Re-Tailoring Jury Trial Rights

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Re-Tailoring Jury Trial Rights
Dry-cleaning patent case raises larger Seventh Amendment issues

BY RICHARD C. REUBEN

The debate over improving the civil justice system has gone through many permutations over the years. Discovery, punitive damages and alternative dispute resolution are but a few of the paths that have been pursued.

A case argued to the U.S. Supreme Court in January addresses the question from yet another—and potentially more fundamental—direction: the reach of the Seventh Amendment’s guarantee of a jury trial in civil cases in federal court.

The specific issue in Markman v. Westview Instruments, No. 95-26, is whether questions over the interpretation of a federal patent are issues of fact for the jury to decide (and generally not subject to appeal) or matters of law to be decided by the trial judge. It is the wider ramifications for civil jury trials that give the case its larger significance.

The issue bitterly divided the en banc U.S. Circuit Court of Appeals for the Federal Circuit at Washington, D.C., which was founded just more than a decade ago, in part to handle the burgeoning intellectual property docket. Patents are government-granted monopolies on the use of intellectual property. Such litigation often is worth millions, even billions, of dollars as parties jockey over the ownership of potentially lucrative products and processes.

In Markman, the fight is over the rights to an inventory control system that could save the dry cleaning industry untold millions in lost clothing and revenues.

Writing for the majority in the Federal Circuit, Chief Judge Glen L. Archer Jr. compared a patent to a statute granting a monopoly and said questions over its interpretation are matters of law for the trial judge, just as with any other statute.

The dissenters were unusually strong. Judge Pauline Newman accused the majority of denying “200 years of jury trial of patent cases in the United States ... simply by calling a question of fact a question of law.” Judge H. Robert Mayer chas-

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Many patent litigators predict juries would virtually vanish from their realm because the central question in most such cases hinges on the meaning of a patent’s precise language. See “Ruling Cuts Jury’s Role in Patent Cases,” July 1995 ABA Journal, page 24.)

The Court’s decision on whether there should be a complexity exception under the Seventh Amendment could be a bellwether of the views of the justices on the civil jury system.

Law v. Fact

Fiddling with the distinction between law and fact provides one way to get at the complexity problem, albeit indirectly, and if it works in the patent context, why not other complex areas of federal law, such as antitrust or securities?

More than 15 years ago, the Burger Court left the complexity question open when it declined to resolve a split between the circuits on the viability of a formal complexity exception. See In re United States Financial Securities Litigation, 609 F.2d 411 (9th Cir. 1979), and In re Japanese Electric Product Antitrust Litigation, 871 F.2d 1069 (3rd Cir. 1989).

Much has changed since then, of course. Perhaps most importantly, the lineup on the Supreme Court has changed, and Markman presents the current Court with its most important Seventh Amendment question to date.

The issue “will surely be in the back of their minds” as the justices consider the surface arguments in Markman, says Albert W. Alschuler, a University of Chicago Law School professor who favors an exception. And while Jeffrey White of the Association of Trial Lawyers of America opposes such an exception, he agrees that “one way or another, Markman is about a vote of confidence in civil juries.”