

**CONTRROLLING IP  
LITIGATION COSTS**

**HIPLA/UH LAW CENTER  
23rd ANNUAL INSTITUTE ON  
INTELLECTUAL PROPERTY LAW**

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# BEFORE ISSUE RIPENS

- Investigate/negotiate
  - Conduct product clearance due diligence
    - Design around if a problem
    - Don't be afraid to ask for a license
    - Weigh litigation risk (liability and \$\$) against need for product
- Don't be afraid to negotiate with infringers
  - File suit before making contact (and serve later if necessary – consequence of MEDIMMUNE)

# **BEFORE A LAWSUIT IS FILED (FOR AND AGAINST)**

- Be prepared for litigation
  - Conduct document search and witness interviews before filing suit (minimize surprises)
  - Proactive document retention program
    - Manage electronic media
    - Be aware of document sources
- Educate employees on importance of attorney-client privilege

# AFTER LITIGATION HAPPENS

- Proactively manage litigation
  - Have an experienced in-house lawyer as an active participant on the trial team
  - Have periodic team meetings (weekly/bi-weekly) to discuss issues and future activities
  - Update projected budgets (monthly/quarterly)
  - Realistically re-evaluate case on a regular basis
  - Remove emotional issues from case evaluations
- Always keep communications open for settlement discussions