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West Texas Judge Says He Can Move Faster Than PTAB

By **Britain Eakin**

Law360 (November 27, 2019, 4:37 PM EST) -- U.S. District Judge Alan D. Albright hasn't been bashful about wanting to draw more patent matters to the Western District of Texas. In roughly 15 months on the federal bench, Judge Albright has transformed a once slow drip of patent cases in the Waco division into a steady stream, adding more than 200 patent cases to his docket.

Though he hasn't tried a patent case yet, the former Austin-based Bracewell LLP patent litigator has spoken openly at conferences about how his experience as an attorney shaped how he approaches patent cases, and told Law360 he can probably hammer out a patent trial more swiftly than the Patent Trial and Appeal Board.

"It's my job to give people the opportunity to have their cases tried in a federal court ... and I probably can get a patent trial resolved more quickly than the PTAB can," Judge Albright said.

It's a bold claim, as the average time to trial for a patent case in district court is 2½ years, according to a 2018 report from PwC, while the U.S. Patent and Trademark Office says PTAB cases should take no more than 1½ years. So how does Judge Albright say he'll do it?

His confidence might be attributable to his local rules and scheduling procedures, which he wasted no time getting to work on after **being appointed** to the federal bench in September 2018. The rules require plaintiffs to serve preliminary infringement contentions within a week of an initial case management conference identifying where in the accused products the element of the patent claims are found.

Claim construction, or Markman hearings, are set for around 23 weeks after the case management conference, with a trial scheduled for around 12 to 14 months after that. His rules also set page limits for claim construction briefs and motions for summary judgment.

And when it comes to typical discovery issues, the judge said he doesn't need briefing. Instead he prefers to handle such matters over the phone and said his approach is more like a mediator, negotiating back and forth to see what's agreeable to all parties.

"I try to get the lawyers to buy in on the resolution of it," he said.

At the American Intellectual Property Law Association conference last month, Judge Albright said **his procedures** are intended to enable attorneys to give their clients some certainty about how he handles patent cases.

The former federal magistrate judge turned litigator said at the conference that his previous courtroom experience has shaped how he presides over cases. Having represented both plaintiffs and defendants, he told Law360 that it's important for both sides to feel they got a fair process and a fair trial.

"The platinum standard for a judge that I'm trying to achieve is that no one when they left the courtroom would have any idea who I thought should win or lose," Judge Albright said. "Whether either party had 100 bucks or a billion, it absolutely does not matter to me. My goal is to come up

with the right result."

Despite a host of rules in his court designed to speed up proceedings, Judge Albright said he's not trying to forge a new path for patent litigation. Rather, he said his approach is "one that works for me," and his only goal is "to give people who are doing IP litigation an alternative venue that they can consider."

Building Waco as an attractive patent venue is a way to relieve pressure on what he called an "overburdened" system, which the judge likened to a big river that needs a few valves to keep from overflowing.

Saying he's not in competition with anyone, Judge Albright added that he wants Waco to be another venue that can help ease the patent case load in places like California and Delaware, the latter of which he said gets about 1,500 patent cases per year.

Though he has expanded his patent docket, Judge Albright hasn't yet adjudicated a case through trial. His first case going to trial is Finalrod IP v. John Crane and is slated to kick off Feb. 3 in Midland, though the parties have a pending motion with the court to push that back until May.

Nonetheless the judge said he has enough of a public track record on how he handles patent cases to allow attorneys to assess whether Waco will be a good venue for their clients or not. And he said he wants to be evaluated — he encourages attorneys to bring their clients to every hearing, especially the Markman hearings, which he holds on Fridays.

"If you're comfortable with the way a judge handles a Markman hearing, then I think you'd feel more comforted that person will be ultimately handling the trial," Judge Albright said.

The judge said one of the primary reasons he wanted to be appointed to the federal bench is to take on patent cases. With 30 years of litigation experience — 20 of those handling all phases of patent cases — Judge Albright said it would benefit the entire bar if attorneys can file in his court and know that he already understands the issues well.

But he said he also enjoys the intellectual challenge of patent cases and dealing with different technologies in every case, something he said he loved as a trial lawyer.

"I like the idea of having a patent trial one month on aerospace technology and the next month dealing with valves," he said. "I like the diversity of technologies that you get presiding over IP cases."

--Additional reporting by Michelle Casady. Editing by Adam LoBelia.

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