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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

West Texas Cements Its Place As Patent Hotbed

By **Ryan Davis**

Law360 (February 26, 2020, 9:30 PM EST) -- The Western District of Texas quickly became one of the nation's busiest courts for patent cases in 2019 after a former Bracewell litigator took the bench in Waco and began encouraging patentees to file suits there, and the influx of new cases shows no signs of slowing.



Judge Alan D. Albright of the Western District of Texas, a former patent lawyer, has made it clear that he enjoys patent cases and has encouraged litigants to file in his district.

According to a **new year-in-review report from Lex Machina**, 279 patent complaints were filed in the Western District of Texas last year, putting it in fourth place on the list of busiest dockets. Before former Bracewell LLP patent lawyer Alan D. Albright **was confirmed** as a district judge in 2018, the number of suits filed there had never reached triple digits in one year.


The district lagged far behind the District of Delaware, which took the top spot with 1,001 patent complaints in 2019. But it was in a tight race with the traditionally busy courts that took second and third place: the Central District of California and the Eastern District of Texas, which had 346 and 333 cases, respectively.

"I think corporations and law firms need to make sure that they view the Western District of Texas as one of the top venues that they or their clients are going to get sued in," said Victor Johnson of Dykema Gossett PLLC's Dallas office.

"The trend is unmistakable at the moment," said David Henry of Gray Reed & McGraw LLP's Waco office.

Since Judge Albright has made clear to the bar that he enjoys patent cases and has actively encouraged litigants to file in the district with **promises** of speedy litigation, Henry said he expects the court's docket to continue to grow.

"As more and more people become aware of some of these litigant-friendly approaches and pragmatic ways to move the case along, I can't imagine that people will not continue to flock here," he said.

Five years ago, the Eastern District of Texas sat firmly atop the list of busiest patent courts with a staggering 2,546 cases, driven by a reputation that its judges and juries were friendly to patentees. Filing trends changed after the U.S. Supreme Court's **TC Heartland**  **decision** in 2017, which discarded rules that had effectively allowed patent suits to be filed anywhere.

Under the decision, suits must now be filed either where the defendant is incorporated or where it has committed acts of infringement and has a "regular and established place of business." That boosted filings in Delaware, where many companies are incorporated, and California, where many defendants are based, while cases in the Eastern District of Texas have declined.

Judge Albright, who took the Western District of Texas bench in September 2018, has shaken up the filing trends by touting his court **at conferences** as an ideal place to file patent suits, with rules aimed at streamlining cases and moving them quickly to trial.

Since numerous major tech companies that are frequently accused of patent infringement have large facilities in Western District cities like Austin and San Antonio, the district will likely see fewer venue challenges that often spur transfer motions in the Eastern District, attorneys say.

"I think that the majority of these cases will be found to be properly filed in this venue," Johnson said.

The Busiest Patent Judges Of The Past Decade

2010 Caseload

Leonard E. Davis	124
Gregory Moneta Sleet	65
Sue Lewis Robinson	59
James Rodney Gilstrap	57
Leonard Philip Stark	54
T. John Ward	35
James V. Selna	35
David Folsom	33
Richard Gibson Andrews	29
Michael H. Schneider Sr.	29

2015 Caseload

James Rodney Gilstrap	1,689
Robert W. Schroeder III	845
Richard Gibson Andre..	200
Leonard Philip Stark	131
Gregory Moneta Sleet	130
Sue Lewis Robinson	109
Barbara M. Lynn	58
David C. Godbey	55
James V. Selna	49
James Donato	39

2019 Caseload

Leonard Philip Stark	285
Colm Felix Connolly	272
Richard Gibson Andrews	269
Maryellen Noreika	264
Alan D. Albright	239
James Rodney Gilstrap	214
Amos Louis Mazzant III	62
Andre Birotte Jr.	56
Christina A. Snyder	53
Philip S. Gutierrez	50

Source: Lex Machina



The Busiest Courts For Patent Cases

The Eastern District of Texas topped off its post as the top venue for patent litigation, while other forums have grown in prominence.

Districts with the most new patent cases in 2010		Districts with the most new patent cases in 2015		Districts with the most new patent cases in 2019	
District	Cases	District	Cases	District	Cases
Texas Eastern	285	Texas Eastern	2,546	Delaware	1,001
Delaware	253	Delaware	544	California Central	346
California Central	228	California Central	298	Texas Eastern	333
California Northern	178	New Jersey	272	Texas Western	279
Illinois Northern	175	California Northern	230	California Northern	240
New Jersey	155	Illinois Northern	163	New Jersey	145
New York Southern	114	New York Southern	154	Illinois Northern	143
Massachusetts	71	Florida Southern	131	New York Southern	106
Florida Middle	70	Texas Northern	115	Florida Southern	61
Florida Southern	67	California Southern	80	Colorado	55

Source: Lex Machina



There are early signs that 2020 could be an even busier year for the Western District, with a burgeoning rush of cases that could give it a shot at becoming the busiest patent court.

As of this week, 109 new patent complaints have been filed in Delaware this year, while 108 have been filed in the Western District. That puts



In his short time on the bench, Judge Albright has developed a reputation for running a court that has advantages for plaintiffs, while his patent expertise gives litigants on both sides a sense that he will manage cases fairly and effectively, attorneys who have appeared before him say.

"I think his experience and his reputation as a practitioner has made a lot of people comfortable with filing cases in his court and trying to stay in his court," said Craig Cherry of Haley Olson PC's Waco office. "They know he knows what he's doing and is going to move the case along in an efficient manner."

For instance, the judge has a policy of trying to resolve discovery disputes with a quick phone call with the parties, rather than through protracted motion practice, which has helped speed cases along.

"His docket is not being overwhelmed with a lot of discovery disputes," Johnson said. "He's able to handle the workload we've seen so far without there being any significant impact on the time to trial for his cases."

In addition, the judge **has said** that he will rarely if ever rule on motions to invalidate patents on eligibility grounds until after claim construction. That policy was welcomed by patent owners who know their cases are unlikely to be short-circuited by eligibility issues early on, as they are in some courts.

The judge's standing orders on those issues and others mean that "you get a lot of predictability in what you can expect" during cases in his court, Henry said.

Last week, Judge Albright handed down his first judgment in an intellectual property bench trial, awarding **\$3.6 million** to Dwyer Group LLC in a dispute with a staffing company over trademarks for Dwyer's service company brands like Mr. Rooter.

Johnson, who represented Dwyer, said Judge Albright ran a tight ship and had a firm grasp of the issues in the case.

"He was really well-prepared and well-versed in the law," he said. "As a trial lawyer, it really made the case seamless. It was a very thorough and quick process with him."

As his docket has grown, Judge Albright has tweaked some of his practices, including an early commitment to let attorneys speak freely without interruption during claim construction hearings, Henry said. He has since moved away from that to limit such hearings to half a day, which is considerably shorter than in other courts.

"In view of the rather crushing case load, he is having to be a little more stringent about time," Henry said.

Judge Albright's experience as a patent litigator is also appealing for litigants deciding where to file suit, said J. Mark Mann of Mann Tindel & Thompson in Henderson, Texas.

"He's an active judge who understands how to handle patent cases, and I think it's a receptive court for patents," he said. "That's a good model for plaintiffs wanting to pick that venue."

The Western District is "quickly becoming a preferred patent venue across the U.S.," and it is likely to remain so going forward, Johnson said.

"I think we'll continue to see him pressing for those cases to be filed if possible in his courtroom, and because of the background he has, he'll be able to handle a substantial docket of patent cases," he said.

--Editing by Aaron Pelc and Alanna Weissman.

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