

Judge Avern Cohn: Non-Jury Trial Requirements for a Patent Case

1. Each juror shall have a notebook that includes a copy of the patent with relevant portions highlighted, a glossary of terms and such drawings and other papers as the parties agree.
2. The parties shall make every effort to agree upon a stipulation of facts to be placed in the juror's notebook.
3. Three-hole punched copies of admitted exhibits may be given to the jurors for placement in their notebooks.
4. Liability and damages are bifurcated. The initial trial will be on liability. Willfulness will be tried subsequently to the same jury or as the Court shall determine.
5. Damages shall also be tried separately to the same jury or to the Court as the Court shall determine.
6. Exhibit lists and exhibit books shall be provided to the Court by the morning of the trial. The Court anticipates a serious effort by the parties to agree on joint exhibits.
7. Witness lists shall be provided to the Court by the morning of trial separately stating witnesses who will be called and who may be called. The Court anticipates a serious effort by each party to make a realistic list.
8. As each witness takes the stand, he or she shall be given a folder of the exhibits to be discussed. The Court and the opposite party shall be given a like folder including a list of the particular exhibits.
9. The jury shall consist of ten jurors. Each party shall have eight peremptory challenges. Twenty-six venire persons shall be examined in the box with those stricken for cause replaced immediately. Strikes shall be in four rounds of two each.
10. If the parties agree on a juror questionnaire it shall be provided to the Court five days before trial, fill out the questionnaires, and its excuses for the day. The parties shall examine the questionnaires and determine those venire persons who they jointly agree to excuse. The deputy clerk will then draw the balance of the panel in the order they will be seated and number the questionnaires accordingly. During voir dire, the Court will ask questions tailored to the questionnaire answers and additional questions as may be appropriate.

Judge Avern Cohn: Non-Jury Trial Requirements for a Patent Case

11. The parties are expected to agree on preliminary instructions which include a description of the issues and general principles of patent law appropriate to the issue.
12. Drafts of final instructions on the law of the case, a verdict form and proposed special questions shall be provided to the Court on the day trial begins. At the same time the parties shall lodge with the Court proposed special questions. Thereafter, the parties shall diligently work toward agreement on the instructions, verdict form, and special questions, using the plaintiff's drafts as a benchmark.
13. Jurors will be permitted to ask questions and take notes. The Court will screen the questions at the conclusion of each witness' testimony.
14. Colored brochures and the like shall be reproduced in full color only.
15. The Court prefers to be provided with cases on relevant points rather than briefs. The rule for which the case stands shall be highlighted in relevant part and briefly stated on the title page. The Court prefers the national reporter system rather than U.S.P.Q., LEXIS, or WESTLAW. Academic discussions of relevant law are encouraged.
16. Exhibits to be used in opening statements shall be shown to the opposite party in advance of trial.