The Sedona Conference Working Group Series

wgs

The Sedona Conference

Commentary on Case Management of Patent Damages and Remedies Issues: Section on Patent Damages Hearings

A Project of The Sedona Conference
Working Group on
Patent Damages and Remedies (WG9)

May 2017 Public Comment Version

The Sedona Conference Commentary on Case Management of Patent Damages and Remedies Issues: Section on Patent Damages Hearings

A Project of The Sedona Conference Working Group on Patent Damages and Remedies (WG9)

MAY 2017 PUBLIC COMMENT VERSION

Author:	The Sedona Conference	
Editor-in-Chief:	Andrea Weiss Jeffries	
Managing Editor:	Jim W. Ko	
Judicial Advisors:	Hon. Cathy Ann Bencivengo	Hon. John D. Love
Contributing Editors:	Chris Bakewell	Vernon Evans
	David Fry	Eric Hutz
	John Jarosz	Carol Ludington
	Janet Ramsey	Alan Ratliff
	Bijal Vakil	Jennifer Yokoyama

Preface

Welcome to the Public Comment Version of The Sedona Conference *Commentary on Case Management of Patent Damages and Remedies Issues: Section on Patent Damages Hearings*, a project of The Sedona Conference Working Group on Patent Damages and Remedies (WG9). This is one of a series of working group commentaries published by The Sedona Conference, a 501(c)(3) research and educational institute dedicated to the advanced study of law and policy in the areas of antitrust law, complex litigation, and intellectual property rights. The mission of The Sedona Conference is to move the law forward in a reasoned and just way.

The mission of WG9, formed in November 2010, is "to create guidelines that will help to clarify and guide the evolution of patent damages and remedies considerations to encourage patent damages and remedies law to remain current with the evolving nature of patents and patent ownership." The Working Group consists of members representing all stakeholders in patent litigation.

The original WG9 *Commentary on Patent Damages and Remedies* was published for public comment in June 2014, and was the focus of the dialogue at The Sedona Conference's 14th Annual Conference on Patent Litigation in Del Mar, CA, in October 2013 and The Sedona Conference's WG9 Meeting in New Orleans, LA, in November 2014. The content of that original WG9 Commentary has been split into two stand-alone Commentaries: the first, entitled the *Commentary on Patent Reasonable Royalty Determinations*, was recently published in December 2016; and the second, entitled the *Commentary on Case Management of Patent Damages and Remedies Issues*, will be brought to publication later this year. In early 2015, the WG9 Steering Committee formed a subcommittee to draft a Proposed Model Local Rule for Damages Contentions, which was published for public comment in April 2016. Later in 2016, the WG9 Steering Committee formed a subcommittee to draft this section on Patent Damages Hearings. To develop this section, the subcommittee held numerous conference calls over the past year-plus, and the draft was a focus of dialogue at The Sedona Conference's Working Group 9 Meeting in Houston, Texas, in February 2017. Both the Proposed Model Local Rule for Damages and Contentions and this Patent Damages Hearings section will ultimately be incorporated, along with additional preexisting and new material, into the upcoming WG9 *Commentary on Case Management of Patent Damages and Remedies Issues*.

This publication represents the collective efforts of many individual contributors. On behalf of The Sedona Conference, I thank everyone involved for their time and attention during the drafting and editing process, and in particular: Chris Bakewell, Vernon Evans, David Fry, Eric Hutz, John Jarosz, Carol Ludington, Janet Ramsey, Alan Ratliff, Bijal Vakil, and Jennifer Yokoyama.

The Working Group was also privileged to have the benefit of candid comments by several active district court judges with extensive patent litigation trial experience, including the Honorable Cathy Ann Bencivengo and the Honorable John D. Love. The statements in this publication are solely those of the non-judicial members of the Working Group and do not represent any judicial endorsement of the recommended practices.

Following the Working Group Series review and comment process described above, The Sedona Conference's commentaries are published for public comment, including in-depth analysis at Sedona-sponsored conferences. After sufficient time for public comment has passed, the editors will

review the public comments and determine what edits are appropriate for the final commentary. Please send comments to comments@sedonaconference.org, or fax them to 602-258-2499. The Sedona Conference hopes and anticipates that the output of its Working Groups will evolve into authoritative statements of law, both as it is and as it should be.

