

A manufacturer sued its competitor for patent infringement in a federal district court. On February 1, the manufacturer served the competitor with a summons and complaint. The day after the competitor was served with process, the competitor filed and served an answer. On February 28, the manufacturer delivered to the competitor a request to produce certain documents within the next 15 days. The competitor did not respond to the request for production or produce the requested documents by March 15. As a result, the manufacturer filed a motion to compel a written response to the request for production on April 1, the day after the parties' initial planning conference.

Will the federal court likely grant the manufacturer's motion?

- A. No, because a request for production is not permitted less than 30 days after service of process.
- B. No, because the competitor's response is not due until 30 days after the initial planning conference.
- C. Yes, because the competitor failed to produce the requested documents by the 15-day deadline.
- D. Yes, because the competitor's response was due 30 days after the request for production was delivered.

Explanation:

A **request for production** is a **method of discovery** used to compel an opposing party to produce and allow inspection of documents, electronically stored information, tangible things, and land. Such a request is permitted 21 days after service of process but is typically not made until the parties have held an initial planning conference **(Choice A)**. When the request is **served *after* the initial planning conference**, the party receiving the request must serve a **response** in writing **within 30 days of service**.

However, FRCP 26(d) allows a party to deliver an "early" request for production before the initial planning conference. When the request is **delivered *before* the initial planning conference**, a **response** is not **due** until **30 days *after* the conference**.^{*} That is because the early request is considered served at the initial planning conference.

Here, the competitor was served with process on February 1, which is when the manufacturer delivered the summons and complaint. On February 28, the manufacturer delivered to the competitor a request to produce certain documents within 15 days. However, this request was delivered *before* the initial planning conference on March 31, so the competitor has until April 30 to respond to the manufacturer's request. Therefore, the court will likely deny the manufacturer's motion to compel.

^{*}The parties may stipulate to, or the court may order, a different deadline to serve a response to a request for production—regardless of whether the request for production is delivered before or served after the initial planning conference.

(Choice C) The parties may stipulate to discovery deadlines that are shorter or longer than those set by the federal rules. However, one party cannot unilaterally amend a discovery deadline—as the manufacturer attempted to do here.

(Choice D) The competitor's response was due 30 days after the initial planning conference—not 30 days from when the request for production was delivered.

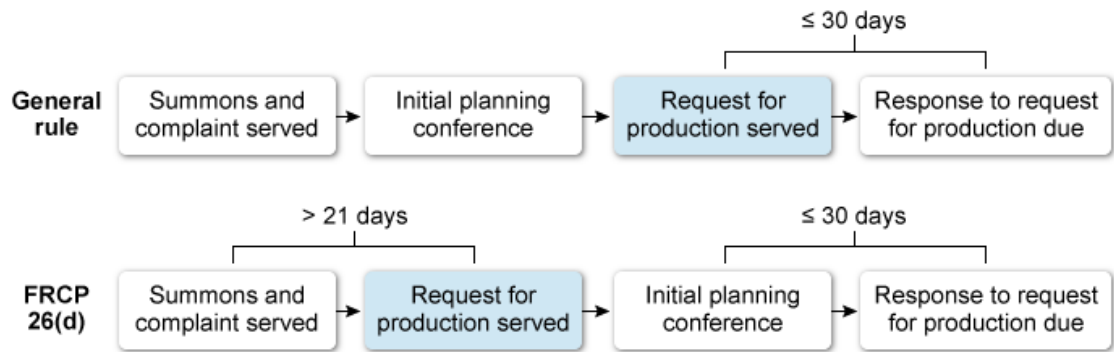
Educational objective:

A request for production can be served *before* the parties hold an initial planning conference, and the other party must respond to that request in writing within 30 days after that conference. If the request for production is served *after* the conference, then the response is due within 30 days after the request is served.

References

- Fed. R. Civ. P. 26(d)(2) (timing of request for production or inspection).
- Fed. R. Civ. P. 34 (request for production or inspection).

Deadline to respond to request for production



FRCP = Federal Rule of Civil Procedure

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