

jury trial.

Would you rather that more questions of validity were handled in district court rather than at the PTAB?

I don't have any problem with the idea of the PTAB handling validity issues, but I will say this: I think juries are very good on them to make the right decisions if they are provided with the right evidence. So, I have great faith in the jury.

One of the things you are becoming known for is liking your briefs in audio file format as well as hard copies. Are you a radio fan? Why audio in particular?

So, what happened is this: when I was going through the process to become a judge, one of the steps you go through is the Senate Judiciary Committee, and the Committee can ask you some tough questions. You know, occasionally, they would say, what about this legal issue such as "what do you think about a Pullman abstention?" Well, no law abstinctions recently. And so, I was afraid someone would say to me: "How do you feel about the 19th Amendment?" I would say: "It's my favourite." But I thought I ought to know a little about all of them.

So, what I did was for each Constitutional amendment, I went and listened to two or three of the leading Supreme Court justices to do with that Constitutional amendment in some way, and so if they asked me a question on the spot in front of the Senate, I was able to say, "The 19th amendment had to do with a women's right to vote," and know what it was. And so, I found that since 2016, I have listened to every Supreme Court argument that they have. And I found that I learn pretty well.

I also commute once a week between Austin and Waco and so, if I am commuting back home to Austin on Thursday, I have found that if I have an audio version of the brief, I would have read the brief already but then, if I listened to it on the way home, number one, it makes the drive home more pleasant, but also, the next day, it is like I have had a double session. I like like I am more familiar with the case by doing it that way.

Is there any Supreme Court case that you particularly recommend to listen to, be it a patent case or anything else?

Oh boy! I'll tell you, for sure, one of the most amazing ones was from 2018, I believe. It was the one that had to do with whether you should be able to charge taxes on internet sales [*South Dakota v Wayfair*]. I guarantee you, if you listen to that, and the arguments, you are going to think that's absolutely right, there is no possible way the other guy can win. That one. There is a lawyer at Kirkland & Ellis named Paul Clement who has now done 100 arguments and I have listened to them all. Available on tape. And he and [Gibson Dunn's] Ted Olson are probably my two favourites.

You are probably aware from your days as a trial attorney that some districts get a reputation as being plaintiff friendly. How were you to be seen in that way?

I am glad you asked me that. In every single talk I have ever given since the first time I started talking about this, it is possible that the last thing anyone should think about this venue is that it is plaintiff friendly. Not only because I am plaintiff friendly, but, you know, we are in an era when defendants can have a lot of reasons to try and transfer cases, and I never want to see me in wanting to get a lot of good quality patent cases to get a reputation of being plaintiff friendly in such a way that someone sued in my court would file a motion to try and get out of it.

I thought that was the worst possible thing that could happen. So, every single time I have ever given a talk to anyone, what I am hoping the people are going to get from my court is someone who had 20 years of experience handling a large number of patent trials to verdict - but also handled them on both sides of the docket. I want every party that comes to my court to be treated as scrupulously fair.

Again, the way I put together the [procedures] committee in the beginning, when I was asking people to be on it, I was absolutely sure that every conceivable type of patent litigant would be represented. I don't know what the break-up is between big firms and little firms but everything I do, I run by them. Every conceivable interest is involved to make sure that every party that could either sue or be sued in my court. And you asked was I going to keep the committee intact? Not only

of patents and we would set different trial dates. I am not for putting form above fairness.

But, obviously, as a plaintiff I think having a trial in under 20 months, is a good thing. If I were in a company that that having almost absolute predictability about every phase of what is going to happen between filing and the trial would also be a good thing. You know, I could take any garden-variety case I have right now and you can tell in 10 months the case should be in terms of getting ready for trial.

In patent circles, there is a lot of discussion at the moment about the state of case law around 101 and we seek with it on a regular basis. Do you think there is now clarity?

Let's just say if there is clarity, I'm still working to find it. Every 101 motion that is filed in my court, we carefully review. My court is that I won't take up a Section 101 motion until after a Markman in the form of a motion for summary judgment.

You are still to have your first jury trial in a patent case, right?

You know, I've had to reschedule at the parties' request everything I have had and I am no longer overly optimistic about this situation. I would sure like to get one under my belt. We have a trial set in July, that we are pretty certain is going to be the most likely first patent trial I think we have.

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