Successful Appellate Advocacy Before the CAFC

An Outline Prepared for the Law Education Institute
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1. To Succeed in Appeal, Act Before Appeal

a. **Protect the case for appeal**. "It is trial counsel's duty to perfect the record in the trial court." Hewitt, James F., Preserving and Assembling the Record for Appeal: Getting Through the Mine Field, Appellate Practice Manual (ABA 1992).

   i. Stand your ground when you are right.
   ii. Object. Any conduct you do not oppose cannot be corrected on appeal. "A party cannot raise on appeal legal issues not raised and considered in the trial forum." *Finch v. Hughes Aircraft Co*., 926 F.2d 1574, 17 USPQ2d 1914 (Fed. Cir. 1991)(dismissal of complaint without opposition affirmed).
   iii. Force formality.
      1. Get rulings on the record.
      2. Get all testimony on the record.
   iv. Be thoroughly thoughtful and consistent with permanent interests: avoid judicial estoppel. *See Yniquez v. State of Ariz*., 939 F.2d 727, 738-39 (9th Cir. 1991) (the "doctrine of judicial estoppel . . . is invoked to prevent a party from changing its position over the course of judicial proceedings when such changes have an adverse impact on the judicial process," and applying the doctrine to prohibit a litigant from asserting on appeal a contrary position on a legal issue after having persuaded the trial court to adopt its prior position on the issue (citations omitted)).
   v. Do not invite error. "The invited error doctrine prevents a party from inducing action by a court and later seeking reversal on the ground that the requested action was error." *United States v. Edward J*., 224 F.3d 1216, 1222 (10th Cir. 2000).

b. **In summary judgment proceedings, preserve the case against summary judgment**.

   i. Prove judgment does not follow from the facts that are undisputed or prove an issue of material fact. *Vivid Technologies Inc. v.*

American Science & Engineering Inc., 200 F.3d 795, 53 USPQ2d 1289 (Fed. Cir. 1999).

ii. If more discovery is needed, prove it by the standard of the regional circuit. *E.g.*, prove "an authentic need for, and an entitlement to, an additional interval in which to marshal facts essential to mount an opposition." *Morrissey v. Boston Five Cents Savings Bank*, 54 F.3d 27, 35 (1st Cir. 1995). "[M]ake an authoritative and timely proffer, (ii) show good cause for the failure to have discovered these essential facts sooner, (iii) present a plausible basis for the belief that there are discoverable facts sufficient to raise a genuine and material issue, and (iv) show that the facts are discoverable within a reasonable amount of time." *Morrissey*, 54 F.3d at 35, as quoted in *Vivid Technologies.*

c. **In any issue of referral, preserve the objection to referral**. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1566, 7 USPQ2d 1057 (Fed. Cir. 1988) ("A party cannot wait to see whether he likes a master's findings before challenging the use of the master. Failure to object in a timely fashion constitutes a waiver.").

d. **At trial, preserve the case against adverse judgment**.

i. Preserve the right to a jury.
   1. Follow all rules to prevent waiver. E.g., *Transmatic Inc. v. Gulton Industries Inc.,* 53 F.3d 1270, 35 USPQ2d 1035 (Fed. Cir. 1995)(Right waived where local rule not followed to object to order for a bench trial.).
   2. Object to a narrow verdict form.

ii. Preserve objections to exclusion of evidence.
   1. Make an offer of proof. 1 Wigmore, Evidence Section 20a at 864 (Tillers rev. 1983) ("An offer of proof . . . is required because an appellate court needs an adequate basis for determining whether a trial court's error regarding an evidentiary matter is prejudicial or merely harmless. . . . The offer of proof places the excluded evidence on the record so that the appellate court can determine whether the improper exclusion of evidence at trial warrants reversal.")
   2. Make a proper offer of proof: offer admissible evidence. *Shapiro, Bernstein & Co. Inc. v. Club Lorelei Inc*., 35 USPQ2d 1852 (W.D.N.Y. 1995)(attorney affidavit not evidence).

iii. Preserve objections to objectionable jury instructions.
   1. Object. Fed. R. Civ. P. 51 ("No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict. . . .").

2. Offer curative instructions. *Biodex Corp. v. Loredan Biomedical Inc.,* 946 F.2d 850, 20 USPQ2d 1252 (Fed. Cir. 1991)("In order to prevail on the jury instruction issue in this case, Biodex must demonstrate both that the jury instructions actually given were fatally flawed and that the requested instruction was proper and could have corrected the flaw.").

iv. Preserve objections to inconsistencies in the jury verdict.

