



**National Board of Trial Advocacy (NBTA)**  
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### **General Principles for Recertification of Patent Litigation Advocates**

- (A) No standards shall in any way limit the right of a certified Patent Litigation specialist to practice law in all fields.
- (B) No lawyer shall be required to obtain a board certification in Patent Litigation before he or she can practice in this field.
- (C) Certification is individual and voluntary. Certification is open to all who qualify.
- (D) A lawyer may have more than one certification from various divisions of the National Board of Trial Advocacy.
- (E) Certification shall be for five (5) years, after which time the certificate cannot be used unless the lawyer is recertified. Certification may be revoked at any time for violations of the General Principles or Standards of the National Board of Trial Advocacy.
- (F) Application will be made to the National Board of Trial Advocacy, on the forms supplied by the Board, and accompanied by the appropriate fee.
- (G) An applicant must complete all requirements, including the examination, within two (2) years of application. If the certification process is not satisfactorily completed within the two (2) year period, the applicant will need to reapply and re-submit all required fees. An application can be denied at any time within the two (2) year application period for failure to successfully meet the requirements for certification.
- (H) Board certification will be issued upon a showing by the applicant, confirmed by the Board's own investigation, that the applicant complies with the qualifying standards for certification.
- (I) All applications and other information submitted to the National Board of Trial Advocacy shall be privileged and confidential, other than as compelled by law, except that the Board may reveal the fact of an application for the purpose of verifying information submitted by the applicant and for the purpose of making such inquiries with respect to the character and professional reputation of the applicant as may be authorized by its rules.
- (J) The National Board of Trial Advocacy does not discriminate against any lawyer seeking certification on the basis of race, religion, gender, sexual orientation, disability, or age

### **Recertification Standards for Patent Litigation Certification –rev. 5/2024**

#### **(A) Good Standing**

The applicant shall furnish satisfactory evidence of good standing in the state of his or her admission or, if admitted in more than one state, in the state of his or her principal practice.

#### **(B) Substantial Involvement**

The applicant must make a satisfactory showing of substantial involvement relevant to specialty certification in Patent Litigation, with at least thirty-five (35) percent of his or her time spent practicing Patent Litigation during the five (5) years preceding the filing of the application for recertification.

The applicant must demonstrate substantial involvement in patent litigation during the the five years preceding recertification by showing that he or she has actively participated in at least fifteen (15) contested matters involving the taking of testimony or motion practice. This may include non-jury trials; evidentiary hearings or depositions; motions heard before or after trial; and arbitration hearings.

The applicant must further demonstrate substantial involvement in patent litigation during the five years preceding recertification by showing that he or she has accumulated a total of 750 points in accordance with the following Qualifying Activity. No more than 250 points may be accumulated in the appellate activities and agency category, and no more than 500 points may be accumulated under the pretrial activity category:

<b>Qualifying Trial Activities</b>	<b>Points</b>	<b>Max. Pts</b>
<b>(No limit on cumulative points in this category)</b>		
Tried federal patent infringement jury trial to verdict or hung jury as lead counsel.	300	Unlimited
Tried federal patent infringement jury to verdict or hung jury as associate counsel.	150	450
Tried federal patent infringement bench trial to decision as lead counsel.	200	Unlimited
Tried federal patent infringement bench trial to decision as associate counsel.	100	300

<b>Qualifying Appellate/Agency Activities (Maximum 250 cumulative points in this category)</b>	<b>Points</b>	<b>Max. Pts.</b>
Lead counsel in a Federal Circuit appeal as a party at interest (not amici)	150	300
Associate counsel in a Federal Circuit appeal as a party at interest (not amici)	75	150
Counsel in a Federal Circuit appeal for amici	50	100
Lead counsel in ITC sec. 337 investigation (predicated on patent infringement) through hearing and initial determination.	150	300
Associate counsel in ITC sec. 337 investigation (predicated on patent infringement) through hearing and initial determination	75	150
Lead counsel in PTAB inter partes review proceeding	100	200
Associate counsel in PTAB inter partes review proceeding	50	100

<b>Other Qualifying Activities</b> <b>(Maximum 500 cumulative points in this category)</b>	<b>Points</b>	<b>Max. Pts.</b>
Conducted Claim Construction argument	50	250
Argued dispositive motions, Daubert motions, or motions in limine in a patent pretrial hearing	50	250
Appointment as lead (100 points) or to steering committee (60 points) for a defendant in a federal patent infringement joint defense group	100 or 60	200
Argued for/against motion to enhance willful infringement damages in a patent post-trial hearing	50	250
Argued for/against JMOLs regarding infringement, validity or damages in a patent post-trial hearing	50	250
Argued for/against injunction or compulsory royalty in a patent post-trial hearing	50	250
Appointment as mediator or special master in a patent infringement case	100	600
Taught law school patent litigation course (infringement, validity, patentability et al topics)	50	200
Authored legal article, book, or treatise chapter on patent litigation (such as: infringement, validity, 101, 285, etc.)	60	250

### **Lead Counsel**

Lead counsel is an attorney substantially responsible for the personal representation of the client during the trial and includes, at a minimum:

- Selecting a jury, opening, or closing, and;
- Presentation of live witnesses through direct and cross examinations.

### **Associate Counsel**

Associate counsel is attorney trying the case with lead counsel and taking an active role at trial including the presentation of live witnesses.

### **Former Judges**

Former Article III and Article I judges may obtain the benefit of their experience presiding over patent infringement cases. A judge who has presided over proceedings in patent infringement cases may accumulate points for any qualifying activities at the same point level, with concomitant caps, as the lawyers who participated in the case (e.g., presiding over a patent infringement trial would result in 300 points, and presiding over a claim construction argument would result in 50 points).

