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ALERT  
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## Cutting Through the Redline: What Companies Need to Know About Proposed Amendments for Federal Circuit Arguments

***Although the Federal Circuit has proposed various revisions to its Local Rules of Practice, the "revisions" relevant to the big question—When will oral argument be scheduled?—are already in effect.***

On April 24, 2020, the Federal Circuit announced a set of proposed amendments to its Local Rules that, if adopted, will go into effect July 1, 2020. Although most of the proposed changes are stylistic or concern particular nuances of electronic filing requirements or formats for briefs or appendices, two of the proposed changes address an important question of timing: When will oral argument be scheduled?

Reducing the time from the close of briefing to oral argument has been of great recent concern to the Federal Circuit, in large part because of the overwhelming number of appeals from the Patent Office—especially in inter partes reviews—created by the 2011 Leahy-Smith America Invents Act. Last year, the court took steps to reduce the amount of time until oral argument by limiting parties' notices of scheduling conflicts to conflicts only of the arguing attorney, and only if good cause is shown; no conflicts from non-arguing counsel or from the parties are considered. In the current set of proposed amendments, the Federal Circuit has formalized those limitations into a new rule, Federal Circuit Rule 34(d).

Another change—regarding panel composition for oral argument—may also be of broad interest. Under the court's current rules in Federal Circuit Rule 47.2(a), panels consist "of an odd number of at least three judges, two of whom may be senior judges of the court." The proposed amendment "generally" limits panels to a single senior judge: "A panel generally will include no more than one senior judge."

Theoretically, the new rule could extend the amount of time it takes for a case to be scheduled for oral argument, to ensure the availability of at least two active judges for each panel. But as a practical matter, this "change" is unlikely to seem like much of a change at all under current conditions. Although the court currently has a fairly robust count of six senior judges, the court's 12 legislatively authorized seats for active judges have been filled since Judge Stoll's appointment nearly five years ago. In fact, panels containing two senior judges have been infrequent in recent years. The new rule therefore is unlikely to have any significant effect for the time being.

Public comments about any of the proposed amendments must be submitted to the Federal Circuit's Clerk of Court by May 27, 2020.



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