



# Patents Post-Grant

Inside Views & News Pertaining to the Nation's Busiest Patent Court

## WDTX "Implausible Schedule" & Cursory Markman Order Highlighted

By Scott McKeown on June 2, 2021



### **WDTX Losing its PTAB Mojo – *Fintiv* Outdated?**

The Federal District for the Western District of Texas (WDTX) is a hotbed of patent litigation. Since 2016, the case load has increased some 700%, with a single federal judge (Hon. Alan Albright) now presiding over 20% of the nation's patent litigation docket. One of the primary attractions of the WDTX is its default schedule, which Judge Albright has highlighted should beat the PTAB's competing trial timing. Consequently, the **vast majority of 314(a) discretionary denials** at the PTAB involve WDTX cases. That is, the PTAB has shown deference to the speed and investment of the WDTX when determining if it should exercise discretion to deny an AIA trial petition.

But recently, the PTAB has begun to look more closely at the actual investment the Court is making in cases. As the Court issues patent decisions at a breakneck pace, the level of analysis and value to the public is now being questioned by the agency. Meanwhile, others are asserting that the default schedule is increasingly implausible with upward of 20 trials being scheduled for a given date.

As the WDTX docket continues to expand, its limited bandwidth may be its undoing.

Recently, in IPR2020-01280 ([here](#)), the PTAB gave little weight to a WDTX Markman Order noting that “the Texas court issued a five-page Order listing constructions for 19 terms in the four asserted patents in the Texas case, but not providing explanations for those constructions.” The decision contrasts the Markman Order of the *Fintiv* case itself, which included a “detailed, 34 page” analysis to the far more cursory, five-page order here. Notably, *Fintiv* was filed with the WDTX in 2018. Accordingly, by comparing the 2018 and 2020 WDTX Markman Orders, the agency is highlighting a seemingly growing bandwidth and manpower problem.

As part of this same dispute, a mandamus petition has been lodged with the Federal Circuit contesting venue. In its brief, ([here](#)) the defendant explains that:

**“In recent years, the Waco Division of the Western District of Texas has seen an avalanche of new patent filings. That court was assigned only 28 patent cases in 2018 [*Fintiv* being one]; the number ballooned to about 248 patent cases in 2019, and 793 cases in 2020—all of them being handled by a single judge. Given that exponential increase in cases, it is implausible that the district court will be able to adhere to its default schedule in all patent cases.”**

(emphasis added)

As trials schedules are inevitably pushed out, and new suits continue to pile up in WDTX, it may be that *Fintiv*'s time has already passed for this particular district.