## **Educational Experience**

- (1) The applicant must demonstrate substantial participation in continuing legal education and the development of the law relevant to the field of patent litigation, in the five years preceding recertification:
  - (a) By attendance and/or electronic participation at not less than forty-five hours in programs of continuing legal education relevant to patent litigation approved by the Commission and the Standards Committee (up to twenty (20) percent of the continuing legal education may be in ethics), or
  - (b) By equivalent participation through, but not limited to, the following means, approved by the Commission and the Standards Committee:
    - (I) Teaching courses or seminars in patent litigation or ethics;
    - (II) Participation as panelist, speaker, or workshop leader, at educational or professional conferences in patent litigation or ethics;
    - (III) Authorship of books, or of articles published in professional journals, on patent litigation or ethics.
    - (IV) By combination of the three subsections above.

Please note:

Florida, South Carolina and Ohio require a higher number of CLE credit hours in order to advertise or communicate the NBPLL certification. Check with your local rules or the NBPLL for more details. NBPLL does not recognize an age or years in practice exemption for CLE.

## **(D) Peer Review**

- (1) The applicant shall submit, the names of six references, not present partners, associates, or relatives of the applicant. Such references shall be substantially involved in the field of patent litigation, and should be familiar with the applicant's practice in that field. At least two shall be judges before whom the applicant has appeared as an advocate in the field of patent litigation not more than three years before application; and at least two shall be lawyers with whom, or against whom, the applicant has appeared as an advocate in that field within three years of recertification.
- (2) NBPLL will solicit confidential statements from the references named by the applicant and may solicit confidential statements of reference from other persons, familiar with the applicant's patent litigation practice, not specifically named by the applicant. References satisfactory to the NBPLL must be received from at least one judge and from at least two attorneys. All reference statements received will be reviewed by the NBPLL to assess whether the applicant has maintained the enhanced level of skill and expertise in the practice area and the integrity and consideration for the interests of clients necessary to merit recertification.

## **(E) Disclosure of Conduct**

The applicant shall comply with Part G of the Certification Standards in the same manner as an applicant for certification.

## **Senior Status Standards**

### **(A) Good Standing**

The applicant shall furnish satisfactory evidence of good standing in the state of his or her admission or, if admitted in more than one state, in the state of his or her principal practice.

### **(B) Substantial Involvement**

(1) Substantial involvement in the specialty area for "Senior Specialist" shall mean that the applicant has been certified as a specialist in the specialty area by the NBPLL for a total of at least ten continuous years preceding the initial application for "Senior Specialist."

### **(C) Educational Experience**

The applicant must show that he or she participated in and completed at least thirty-six hours of educational activity, as set forth in Part C of the Certification Standards, during the five years preceding senior status.

Please note:

Florida, South Carolina and Ohio require a higher number of CLE credit hours in order to advertise or communicate the NBPLL certification. Check with your local rules or the NBPLL for more details.

NBPLL does not recognize an age or years in practice exemption for CLE.

### **(D) Peer Review**

(1) The applicant shall submit, for each specialty area, the names of five references, not present partners, associates, or relatives of the applicant. Such references shall be substantially involved in the relevant field of trial law, and should be familiar with the applicant's practice in that field. At least two shall be judges before whom the applicant has appeared as an advocate in the relevant field not more than three years before application; and at least three shall be lawyers with whom, or against whom, the applicant has appeared as an advocate in that field within three years preceding application for senior status.

(2) NBPLL will solicit confidential statements from the references named by the applicant and may solicit confidential statements of reference from other persons, familiar with the applicant's practice, not specifically named by the applicant. References satisfactory to the NBPLL must be received from at least one judge and from at least two attorneys. All reference statements received will be reviewed by the NBPLL to assess whether the applicant has maintained the enhanced level of skill and expertise in the practice area and the integrity and consideration for the interests of clients necessary to merit senior status.

**(E) Disclosure of Conduct**

The applicant shall comply with Part G of the Certification Standards in the same manner as an applicant for certification.

**Annual Reporting**

Annually, members will be required to submit a Disclosure of Conduct/Liability and annual dues. The applicant's annual dues and Disclosure of Conduct (Part G of the Certification Standards) must be current before an application for recertification will be granted. Disclosures of Conduct/Liability shall be submitted to the Standards Committee to determine if certification should be continued.

**Denial or Revocation of Certification**

- (A) An application for certification may be denied for failure to comply with any of the requirements relating to good standing, substantial involvement, educational experience, peer review, examination, legal writing, disclosure of conduct, financial responsibility or any other failure to demonstrate possession of an enhanced level of skill and expertise in patent litigation and demonstrated integrity and dedication to the interests of clients.
- (B) An application for recertification may be denied for failure to comply with any of the requirements relating to good standing, substantial involvement, educational experience, peer review, disclosures of conduct, financial responsibility or any other failure to demonstrate possession of an enhanced level of skill and expertise in patent litigation and integrity and dedication to the interests of clients.
- (C) An existing certification may be revoked for failure to demonstrate maintenance of an enhanced level of skill and experience in patent litigation and integrity and dedication to the interests of clients.
- (D) Decisions of the Examination Committee and the Brief Review Committee are final and not subject to further review or appeal. An attorney who is refused certification for any other reason, or who is refused recertification or whose certification is revoked may pursue review under the Appeal Procedures of the NBPLL. Exhaustion of this right shall be a condition precedent to judicial review.
- (E) A lawyer who is refused certification or recertification, or whose certification is revoked, may not apply for certification until one year after the date of such refusal, denial or revocation.
- (F) Suspension of the license to practice law shall operate as an automatic revocation of certification.
- (G) A lawyer who publicizes a certification or application for certification prior to its being granted, or continues to publish a certification after it has been revoked or suspended, may be barred from certification.