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Cost-Containment Strategies for Patentees in Litigation

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Patent litigation has become increasingly expensive, to the point that in 2011, then Federal Circuit Chief Judge Randall Rader characterized the expense as “one of the great challenges of our profession[.]” Chief Judge Randall R. Rader, “The Most Pressing Issues in IP Law Today” (2011). Two years later, the Federal Circuit's Advisory Council concluded, “Courts and the patent bar have attempted to control the cost and complexity of patent cases with some success . . . [b]ut problems persist.” Federal Circuit Advisory Council, Introduction to [Model] Order Limiting Excess Patent Claims and Prior Art (2013). These sentiments remain true today. This practice note provides guidance for in-house counsel on reducing litigation costs by identifying certain activities that can be moved in-house or steps that can be taken to simplify litigation as early as practicable. We also provide suggestions on how to ensure that you receive early notice of any potential budget adjustments and thereby do not miss opportunities for cost-containment. The note touches on each stage of a case, from the pre-suit investigation through trial.