

Allens › ‹ Linklaters

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*Overview of Australian Patent
Litigation and Mock Trial*

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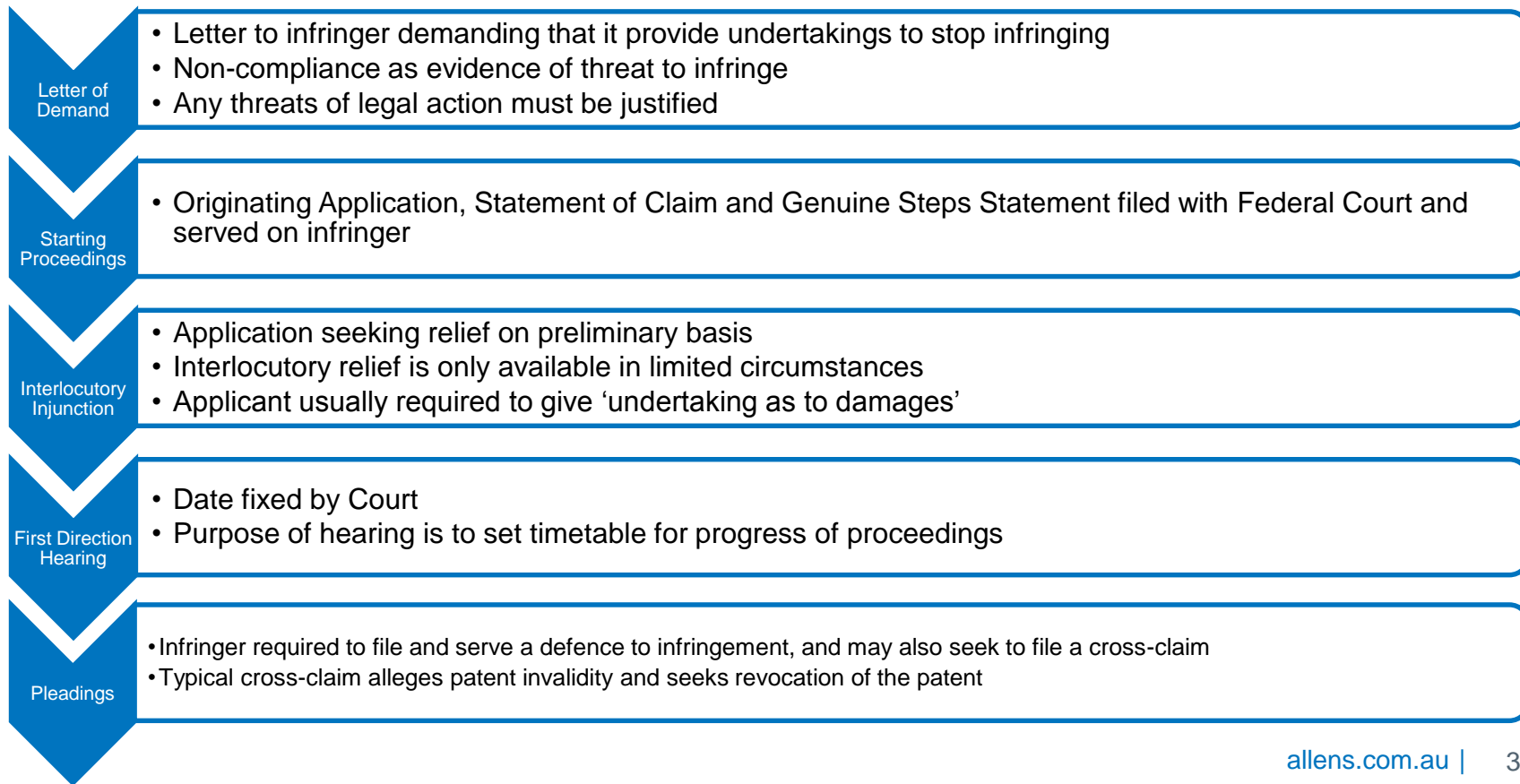
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➤ Venue and Jurisdiction for Patent Litigation