Craig W. Weinlein
Executive Director
The Sedona Conference
May 2017

Table of Contents

Patent Damages Hearings Principles "At a Glance"

Patent Damages Hearings Best Practices "At a Glance"

I. Introduction

The law of patent damages has been evolving over the past decade. As parties and their advocates have attempted to advance their damages goals within the changing damages landscape, new damages theories have emerged, with mixed success. Some have passed district court and appellate scrutiny, whereas others have failed at one or more stages of review. The uncertainty surrounding damages issues can cause parties to engage in unnecessary discovery, motion practice, and pretrial and trial proceedings; and can increase the gap between the parties' expectations about the value of the case, which, in turn, can operate to paralyze settlement discussions. An early assessment of the parties' damages theories and resolution of key issues by the court could operate to lessen this gap, facilitating settlement discussions while at the same time narrowing the scope of the issues should the case go forward. The early damages-focused hearing process described herein is one way to accomplish these goals.

In its initial effort to bring clarity to damages theories and positions relatively early in the case, in April 2016 the Sedona Conference Working Group on Patent Damages and Remedies (WG9) published for public comment a proposed model patent local rule on damages contentions.[1] That model local rule provides a framework for the early exchange of damages-related information and contentions to facilitate each party's development and disclosure of its damages theories and positions earlier than might otherwise occur. Early disclosure of damages theories provides three main advantages: (i) assisting the court in addressing issues of proportionality in conjunction with requested discovery; (ii) facilitating settlement discussions by providing the parties with earlier clarity into one another's view of exposure; and (iii) promoting an earlier vetting of damages theories through an orderly pretrial *Daubert* and *in-limine* process.

As a next step in the process of advancing these goals, a WG9 drafting team was assembled to evaluate early court hearings focused on damages, and to develop principles and best practice recommendations around such damages-focused hearings.

To guide the Patent Damages Hearing drafting team's development of best practice recommendations on this subject, the team developed the following overarching principle:

<u>Principle No. 1</u> – A damages hearing can be used to facilitate communication between the court and the parties regarding competing damages theories by: (1) clarifying and narrowing the contested damages issues in the case; (2) identifying additional discovery the parties may require; (3) simplifying pretrial and trial proceedings (e.g., *Daubert* motions and motions *in limine*); and (4) facilitating settlement discussions.

[1] The Sedona Conference's Working Group 9 (Patent Damages and Remedies) published for public comment its *Commentary on Case Management of Patent Damages and Remedies Issues: Proposed Model Local Rule for Damages Contentions*, *available at:* https://thesedonaconference.org/publication/The%20Sedona%20Conference%20Commentary%20on%20Case%20Management%20of%20Patent%20Damages%20and%20Remedies%20Issues%3A%20Proposed%20Model%20Local%20Rule%20for%20Damages%20Contentions [hereinafter *WG9 Proposed Model Local Rule for Damages Contentions*].

Early in the work of the drafting team, it became apparent that there is no one-size-fits-all approach to considering damages issues in a patent case. For some cases, a very early assessment with a minimal exchange of documents will suffice to permit the parties to confer meaningfully and resolve the case. For other cases, a realistic and useful damages assessment is more likely to occur only after the parties have exchanged infringement and invalidity contentions, and the court has issued its *Markman* ruling. The damages hearing contemplated herein is directed largely to this latter group of cases, although the processes outlined certainly could be modified to suit any patent case.

II. Timing of the Damages Hearing

For a damages hearing to be productive, proper timing is critical. Held too early, and the pre-hearing exchanges will be too vague to allow for a useful discussion. Held too late, and several of the benefits of a damages hearing—like focusing discovery and addressing evidentiary issues—will evaporate.

Best Practice 1 – A damages hearing, if held, should be conducted after the parties have disclosed their damages contentions, and sufficiently in advance of trial to allow the parties and the court to reap the full benefits of the hearing.

