

Section A

Introduction

The objective of this course is to develop and improve trial skills through “learn-by-doing” techniques. Participants should expect to become more proficient in examining and cross-examining fact and expert witnesses; in handling, authenticating, and introducing documents and other exhibits; and in other trial skills involved in patent litigation. The course is based upon a hypothetical patent infringement controversy that has reached the trial stage. This trial will be a jury trial in Federal Court.

The materials contained in this volume constitute the case file of this patent controversy. All information necessary to prepare for, and participate in, the course is contained in these materials. While the case file is intended to fully portray the patent controversy, the course will not be conducted as a full trial in the traditional sequence. Rather, trial skills will be developed in the context of particular problems that are designed to simulate the courtroom proceedings in various portions of a full trial. Students should consider the issues raised by the facts of the controversy and develop a total trial approach or philosophy.

The course is not designed or intended to be a lecture series on the subject of patent trial advocacy. Each session will consist almost entirely of performances by the participants and critiques by the faculty. This is strictly a “learn-by-doing” approach to instruction. Half of the participants in each group will assume the role of Plaintiff’s counsel, and the other half will assume the role of Defendant’s counsel. Analysis of the problems from both the plaintiff’s and the defendant’s points of view is required if offensive and defensive strategies and tactics are to be effective. The setting is intended in all respects to simulate a courtroom atmosphere.

In a typical problem, such as the direct and cross-examination of one of Plaintiff’s fact witnesses, a student from Plaintiff’s group will be called on to begin direct examination of the witness. During this examination, the other students in the group (including those assigned to represent Plaintiff) may raise appropriate objections to the form or content of the questions asked of the witness. This “all object rule” applies to all trial problems unless otherwise indicated.

After each team has conducted its examinations, the faculty and the other students will critique these individual performances. Students are expected to offer constructive suggestions and discuss the techniques employed.

Except for those problems that specifically deal with the handling and introduction of exhibits, all documents and exhibits are to be treated as already admitted into evidence. Specific instructions are provided for each problem dealing with exhibits.

The necessity for adequate preparation prior to class attendance cannot be overemphasized. There will be little or no time for in-depth preparation during the class; accordingly, all preparations should be completed before arrival. Intimate knowledge of all the facts and familiarity with the supporting documentation is a must. Preparation for conducting the examination of witnesses should involve outlining the areas of their testimony, and preferably, writing out the questions to be asked. Students may refer to their written outlines and questions during examination.

It is essential to devote a substantial portion of the preparation to study of the materials contained in the attached Guide to Trial Advocacy Skills (Section J). This guide includes a discussion of some topics that will be covered at the program, such as opening statements and closing arguments. These topics are included for general information only. The guide is written primarily for jury trials; however, basic considerations are in most instances the same for both bench and jury trials. Faculty members will provide additional insight into considerations unique to patent bench and jury trials, where necessary.

Students should also obtain an up-to-date copy of the Federal Rules of Evidence. Effective participation in the course requires intimate knowledge of the rules relating to the taking of testimony and the offering of exhibits into evidence.