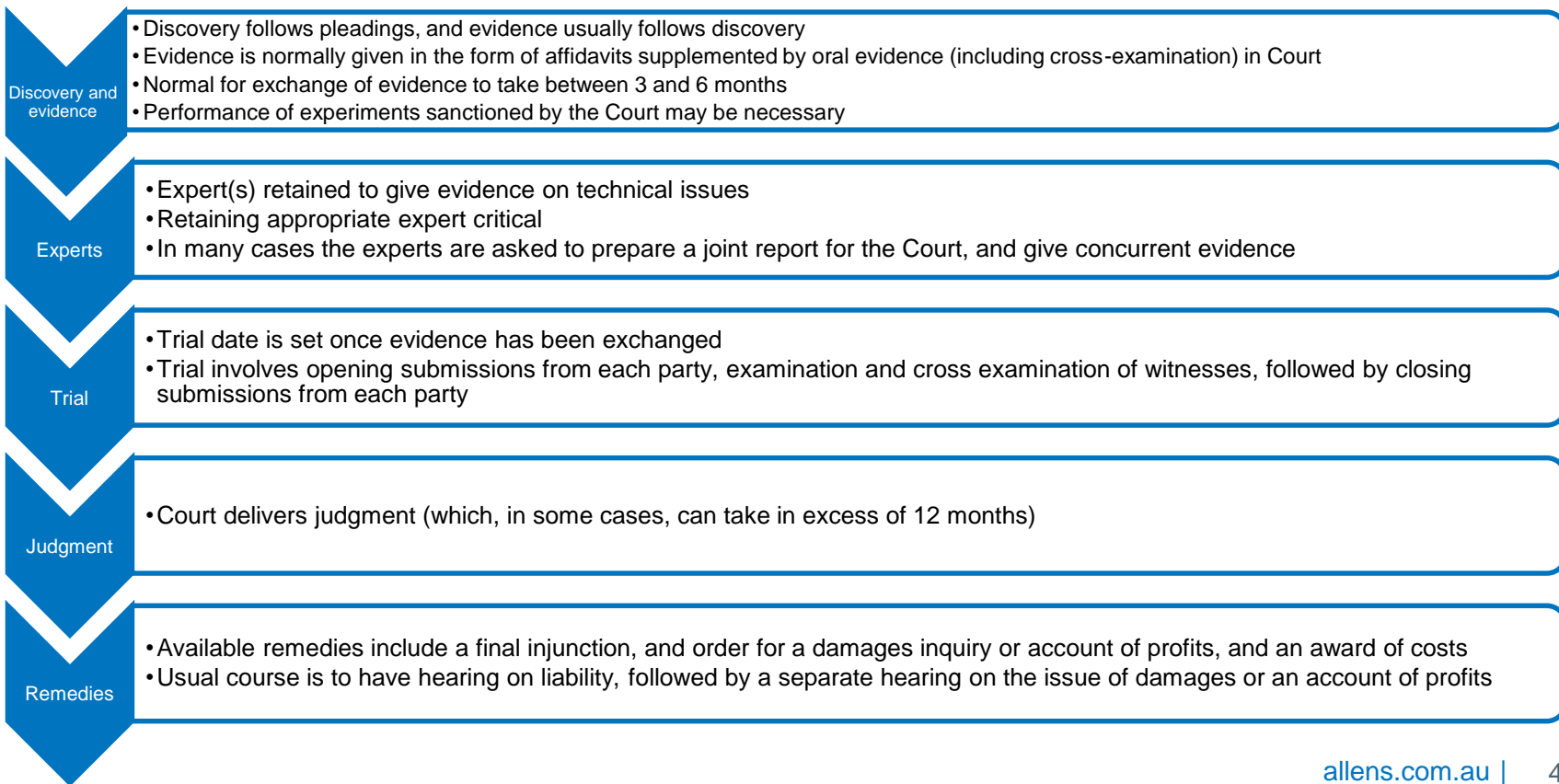
- > Almost all patent claims in Australia are heard by the **Federal Court of Australia**
- > Trial before single judge. No jury
- > Cases are generally **split** into separate phases:
 - Determination of **liability** – validity, infringement and injunctive relief
 - Determination of **quantum** of damages or an account of profits
- > All parties have a right of appeal to the **Full Court of the Federal Court**
- > Decisions of the Full Court can be appealed, with leave, to the **High Court of Australia**



➤ Overall Flow of a Patent Case in Australia (1 of 2)



➤ Overall Flow of a Patent Case in Australia (2 of 2)



➤ Costs in Patent Litigation



COSTS ORDERS

Unsuccessful party usually ordered to pay costs of successful party



SECURITY FOR COSTS AND FOREIGN CORPORATIONS

Where no realisable assets in Australia, party may be ordered to provide security to cover any costs orders which may ultimately be made in favour of the other party

➤ Definition of Patent Infringement

- > Infringement is understood to mean **exploitation** of a product or process claimed in a patent
- > To 'exploit' an invention means:
 - (a) where the invention is a product - make, hire, sell or otherwise dispose of the product, offer to make, sell, hire or otherwise dispose of it, use or import it, or keep it for the purpose of doing any of those things; or
 - (b) where the invention is a method or process - use the method or process or do any act mentioned in paragraph (a) in respect of a product resulting from such use;
- > There will be no infringement unless the alleged infringer has taken all of the **essential features or integers** of the patentee's claim.
- > Infringement is determined after construction of the claims.

