

© 2021 The Sedona Conference

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

THE SEDONA CONFERENCE WORKING GROUP SERIES



THE SEDONA CONFERENCE

Commentary on Streamlining Lower-Value Patent Cases

A Project of The Sedona Conference
Working Group on Patent Litigation
Best Practices (WG10)

NOVEMBER 2021 VERSION



Table of Contents

I.	Introduction.....	1
II.	Identifying Cases to be Streamlined	2
A.	Considerations for cases to be streamlined	2
1.	Amount in controversy	2
2.	Demand amount (for settlement purposes)	2
3.	Other damages indicators	2
4.	Weak case on the merits.....	3
III.	Encouraging Participation	4
A.	Recognizing the advantages of a streamlined approach.....	4
1.	Benefits to plaintiff	4
2.	Benefits to defendant	4
IV.	Structure & Implementation.....	5
A.	Structural considerations	5
1.	Optional participation	5
2.	Waiver of jurisdictional and venue arguments.....	5
3.	Timing of participation	5
4.	Waiver of claims/remedies/patent office proceedings	5
5.	Limitations on asserted claims and asserted prior art.....	6
6.	Discovery limitations.....	6
7.	Claim construction and summary judgment	7
8.	Trial	8
9.	Damages	8
10.	Schedule.....	8
V.	Case Management Statement Order.....	10
VI.	Comparative Analysis	13
A.	Purpose.....	13
B.	Analysis	13
1.	IPEC	13
2.	EDTX Track B.....	14

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

3. Copyright Claims Board and the New Case Act (Copyright Alternative in Small-Claims Enforcement Act of 2020) – signed December 27, 2020 ..**Error! Bookmark not defined.**

© 2021 The Sedona Conference

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

Principles “At a Glance”

[TO BE DRAFTED]

© 2021 The Sedona Conference

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

Best Practices “At a Glance”

[TO BE DRAFTED]

I. Introduction

The *Commentary on Streamlining Lower-Value Patent Cases* explores ways to efficiently and effectively resolve certain types of patent cases with proportional impact on the parties, courts, third parties and other stakeholders. It recognizes that our current “one size fits all” patent litigation model over-taxes the system and parties when the value of a particular patent case is relatively low. The *Commentary* explores the realities of the patent litigation ecosystem and the interests of all stakeholders to generate a balanced proposal that can be effectively employed, focusing on the lower-value cases that consume a disproportionate amount of party and court resources. This *Commentary* is not directed at the very low value cases that tend to resolve before consuming meaningful court resources.

The *Commentary* explores what types of cases would benefit from streamlining. For example, some cases are weak on the merits either because they involve a limited damages period (i.e., marking problems and/or expired or soon-to-be-expired patents) or because there is a clear noninfringement, invalidity, standing or other issue. Some cases might involve a low demand from a plaintiff seeking a large number of smaller settlements. Yet other cases might involve a patent directed to a minor or small aspect of an accused product. The *Commentary* recognizes that some cases may fall within more than one of these categories.

An initial goal of Working Group 10 (WG10) was to accurately and fairly identify such cases, and to develop a streamlined program for resolving them. WG10 conducted a comparative analysis of the different procedures and best practices employed in our own judiciary across practice areas and programs implemented in other countries. The goal was to study the efficacy of such practices to inform the development of this *Commentary*.

The primary focus of this *Commentary* is to develop a fair and balanced Streamlined Patent Case Program (“the Program”) that will become widely adopted in the court system and by litigants and transform the way lower-value patent cases are resolved. This Program reflects the inputs of representatives from all key stakeholders in the patent litigation system, after fleshing out any barriers to adoption and minimizing any unintended consequences.

II. Identifying Cases to be Streamlined

A. CONSIDERATIONS FOR CASES TO BE STREAMLINED

Patent cases with potentially hundreds of millions of dollars at stake – whether through monetary damages or the threat of an injunction – are the exception not the rule in U.S. litigation. Accordingly, the vast majority of patent cases that are filed today would benefit from some form of streamlining. This *Commentary* explores a number of guideposts for identifying such cases, as discussed below.

1. Amount in controversy

In WG10's experience, most patent cases filed in the U.S. have a realistic damages recovery of less than \$20 million. This *Commentary* therefore recommends the damages "ceiling" in the Streamlined Patent Case Program be set at \$20 million. Many plaintiffs enter into litigation with no expectation of receiving \$20 million or more in damages if successful, and for those plaintiffs, there should be no hesitation to enter into the streamlined program. For those plaintiffs who may have expectations of a greater recovery, this number sets an appropriate balance between a plaintiff's desire to seek a greater sum if the case proceeds to trial versus the benefits to the plaintiff in agreeing to enter into the Program (see Section IV.A).

