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Articles

Qualification of Expert Witnesses in United States Patent Litigation: A Review of Federal Circuit Case Law Regarding Rule 702 of the Federal Rules of Evidence^{*}

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Abstract

Expert witnesses serve an important role in United States patent litigation. Patent litigation often involves complex technological issues. Technical experts are needed to help a judge interpret claim language or to assist a jury to understand patented technology or infringing products. When resolving the patentability issues, such as anticipation and obviousness, technical experts are good consultants

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for factfinders. Additionally, damages calculation requires knowledge of industries and financial or accounting theories. Damages experts must get in to resolve the issues of monetary remedies. While expert witnesses play an important role in patent litigation, fewer studies explore the relevant case law about the qualification of experts or the admissibility of expert opinions. So, this paper is intended to address Federal Circuit case law regarding those issues. While Title 35 of the United States Code speaks nothing about expert witnesses, Rule 702 of the Federal Rules of Evidence is the only statutory basis for the requirements of qualified experts. In this paper, the case law review begins by examining the judicial interpretation of Rule 702. Three U.S. Supreme Court cases and several Federal Circuit cases will be analyzed. Then, this paper focuses on two categories of experts: technical experts and damages experts. Cases related to either category will be discussed. While Rule 702 requires an expert to have “scientific, technical, or other specialized knowledge,” it is up to a district court judge to admit or exclude expert witnesses or expert opinions as evidence heard by a jury. Besides, the Federal Circuit’s review standard is an abuse of discretion. So, a district court judge usually has much leeway. Furthermore, based on the analysis of the Federal Circuit cases, this article provides legal principles or propositions related to expert testimony.

Keywords: Nonobviousness, Patent Litigation, Expert Witness, Rules of Evidence, Damages Calculation