If a damages hearing is held too early—for example, in the early stages of fact discovery—parties are less likely to have devoted significant attention to their damages theories and contentions. And even if they have, they are often reluctant to disclose this information for fear of locking themselves into untenable (or unsupportable) theories before they have sufficiently vetted them with their damages experts.

As a result, the disclosures exchanged before a too-early damages hearing may be underdeveloped, vague, and noncommittal. In those circumstances, a damages hearing would do little—if anything—to clarify or narrow the disputed issues in the case (although, as discussed below, an early hearing may still be useful to facilitate early settlement).

If a damages hearing is held too late—for example, after the experts have exchanged their reports—several of its potential benefits will disappear. The parties and their experts will be locked into their respective positions, with no opportunity to change course to address *Daubert* challenges or other evidentiary issues without disrupting the trial schedule. And because fact discovery will have already concluded, the parties will not be able to use the information exchanged before and during the hearing to focus their discovery efforts. In short, all of the inefficiencies caused by delayed attention to damages issues and scorched-earth damages discovery will still remain.

Best Practice 2 – A damages hearing, if held, should be scheduled as soon as practicable, and ideally no later than 60 days before service of the opening Rule 26 expert report on damages (i.e., the report from the party with the burden).

The timing of the damages hearing should be discussed at the Rule 26(f) and Rule 16 conferences. In some cases, "as soon as practicable" might be early in the case, after the parties have exchanged initial disclosures and some limited discovery. Holding a damages hearing at this point is more likely to facilitate early settlement and avoid the expense of full fact discovery.

In other cases, "as soon as practicable" will come closer to the middle or later stages of fact discovery (e.g., after the *Markman* ruling and any subsequently updated infringement and invalidity contentions). By this point, the parties will likely have spent a substantial amount of time working with their experts to formulate and disclose their damages contentions. This will foster a more meaningful exchange of information before the hearing, which will allow the parties and the court to have an informed discussion about the issues in dispute. It should also give the parties enough

information to consider and raise any potential evidentiary issues and *Daubert* challenges. And because a more concrete discussion will give the parties a clearer picture of the numbers at stake, holding a hearing later in fact discovery can still help facilitate settlement discussions before the parties engage in full-blown expert discovery.

At the same time, by requiring that the hearing occur before the submission of opening expert reports—and ideally at least 60 days beforehand—this practice ensures that there will be adequate time in the case schedule to address the court's observations and/or ruling in Rule 26 expert reports and in pretrial motions. It also gives the parties time to obtain any additional discovery not yet provided that is necessary for the experts to complete their Rule 26 expert reports.

III. Pre-Hearing Damages Discovery

For the preliminary damages hearing to be both productive and effective, there should be clear guidelines governing the scope of discovery to be completed prior to the hearing. Pre-hearing discovery, including damages contentions if applicable, should be sufficiently fulsome to allow for the exchange of meaningful pre-hearing damages expert statements and a productive hearing on all damages issues, but not so extensive as to impose unduly high costs and discovery burdens, or hinder substantive advancement of the case.

Early determination of the necessary scope and timing of damages discovery can lead to more productive settlement negotiations/mediations, a less burdensome and costly discovery process, and a more focused and productive damages hearing.

Best Practice 3 – The discovery related to damages hearings should focus on key information that will allow experts to prepare a meaningful damages statement prior to the hearing. The type and timing of this discovery should be agreed upon in advance of the Rule 16 conference or ordered by the court at the Rule 16 conference if no agreement is reached.

Below is a list of exemplary, but non-exhaustive, categories of such types of damages discovery:

i) sales volume, revenue, and profit numbers;

ii) relevant licenses and agreements;

iii) market information, including information regarding the importance of the patented invention to the market;

iv) advantage of the patented invention in the relevant marketplace;

v) marking or other information that may impact the damages period; and

vi) any F/RAND commitments or agreements, as applicable.

These categories may vary based on the complexity of the case; parties should focus on what key types of damages discovery are necessary for their dispute at the outset of the case. The parties' Rule 26(f) report should include the agreed upon categories of damages discovery needed at the early stages of the case. Depending on the circumstances of the case, this may lead to the parties agreeing to addtional or, alternatively, fewer categories of discovery. To the extent there are disputes, the court should address them at the case management conference to provide a clear guideline regarding the proper scope of early damages discovery. Focusing on key damages discovery at the outset of the case will allow for the meaningful exchange of short damages statements and, when applicable, damages contentions.