1. Where necessary, object before the jury is discharged. A defendant may not argue verdict inconsistentcy if he or she failed to object "after the verdict was read and before the jury was discharged." *Coastal Fuels of Puerto Rico, Inc. v. Caribbean Petroleum Corp*., 79 F.3d 182, 201 (1st Cir. 1996).

v. Preserve the right to judgment notwithstanding the verdict (JMOL): make a timely and proper motion.

1. Make the motion at the close of the evidence. F.R.C.P. 50(a).
2. No motion prevents JMOL. *Biodex* ("Quite clearly, the only available remedy upon finding error in a judgment entered on a jury verdict where there has been no motion for JNOV is limited to a remand for a new trial.").
3. A late motion is the same as no motion. *Browder v. Director, Dep't of Corrections*, 434 U.S. 257, 265 (1977).
4. A motion without an issue is the same as no motion as to that issue. *Foster-Miller Inc. v. Babcock & Wilcox Canada,* 210 F.3d 1, 54 USPQ2d 1193 (1st Cir. 2000).

e. **Post trial – preserve the right to JMOL and new trial**.

i. Renew the JMOL motion no later than ten days after entry of judgment. F.R.C.P. 50(b).

ii. Preserve the right to new trial.

1. Make the motion not later than ten days after judgment. F.R.C.P. 59(b).
2. As with JMOL, no motion or the absence of an issue is fatal. *Arachnid Inc. v. Medalist Marketing Corp*., 972 F.2d 1300, 23 USPQ2d 1946 (Fed. Cir. 1992)(issue not in postrial motions is waived).

2. **Take a Timely and Proper Appeal**.

a. **Be timely**.

i. As appellant. Pursuant to Fed. R. App. P. 4(a)(1) a notice of appeal must be filed "within 30 days after the date of entry of the

judgment or order appealed from." The 30-day time limit is "mandatory and jurisdictional." *Browder v. Director, Ill. Dep't of Corrections*, 434 U.S. 257, 264 (1978); *Tylo Sauna, S.A. v. Amerec Corp*., 826 F.2d 7, 3 USPQ2d 1792 (Fed. Cir. 1987).

ii. As appellee. File any cross appeal with 14 days of the first notice of appeal. F.R.A.P. 4(a)(3). Note, Wright, Bradley C., Ten Mistakes to Avoid at the Federal Circuit, 17 ABA IPL Newsletter (Winter 1999)(Mistake #6: Cross-Appealing).

b. **Be early**. An appeal after judgment and before motions is effective. F.R.A.P. 4(a)(4)(B)(i).

c. **File in the right form**.

i. Specify the parties appealing. F.R.A.P. 3(c)(1).
ii. Designate the judgment(s) or order(s) appealed. F.R.A.P. 3(c)(1).
iii. Name the Federal Circuit. F.R.A.P. 3(c)(1).

d. **File in the right court**.

i. An appeal … may be taken only by filing … with the district clerk. F.R.A.P. 3(a)(1).

e. **Have jurisdiction.**

i. Final judgments are appealable. 28 U.S.C. 1291; *Coopers & Lybrand v. Livesay*, 437 U.S. 463 (1978)(A final judgment is "a decision by the District Court that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.").
ii. Grants and denials of preliminary injunctions are appealable. 28 U.S.C. 1292(a)(1).
iii. Appeals of partial judgments are primarily only by certification from the district courts. Fed. R. Civ. P. 54(b).

f. **Have a non-frivolous issue**. *State Industries Inc. v. Mor-Flo Industries*, 948 F.2d 1573, 20 USPQ2d 1738 (Fed. Cir. 1991)(sanctions awarded for a frivolous appeal).

g. **Learn the rules, including the Federal Circuit's Rules and its practice notes.** "[The Federal Circuit] Rules … are distributed to members of the bar upon their admission to practice before this court and to counsel for both parties whenever an appeal is filed. " *State Industries* (failure to follow practice notes criticized).

h. **Learn about the Court.** Wright (Mistake #8: failure to know the Court).