In evaluating the realistic value of the case, the plaintiff should assess any prior license agreements to the asserted patents. License rates that have not generated significant revenue should be an indicator to the plaintiff that the present case is a strong candidate for the Program.

2. Demand amount (for settlement purposes)

Some plaintiffs file patent cases with the expectation of quickly settling the case for well under \$1 million. The vast majority of those cases settle before any meaningful effort is expended by the court on the case. These types of cases are generally not appropriate for the streamlined program, because the Program requires the parties and the court to expeditiously move the case forward. Instead, nearly all of these cases will and do resolve in the ordinary course and will not benefit from the Program.

3. Other damages indicators

The parties to a case may consider other damages-related indicators of the value of the case in determining whether to take advantage of the Program. For example, if the patent has expired or is set to expire soon, and/or the plaintiff or its licensees have clearly not complied with the marking requirement of 35 U.S.C. § 287, the damages realistically available to the plaintiff may be limited. Another possibility is that the plaintiff may have over-estimated the amount of the defendant's sales of the accused products. In such a case, both parties will benefit from the defendant revealing this information to the plaintiff soon after the case is filed, so that the parties can elect to use the Program.

The parties should also realistically assess whether the patent(s) in suit cover only a minor component or feature of the accused products. Here too, an early communication from the

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

defendant to the plaintiff regarding the value of the accused component/feature may result in the parties agreeing to enter into the Program.

4. Weak case on the merits

There may also be instances where the plaintiff has missed or is unaware of facts that adversely impact its case on the merits. For example, the defendant may have demonstrably strong prior art, or an on-sale bar defense. The defendant may also believe that there is a straightforward noninfringement argument. Communication of these facts to the plaintiff early on is encouraged. While the plaintiff may not necessarily agree with the strength of defendant's arguments, it may nonetheless be convinced to use the Program in order to obtain resolution of the issue as quickly and efficiently as possible.

III. Encouraging Participation

A. RECOGNIZING THE ADVANTAGES OF A STREAMLINED APPROACH

Early identification of cases that may benefit from the Streamlined Patent Case Program is critical to achieving widespread adoption. Trust by both parties in the Program is paramount. Streamlining cannot successfully occur unless the parties “trust the process” and recognize that each side is giving up certain things that might otherwise be available in a traditional, non-streamlined case. Below are some of the advantages the Program offers each party.

1. Benefits to plaintiff

For the plaintiff, the Program offers several benefits. With the possible exception of the Alexandria Division of the Eastern District of Virginia, the Program is significantly faster than any schedule currently available in district court. A plaintiff will receive a decision on the merits 44 weeks after the parties enter into the Program. If the plaintiff succeeds on the merits, it will receive a decision on damages 16 weeks later. Given that most courts will not proceed to a jury trial in under two years, this is a significant time savings.

More than just speed, the Program also offers significant cost savings. The Program requires a limited number of asserted patent claims, asserted prior art references, and offers reduced discovery demands. Further, certain issues that might otherwise require substantial time and resources, such as willful infringement and injunctive relief, are not available under the Program. The end result is a patent case that should ultimately be completed at a fraction of the normal cost.

The plaintiff also benefits from avoiding the uncertainty and additional cost associated with IPR or PGR proceedings before the Patent Trial and Appeal Board (PTAB), as well as the satellite litigation issues that often surround PTAB proceedings (such as whether the case should be stayed, and the scope of prior art estoppel if the PTAB proceeding is unsuccessful).

2. Benefits to defendant

Many of the same benefits identified above inure to the defendant as well. The defendant will also enjoy the significant cost savings associated with the Program. The defendant also benefits from avoiding any uncertainty associated with willful infringement claims and an injunction request. The defendant avoids the cost and time-consuming nature of email discovery. Finally, the damages cap provides a defendant certainty with respect to the worst-case impact the case could have on the company's bottom line.

IV. Structure & Implementation

A. STRUCTURAL CONSIDERATIONS

WG10 considered a number of options for how to structure the Streamlined Patent Case Program, and the features/requirements of such a Program, before arriving at the following core aspects of the Program.