Where a party determines that it requires additional discovery beyond the categories agreed upon or ordered by the court at the initial case management conference, it may seek that additional discovery from the opposing party by agreement or by court order if no agreement is reached.

<u>Best Practice 4</u> – The parties should discuss damages issues as part of the Rule 26(f) and initial case management conference. These discussions should include a focus on the key types of discovery necessary to adequately prepare the expert statements to be used in the damages hearing.

Items to consider at these initial conferences and meet-and-confers are the types of information the parties will be required to exchange in advance of the damages hearing whether through damages contentions, short expert statements, or both. In one form or another, such damages disclosures should include at least the following types of information:

i) theories under which damages are sought (e.g., lost profits, reasonable royalty, price erosion, a combination of theories, etc.);

ii) for reasonable royalty: the appropriate royalty base, factors applicable to determining a royalty rate, etc.;

iii) for lost profits: the definition of the market, support for "but for" contentions, etc.;

iv) a description of the marketplace;

v) the advantage of the patented invention over the prior art; and

vi) the timeframe of damages period.

<u>Best Practice 5</u> – When part of the case, damages contentions should be exchanged after infringement contentions but well enough in advance of the hearing to determine what, if any, additional damages discovery is necessary for the pre-hearing expert statements.

Damages contentions can increase efficiency, focus discovery, and sharpen damages theories and points of disagreement. These disclosures should occur early enough in the overall case to focus on and address any damages theories or contentions that may need further explanation. To accomplish this, they should take place after infringement contentions to allow for the proper analysis of the accused products/instrumentalities/processes.

The *WG9 Proposed Model Local Rule for Damages Contentions*[2] provides helpful suggestions about the scope, use, and purpose of damages contentions. Whether required by the local rules or the court in a given case, or pursued by the parties by way of interrogatories, damages contentions are helpful to assist the parties and the court in determining the scope of any additional damages discovery required by the damages experts to prepare their Rule 26 expert reports. This will also help to identify additional discovery needed by the experts to prepare the short, pre-hearing expert statements discussed in Section IV below.

[2] *Id.*

IV. Preparation for the Damages Hearing

Effectiveness of the damages hearing is enhanced by adequate preparation and by advance communication of key damages information to the court and the parties. Exchanging short expert statements that address key damages topics in advance of the damages hearing focuses the damages hearing on those damages topics that matter most.

A. DAMAGES EXPERT STATEMENTS

Best Practice 6 – The parties should exchange short damages expert statements prior to the damages hearing setting forth the damages expert's views regarding applicable damages theories, computations, information and preliminary opinions regarding key issues, as well as any discovery still required to finalize the expert's theories and opinions.

Short damages expert statements should be submitted in advance of damages hearings. In most disputes there are a small number of key topics, assumptions, or opinions that result in the most significant disparities between the parties' damage claims. A brief explanation of each damages expert's view of the key issues and opinions in advance of the damages hearing will help the court, experts, and parties prepare for the hearing.

Typically, each technical expert and damages expert statement should consist of no more than five pages, unless otherwise directed by the court, and should be submitted to the court and opposing counsel at least ten days prior to the damages hearing. The page limit is intended to foster focus on key facets of opinions. In contrast to the Rule 26 expert reports, these short statements are not expected to reflect detailed discussion and fulsome evidentiary support for each opinion. The purpose of these page-limited expert statements is to efficiently highlight key topics and opinions to help frame the issues to be covered in the damages hearing, and to identify any discovery the expert still requires in order to complete her analysis.

B. TECHNICAL EXPERT STATEMENTS

Best Practice 7 – Short technical expert statements related to damages should be exchanged prior to the damages hearing, setting forth the technical expert's conclusions and bases for the conclusions regarding technical considerations involved in the issues highlighted by the damages expert's pre-hearing statement. At its discretion, the court may omit technical expert reports.