➤ Construction of Patent Claims

- > The proper construction of the claims is a **matter of law**.
- > A claim is construed from the **perspective of a person skilled in the relevant art**, and in the light of the **common general knowledge**.
- > Ordinary words should be given their **ordinary meaning** unless:
 - a person skilled in the art would give them a technical meaning; or
 - the specification ascribes a special meaning.
- > Claims should be construed **in the context of the specification** as a whole, but **cannot be narrowed or expanded by adding glosses** drawn from the specification.
- > Claim should be given a **purposive construction**.
- > Use of **patent office file** to aid construction is **not allowed**.

➤ Mock Trial Scene 1: Closing submissions by the Applicant

Applicant of the scope of the Applicant's Invention

Feature

- 1 Control method for a car navigation system that displays a map on a display screen, the method comprising steps of:
- 2 reading, from first memory means in which facility data comprising display data a plurality of service facilities and coordinate data indicative of existing positions of the service facilities have previously been stored, the display data to display the plurality of service facilities on the display screen
- 3 designating one of the plurality of service facilities displayed on the display screen in accordance with an operation
- 4 reading coordinate data corresponding to the designated one service facility from the memory means
- 5 storing the read coordinate data as user registered data in second memory means; and
- 6 displaying a position indicated by the coordinate data read from the second memory by superimposing a predetermined pattern on to the map when the map is displayed on the display screen

➤ Mock Trial Scene 1: Closing submissions by the Applicant

Comparison of claimed Invention with the D Method

Feature

- 1 A control method for car navigation system that displays a map on a screen of D which includes:
 - 2 holding D spot data including D name data indicative of a plurality of spots and D data indicative of existing positions of the spots in D server of the car navigation system in order to display the plurality of spots corresponding to the D name data on the screen
 - 3 receiving an instruction to register one of the plurality of spots displayed on the screen a "memo position"
 - 4 obtaining D position data corresponding to the designated spot from D server
 - 5 to be registered according to the instruction in order to store the D position data as D memo data
 - 6 superimposing an icon on the map indicated by the D position data of D memo data read from D server when the map is displayed on the screen
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➤ Mock Trial Scene 1: Applying claim construction principles



CAR NAVIGATION SYSTEM

The claimed method is for a car navigation system, but this **does not require all elements of the system to be physically installed in the car.**

There is **no ambiguity in the claim language**, meaning any requirement for the entire system to be installed in a vehicle adds an **impermissible gloss** to the claim based on the example embodiment described in the specification



FIRST MEMORY MEANS

The **first memory means is any electronic storage medium which is used to store the “display data”** (i.e. the names of locations which can be searched by a user) and **“coordinate data”** (i.e. latitude and longitude position of selected locations).

This corresponds to the D Server, which stores the names and locations of “spots”.



SECOND MEMORY MEANS

The **second memory means is any electronic storage medium which is rewritable and is used to temporarily record the coordinate data** for the selected location. This data is **retrieved for display** on the display screen.

This also corresponds to the D Server, which registers a selected location as “memo data” and retrieves the information for display on the D Terminal.

➤ Mock Trial Scene 2: Closing submissions by Respondent

- > **Ambiguities** in claim construction can be clarified by having reference to the **disclosure in the specification** as a whole.
 - Where many different car navigation systems were available as at the priority date, it is necessary to refer to the body of the specification to identify the type of system forming part of the Invention.
- > Adopting a purposive **construction does not extend the patentee's monopoly** to the “ideas” disclosed in the specification.
 - The examples of the first memory means and second memory means provided in the body of the specification are very limited.
 - The patentee's monopoly should not extend beyond the matters clearly disclosed in the specification as a whole.

