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