# Developing Interrogatories to a Patentee Plaintiff



Patent litigation is discovery-intensive. However, the maximum number of interrogatories propounded is twenty-five unless you get court approval. So ask efficiently. Each case is different; there is no routine case. In that direction, an accused infringer should consider the following topics for propounding interrogatories to a plaintiff patent owner.

(A) Which claims are being asserted?

Most well-drafted patents contain several claims, each one potentially asserted by the patent owner. The amount of discovery, expert analysis, and trial presentation is directly affected by the number of claims in dispute.

(B) Provide a claim chart

Ask for an element-by-element analysis of the plaintiff's infringement contentions, proposed claim construction and the intrinsic and extrinsic evidence supporting the proposed claim construction. With this information, you can identify which claim constructions you can agree to, which ones to fight, and which ones you may need to introduce proactively.

(C) Is plaintiff alleging literal infringement and/or infringement under the doctrine of equivalents?

Care should be taken here. Especially, if the plaintiff is unsophisticated in patent litigation, you may not want to remind the plaintiff of the doctrine of equivalents. If the plaintiff does not assert the doctrine of equivalents in a timely manner, the plaintiff may lose the opportunity to bring the doctrine of equivalents to trial.

(D) Invention dates

If the inventor invented after the publication of barring prior art, then the patent may be invalid. You need to pin the patentee

on the dates of conception and reduction to practice so that you don't search for a moving target. Ask the plaintiff to identify all witnesses and documents supporting their asserted dates of conception and reduction to practice.

(E) Facts on willful infringement

You need the plaintiff to identify the witnesses and documents supporting a claim for willful infringement, which risks the defendant paying up to triple damages.

(F) Plaintiff's products/services

Find out if the patentee plaintiff makes, uses, or sells any products or services that are the subject of the litigated patent.

(G) Patent marking

There are usually no damages for the plaintiff if their own patented product is not marked with the relevant patent number. This fact may be a significant issue when calculating damages.

(H) Prior Art

Ask the patentee plaintiff to identify any prior art that was not provided to the patent office.

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