3. Act Swiftly at the Briefing Stage

a. Plan that you have only about 60 days.

i. The appellant must serve and file its initial brief within 60 days after docketing. Fed. Cir. R 31(a)(1)(A).
ii. A cross-appellant has 40 days from service of appellant's brief. Fed. Cir.R. 31(a)(2).

b. **Marshal all the arguments**.

i. Thoroughly, creatively comb the record for issues.
ii. Check the record against memories.
    1. Beliefs formed from the record alone may be wrong. *E.g., Lummus Industries Inc. v. D.M. & E. Corp.,* 862 F.2d 267, 8 USPQ2d 1983 (Fed. Cir. 1988)(position of timely jury instructions off the record accepted).

c. **Catalog all issues**.

i. Arguments not made in the opening brief are waived. *Becton Dickinson and Co. v. C.R. Bard Inc.,* 922 F.2d 792, 17 USPQ2d 1097 (Fed. Cir. 1990); Wright (mistake #3: raising new issues late).
ii. Unless there is a remand, all issues within the scope of the appealed judgment are deemed incorporated within the mandate and thus are precluded from further adjudication. *Engel Industries Inc. v. Lockformer Co.,* 166 F.3d 1379, 49 USPQ2d 1618 (Fed. Cir. 1999).

d. **Apply the standards of review**.

i. "Standards of review … influence the disposition of appeals far more than many advocates realize." Michel, Paul R., Circuit Judge, CAFC, "Appellate Advocacy – One Judge's Point of View, The Federal Circuit Bar Journal, Vol. 1, No. 2, Summer 1991 at 2.
ii. The standards are de novo review, clear error, substantial evidence, abuse of discretion, and arbitrary and capricious. Dunner, Donald R., "Appeals to the Federal Circuit," Chapter 24, Patent Litigation Strategies Handbook (BNA 2000).
iii. *De novo* - examples are:
    1. Statutory interpretation is reviewed *de novo*. *Hodges v. Secretary of the Dep't of Health & Human Servs*., 9 F.3d 958, 960 (Fed. Cir. 1993).
    2. Claim interpretation is reviewed *de novo*. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1456, 46 USPQ2d 1169, 1174 (Fed. Cir. 1998) (en banc).

3. Contract interpretation is reviewed *de novo*. *Ethicon, Inc. v. U.S. Surgical Corp*., 135 F.3d 1456, 1466, 45 USPQ2d 1545, 1552 (Fed. Cir. 1998).
4. Pretrial stipulation interpretation is reviewed *de novo*. *See Intel Corp. v. ULSI Sys. Technology, Inc*., 995 F.2d 1566, 1569, 27 USPQ2d 1136, 1138 (Fed. Cir. 1993), *cert. denied*, 114 S. Ct. 923 (1994).
5. Grant of summary judgment is reviewed *de novo*. *Augustine Medical Inc. v. Progressive Dynamics Inc*., 194 F.3d 1367, 52 USPQ2d 1515 (Fed. Cir. 1999).
6. Denial of a motion for JMOL is reviewed *de novo*. *See, e.g., Odetics, Inc. v. Storage Tech. Corp*., 185 F.3d 1259, 1266, 51 USPQ2d 1225 (Fed. Cir. 1999).
7. Whether an invention was on sale is a question of law reviewed without deference. *Robotic Vision Sys., Inc. v. View Eng'g, Inc*., 249 F.3d 1307, 1310, 58 USPQ2d 1723, 1725 (Fed. Cir. 2001).
8. The ultimate determination of whether an invention would have been obvious is a legal conclusion reviewed without deference. *Brown & Williamson Tobacco Corp. v. Philip Morris Inc,* 229 F.3d 1120, 56 USPQ2d 1456 (Fed. Cir. 2000).

iv. Clear error – examples:
1. Factual findings in bench trials are reviewed for clear error. F.R.C.P. 52(a); s*ee Winner Int'l Royalty Corp. v. Wang,* 202 F.3d 1340, 1348, 53 USPQ2d 1580, 1586 (Fed. Cir. 2000).
    a. As to infringement. *See Insituform Techs., Inc. v. Cat Contracting, Inc*., 161 F.3d 688, 692, 48 USPQ2d 1610 (Fed. Cir. 1998).
    b. As to validity. *E.g., B.F. Goodrich Co. v. Aircraft Braking Systems Corp*., 72 F.3d 1577, 37 USPQ2d 1314 (Fed. Cir. 1996).
    c. As to inequitable conduct. *See Molins PLC v. Textron, Inc.*, 48 F.3d 1172, 1178, 33 USPQ2d 1823 (Fed. Cir. 1995).
    d. As to the exceptional nature of a case. *E.g., Enzo Biochem Inc. v. Calgene Inc.,* 188 F.3d 1362, 52 USPQ2d 1129 (Fed. Cir. 1999).
    e. In all issues with factual components. F.R.C.P. 52.

v. Substantial evidence – examples:
1. Jury fact finding is reviewed for substantial evidence. *Kearns v. Chrysler Corp*., 32 F.3d 1541, 1547-48, 31 USPQ2d 1746 (Fed. Cir. 1994).