Short technical expert statements on technical issues relating to damages issues should generally be submitted in advance of the damages hearing. Many damages issues are impacted by technical considerations, such as the importance of the technology at issue, the applicability of the entire market value rule, apportionment, and available alternatives and design-around alternatives. Where these or other issues are discussed in a party's damages statement, they should be supported, as appropriate, by input from technical experts, each of whom should submit a short technical expert statement to assist in accomplishing the objectives of a damages hearing.

Similar in nature to the damages expert statements, the technical expert statements are, presumptively, no longer than 5 pages, and should focus on providing information relating to the key damages issues outlined in the damages expert's report. Technical considerations unrelated to issues raised by the damages expert report(s) need not be addressed in these short statements; excessive detail and discussion are discouraged.

C. IDENTIFICATION OF POINTS OF AGREEMENT AND DISAGREEMENT

Efforts should be made to identify topics about which the experts agree, and to highlight key topics about which the experts disagree. This provides clarity and allows efforts of the experts, parties, and the court to focus on disputed topics.

<u>Best Practice 8</u> – The court should consider including processes, such as the preparation of an "agreed witness statement," to identify prior to the hearing key topics as to which the experts agree and disagree.

Prior to the damages hearing, the court could require the experts to identify data, facts, assumptions, methodologies, or opinions about which the experts agree; perhaps preparing an "agreed witness statement" listing topics about which they agree and disagree. This may be accomplished based on information known before the above expert statements are prepared, or after the above expert statements are completed and exchanged. Identifying areas of opposing expert witness agreement will allow any further discovery and expert reports to focus on the topics of disagreement, providing clarity and efficiency.

This proposed Best Practice does not purport to identify a single process to be used for this purpose, and instead allows tailoring the process to fit each situation. Contemplated processes include:

- a conference of counsel and expert prior to the hearing to prepare an agreed witness statement for submission to the court;
- an exchange of proposed agreed witness statements, followed by a conference of counsel to agree upon a single list for submission to the court; and
- a conference among experts, outside the presence of counsel, to generate an agreed witness statement for submission to the court.

V. Conducting the Damages Hearing

To be most useful to the parties, the damages hearing should be conducted in a manner that enables areas of agreement among the parties to be recognized and areas of disagreement between the parties to be clarified. Accordingly, the hearing should afford each side the opportunity to present its damages theory and positions, including supporting evidence, and to identify any additional discovery needed to carry out the analyses that are expected to be included in the damages expert's Rule 26 report.

The hearing is meant to be informational and constructive, rather than confrontational in tone. Accordingly, the questioning of damages experts should be directed towards understanding the experts' proposed approaches to the determination of damages and identifying areas of agreement and disagreement between opposing damages experts. For areas of disagreement, questioning of the damages witnesses may examine the rationale or justification for the position taken by each of the damages experts. The questioning should also elicit information regarding additional discovery that may be required by an expert to complete her analysis.

Best Practice 9 – The parties' damages experts (and technical experts, as necessary) shall be made available to testify about their opinions, the bases therefor, and additional information needed to complete their final reports.

As noted above, the hearing will be preceded by short statements by damages and technical experts. With those statements in hand, the hearing provides the court and the parties with the opportunity to ask clarifying questions concerning the foundations of and justifications for the damages theories and positions set forth in those statements. In some cases, testimony from technical experts may be needed to explain some aspects of the damages expert's opinion. The questioning is intended to be short and focused on key issues.

Best Practice 10 – Questioning of each side's damages expert should begin with clarifying questions from the court followed by brief, optional questioning by opposing counsel.

In order to set the tone and use the hearing time most effectively, the court should begin the process by swearing in all of the damages experts and seating them together in the courtroom or jury box. That is, rather than seating the experts in the witness box and questioning one expert fully and then moving on to the next, the court would be in a position to question one expert, follow up on the initial response with questions to another expert, and then go back to questioning of the first expert, as appropriate. In order to maintain orderly proceedings focused on issues of importance to the court, the court should remain in control of the questioning, with experts directing their responses to the court. Experts should not address one another directly. Following questioning by the court, the court should allow each party a predetermined amount of time, on the order of ten minutes, with the opposing party's witness.