1. Optional participation

A fundamental aspect of the Program is to eliminate a jury trial and proceed instead with a relatively short bench trial. Jury trials add significant expense due to the voir dire process, the need for jury instructions and a verdict form, Rule 50 and Rule 59 motions, and (for many parties) the use of jury researchers and mock trials. A bench trial avoids these costs. A bench trial is also more efficient and can be completed in a faster time than a typical jury trial.

Thus, in order to participate in the streamlined process, the parties must both agree to waive their right to a jury trial. Because of Seventh Amendment concerns, this necessarily requires that participation in the Program be optional to both parties, not mandatory. The consensus of WG10 is that the benefits to both parties of participating in the Program will outweigh any concerns they may otherwise have regarding giving up the right to a jury.

Making participation optional also avoids any concerns that may be associated with the judge mandating that parties participate in the Program. A party may be understandably concerned that the judge has already pre-judged the merits of the case if the judge is the one recommending or requiring that the parties enter into the Program. Removing the judge from the process of deciding whether to enter into the Program avoids this concern.

2. Waiver of jurisdictional and venue arguments

A requirement for entry into the Program should carry with it the requirement that the parties waive any arguments regarding personal or subject matter jurisdiction and improper or inconvenient venue. This requirement works towards achieving the goals of the Program and allows the parties and the court to proceed expeditiously to issues regarding the merits of the patent claim.

3. Timing of participation

As discussed in Section V.10 below, the Program includes an aggressive schedule. In order to achieve the goal of a trial on the merits well within a year of filing the complaint, a requirement of the Program is that both parties agree to participate in the Program before the answer to the complaint is filed. In particular, this gives the defendant enough time to evaluate the merits of the case and determine whether it wishes to enter into the Program.

4. Waiver of claims/remedies/patent office proceedings

There are a number of issues that arise in patent litigation that can quickly escalate the cost of the case and require significant resources to address. In furtherance of the goal of a streamlined, cost-

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

efficient process, a requirement for entry into the Program is for parties to give up the right to pursue some of these issues.

First, by entering into the program, the plaintiff agrees not to pursue any claims of willful infringement. This eliminates costly and time-consuming disputes over the production of opinions of counsel and waiver of the attorney-client privilege. Second, the plaintiff also agrees not to seek an injunction against the accused products/processes. This eliminates discovery into the irreparable harm and public interest factors, and the potential need for expert testimony as to both.

Third, the defendant agrees that it will not pursue invalidity proceedings before the PTAB (such as filing petitions for IPR, CBM, or PGR) or Patent Office (ex parte reexamination). This eliminates a significant cost to both parties, and also ensures that related disputes are not raised in the court proceedings (such as whether the case should be stayed and the scope of any prior art estoppel).

5. Limitations on asserted claims and asserted prior art

In keeping with the goal of the Program, WG10 recommends that there be stringent limits placed on the number of patent claims the plaintiff can assert, and the number of prior art references that the defendant may rely on. In practice, plaintiffs frequently assert numerous claims, only to drop claims as the case progresses, with only a handful of claims actually tried. Defendants, in turn, frequently identify many dozens of prior art references, generating hundreds or even thousands of pages of invalidity charts, when in reality only a few references may actually be relied on at trial. Putting strict limits in place at the beginning of the program reduces the unnecessary costs associated with these practices.

As such, the Program imposes the following limitations: a total of five asserted claims (regardless of the number of asserted patents), and no more than seven total prior art references. If there are multiple asserted patents and the patents have different specifications, then the defendant may add two additional prior art references per different specification. For example, if the plaintiff asserts three patents where two of the patents share a common specification and the third has a materially different specification, the total number of prior art references that the defendant may assert is nine. To the extent that the defendant raises obviousness arguments under 35 U.S.C. § 103, the obviousness combinations must be made from the prior art references identified by the defendant as part of the total allowed number – in other words, the defendant cannot rely on additional references to (for example) show the “state of the art.”

6. Discovery limitations

A key aspect of the Program is significantly reducing the amount of discovery sought and produced. Discovery is where the bulk of patent litigation expense arises, and it also frequently requires the most commitment from the parties in terms of time and resources.

i. Core documents

The Program requires that six weeks after entry into the streamlined program, both parties produce their “core” documents. For plaintiff, this includes the patent(s), file histories, any prior art, assignment/chain of ownership documents, license/settlement agreements, documents concerning the inventor(s), development (conception/reduction to practice) history documents (inventor

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

notebooks, presentations, etc.), and documents regarding the accused products/process. If the plaintiff alleges that it offers a competing product, then documents regarding the customers/sales/profits for the competing products should also be included as part of the core document production.