2. PTO fact finding is reviewed for substantial evidence. *Dickinson v. Zurko*, 527 U.S. 150 (1999); *In re Gartside*, 203 F.3d 1305, 53 USPQ2d 1769 (Fed. Cir. 2000).

vi. Abuse of discretion – examples:
   1. Grant or denial of preliminary injunction is within sound discretion. *Purdue Pharma L.P. v. Boehringer Ingelheim Gmbh,* 237 F.3d 1359, 1363, 57 USPQ2d 1647, 1649 (Fed. Cir. 2001).
   2. Exclusion of evidence is reviewed for abuse of discretion. *ATD Corp. v. Lydall Inc.,* 159 F.3d 534, 48 USPQ2d 1321 (Fed. Cir. 1998)("The abuse of discretion standard is applied to review of evidentiary rulings … generally in the federal system. *E.g., Schrand v. Federal Pacific Elec. Co*., 851 F.2d 152, 156-57 (6th Cir. 1988)).
   3. Denial of a motion for new trial is reviewed for abuse of discretion. *Railroad Dynamics, Inc. v. A. Stucki Co*., 727 F.2d 1506, 1512, 220 USPQ 929 (Fed. Cir. 1984).

vii. Arbitrary and capricious.

e. Apply "the standard within the standard."

i. *E.g.,* summary judgment is reviewed *de novo*, but a conclusion of laches, even by summary judgment, is reviewed for abuse of discretion. *A.C. Aukerman Co. v. R.L. Chaides Constr. Co.,* 960 F.2d 1020, 1039, 22 USPQ2d 1321, 1333 (Fed. Cir. 1992) (en banc).

ii. *E.g*., review of denial of a motion for JMOL is *de novo*, but the review is in part to decide whether substantial evidence supports the verdict. *Perkin-Elmer Corp. v. Computervision Corp*., 732 F.2d 888, 893, 221 USPQ2d 669, 673 (Fed. Cir. 1984).

iii. *E*.g., a decision of obviousness is reviewed as a matter of law, but the underlying factual findings are reviewed for clear error. *E.g., Brown & Williamson Tobacco Corp.*

iv. *E.g.*, an abuse of discretion occurs when a decision is based on an erroneous interpretation of law or clearly erroneous factfinding, or if that "decision represents an unreasonable judgment in weighing relevant factors." *A.C. Aukerman Co*.

f. **Understand the standards.**

i. *E*.g., substantial evidence is evidence from which a reasonable jury could have found in favor of the prevailing party. *See Tec Air, Inc. v. Denso Mfg*., 192 F.3d 1353, 52 USPQ2d 1294 (Fed. Cir. 1999).

ii. *E*.g., clear error is present when "the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake

has been committed." *United States v. United States Gypsum Co*., 333 U.S. 364, 395 (1948).

g. **Strip issues mercilessly**.

i. Strip anything frivolous. "Prospective appellants … must assure themselves that they can make a nonfrivolous argument for reveal before filing an appeal." *State Industries*.
ii. Strip anything harmless. F.R.C.P. 61.
iii. Strip on adverse standards of review. Wright (Mistake #2: failure to appreciate the standard of review.)
    1. Favor issues with low standards; disfavor issues with high standards.
    2. *E.g.*, "One who blindly challenges on appeal the exercise of discretion might do better to take a leisurely stroll through an uncharted minefield." Aldisert, Ruggero J., Winning on Appeal: Better Briefs and Oral Advocacy (NITA 1996).
iv. Strip because you cannot provide a reasoned and persuasive analysis. *E.g,,* "We certainly will not reverse based merely on attorney assertion that the finding or ruling was 'clearly erroneous.' We need a reasoned and persuasive analysis of why." Michel at 3.
v. Strip because you're not convinced yourself.
vi. Strip on vetting.
    1. Vet with former Federal Circuit clerks.
    2. Vet with senior lawyers and associates.
    3. Vet with friends and family.
vii. Choose. "To litigate is to choose." Joseph Miller, Sidley & Austin, Patent Trial Advocacy, Chicago-Kent College of Law (August 1998).
    1. Plan no more than one to three issues. "A brief presenting more than two or three issues may be viewed with suspicion." Michel at 8; Wright (mistake #10: shotgunning the issues).
    2. Apply a "litmus test" of the number of issues in the brief:

"Number of Issues	Judge's Reaction
Three	Presumably arguable points.
Four	Probably arguable points.
Five	Perhaps arguable points.
Six	Probably no arguable points."

