



NEW YORK STATE
Unified Court System

OFFICE OF COURT ADMINISTRATION

HON. JOSEPH A. ZAYAS
CHIEF ADMINISTRATIVE JUDGE

HON. NORMAN ST. GEORGE
FIRST DEPUTY CHIEF ADMINISTRATIVE JUDGE

DAVID NOCENTI
COUNSEL

MEMORANDUM

To: All Interested Persons
From: David Nocenti
Re: Request for Public Comment on Amending 22 NYCRR § 202.70(b)(1) to Add a Reference to Technology in the Description of Commercial Cases
Date: October 5, 2023

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The Administrative Board of the Courts is seeking public comment on a proposal, proffered by the Commercial Division Advisory Council (CDAC), to amend the Rules of the Commercial Division, 22 NYCRR 202.70(b)(1), to include “technology transactions and/or other matters involving or arising out of technology” as an example of a commercial case that the Commercial Division has jurisdiction over. (Exhibit A, CDAC Memorandum)

CDAC notes that technology plays an increasingly important role in business operations and states that the Commercial Division Rules “should communicate the Commercial Division’s receptivity to, and familiarity with, resolving technology disputes.” (Ex. A, p. 2.) CDAC also notes that many of the business courts in other states have emphasized their jurisdiction over and experience with adjudicating technology disputes, and CDAC proposes that the Commercial Division rules should likewise contain an explicit statement that the Commercial Division handles disputes involving technology. The proposed amendment is made to the list of examples of Commercial Division cases, to avoid any misperception that the rule change alters or enlarges the scope of the Commercial Division’s jurisdiction (Ex. A, p. 3).

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Persons wishing to comment on the proposal should e-mail their submissions to rulecomments@nycourts.gov or write to: David Nocenti, Esq., Counsel, Office of Court

Administration, 25 Beaver Street, 10th Fl., New York, New York, 10004. Comments must be received no later than November 13, 2023.

All public comments will be treated as available for disclosure under the Freedom of Information Law and are subject to publication by the Office of Court Administration. Issuance of a proposal for public comment should not be interpreted as an endorsement of that proposal by the Unified Court System or the Office of Court Administration.

EXHIBIT A

MEMORANDUM

To: Commercial Division Advisory Council

From: Subcommittee on Procedural Rules to Promote Efficient Case Resolution

Re: Proposed Amendment to Rule 202.70 (b)(1) - Reference to Technology In Description of Commercial Cases

Date: June 23, 2023

This memorandum proposes an amendment to Rule 202.70(b)(1) of the Uniform Rules for the Supreme and County Courts (Rules of Practice for the Commercial Division) (Rule) to explicitly confirm that the Commercial Division has jurisdiction over actions in which the principal claims involve or consist of technology transactions and/or other matters involving or arising out of technology.

Current Rule

Pursuant to Section 202.70(b), among several categories of cases:

Actions in which the principal claims involve or consist of the following will be heard in the Commercial Division provided that the monetary threshold is met or equitable or declaratory relief is sought:

- (1) Breach of contract or fiduciary duty, fraud, misrepresentation, business tort (e.g., unfair competition), or statutory and/or common law violation where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices);

Proposed Amendment

For the reasons set forth herein, we recommend that the Commercial Division Advisory Council adopt an amendment to Section 202(b)(1) to modify the line that lists examples of commercial cases to include technology-related matters by stating “...(e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; technology transactions and/or other matters involving or arising out of technology; trade secrets; restrictive covenants; and employment agreements not including claims that principally involve alleged discriminatory practices)[.]”

Rationale

With technology playing an increasingly important role in the operation of businesses of all sizes, both inside and outside the State of New York, the capabilities and sophisticated expertise of the Commercial Division to handle disputes involving technology are worth noting. Other business courts have explicitly done so. For instance, the business courts in both Maryland and Delaware emphasize their jurisdiction over and experience with technology disputes. Indeed, the business court in Maryland is called the “Maryland Business and Technology Case Management Program.” In addition, although the Delaware Chancery Court is generally a court of equitable jurisdiction, as provided via 10 Del. C. § 346, Rule 91 of the Court of Chancery Rules, entitled “Technology Disputes Arising at Law,” provides that “The Court shall have jurisdiction to adjudicate a technology dispute involving solely a claim for monetary damages only in the event the amount in controversy exceeds one million dollars.” That statute also gives the Chancery Court the ability to mediate technology disputes.

Other states have followed suit in specifically identifying technology based disputes as within their business court’s jurisdiction, e.g., Georgia’s State-wide Business Court (GS 15-5A-3(a)(1)(A)(xvii), encompassing matters “[a]rising from e-commerce agreements; technology licensing agreements, including, but not limited to, software and biotechnology license agreements; or any other agreement involving the licensing of any intellectual property right, including, but not limited to, an agreement relating to patent rights”); Iowa’s Business Specialty Court (Amended Memorandum of Operation, encompassing cases arising “from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights”); Michigan Business Court (MCL 600.8031(2)(b), encompassing disputes “involving information technology, software, or website development, maintenance, or hosting”); North Carolina Business Court (N.C.G.S. § 7A-45.4(a)(5), encompassing “[d]isputes involving the ownership, use, licensing, lease, installation, or performance of intellectual property, including computer software, software applications, information technology and systems, data and data security, pharmaceuticals, biotechnology products, and bioscience technologies.”); Tennessee, Business Court Docket Pilot Project (Supreme Court Order ADM2017-00638, encompassing actions arising “from technology licensing agreements, including software and biotechnology licensing agreements, or any agreement involving the licensing of any intellectual property right, including patent rights”); Utah Business and Chancery Court (to become operational in 2024, specifically includes references to adjudication involving blockchain technology); West Virginia Business Court (Rule 29.04(a)(2), encompassing disputes presenting “commercial and/or technology issues in which specialized treatment is likely to improve the expectation of a fair and reasonable resolution of the controversy because of the need for specialized knowledge or expertise in the subject matter or familiarity with some specific law or legal principles that may be applicable”).

As one of the world’s most sophisticated venues for the resolution of commercial disputes and located in the world’s leading financial center and serving as technology hub, the Commercial Division Rules should communicate the Commercial Division’s receptivity to, and familiarity with, resolving technology disputes. The proposed Rule

amendment refers to technology-related matters in the list examples of commercial cases “(e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements; technology transactions and/or other matters involving or arising out of technology; trade secrets; restrictive covenants...” to amplify the Commercial Division’s capabilities, rather than as a separate category of cases, so as to avoid any misperception that the Rule change alters and/or enlarges the scope of the Commercial Division’s jurisdiction.