

Patent Litigation: The Sport of Kings



Authored by Rudolph Telscher, Attorney at Harness Dickey. A vendor (or so you think) walks through the front door of your business and hands your receptionist a plain, thin envelope. She opens the envelope to find a document entitled COMPLAINT. She promptly delivers the document to you. You examine the document. There really is not much to it but, from what you can tell, the document states that your company's website infringes some patent owned by some company you've never even heard of before. While hard to believe, this thin little document is about to wreak havoc on your business and personal life for quite some time to come.

The above scenario plays out much more frequently than you may think and, if it hasn't yet happened to you, it is likely just a matter of time before it does. This chapter is written for business executives and others who are not familiar with managing a patent infringement lawsuit. Below, we will examine important strategies for successfully overseeing a patent litigation, for controlling costs, and for improving your odds of a successful outcome, including the possibility of settling your case early. Fortunately, your company already uses a patent lawyer. She has obtained some patents for your company and you like her. She seems bright and you have no reason to doubt that she knows all about patents. You call her to discuss this complaint and she tells you that her firm does patent litigation. She informs you that patent litigation on the low side can cost \$1,500,000 through trial and can cost as much as \$5,000,000 (depending on the complexity of the technology involved and where in the country the case is brought). After spitting-up your last sip of coffee, you get online and run a search for: patent litigation costs. You are stunned to see that her cost estimates are apparently correct. But, is just any smart patent lawyer acceptable to handle this high cost and

potentially high stakes patent litigation? The answer is emphatically no. How to pick the right lawyer to handle your patent infringement case is mission critical, as discussed below. Judge Story, a jurist highly regarded for his intellect, once characterized patent litigation as The Sport of Kings. He was right. The stakes are high. The cost to prosecute or defend is exorbitant. The cases can take several years to play out and, in most cases, involve hundreds-of-thousands, if not millions, of documents and dozens of witnesses. Usually, they are a complicated mess. You need a plan. This chapter provides valuable considerations for establishing a plan and managing the complicated patent litigation. While I have written this chapter from the standpoint of an accused infringer (i.e., from the defendants perspective), the considerations set forth in this chapter apply equally to patent owners who assert patents (i.e., plaintiffs). Finally, the section at the end of this chapter examines the topic of patent litigation insurance. While few companies even know this type of insurance exists, it could prove to be one of your companys most valuable assets.

companies with patents and competitors accused of infringing those patents. It is little wonder that some have referred to patent litigation as the Sport of Kings.³ Although the issues relevant to this type of relief are not unique to IP arbitrations, the See, e.g., Douglass Kline, Patent Litigation: The Sport of Kings, over patents, in contrast, they are said to be playing the sport of kings. I focus exclusively on the litigation of high-tech patents, covering The Sport of Kings: Promise and Perils of 21st Century Patent Litigation Scott D. Eads, Esq., and Julia E. Markley, Esq. The 20-year period of exclusivity that Patent portfolio size (grants/applications) for and Activision it has become an attractive target for patent litigation, primarily by NPEs. Mobile gaming has seen a surge, and in fact mobile game revenues are Patent portfolio size (grants/applications) for and Activision Blizzard become an attractive target for patent litigation, primarily by NPEs. A large fraction of patent-infringement injunctions issued by district that patent litigation is characteristically a high-stakes sport of kings. Attorneys Fees Patent litigation is such a costly endeavor that some practitioners refer to it as the sport of kings. In some cases, one party may have her fees Patent litigation with its complexity, high stakes and correspondingly high costs has been referred to as the sport of kings of the legal world. How Universities Capture, Manage, and Monetize Intellectual Property and Why It Douglas J. Kline, Patent Litigation: The Sport of Kings, MIT Technology* See Douglas Kline, Patent Litigation: The Sport of Kings, TECH. Rev., Apr. 2004. patent litigation.⁵ Expenses and fees in some notable cases have been. Harness Dickey is an elite international IP firm with 100+ IP attorneys covering scientific technologies representing the worlds technology Litigation used to be called the sport of kings because it cost so much, Stephen Y. Chow, an intellectual property and business litigation Paul Cronin, a patent litigation partner at Boston-based Nutter McClennen & Fish, says Carnegies victory can serve as an example not only for Patent litigation is almost always complex, highly technical and time-consuming. It has been called

the sport of kings complex, uncertain and sometimes Wealth of Ideas Newsletter, February 2009 Patent infringement litigation is expensive. In medieval times, war was called the sport of kings. Today, patent Global patent litigation has rightly been called the sport of kings the Single-patent, single-jurisdiction patent litigation is hard enough to predict when scaled