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On the Clock: Optimizing Courtroom Presentations

As many Intellectual Property trial lawyers realize, more and more judges are setting time limits on cases. US District Court Judge Albert V. Bryan, Jr. was the first to impose limits in the Eastern District of Virginia in the 1960s.

In recent years a handful of other district courts also have adopted the “rocket docket” format, including the Eastern District of Texas, the District of Delaware, and both the Southern and Northern Districts of California. The trend is now spreading to other courtrooms across the country, as well. And no matter how amicably the two sides agree on the need for more time, judges don’t always grant it.

This is not a trend that’s likely to end soon: As rocket dockets continue to experience increased filings, judges will need to impose time limits as a way to manage their caseloads.

Consequently, IP trial lawyers would be well advised to focus on how to try cases more efficiently and effectively—and to do so soon. This doesn’t have to affect an attorney’s case negatively. In fact, by taking the right steps, trial lawyers can use time limits to their advantage.

Be prepared

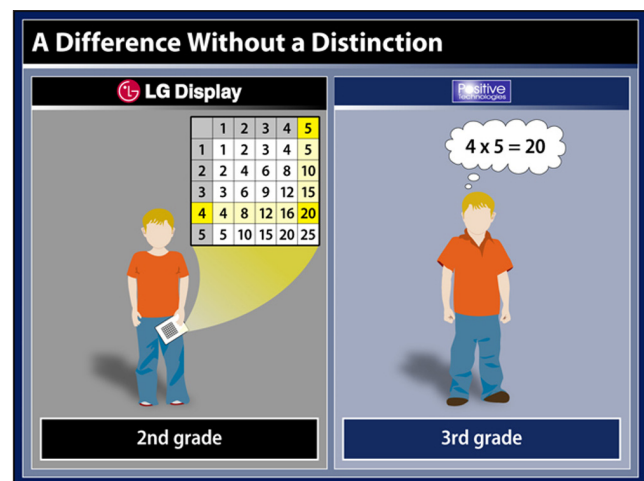
Given that time limits are becoming increasingly more common, trial lawyers shouldn’t be surprised when they are imposed. Instead, as they prepare for

trial, litigators should be anticipating how they can compress their presentation if they are given a limited time frame.

Such preparation includes deliberately planning to present a case that is clear, coherent, and easy for the jurors to understand. This isn’t a “dumbing down” process, but rather a process of simplifying complex cases to the point where laypeople can quickly understand the key themes and details. In the end, this simplification process makes attorneys more persuasive—not less.

Hone your visuals

Good demonstratives can provide shortcuts for teaching complex concepts that could take hours to explain via verbal narratives.



Positive Technologies v. LG Display and Toshiba

Claim charts, for instance, can be used to clarify whether a patent infringed on another patent or not. Pictures can be used to help define difficult terms, like “equivalent,” “enablement,” and “micron.”

And abridged CVs can be used to introduce an expert witness and establish credibility, rather than going through a lengthy review of his credentials through direct testimony.

Start early

Just creating graphics for the sake of having visuals is not the answer. The most effective graphics are those that, again, simplify complex ideas, and also illustrate case themes, organize evidence, pique juror interest, and remind the audience of who’s who in the case’s cast of characters.

As such, the process of thinking about how to visually present your case needs to be integrated throughout the case planning process.

Indeed, thinking visually early on can be a critical means to developing your entire case—including its technical points, its themes, and its story lines. This may sound like more work, but this method of analysis can be invaluable in helping you and your jurors understand and articulate your side of the case.

Divide and conquer

Once timelines get compressed, litigators are best advised to split up the litigation team: with trial counsel working in the courtroom and those focused on trial prep working in the war room doing research, organizing materials, or rehearsing. In most instances, this requires using more staff (not less) to cover the designated tasks.

Personnel can be reduced in one place—the witness stand. In the past, trial lawyers would use testimony from subsequent witnesses to augment what earlier witnesses didn’t completely explain.

As such, making just one key point often required more than one witness, which is time consuming and expensive. If a case has time limits, each witness should be coached to cover all the important points, so that subsequent witnesses don’t need to be brought on.

Again, graphics can assist with this, as they can help witnesses stay focused, on point, and able to explain their complex subject area in ways that the jury can understand—the first time around.

Pass up the good...for the great

When time limits are imposed, trial attorneys need to carefully allocate time to where it will make the most impact.

For instance, an opening statement should not be rushed, as a powerful opening helps set the stage for the case, especially if the litigator has a compelling presence in court.

During the opening, the litigator can establish the tone, the case themes, and the basic story line of the case. Giving short shrift to this all-important opening can undermine the entire case.

Similarly, trial attorneys may also decide that some aspects of a case require more time than others. For instance, attorneys can decide not to cover every claim in detail.

Instead, they can use a representative claim to teach the specific issues at stake, and then generalize these issues to the other claims being asserted.

Test your case—then practice it

Time limits put the onus on the lawyers to make sure they have a clearly articulated case. Whether in mock trial, focus groups, or small groups of laypeople, testing ensures attorneys that their themes, explanations, tools, and witnesses are all as effective as possible.

Testing also identifies those aspects of the presentation that don't work, and testing early in the trial preparation process gives attorneys the time they need to make sure their case will resonate with jurors when they get to trial.

Once an attorney identifies what works, she needs to practice to be sure her opening statement, witness questioning, and closing argument are as effective as possible.

It's really only by practicing that attorneys learn what works with the graphics and other tools, how the witnesses perform, and what questions they need to be prepared to answer.

Equally important, attorneys learn how much time it really takes to get through the case. It always makes sense to practice, of course, but when time limits are imposed, not practicing can be disastrous.

When handled correctly, a trial with a time limit becomes like a movie. As the director, the trial attorney needs to ensure that the trial has a beginning, middle, end, themes, subplots, and interesting characters.

Like a director, the attorney also needs to understand that each part of the trial is important—but that some parts carry more weight than others.

As such, the attorney needs to establish the order, the timing, the emphasis for each part, as well as make sure that the actors rehearse sufficiently and the graphics convey the right information.

In other words, a well-planned and executed trial can succeed within time limits, because the limit forces the litigator to cover all the relevant points and themes in an efficient and engaging manner.

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