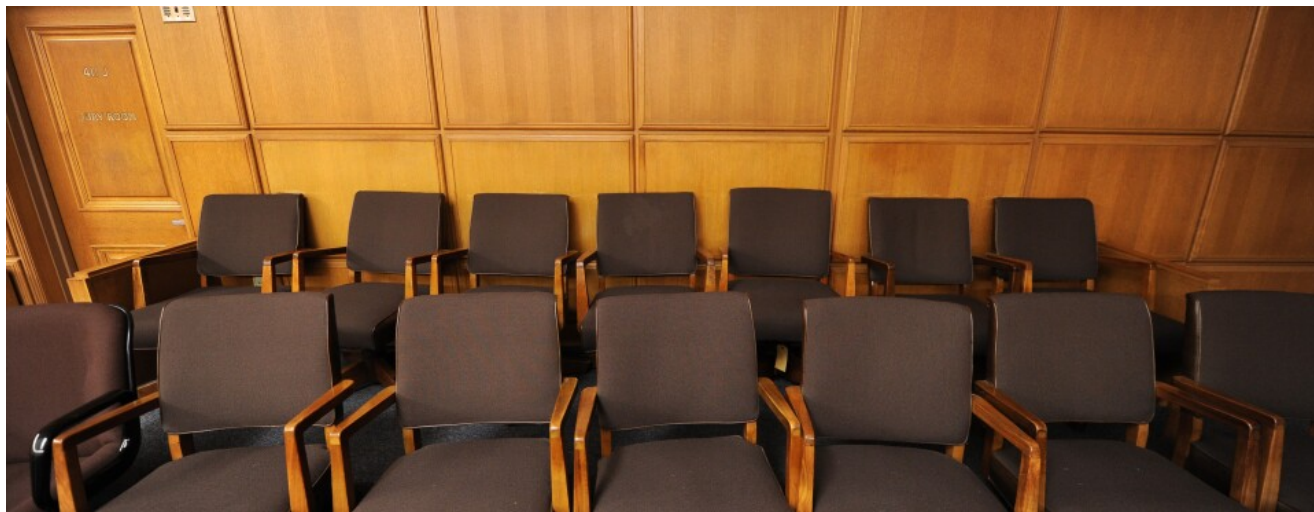


Texas Patent Trial Scrubbed After Lawyers, Witnesses Ready to Go

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Laurel Brubaker Calkins



Legal teams for Atlas Global Technologies LLC and TP-Link Technologies Co. Ltd. got less than 24 hours' notice they wouldn't pick a jury for their scheduled patent infringement trial in remote east Texas on Friday morning.

The companies shared an Aug. 18 docket call with another patent infringement case—*Estech Systems IP LLC v. Mitel Networks Inc.*—that was also set to pick a jury before Judge Rodney Gilstrap of the US District Court for the Eastern District of Texas.

As late as Thursday morning, neither case docket indicated which of the two trials would start the next morning. Sometime later that day, a court clerk called Atlas and TP-Link to say this wouldn't be their turn. Early Friday, a one-sentence cancellation notice popped up on the *Atlas Global v. TP-Link* docket, and *Estech v. Mitel* started jury selection a few hours later.

Lawyers for both Atlas Global and TP-Link didn't immediately respond to emails seeking comment on the last-minute cancellation. Several sent auto-responses indicating they were unavailable because they were out of town in trial.

Earlier this week, TP-Link's lawyers urged Gilstrap to either let their trial go first or reschedule them for December, citing extensive trial-prep work already completed and scheduling conflicts if their case got bumped to the backup start date of Sept. 8.

They noted that trial teams were already in Marshall, Texas—about 2.5 hours drive east of Dallas—and corporate representatives and expert witnesses were set to fly in from as far as Hong Kong. TP-Link's lead lawyer is also scheduled to take a non-refundable sabbatical trip

through Europe and Asia with his wife from Aug. 31 through Nov. 20, the attorney's first lengthy break in 25 years of private practice, according to court filings. The lawyer specifically scheduled his trip to occur after this trial ended, TP-Link said.