The defendant's core documents should include prior art, documents regarding the accused products/process (source code, specifications, schematics, flow charts, formulas, etc.), financial information concerning the accused products/process (customers, revenue, profit/loss statements), and any license agreements related to the accused products/process.

ii. No email discovery

A threshold limitation on discovery is the elimination of email discovery. Particularly with the requirement that the plaintiff forego any willful infringement claims, the marginal need for email discovery in the streamlined program is far outweighed by the cost, in terms of both time and expense, that email discovery typically entails. By eliminating email discovery, the typical disputes over the number of custodians, the search terms, the number of "hits," etc. is avoided.

iii. Other discovery

In addition, the Program imposes significant reductions in: (a) the number of interrogatories; (b) the number of requests for production; (c) the number of requests for admission; (c) the number of subpoenas; (d) the number of Rule 30(b)(6) deposition topics; and (e) the number of depositions that a party may take. Because not every case has the same issues, the Program provides flexibility in allowing the parties to jointly propose these limitations, with the court resolving any disputes.

iv. Discovery dispute resolution

The Program includes discovery disputes to be resolved on an expedited basis, whereby the parties provide the court with a brief, joint letter explaining the dispute and each parties' respective positions, followed by a short telephone conference with the court. The court will provide its decision at the conclusion of the conference, or shortly thereafter.

7. Claim construction and summary judgment

The Program requires the parties exchange their identification of claim terms, proposed constructions, and supporting evidence 10 weeks after entry into the streamlined program. The court will have flexibility in setting its preferred form of briefing and schedule, but should hold a claim construction hearing 17 weeks after the parties' entry into the streamlined program. The default recommendation of the Program is that the claim construction hearing take place by video and last no more than two hours. The court will provide its constructions following the hearing, or shortly after the hearing.

Because the Program eliminates the jury trial in favor of a bench trial, the consensus of WG10 is that the parties should not be allowed to file summary judgment motions under the Program. In order to meet the program's goal of a trial on the merits well within a year of the complaint being filed, summary judgment briefing is not feasible in that time frame. To the extent there is dispute

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

over the definiteness of a claim term (35 U.S.C. § 112), any such disputes should be raised and resolved as part of the claim construction process.

8. Trial

The Program requires trial on the merits be conducted by the court 40 weeks after entry into the Program, with the parties submitting trial briefs five weeks prior. The trial should be limited to two or three total days. The court will issue its decision on liability four weeks after the trial.

9. Damages

As discussed in Section III.A.1, the Program imposes a maximum the plaintiff may seek in damages of \$20 million.

If the court determines that one or more the asserted patents are infringed and not invalid, the parties will immediately proceed to the damages phase of the case. This expedited process provides for a short period of expert discovery, with a one-day bench trial on damages taking place 56 weeks after entry into the streamlined program. The court's decision on damages will issue no later than four weeks after the trial. Where applicable, the damages phase will include argument and decision from the court regarding an appropriate running royalty in the absence of injunctive relief being available.

10. Schedule

The following tables set forth the Program's recommended streamlined schedule.

i. Liability phase

Event	Deadline (from entry into program)
Plaintiff identifies claims and provides claim charts	One week
Defendant provides non-infringement contentions	Four weeks
Parties produce core documents	Six weeks
Defendant provides invalidity contentions	Eight weeks
Parties exchange claim terms/constructions and supporting evidence	10 weeks
Claim construction briefing completed	15 weeks
End of fact discovery	16 weeks

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

Event	Deadline (from entry into program)
Claim construction hearing (2 hours by video; constructions provided during or soon after the hearing)	17 weeks
Service of infringement and invalidity expert reports	21 weeks
Service of responsive expert reports	25 weeks
Expert discovery deadline	27 weeks
Submission of trial briefs	35 weeks
2-3 day bench trial	40 weeks
Decision on liability	44 weeks

ii. Damages phase

Event	Deadline (from entry into program)
Plaintiff serves damages expert report	48 weeks
Defendant serves damages expert report	50 weeks
Damages expert discovery deadline	52 weeks
Submission of damages trial briefs	54 weeks
1-day bench trial on damages	56 weeks
Decision on damages	60 weeks

V. Case Management Statement Order

As set forth above, the Program requires the court's participation early in the process, with claim construction initiating only 10 weeks after entry into the program. The court will benefit from an early disclosure of information regarding the case. Thus, WG10 recommends under the Program that the court issue an order immediately after the parties agree to enter into the Program that provides the court with information regarding the case. A draft model order is set forth below.

