

FEDERAL CIRCUIT PRACTICE SEMINAR (LAW 437) FALL 2021

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Introduction:

The course will focus on the practical aspects of appearing before the Federal Circuit. It will discuss the history of the Federal Circuit, the purpose of its creation, its jurisdiction, and rules of practice. It will include brief writing and oral argument. In addition, the course will discuss the practical inner-workings of the Federal Circuit.

Course Materials:

We will not use a casebook for this course. Rather, we will use materials collected by us on the various topics that we will cover. We will provide a pdf of the materials to each student during the first class.

Class Schedule:

All classes (except for one) will meet at the Law School from 4:00 to 6:00 PM on Thursdays. One class will be held at the Federal Circuit (as noted below). **Please note that there will be no class on September 23 or October 14.** In addition, we may have conflicts that may require us to cancel a class. We will always warn in advance and will get a substitute, if possible.

Learning Outcomes:

By the end of the course, students should be able to demonstrate an understanding of:

- the Federal Circuit rules;
- how to select issues and brief an appeal before the Federal Circuit; and
- how to argue an appeal before the Federal Circuit.

Class Attendance:

The Law School's regulations require regular and punctual attendance. As such, we will take attendance every class and will expect regular attendance. Obviously, there may be instances when you will have to miss class. We ask that you inform one of us in advance that you will be missing a class (to the extent you know).

Grade:

There will be no exam in this course. Rather, your grade will be based on your writing ability and oral advocacy skills, as those are the two things that make one a good advocate before the Court. Your writing ability will be judged by the briefs you submit (we will discuss this more during class); your oral skills will be judged through the oral argument, as well as class participation. Specifically, the grade will be broken down as follows:

Briefs: 70%
Oral Argument: 20%
Class Participation: 10%

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Topic	Date	Assignment
I. Introduction/Background <ul style="list-style-type: none"> A. About the Court B. History/Purpose/Creation of the Federal Circuit C. Types of cases heard by the Federal Circuit D. State of the Court 	August 26	Read R1-R18 Skim R19-R47
II. Practical Aspects of Appearing Before the Federal Circuit <ul style="list-style-type: none"> A. Overview of an appeal (from filing to decision) <ul style="list-style-type: none"> ○ How are cases decided? B. Binding precedent on the Federal Circuit <ul style="list-style-type: none"> ○ Precedential v. Non-Precedential Opinions ○ Regional v. Federal Circuit Law 	September 2	Read R-48 to R-78 Read Rule 32.1
III. Pre-Appeal Procedures <ul style="list-style-type: none"> A. Preserving Issues for Appeal <ul style="list-style-type: none"> ○ Rule 3 – Notice of Appeal B. What Issues to Appeal <ul style="list-style-type: none"> ○ Law v. fact ○ Standard of review 	September 9	Read Rules 3, 38 & R-79 to R-130 Read Rule 27 & Handouts on Motions Practice
IV. Motions Practice <ul style="list-style-type: none"> ○ Rule 27 – Motions and Responses 		
V. Briefing a Case Before the Federal Circuit <ul style="list-style-type: none"> A. Review Problem for Moot Appeal <ul style="list-style-type: none"> ○ Review facts/issues ○ Assignments - Appellants/Appellees 	September 16	Review problem, conduct research, and be prepared to discuss issues
No Class this Week	September 23	Work on detailed outline for brief

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Topic	Date	Assignment
B. Techniques for Drafting Opening Briefs C. Review Sample Briefs D. Federal Circuit Rules <ul style="list-style-type: none"> ○ Rule 28 – Briefs ○ Rule 30 – Appendices ○ Rule 31 – Filing and service of briefs ○ Rule 32 – Form of briefs, appendices, & other papers 	September 30	Read R-251 to R-300 & the Rules mentioned under the Topics Tab Skim Sample Briefs (i.e., R131-R250) Outline due on Oct. 3rd at 6 pm
E. Conferences to discuss outlines for briefs	October 7	Come prepared to ask any questions about briefing
VI. Oral Argument Before the Federal Circuit		
A. No Class This Week—Work on Briefs	October 14	Work on briefs
B. Basics of Oral Argument before the Federal Circuit	October 21	Read Rule 34 & R-301 to R-335
C. Review and Discuss Briefs/Issues of a Case to be Heard in November	October 28	Read briefs and be ready to discuss issues raised
D. Observe Oral Argument at the Federal Circuit (Note – As of September 2021, the Court permits in-person attendance only by arguing counsel and one additional attendee per party. If that practice remains in place in November, then this class will involve listening to live arguments remotely.)	Week of November 1	Briefs due on November 7th at 6 pm
VII. Oral Arguments		
<ul style="list-style-type: none"> • Oral arguments will be judged by attorneys who practice before the Federal Circuit, former law clerks, and/or judges 	November 11	Prepare for oral argument
VIII. GSR Competition		
<ul style="list-style-type: none"> • GSR Competition Rules and Problem 	November 18	Review GSR Rules and Problem