"It's very expensive for these cases to be swept aside at the last minute," veteran Texas attorney Dick DeGuerin, who isn't involved in the case, said Friday. "The lawyer standing in the courtroom is just the tip of the iceberg. There's all this other stuff that is submerged that the public doesn't see. But it's there, and it's expensive."

Both sides have gone to great lengths to prepare for trial, DeGuerin noted, particularly in complex patent infringement cases. The docket in this case requires notice to 27 lawyers in six firms scattered from the Pacific Northwest to New York City. Each law firm typically uses its own trial support team, which must be relocated to the trial courthouse.

"There's paralegals, runners, rooms in hotels, war rooms, documents, displays for the jury," DeGuerin said. Subpoenas must be served, and witnesses coordinated. Experts charge to block off time to testify whether they're called to the stand or not, he added.

"Nine-tenths of it happens below the surface," he said. "If you've got to do it all over again, it's all wasted time and money. And that money has to come out of somebody's pocket."

In asking to avoid a pile-up at the courthouse, TP-Link's lawyers reminded Gilstrap that his assistant—US Magistrate Judge Roy S. Payne—told the parties during a July 24 pretrial conference they should be ready to proceed Aug. 18 even though the other lawsuit had a higher-priority trial setting.

That other suit, *Estech v. Mitel*, involves essentially the last claim standing from patent infringement allegations the patent monetization company filed against a number of companies in 2021. The other companies settled out of court in recent months, a fact not lost on the magistrate considering Gilstrap's conflicted Aug. 18 calendar.

"Obviously only one can be first, and I'm not sure—I will say that I am aware of lots of settlement discussions going on in Estech," Payne said at a July 24 pretrial conference, according to TP-Link's filing. "There's only—of the original, I don't know, dozen cases filed two years ago—there's one remaining, and that's this Mitel case. If I were on the docket with them, I would be counting on being reached for trial."

If they couldn't proceed Friday, TP-Link's lawyers asked Gilstrap to bump their trial start to early December to give the lead attorney time to get back and prepare. The company also confirmed its witnesses are all available in that time frame. Atlas Global opposed pushing the trial to early December because it is currently set for trials on Nov. 27 and Dec. 4 in other venues, according to TP-Link's filing.

Gilstrap heard discussion on the schedule conflicts at an Aug. 15 teleconference without ruling.

Andrea Brunson, Gilstrap's assistant, defended the practice of setting multiple cases on the same date to prevent judges who are in demand from facing empty calendars if parties settle on the eve of trial. She said Atlas and TP-Link always knew they would go to trial Friday only if Estech settled first.

"We notify the second in line for trial as soon as we learn the first trial has settled or resolved," Brunson said Friday in an email. "Sometimes that is well in advance of selecting a jury, and sometimes it is close. With our busy trial docket we do not have the luxury of losing a trial term we can't get back because the only case set settles close to trial."

DeGuerin said he disagrees with judges who think clearing docket backlogs is more important than respecting the time and effort of busy lawyers and their clients, though he emphasized those comments were not directed at Gilstrap. Setting multiple trials for the same date with the expectation some will settle but at least one will be available to start is a fail safe for judges but a headache for litigants, he said.

"No one knows which will go, but they can't risk not being ready," DeGuerin said. "Unless there's a really good reason, it shouldn't happen that way."

Atlas Global is represented by Susman Godfrey LLP, Heim, Payne and Chorush LLP, Ward, Smith & Hill PLLC and Capshaw DeRieux LLP. TP-Link and its sister companies are represented by Kilpatrick Townsend & Stockton LLP and Gillam & Smith LLP.

The case is Atlas Global Technologies LLC v. TP-Link Technologies Co., Ltd., E.D. Tex., :21-cv-00430, Jury selection canceled. 8/18/23

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