

A patent holder brought a patent infringement action, which involves triable jury issues, in federal court against a licensee of the patent. The patent holder believed that a jury would be more sympathetic to his claims than a judge and asked his lawyer to obtain a jury trial.

What should the lawyer do to secure the patent holder's right to a jury trial?

- A. File and serve a complaint that includes a jury trial demand.
- B. File and serve a jury trial demand at the close of discovery.
- C. File and serve a jury trial demand within 30 days after the close of the pleadings.
- D. Make a jury trial demand at the initial pretrial conference.

Explanation:

Under Federal Rule of Civil Procedure 38, a party may **demand a jury trial** on any triable jury issue by:

- **serving** the other parties with a written jury trial demand **no later than 14 days after the last pleading** directed to that issue is served *and*
- **filing** the jury trial demand with the court within a **reasonable time after service** of the demand.*

The demand can be **included in a pleading** or set forth in a separate document. And the right to a jury trial is waived if the above requirements are not met. The lawyer here can therefore secure a jury trial by including the jury trial demand in a filed and served complaint—ie, the pleading that starts a case.

*A proper jury trial demand may be withdrawn later, but only with the other parties' consent.

(Choice B) Discovery is a pretrial phase of a lawsuit during which the parties are compelled to disclose information related to the case. Since this is a lengthy process that often continues more than 14 days after the last pleading is served, a jury trial demand filed and served at the close of discovery would likely be untimely.

(Choice C) A jury trial demand must be served within 14 (not 30) days after the last pleading directed to the triable issue is served. And the demand would be even more untimely if the last pleading concerning the triable issue was served before pleadings closed.

(Choice D) An initial pretrial conference is typically held several weeks after the pleadings have closed, so a jury trial demand made at that conference would likely be untimely.

Educational objective:

A party may secure the right to a jury trial on any triable jury issue by (1) serving the other parties with a written jury trial demand no later than 14 days after the last pleading directed to the issue is served and (2) filing the jury trial demand with the court within a reasonable time after service of the demand.

References

- Fed. R. Civ. P. 38 (jury trial demand).

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Jury trial demand timeline



π = plaintiff; Δ = defendant

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