THE BENEFITS OF PATENT ARBITRATION

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Welcome

Welcome to this eBook about patent arbitration.

I have been arbitrating and litigating commercial and intellectual property disputes for nearly three decades in various courts and hearing rooms around the country. These cases haven't gotten any less complex or expensive as time has gone on. Patent cases are particularly complex, often involving advanced technology, issues of claim construction, patent validity, and increasingly complex damages analysis.

The path of a patent case in court is lengthy and expensive. After lengthy discovery and court determination of some legal issues like claim construction, the cases are tried to juries. That means the cases are decided in large part by lay people struggling to learn the basics of patent law, technology, and damages accounting.

Post-grant review of patents has become another battle-ground. This review offers another forum – this time the Patent Office – for the parties to address the validity of the patent, although not infringement issues. Often this review proceeds in tandem with court cases or the court case is stayed until determination by the Patent Office.

No wonder these cases are so long and expensive to get through the court system.

Through my experiences as an arbitrator, I have become convinced that commercial and intellectual property matters in general – and patent-related matters in particular – are often very well suited to arbitration. Arbitration can allow the parties to get quickly to the heart of a business dispute.

An experienced arbitrator can help design a process tailored to get the parties the information needed to sort the matter out. But the arbitrator can also keep the matter on track for a quick but thoughtful determination, avoiding much of the procedural wrangling common in these cases. The parties' can present their often complex technical and legal issues to one decision maker who has the experience and background necessary to understand the matter well. And the entire dispute can be resolved in one proceeding.

Arbitration can, in short, get the parties back to minding their business rather than getting stuck for years in the business of litigation.

I hope you find this eBook, focusing on the benefits of patent arbitration, useful in considering how you might best handle your next patent dispute. Of course, many of these considerations are also applicable to commercial disputes, particularly those involving intellectual property.

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Patent law is a highly complex area of the law, requiring its own skill set. Due to the complexity of this area of the law, many who encounter a patent dispute search for alternative methods of handling the dispute. One alternative to litigating these issues is participating in patent arbitration. Arbitration has successfully and efficiently resolved cases involving patents, including patent licenses. While arbitration can be helpful in a number of different contexts, it is particularly effective in patent disputes as explained further below.

1. **Less Expensive**

One of the most significant benefits of using arbitration for patent disputes is that it is usually much less expensive. Many inventors acquire patents in order to protect their intellectual property. However, they may not be in the position to actually litigate a case based on patent infringement as would be necessary if pursuing full-blown federal patent litigation. Similarly, many licensees of patents need to know their rights and responsibilities if there is a dispute, but don't want to go through a full-blown federal court case to determine them. Despite arbitration being an alternative form of dispute resolution, it is fully recognized under federal law. Additionally, arbitration organizations have established specific rules to help make the process easier to pursue. Due to the limitations in discovery and other procedural matters and the expedited process, arbitration tends to be much cheaper than litigation.

2. **Faster**

In intellectual property law, time is of the utmost importance. If a patent matter is pending for a long time, the parties' businesses may be in limbo. One party may not know whether it will owe royalties or damages and the other doesn't know what kind of payment it will ultimately receive, if any.

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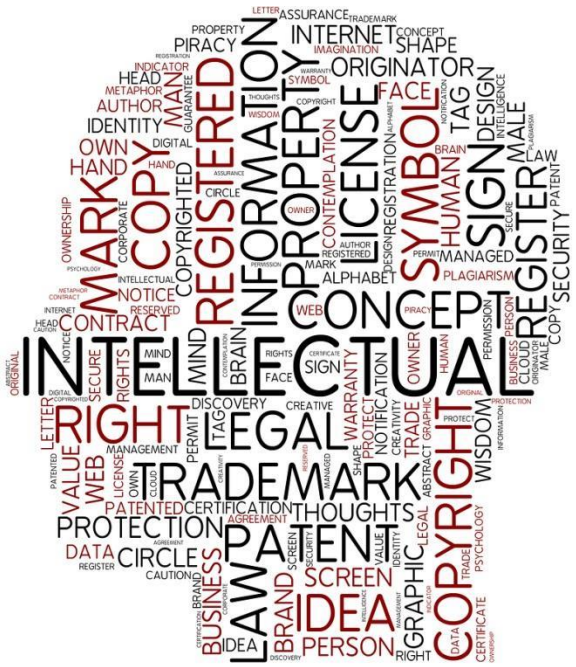
Arbitration allows the parties to receive a result much more quickly than they would receive through litigation. American courts are known for having too many cases that are further delayed with motions and hearings. Arbitrators can usually hear a case much more quickly than a judge is able to. Arbitration rules impose limits on the amount of time that an arbitrator has to reach a decision as can parties' arbitration agreements.



Additionally, arbitration is more final in nature. In litigation, the parties will be able to appeal the decision, keeping the parties in limbo even longer. In contrast, there are very few times when an arbitration award can be successfully appealed.

3. Specialized Knowledge

Another key benefit of patent arbitration is that it allows the parties to select a decision maker who has specialized knowledge of patent law. In litigation, the parties must attempt to argue their side to a jury of lay people who may not understand the complexities involved. This often translates to attorneys taking up a lot of time in order to educate the jurors and appealing to emotion.

When using arbitration the parties are able to explore the experience and background of potential arbitrators. This allows the parties to choose an arbitrator with patent law experience, giving attorneys the opportunity to present the case to a knowledgeable decision make rather than lay jurors who may struggle with sophisticated patent issues.

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4. More Control

The parties are able to have more control over the process through arbitration than they would if they were pursuing litigation. Their arbitration agreement can limit the scope of matters to be decided in arbitration. Likewise, the parties can define the scope of arbitration to be sure it incorporates important aspects of the dispute, including claim construction or infringement by specific designs in a way that alternatives such as post-grant review fail to do.

Additionally, the parties can create a customized discovery plan that provides them with the information that they need to present their case without the unnecessary and lengthy discovery processes common with litigation. The parties can also select a forum that is convenient and fair to both of them, saving time and work in this area.

5. Confidential

A significant drawback of litigating patent disputes is that litigation tends to create a public record. Even if the court orders certain protective orders, the parties still risk having their confidential information and ideas exposed. In contrast, arbitration is a confidential process and the parties can agree to significant confidentiality protections that may not be available in court.

Having this confidentiality can be extremely important in the intellectual property context. Determining a patent matter often involves analysis of parties' design processes, specific technology, and financial aspects of their businesses. Often neither party wants to risk having this proprietary information made public in open court.

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David Allgeyer brings a breadth of knowledge and experience to the table. He has been a partner of the Minneapolis law firm of Lindquist & Vennum for nearly 30 years during which he served as a successful litigator. Additionally, he has arbitrated over 65 intellectual property and business disputes throughout the country. He served as a Panel Chair in many of these arbitrations. He continues to serve as a member of the AAA Commercial Panel.

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