

PATENT LITIGATION: Stages of Litigation

- International teams for litigation cases
- Case work up including consideration of budgeting and fee arrangements
- Identifying appropriate forum for litigation with note to rocket docket districts
- Drafting and filing complaints, and
- Drafting and filing answers including:
 - Noninfringement
 - Invalidity
 - Inequitable conduct
 - Inventorship
 - Filing and arguing motions to dismiss for example inequitable
 - Conduct for failing to plead with particularity
 - Motion to change venue
- Preparing initial disclosures
- Drafting and negotiating protective orders
- Discovery
 - Plaintiff or defendant specific discovery requests
 - Counseling clients on responding to requests
 - Preparing infringement/noninfringement, validity/nonvalidity claim charts
 - Negotiating and preparing protective orders
 - Work with the client to gain information for the case in the least disruptive manner to daily business
 - E-discovery—negotiating, managing and counseling
 - Working with and managing outside consultants
 - Counseling clients regarding discovery best practices: litigation holds, document retention policies, witness identification, privilege analysis, confidentiality, reliance upon opinion
 - Counseling clients with respect to software and source code
 - Taking and defending depositions of fact witnesses and company representative witnesses
 - Expert discovery (technical, financial, testifying, and consulting)
 - Identify the expert and determine their role and cost effective use of their service
 - Preparing and taking depositions
 - Negotiating issues surrounding expert reports
 - Managing and focusing experts
- Expert witnesses—prepping and deposing
- **Markman Hearings**
 - Determining issues related to claim construction
 - Counseling clients with regard to best practices for Markman Hearings

- Preparing and responding to briefs
 - Represent client at hearing
 - Timing
 - **Motion Practice**
 - Preparing and defending motions
 - Motions to dismiss
 - Summary Judgment including:
 - Invalidity
 - Infringement
 - Noninfringement
 - Inequitable conduct
 - Ownership
 - Inventorship
 - In limine
 - Daubert Motions
 - JMOL motions
- **Trial**
 - Select and work with jury consultants
 - Jury selection strategy ([Hyperlink](#))
 - Mock trials
 - Issues related to final pretrial conference
 - Juror investigation
 - Preparing voir dire
 - Jury instructions
 - Examining witnesses, direct and cross, fact and expert
- **Preparing for trial**
 - Strategizing with client on order of witnesses
 - Preparing opening and closing statements
 - Preparing witnesses and witness outlines
- **Appellate—Court of Appeals for the Federal Circuit (CAFC)**
- **Arbitration and mediation**
 - Identifying and agreeing to mediators
 - Preparing mediation reports
 - Participating in negotiations