Causey Engineering Expert Witnessing in Patent Litigation

Causey Engineering's start in providing Expert Witness services in Intellectual Property litigation stemmed from its forte, complex heavy industrial civil cases. Counsel found that our experience on complex civil cases coupled with our professional credentials and hands-on field experience put us at ease in testifying to people in all walks of life. It provides credibility. We target patent litigation for heavy industry cases.

Intellectual Property and Patent litigation involves case strategy, research and technical expertise that is not unlike our industrial civil type of litigation, albeit there certainly are rules unique to prove a patent case. One example is Title 35, Part II Patentability of Inventions and Grant of Patents, Sections §100 through §103. "What is patentable" is a major issue. But, complex industrial civil cases also rely heavily on the Expert Witness for success.

Working for the Plaintiff on pre-litigation claims and Claims Chart construction require precision. The Markham hearing has special importance. We must help show that infringement exists. The Federal Rules of Evidence "Rule 11" include an analysis of how claims are infringed. The Expert will read the relevant patents and discuss them. The patent office provides the prosecution history of the patent. Both the Plaintiff's and the Defendant's Expert will contribute to the definition of claims terms for the *Markman* hearing.

Expert Reports and defense of our opinions in deposition have been part of Causey's work for years. Testifying in a patent trial requires the same attributes as in complex industrial cases. We assist in identifying damages.

When working for the Defendant, two key strategies that involve the Expert Witness in a patent infringement suit are (i) the patent is invalid and (ii) the patent is not being infringed. The question of a patent's validity is directly tied to Title 35 Section §102 and/or §103. In order for a patent to be valid it must pass the novelty and non-obviousness tests articulated in these Sections. The Defendant must locate and produce prior art that either anticipates the invention (§102 novelty) or when taken together the totality of the prior art (§103 non-obviousness) makes it obvious that "*a person having ordinary skill in the art*," would have come to the conclusions articulated in the patented claims.

The Defendant's Expert Witness rebuts the claims charts prepared by the Plaintiff and produces an Expert Report as to why the Defendant does not infringe each element in the claims construction. Our background has proven to be invaluable in identifying prior art and analysis of infringement arguments, as well as non-infringement arguments. Prior art includes not only patents, but also, data sheets, technical specifications, sales brochures, products, books, articles, conference papers etc. If it was in public domain, it is prior art. These arguments are included in the Expert Report that the Expert must defend at deposition, and later at trial.

Causey wants to assist the client and their law firm in supporting their position in prosecuting or defending a patent infringement case. We endeavor to make the complex technical issues understandable, and tell the human side as well, so the trier of fact will discover the truth for themselves. Like any Expert Witness engagement, we are hired as an independent Expert, not an advocate. We must independently come to our opinions. Our client needs our support on the positions being taken by the client and law firm. We apply all our skills in that role.

REFERENCES

1. *http://www.armstrongteasdale.com/News-Publications/Archives/PresentingAPatentInfringementCase.php*

2. 2006 National Expert Witness Network. LLC