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Insight — 6/25/2014

On June 4, 2014 the United States District Court for the District of Colorado adopted a Pilot Program implementing proposed Local Patent Rules. On June 11, the Court announced that the new Local Patent Rules will apply to all patent cases filed in the District of Colorado on or after August 1, 2014. These new rules were adopted in time for the official opening of the Regional Patent Office in Denver.

The Local Patent Rules were developed collaboratively with members of the local patent bar and with input from public comment. Our patent litigation partner, Jane Michaels, chaired the drafting committee. The Pilot Program is designed to provide uniformity and facilitate efficient management of patent cases.

Parties and counsel involved in patent litigation in Colorado need to be aware of the following key provisions of the new Local Patent Rules:

- *The Court's new Scheduling Order in a Patent Case, designed to coordinate with the Court's Local Patent Rules, sets out presumptive deadlines for specific disclosures, contentions, document production, and claim construction briefing.*
- *The party claiming patent infringement must serve Infringement Contentions, identifying with specificity each accused product or process, including a claim chart detailing the factual basis for each claim of each patent that is allegedly infringed and providing documents demonstrating patent ownership rights, all substantive communications with the Patent Office, and evidence of the conception of the invention.*
- *In a departure from local patent rules adopted in most other jurisdictions, Colorado requires a party opposing a claim of patent infringement to serve a Response to the patent owner's Infringement Contentions, clearly identifying the basis for its non-infringement arguments and producing documents that demonstrate the operation of the accused products or processes, including specifications, schematics, flow charts, art work, and source code, if relevant.*
- *A party opposing a claim of patent infringement and contending that the asserted patent is invalid must serve Invalidity Contentions, accompanied by a claim chart detailing the basis for its invalidity arguments, and produce copies of the claimed prior art.*
- *The patentee must file a Response to the Invalidity Contentions*

and produce any additional documents supporting its position.

- *A party opposing patent infringement and/or asserting invalidity files the opening claim construction brief. All claim construction briefs are limited to 10,000 words per party. If a party files an opening and a reply brief, the two briefs together may not exceed the 10,000 word limit.*
- *Infringement contentions and invalidity contentions may only be modified upon a showing of good cause (e.g., previously undiscovered information or an unanticipated claim construction ruling).*

In patent litigation, as in all cases pending before the U.S. District Court for the District of Colorado, counsel for the parties are encouraged to work cooperatively to develop a reasonable, efficient, and cost-effective pretrial discovery schedule, after considering the guidelines and presumptive deadlines in the Scheduling Order. The new Local Patent Rules are not intended to be rigid or mechanistic, and the District Court judges retain discretion to adopt particularized scheduling, disclosure and briefing requirements suitable to the circumstances of a specific case.

If you have questions about the new Local Patent Rules or how they may affect your company, please contact Tim Getzoff, Don Degnan, or Jane Michaels.

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