Kilpatrick

5 KEY TAKEAWAYS

Patent Disputes: Bringing, Financing, and Fighting Big Cases

Kilpatrick partner Mitch Stockwell recently presented to clients at the Kilpatrick Intellectual Property Seminar on the topic of "Patent Disputes: Bringing, Financing, and Fighting Big Cases." Mr. Stockwell explored both the hot topics and basic benchmarking techniques for addressing patent disputes from beginning to end. This session started with how to utilize, and avoid, the latest PAE state laws at the demand stage and discuss how to address willfulness issues along the way. He then discussed the patent financing trends that remain prevalent as well as addressed the theories that plaintiffs are pursuing, and the defense is attacking, the "big damages" cases.

Key takeaways from the presentation include:

1. Litigation funding has risen to become a large, legitimate and now regulated business that addresses both consumer and commercial cases, including patent and other intellectual property litigation.

2. Substantial financing of patent infringement claims results in significant damages claims and critical litigation in key technology areas.

3. Regulatory efforts have focused mostly on disclosure concerning financing. But at least for patent assertion entities that engage in mass campaigns, state law "bad faith" patent assertion statutes also exist that can be helpful.

4. The bad faith assertion laws vary among the states but often will also apply to patent assertions by and between competitors, requiring care when initiating or receiving licensing demands.

5. Willfulness and enhanced damages awards have meaningfully increased post-Halo and targets of patent assertion campaigns should consider whether state bad faith assertion laws can better position them against a claim of willful infringement.

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