MODEL ORDER GOVERNING THE CASE MANAGEMENT STATEMENT IN A PATENT CASE UNDER THE STREAMLINED PATENT CASE PROGRAM

1-1.1 The Case Management Statement

Within one week after entry into the Streamlined Patent Case Program, the parties will prepare a case management statement and file it with the court. Plaintiff is responsible for ensuring the prompt filing of the Case Management Statement. The management statement will address or identify the following:

1. When Plaintiff's complaint was filed, and, if applicable, number of extensions and days of extension.
2. When Defendant responded to Complaint, or when Defendant's response is due.
3. The date(s) when the parties agreed to enter into the Program.
4. Number(s) of asserted patents, numbers of asserted claims, and quantity of asserted patents and claims. (Example: Plaintiff has asserted Patent No. X,XXX,XXX Claims 2 and 4; and Patent No. Y,YYY,YYY Claims 1 and 6; for a total of 2 asserted patents and 4 asserted claims.)
5. A chart of all pending and past cases where a common patent is or was asserted, such chart taking the following form:

Case Name	Case Cite	Venue and Judge	Overlapping Patents	Time to Resolution (if resolved)	Key Rulings

6. Any other litigation between the parties and the nature and status of that litigation.
7. For any patent licensed by a holder of a patent-in-suit, provide a chart listing the date of such license, the patents licensed, the financial terms of such license and any key provisions

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

and restrictions. The patent holder may optionally add an explanation as to how the financial terms were set (for example, if the dollar amount is low based on a limited sales base).

Indicate which licenses cover any of the patents-in-suit and which licenses the patent holder contends are comparable.

8. A good-faith estimate of the damages range expected for the case (not to exceed \$20 million) along with an explanation for the estimates. These estimates will be non-binding. If either party is unable to provide such information, that party will explain why it cannot and what specific information is needed before it can do so. Such a party shall also state the time by which it should be in a position to provide that estimate and explanation.
9. A listing of any key factors that will impact the value or termination of this case.
10. All non-operating companies and LLCs that are under the control of a party, that are controlled by a party or under which a party is under common control and the total number of patent lawsuits brought by those non-operating companies and LLCs.
11. For any non-operating companies or LLCs with fewer than 10 members, the identity of such members.
12. A listing of the following information regarding any person or entity that is not a party and is providing funding for some or all of the attorneys' fees and expenses for the litigation on a non-recourse basis, or is providing discounted legal services, in exchange for (1) a contingent financial interest based upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal or bank loan, or insurance:
 - a. The identity of the funder(s), including the name, address, and if a legal entity, its place of formation;
 - b. Whether the funder's approval is necessary for litigation decisions or settlement decisions in the action and if the answer is in the affirmative, the nature of the terms and conditions relating to that approval; and
 - c. A brief description of the nature of the financial interest.
13. A summary of any notice of any patent-in-suit and a summary of any pre-suit or post-suit discussions relating to a potential license of any patent-in-suit including any financial terms exchanged.
14. Any IPR, CBM, or other PGR petitions regarding the asserted patent(s) and the status of each. If applicable, provide docket number, filing and docketing date, and date of expected Final Written Decision.
15. The parties' recommendation to the court concerning discovery limits (if the parties cannot agree, provide each party's proposal):
 - a. The maximum number of interrogatories;

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

- b. The maximum number of requests for production of documents;
 - c. The maximum number of requests for admission;
 - d. The maximum number of subpoenas the parties may issue;
 - e. The maximum number of Rule 30(b)(6) topics; and
 - f. The maximum number of depositions.
16. Any proposed modifications to the court's Model Protective Order and justifications thereof.

VI. Comparative Analysis

A. PURPOSE

WG10 undertook a comparative analysis to explore other efforts to streamline lower-value patent cases. In doing so, the following systems were explored: IPEC, the Eastern District of Texas's Track B Program, and the Copyright Claims Board and the New Case Act.