➤ Mock Trial Scene 2: Closing submissions by Respondent

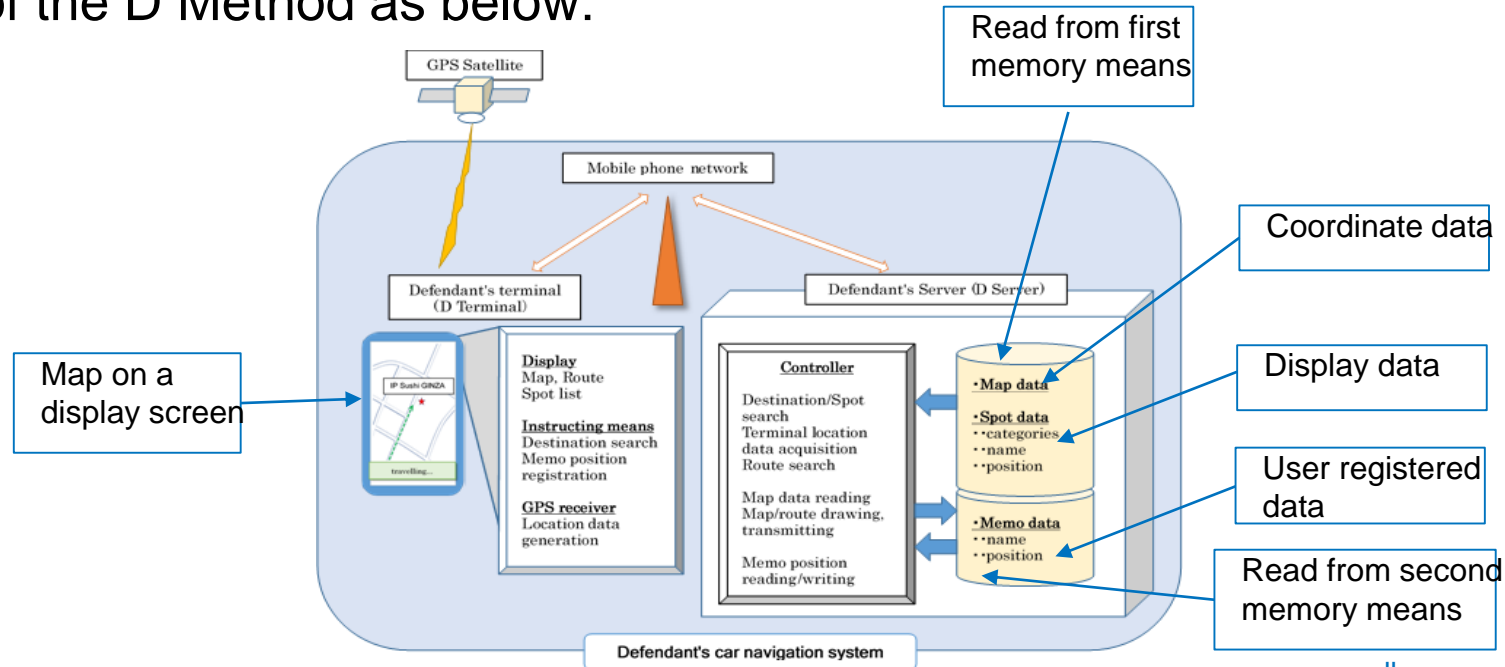
> **Key distinctions** between Invention and D Method:

- Equipment used in D Method is not entirely contained in the car, but is separated between an in-car D Terminal (display screen) and remote D Server – the D Method therefore does not involve a car navigation system as described in the patent.
- The D Server is not a portable memory means, distinct from the CD-ROM used as the first memory means in the claimed method.
- D Method uses only a single memory means – the D Server – rather than employing separate first and second memory means.

> **Doctrine of equivalents does not apply** in Australia, so cannot assist the patentee is expanding the scope of the claimed invention.

➤ Mock Trial Scene 3: Closing reply submissions by Applicant

- > The Applicant does not seek to rely on the doctrine of equivalents.
- > The essential integers of the Invention map directly onto the features of the D Method as below:



➤ Mock Trial Scene 4: Judgment



CONCLUSIONS ON CONSTRUCTION

The judgment will set out what the Court considers to be the **proper construction of the claim in suit**, having regard to the evidence of expert witnesses where appropriate.



DETERMINATION ON INFRINGEMENT

Based on the findings on construction, the Court will make **findings of fact on infringement**.

The Court will then conclude whether infringement is made out.



ORDERS

Orders **disposing of the liability portion** of the proceeding will be made, and **further orders for progressing the hearing on the quantum** of damages or account of profits (if the Applicant is successful) will be made.

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