

EXCERPTS OF CHIEF JUDGE DAVID RUSCHKE PPAC QUARTERLY MEETING  
November 16, 2017

1

UNITED STATES PATENT AND TRADEMARK OFFICE

EXCERPTS OF CHIEF JUDGE DAVID RUSCHKE  
PPAC QUARTERLY MEETING  
November 9, 2017

Transcribed by DONNETTE COWGILL

CSI GLOBAL DEPOSITION SERVICES

1 P R O C E E D I N G S

2 JUDGE RUSCHKE: I want to talk a  
3 little bit about expanded panel, since that has  
4 gotten a fair amount of discussion out there in the  
5 public.

6 I think a number of stakeholders are --  
7 are unaware that we have a large number of SOPs,  
8 standard operating procedures, that are on our  
9 website. And SOP 1 is how we -- it's not just  
10 expanded panels; it's how we panel cases generally.  
11 But there is a large section there on expanded panel  
12 practice within the PTAB.

13 The chief judge, myself, has discretion to  
14 expanded a panel, but there are four specific  
15 reasons at the present time as to why we would  
16 expand a panel. One is that it's an issue of  
17 exceptional importance, the second one is that it's  
18 to maintain uniformity of board decisions, and the  
19 last two are essentially written requests from the  
20 commissioner who have an issue of first impression,  
21 or where it seems as if in the public interest, they  
22 should -- we -- we should not be following a prior  
23 board decision.

24 So it's really these first two categories  
25 that I think are important to look at: issue of

1 exceptional importance, uniformity of board  
2 decisions. And one thing that we're doing right  
3 now, that we haven't necessarily done previously, is  
4 that when we do expand the panel, we are expanding  
5 it and providing the reasons for it. And I think  
6 that is something that you'll see in every single  
7 one of our expanded panel decisions.

8           Again, it's a suggestion for panel  
9 expansion. It can frankly be done by anyone, the  
10 judge, the merits panel, an interlocutory panel,  
11 applicant or patent owner, and a party in an inter  
12 partes reexam, interference, or trial.

13           I think this is an interesting slide.  
14 This is actually done rarely, and it actually says  
15 "rare" in the SOP. I expanded the panels in only  
16 four cases in 2017, and in those situations the vote  
17 remained unanimous.

18           And some people must have -- and so the  
19 reason that I expanded the panel, and you can see  
20 here I point to the second bullet point down there,  
21 General Plastic. That's the one that ultimately  
22 went into a presidential designation. The reason we  
23 expand it, which is mainly adding the chief judge  
24 and Scott, the deputy chief judge, into the  
25 situation is to emphasize this is an important case.

1 This is where the jurisprudence of the board is  
2 going.

3 And in the case of General Plastic, we  
4 expanded the panel, we made it informative, and we  
5 made it presidential. That could be a trend. I'll  
6 just -- I'm just saying, so I'll keep -- so if you  
7 see that happening, that's -- this is what -- this  
8 is what we're doing. And we will explain it into  
9 the -- the opinion as to why we expanded the panel.

10 UNIDENTIFIED MALE: David -- all  
11 right. More questions from the audience --

12 JUDGE RUSCHKE: Sure.

13 UNIDENTIFIED MALE: -- on -- on panel  
14 expansion, three-part question: One is when and how  
15 would parties be informed that the panel will be  
16 expanded, when and how. Two, how are the additional  
17 judges assigned, by whom And three, who decides the  
18 size of the expanded panel?

19 JUDGE RUSCHKE: So right now, the SOP  
20 or one, for expanded panels, does not require prior  
21 notice to the parties for expansion. So typically  
22 when the -- the panel has been expanded, the parties  
23 will find out in the decision when it issues at that  
24 point. In terms of the number, I think that was the  
25 third part.

EXCERPTS OF CHIEF JUDGE DAVID RUSCHKE PPAC QUARTERLY MEETING  
November 16, 2017

5

1 UNIDENTIFIED MALE: How are they --  
2 how are the additional judges assigned and by whom?

3 JUDGE RUSCHKE: Yeah, so those are  
4 all decided by the discretion of the chief judge.  
5 It's actually sort of laid out in -- in the SOP as  
6 well. Again, we have in the past, not since I've  
7 been chief, we have expanded it with other judges.  
8 Sometimes it has been expanded with the -- the  
9 leadership of the board.

10 As you saw there, I've only expanded it in  
11 situations where I've added Scott and myself to  
12 emphasize a unanimous decision below. But it is  
13 within my discretion. As to the numbers, it's  
14 recommended to be an odd number, but that also is in  
15 the discretion of the chief judge. And as you can  
16 see there, we have gone from 3-0 to 5-0 and  
17 sometimes from 5-0 to 7-0.

18 I did want to, as I mentioned earlier at  
19 the agenda, at -- at the beginning of the -- of the  
20 hour, we are officially releasing on our website  
21 today "SOP 9 on Remands." This has been a while  
22 coming, and I wanted to thank a number of the judges  
23 who have worked relentlessly on this.

24 The thing that we wanted to do primarily  
25 was to provide guidance to the judges, as well as

CSGLOBAL DEPOSITION SERVICES

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.