Aldisert at 120.

h. Plan the opening brief to gain immediate attention.

i. Lead from strength – the strongest issue.

ii. Express a compelling argument, and one that meets the standard of review. "[W]hat … should [advocates] do? Only two things: (1) Describe the 'marriage' of the few facts and the few authorities that compel your result; and (2) Demonstrate how they meet … the applicable standard of review." Michel at 10. "As you write, prop a sign, literally or figuratively, on your desk that asks, 'Will this brief persuade the reader?'" Aldisert at 17.
iii. If possible, express an issue calling for a precedential opinion.
iv. Express a message the reader will understand – be simple and clear.
v. Structure the brief within the framework of the judges' knowledge, beliefs and attitudes. "The best techniques and theories tend to be those that mesh with the judges' own decision-making process." Michel at 2.

i. Strip content mercilessly.

i. Strip for frivolousness. "Our court recently catalogued some of the types of appellate litigation misconduct which are considered sanctionable. … Sanctionable misconduct has been held to include (though is by no means limited to): seeking to relitigate issues already finally adjudicated, … failing to explain how the trial court erred or to present clear or cogent arguments for reversal …; rearguing frivolous positions for which sanctions had already been imposed in the trial forum …; failing to cite authority and ignoring opponent's cited authority …; citation of irrelevant or inapplicable authority …; distorting cited authority by omitting language quotations …; making irrelevant and illogical arguments …; misrepresenting facts or law to the court." *State Industries*.
ii. Strip on vetting.
iii. Strip for better tone: "A persuasive brief reads like a judicial opinion: unbiased, not argumentative; neutral, yet forceful. … There is no need to use up the entire page limit when filing a brief." Wright.
iv. Choose. "The worst problem facing advocates is that they know too much. …The first principle of effective advocacy therefore lies in selectivity." Michel at 1.

j. **File on time in proper form**.

i. Preferentially, count words, not pages, and act accordingly. F.R.A.P. 32(a)(7)(B).
ii. Include all necessary sections – and don't stop there.
    1. Have an argument, a summary of argument, a statement of issues, a statement of the case, a statement of facts, a jurisdictional statement, etc. F.R.A.P. 28; Fed. Cir. R. 28.

2. Consider a "preliminary statement."

iii. Use pinpoint citations to the record. Wright (Mistake #5: failure to use pinpoint citations).

k. **Load up on graphics**. See F.R.A.P. 32(a)(7)(b)(with proper word count, no page length limit).

l. **Employ wise suggestions.**

i. Have "an ample number of meaningful headings." 1 Dunner, Donald R. & Gholz, Charles L., Court of Appeals for the Federal Circuit: Practice & Procedure, §4.02 (2000).
ii. Use a glossary. *Id.*
iii. Consider fold-out charts and colored drawings. *Id.*
iv. Use claim charts. *Id.*
v. Type important handwritten material from the record. *Id.*
vi. Reduce issues to the level of lay comprehension. *Id.*
vii. Avoid undue length. *Id.*
viii. Discuss all issues. *Id.*
ix. Avoid the "ingenious." *Id.*
x. Avoid personal attacks on opposing counsel. *Id.*
xi. Cite no non-precedential decisions. *Id.*
xii. NEVER personally criticize the district court. *Id.*

m. **Avoid common criticisms**:

i. Too long.
ii. Too many issues.
iii. Too many facts and legal points.
iv. Lack central theme.
v. Lack organization.
vi. Fail to engage.
vii. Misrepresent facts and holdings.

n. **Write a persuasive reply**.

i. Engage the red brief.
ii. No new issues.

