments within the District of Delaware and other district courts.

Please check our website for additional updates on important patent law topics.

---

\* [Anthony F. Lo Cicero](#) is a partner and [Jessica A. Capasso](#) is an associate at Amster, Rothstein & Ebenstein LLP. They can be reached at [alocicero@arelaw.com](mailto:alocicero@arelaw.com) and [jcapasso@arelaw.com](mailto:jcapasso@arelaw.com), respectively.