

A manufacturer brought a patent infringement action in federal court against a company to recover \$50,000. The complaint did not include a jury demand. The company timely filed and served its answer, which included a jury trial demand on the issue of damages. Ten days after being served with the answer, the manufacturer filed and served a written jury trial demand for all triable jury issues. The company immediately moved to strike the manufacturer's jury trial demand.

Is the court likely to grant the motion to strike?

- A. No, because the manufacturer properly demanded a jury trial.
- B. No, because the manufacturer's jury demand was served within 30 days after the company's jury demand.
- C. Yes, because the manufacturer failed to include a jury demand in its complaint.
- D. Yes, because the manufacturer's jury demand was untimely filed.

Explanation:

Under Federal Rule of Civil Procedure 38, a civil litigant (plaintiff or defendant) may properly demand a jury trial on any triable jury issue by:

- serving the other parties with a written jury demand within 14 days after the last pleading (usually the defendant's answer) is served *and*
- filing the demand with the court within a reasonable time after service of the demand.

When a party demands a **jury trial on specific issues**, another party may serve a **jury trial demand** for any **other triable jury issue** within **14 days after service** of the **original demand** or a shorter time ordered by the court **(Choice B)**.*

Here, the company timely filed and served its answer, which included a jury trial demand on the specific issue of damages. The manufacturer then served a written jury trial demand for all other triable jury issues 10 days after the company served its original demand, which was within the 14-day deadline. Therefore, the court likely will deny the company's motion to strike the manufacturer's jury trial demand **(Choice D)**.

*If a party does not specify the issues for which it is demanding a jury trial, the demand is treated as a request for a jury trial on all triable jury issues.

(Choice C) A jury trial demand may, but need not, be included in a **pleading** (eg, a complaint). The demand can also be made in a separate, stand-alone document (as seen here).

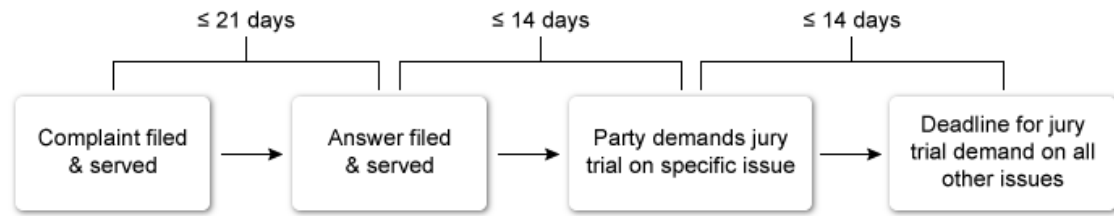
Educational objective:

When a party demands a jury trial on specific issues, another party may serve a jury trial demand for any other triable jury issue within 14 days after service of the original demand or a shorter time ordered by the court.

References

- Fed. R. Civ. P. 38(c) (jury trial demand on specific issues).

Jury trial demand on specific issues



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