

Intellectual Property Litigation

- Patent Infringement
- Trademark Infringement
 - State or common law
 - Federal Lanham Act
- Trade Secrets
- Other -- trade dress, unfair competition, antitrust, etc.

Intellectual Property Litigation

- Exclusive Federal Jurisdiction for patent and copyright cases -- state courts lack jurisdiction
- Federal question jurisdiction for trademarks -- with concurrent state court jurisdiction

Intellectual Property Litigation

- Standard federal court venue rules
 - Patent infringement -- where products sold or offered
 - Trademark -- where trademark used
 - Effect of Internet
- Rocket Docket -- Eastern District of Virginia

Intellectual Property Litigation

- Patent Infringement Action Considerations
 - Litigation costs -- median \$1.2 million
 - Presuit investigation -- infringement and validity
 - Rule 11 considerations -- sanctions are real possibility
 - Cease and Desist letters to potential defendants

Intellectual Property Litigation

- Trademark Infringement
 - Injunctive relief frequently critical
 - Federal registration
 - likelihood of confusion

Intellectual Property Litigation

- Copyright Infringement
 - Registration
 - Acts of infringement -- copy, make derivative works or distribute
 - Proof of copying -- access and substantial similarity
 - If registered, statutory damages of \$750 to \$30,000; \$150,000 for willful infringement

Intellectual Property Litigation

- Copyright Infringement
 - Software (clients using pirated or unauthorized copies)
 - Jewelry
 - Publications
 - Music
 - Internet content

Intellectual Property Litigation

- Other Intellectual Property Litigation
 - Trade dress
 - Unfair Practices Act -- Section 57-12-1
 - State trade mark
 - Antitrust
 - Trade Secrets

Intellectual Property Litigation

- Insurance
 - Patent Infringement Insurance -- Offensive and Defensive
 - Commercial General Liability -- Advertising injury provision may provide coverage for alleged trademark infringement