4. Prepare Well for Oral Argument

a. **Come for 15 minutes per side**. Fed. Cir. Practice Note for FRAP 34.

b. **Come for the first half of a panel conference, assuming a panel prepared to decide the case, and yourself as a colleague**. IOP #3 par. 2., IOP #8 par. 1; Banner, Mark T., Appeal: Winning on Infringement at the

Federal Circuit (1999)(on file with Mr. Shifley): "Oral argument … in a very real sense, … is the start of the conference at which the case is decided." Michel: "conference follows immediately after the panel's last oral argument of the day." Wright (Mistake #9: treating the judges as adversaries).

c. Come with mastery.

i. Master the facts. "Know the record. Be prepared to refer to appendix citations." Banner.
ii. Master the procedure. Follow Federal Circuit Rule 34, the associated Practice Note, and the Court's Information Sheet, Notice to Counsel on Oral Argument, and Notice regarding Courtroom Decorum.
iii. Master the law.
    1. "Names and numbers. Citations and quotations." Judge Paul Michel, CAFC, Master Class on Appellate Brief Writing, John Marshall Law School (November 21, 1997).

d. Practice – mock it up. "Rarely does success depend on the 'speech' that you work so hard to prepare. It lies instead in anticipating the inevitable, skeptical questions, and preparing answers in advance. Testing them is crucial. One good way to test them out is to conduct a moot court." Michel at 7. "I favor using a moot court." Banner.

e. Lead from strength.

i. Skip your name, your partner's name, and your client's name.
ii. Skip the facts. Wright (Mistake #1).
iii. Skip the visual aids. Wright (Mistake #4: overuse and misuse of exhibits at oral argument).
iv. Get to the heart of the case in the first sentences. "Make your first sentence *count* by getting to the heart of your case." Banner. "Get to the essence of the case and your position as quickly as possible." Dunner & Gholz at §5.04.

f. **Emphasize and simplify the pivotal issues**.

i. Strip mercilessly. "Touch the highlights." Dunner & Gholz at §5.04.
ii. Plan an oral argument of a maximum of 8-10 minutes and preferably 7 minutes. Donald J. Dunner, Master Class on Appellate Brief Writing, John Marshall Law School (November 21, 1997).

g. **Adjust at the last minute to the panel members**.

i. Learn of the specific panel members the morning of the argument.
ii. Adjust to them.

h. **Answer the Court's questions**.

i. Prepare for questions. "What then characterizes the very best oral arguments? Not 'argument' at all, but mainly *answers,* answers that resolve in your client's favor the 'nagging doubts' of panel members. Michel; Wright (Mistake #7: failure to anticipate questions).
ii. Prepare for the adverse questions. "[M]ore cases are lost at oral argument than won. Often, that is because honestly answering tough questions exposes the weaknesses of the case." Michel at 7.
iii. Always welcome questions.
iv. Always, always, answer the questions, preferably first with "yes" or "no." "[N]on-answers … tell us there *is* no satisfactory answer." Michel at 7.

i. **Respect and enhance decorum.**

i. Streamline and bind paperwork for the podium.
ii. Minimize easel materials and movement in the courtroom.
iii. Address each judge as "your honor" and not personally.
iv. Let the humor be the Court's.
v. Make no flip, snide, personal or casual remarks.
vi. Speak only while a judge is not speaking - never speak over a judge, not for a split second.

5. **Act Quickly and Wisely in any Post-Appeal Situation**

a. **Petition for panel rehearing in time**. F.R.A.P. (a)(1).

b. **Petition when there is a dissent, not otherwise**.

Valuable Resources

Federal Rules of Appellate Procedure.
Federal Rules of Civil Procedure.
Rules of Practice, United States Court of Appeals for the Federal Circuit (available from the court clerk).
Internal Operating Procedures of the Federal Circuit (available from the court clerk).
Michel, Paul R., Appellate Advocacy – One Judge's Point of View, 1 The Federal Circuit Bar Journal 2 (Summer 1991).
Wright, Bradley C., Ten Mistakes to Avoid at the Federal Circuit, 17 ABA IPL Newsletter (Winter 1999).

Dunner, Donald R., "Appeals to the Federal Circuit," Chapter 24, Patent Litigation Strategies Handbook (BNA 2000).
Dunner, Donald R. & Gholz, Charles L., Court of Appeals for the Federal Circuit: Practice & Procedure (2000).
Aldisert, Ruggero J., Winning on Appeal: Better Briefs and Oral Advocacy (NITA 1996)
Appellate Practice Manual (American Bar Association Section of Litigation 1992).
Banner, Mark T., Appeal: Winning on Infringement at the Federal Circuit (1999)(on file with Mr. Shifley).