<u>Best Practice 11</u> – At the conclusion of the hearing, the court and the parties should understand the areas of agreement and disagreement concerning damages issues and know what additional discovery, if any, must be produced prior to the submission of expert reports.

For these hearings to be useful, there should be greater clarity concerning relevant damages theories and factual bases after the hearing than existed before the hearing. Depending on the facts and circumstances of the case, the court may wish to state at the conclusion of the hearing its understanding of the areas of agreement and disagreement concerning damages issues. With regard to areas of disagreement, the court may resolve disagreements based on existing evidence or identify those issues that should be addressed in more detail by the damages reports. The court may also make observations or rule on outstanding discovery disputes or damages theories that may be vulnerable to exclusions through *Daubert* motions or motions *in limine*. Additionally, observations or rulings made by the court at the damages hearing may help the parties gain a sense of the damages theories that are likely to be presented to the fact-finder, and thus facilitate settlement discussions.

VI. Modification or Supplementation of Damages Hearing Positions

For damages hearings to serve their intended purposes, parties must develop and disclose their damages theories and positions to the extent possible given the discovery provided in advance of the preparation of the short pre-hearing damages statements referenced above. In order to prevent a party from attempting to sandbag another party through incomplete disclosure and to aid future decision making by the parties and the court, the parties should be required to adhere to the damages theories and positions they set forth at the damages hearing, subject to a showing of good cause for any proposed modifications or supplementation of those theories or positions in damages expert reports (or in any other expert report or at trial, as applicable).

Best Practice 12 – Any deviations from a theory or position taken at the damages hearing should be explained in the Rule 26 expert report, and if the opposing party moves to strike, the proponent of the supplementation or modification should bear the burden of showing (i) good cause to support the supplementation or modification, as well as (ii) the absence of substantial undue burden to other parties

To the extent a party modifies or amends a damages theory or position presented at the damages hearing, it should clearly state so in its Rule 26 damages expert report (as well as supplementing any written discovery response, as required by federal and/or local rules) and explain the basis for the modification or supplementation. For example, if discovery requested but not provided prior to the damages hearing causes a change in theory or position, the damages expert should state that in his Rule 26 expert report. Should another party seek to strike or exclude the modification or supplementation, the proponent of the modification or supplementation shall make a showing of good cause and no substantial undue burden to the other parties.

The Sedona Conference Working Group Series & WGS Membership Program

"DIALOGUE DESIGNED TO MOVE THE LAW FORWARD IN A REASONED AND JUST WAY."

The Sedona Conference was founded in 1997 by Richard Braman in pursuit of his vision to move the law forward in a reasoned and just way. Richard's personal principles and beliefs became the guiding principles for The Sedona Conference: professionalism, civility, an open mind, respect for the beliefs of others, thoughtfulness, reflection, and a belief in a process based on civilized dialogue, not debate. Under Richard's guidance, The Sedona Conference has convened leading jurists, attorneys, academics, and experts, all of whom support the mission of the organization by their participation in conferences and the Sedona Conference Working Group Series (WGS). After a long and courageous battle with cancer, Richard passed away on June 9, 2014, but not before seeing The Sedona Conference grow into the leading nonpartisan, nonprofit research and educational institute dedicated to the advanced study of law and policy in the areas of complex litigation, antitrust law, and intellectual property rights.

The WGS was established to pursue in-depth study of tipping point issues in the areas of antitrust law, complex litigation, and intellectual property rights. It represents the evolution of The Sedona Conference from a forum for advanced dialogue to an open think tank confronting some of the most challenging issues faced by our legal system today.

A Sedona Working Group is created when a "tipping point" issue in the law is identified, and it has been determined that the bench and bar would benefit from neutral, nonpartisan principles, guidelines, best practices, or other commentaries. Working Group drafts are subjected to a peer review process involving members of the entire Working Group Series including—when possible—dialogue at one of our working group meetings, resulting in authoritative, meaningful, and balanced final commentaries for publication and distribution.

The first Working Group was convened in October 2002 and was dedicated to the development of guidelines for electronic document retention and production. Its first publication, The Sedona Principles: Best Practices Recommendations & Principles Addressing Electronic Document Production, has been cited favorably in scores of court decisions, as well as by policy makers, professional associations, and legal academics. In the years since then, the publications of other Working Groups have had similar positive impact.