B. ANALYSIS

1. IPEC

- Background: The Patents County Court (PCC) was set up in 1990 as a specialist court designed to deal exclusively with intellectual property disputes. It was intended to provide a less costly and less complex alternative to the High Court Patents Court.
- On October 1, 2012, the PCC introduced a special "Small Claims Track" for IP claims valued at under £5,000 and which relate to copyright, trade marks, passing off, database right and unregistered design rights. This "no frills" regime should help certain SMEs and individuals who have struggled to justify the cost of enforcement when faced with prolific (often web-based) infringement of their IP rights.
- Key provisions:
 - the parties set out their respective cases fully but concisely at the outset;
 - no further evidence, written argument or specific disclosure is permitted without the permission of the judge and will be decided at an all-important "Case Management Conference";
 - any other applications will, if possible, be dealt with on paper or by telephone;
 - the trial will be limited to one or at most two days;
 - the total recoverable costs are capped at £50,000 for determining liability; and
 - damages are limited to £500,000.
- Key Lessons
 - Program's success based on judicial oversight. Revamped and most successful under HH Judge Birss.

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

- Also a separate Shorter Trial Scheme, that is in the regular High Court, rather than IPEC, but has a more abbreviated (and faster) procedure. Link to the rules:
 - <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/practice-direction-57ab-shorter-and-flexible-trials-schemes>
- Additional resources:
 - <https://www.gov.uk/courts-tribunals/intellectual-property-enterprise-court>
 - <https://www.gov.uk/guidance/take-a-case-to-the-intellectual-property-enterprise-court>
 - <http://www.warwicksciencepark.co.uk/spark-edition-february-2013/patents-county-court-proves-its-worth/>

2. **EDTX Track B**

- Background: Announced in February 2014 by Chief Judge Leonard Davis of the Eastern District of Texas as a special track designed to provide litigants with an option for more efficient resolution of patent infringement cases.
- Limited data – only 9 cases with 5 different plaintiffs over 6 years.
 - All cases settled and none got past Markman.
- Requires agreement by the parties:
 - Joint discovery plan is negotiated by the parties to include written discovery limits, deposition limits, limits on the number of expert witnesses, whether expert depositions can be authorized, early reduction of asserted claims and prior art, etc. <https://www.txed.uscourts.gov/sites/default/files/goFiles/14-03.pdf>
 - There were no specific sanctions identified, but the order warned that sanctions could be imposed for failing to make early disclosures.
- Early disclosures of main substance of claims and defenses prior to the case management conference (CMC):
 - Plaintiff is required to provide early infringement contentions and produce all licenses or settlement agreements. Plaintiff is also required to produce a good faith estimate of damages and the methodology used to arrive at the estimate.
 - Defendant is required to disclose summary sales information reflecting the quantity of accused and related unaccused products sold in the US and the revenues from those sales. Defendant is also required to serve invalidity contentions.

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

- The parties are required to exchange claim terms for construction early.

Plaintiff	Defendant	Timing	Ordinary timing
Inf. Cont. + Prior Lic./Settlements		Answer + 14 day	CMC - 10
	Sales summary (accused products & reasonably likely to be accused)	+ 30 day	
Non-binding damages Estimate		+ 14 day	
	Invalidity cont.	+ 14 day	CMC + 35
CMC ready notice		+ 5	
Joint Dis. Plan*	Joint Dis. Plan	CMC – 7 days	

- Other Features

- Case-value-dependent limitations for:
 - written discovery
 - depo limits
 - limit on number of expert witnesses
 - whether to allow expert depositions
- Document production optional (by request only) or mandatory
- Whether to restrict patent claims and prior art
- E-discovery modifications
- Standard PO amendments
- Trial and Markman schedule incl. appropriate terms limitation
- Mediation position
- Requests for special scheduling to resolve clearly dispositive issues
- Appropriateness of:
 - Expedited trial
 - Consolidating Markman and trial
 - Trial on limited issues
 - Post-trial mediation before entry of judgement on verdict
- Trial by Magistrate option

3. Copyright Claims Board and the New Case Act (Copyright Alternative in Small-Claims Enforcement Act of 2020) – signed December 27, 2020

- Background:

- Early stages: 1 year to implement including a rule making process.

This confidential draft of The Sedona Conference Working Group 10 on Patent Litigation Best Practices is not for publication or distribution to anyone who is not a member of Working Group 10 without prior permission. Please send comments and suggested edits by email to comments@sedonaconference.org by December 2.

- The CCB will move to staffing and regulations next and anticipate being ready to receive these small claims by December 27, 2021 (one year after the CASE Act was signed), with the potential for an extension to June 25, 2022.
- Applies to very low value copyright claims valued at less than \$30,000 through a CCB small claims process.
- Links:
 - <https://www.copyright.gov/about/small-claims/>
 - <https://www.copyright.gov/about/small-claims/faq.html>