Any interested jurist, attorney, academic, consultant, or expert may join the Working Group Series. Members may participate in brainstorming groups, on drafting teams, and in Working Group dialogues. Membership also provides access to advance drafts of WGS output with the opportunity for early input. For further information and to join, visit the "Working Group Series" area of our website, https://thesedonaconference.org/wgs.

The Sedona Conference Working Group 10 on Patent Litigation Best Practices— List of Steering Committee Members and Judicial Advisors

The Sedona Conference's Working Group 10 on Patent Litigation Best Practices Steering Committee Members and Judicial Advisors are listed below. Organizational information is included solely for purposes of identification.

The opinions expressed in publications of The Sedona Conference's Working Groups, unless otherwise attributed, represent consensus views of the Working Groups' members. They do not necessarily represent the views of any of the individual participants or their employers, clients, or any organizations to which they may belong, nor do they necessarily represent official positions of The Sedona Conference. Furthermore, the statements in each publication are solely those of the non-judicial members of the Working Group; they do not represent judicial endorsement of the opinions expressed or the practices recommended.

Steering Committee Members

Gary M. Hoffman, Pillsbury Winthrop Shaw Pittman LLP
Andrea Weiss Jeffries, WilmerHale
Patrick M. Arenz, Robins Kaplan LLP
Donald R. Banowit, Sterne, Kessler, Goldstein & Fox P.L.L.C.
Marta Beckwith, PacTech Law
Monte Cooper, Orrick, Herrington & Sutcliffe LLP
Melissa Finocchio, Intellectual Ventures
Henry Hadad, Bristol-Myers Squibb
R. Eric Hutz, Reed Smith LLP
Philip S. Johnson, recently of Johnson & Johnson
Paul K. Meyer, TM Financial Forensics, LLC
Matthew Powers, Tensegrity Law Group LLP
Teresa Stanek Rea, Crowell & Moring LLP
John A. Scott, Qualcomm Incorporated
Leah Poynter Waterland, Cisco Systems, Inc.

Judicial Advisors

Hon. Cathy Ann Bencivengo, U.S. District Judge, Southern District of California
Hon. Cathy Bissoon, U.S. District Judge, Western District of Pennsylvania
Hon. Hildy Bowbeer, U.S. Magistrate Judge, District of Minnesota
Hon. Stanley R. Chesler, U.S. District Judge, District of New Jersey

Hon. Joy Flowers Conti, Chief U.S. District Judge, Western District of Pennsylvania
Hon. Leonard E. Davis (ret.), Fish & Richardson
Hon. Theodore R. Essex, Administrative Law Judge, U.S. International Trade Commission
Hon. Marvin J. Garbis, U.S. District Judge, District of Maryland
Hon. Paul Grewal (ret.), U.S. Magistrate Judge, Northern District of California
Hon. Andrew J. Guilford, U.S. District Judge, Central District of California
Hon. Faith S. Hochberg (ret.), Judge Hochberg ADR, LLC
Hon. James F. Holderman (ret.), JAMS
Hon. Susan Illston, U.S. District Judge, Northern District of California
Hon. Kent Jordan, U.S. Appellate Judge, Court of Appeals for the Third Circuit
Hon. Barbara M. G. Lynn, Chief U.S. District Judge, Northern District of Texas
Hon. Paul R. Michel (ret.), U.S. Appellate Judge, Court of Appeals for the Federal Circuit
Hon. Kathleen M. O'Malley, U.S. Appellate Judge, Court of Appeals for the Federal Circuit
Hon. James L. Robart, U.S. District Judge, Western District of Washington
Hon. Gail J. Standish, U.S. Magistrate Judge, Central District of California
Hon. Nina Y. Wang, U.S. Magistrate Judge, District of Colorado
Hon. Ronald M. Whyte (ret.), U.S. District Judge, Northern District of California

WG10 Chair Emeriti

Hon. Paul R. Michel (ret.), U.S. Appellate Judge, Court of Appeals for the Federal Circuit
Robert G. Sterne, Sterne, Kessler, Goldstein & Fox P.L.L.C.