Analysis

EDTX Eclipses WDTX As Top Patent Venue

By Dani Kass · Listen to article

Law360 (February 7, 2024, 11:02 PM EST) -- The Eastern District of Texas in 2023 surpassed the state's Western District as the most popular venue for patent litigation nationally, now that patent cases are no longer automatically assigned to a prominent judge in Waco, according to new data from Lex Machina.

In 2023, there were 627 patent cases filed in the Eastern District of Texas, compared to 519 in the Western District and 428 in Delaware.

It's a big shift from the year before, when the Western District of Texas' 879 filings surpassed Delaware's 668 and Eastern Texas' 471.

In 2021, the numbers were even more stark, with the Western District of Texas receiving more than double the cases of the Eastern District — 984 to 448. Delaware had come much closer that year, though, with 882 cases.

WDTX No Longer Top Spot for Patents in 2023

The Eastern District of Texas led the way last year after seeing a 33% jump in patent cases.

District	2021	2022	2023	Total	Percent
Western District of Texas	984	879	519	2,382	21.7%
District of Delaware	882	668	428	1,978	18.1%
Eastern District of Texas	448	471	627	1,546	14.1%
Central District of California	245	223	173	641	5.9%
Northern District of Illinois	161	216	226	603	5.5%
Northern District of California	177	141	128	446	4.1%
District of New Jersey	107	116	135	358	3.3%
Southern District of New York	105	119	84	308	2.8%
Southern District of Florida	73	79	62	214	2.0%
Northern District of Texas	60	87	65	212	1.9%

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Judge Alan Albright had turned the Western District of Texas into a favored patent venue when joining the bench as the sole judge in the Waco division. Since his 2018 start, the former patent litigator actively and successfully solicited patent cases, and patent owners flocked to him, relying on the assignment predictability that comes from a one-judge court.

But the district's then-chief judge, Orlando Garcia, in 2022 cracked down on having all patent cases filed in Waco automatically assigned to Judge Albright and instead **mandated** that they be randomly assigned to judges across the district.

Attorneys say the impact of that order is being felt, and the data from **Lex Machina's patent litigation report** supports their observations.

"The random assignment order was designed to do this," said Leah Bhimani Buratti, a partner at Austin-based Botkin Chiarello Calaf PLLC. "It has had the impact that I think everybody expected, which is that it's pulling some cases away from Judge Albright and dispersing them through the district."

Patent owners filing in Waco can now be assigned to **any of 11 judges**, which can make the venue too unpredictable for clients, according to WilmerHale partner Amanda Major. The district is still

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adjusting to the change, whereas the Eastern District of Texas has a more established practice from having a long-term patent docket, she said.

However, Buratti said, patent owners will likely be assigned to Judge Albright when filing cases related to ones already on his still-hefty docket.

"He had such a heavy load at the outset that those [cases] have been plenty to keep him very busy, even since the random assignment order," she said.

Meanwhile, Delaware's decline is most likely tied to a **new requirement** from Chief Judge Colm F. Connolly requiring patent owners to disclose information about their litigation, such as who is funding it, who is making the decisions and who stands to benefit.

"That's another venue that has traditionally been popular, but if you are representing a party that has litigation funding, there's more uncertainty about where you land in Delaware," Major said.

Judge Connolly's order is particularly affecting nonpracticing entities that file a significant amount of litigation, but don't generally make their financial and power structures public, said Troutman Pepper partner Dabney Carr.

"It seems like aversion to Delaware is pretty strong among the high-volume plaintiffs," he said.

The other most popular districts Lex Machina determined in the last three years combined are the Central District of California; the Northern District of Illinois; the Northern District of California; the District of New Jersey; the Southern District of New York; the Southern District of Florida; and the Northern District of Texas.

The Western District of Texas still attracted the largest percentage of cases when combining 2021, 2022 and 2023, at 21.7%, with Delaware following at 18.1% and Eastern Texas at 14.1%. Central California, which is the next most popular district, fell far behind, with only 5.9%.

The Eastern District of Texas has been a hub for patent litigation for more than 20 years, and Buratti said that even as the Western District of Texas and Delaware grew, the Eastern District of Texas "has been busy all along."

"A lot of plaintiffs, for a time they felt like they could choose the Eastern District or the Western District as options," she said. "I think now the Eastern District offers plaintiffs more predictability."

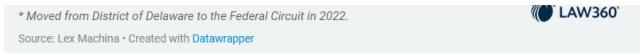
When looking at individual judges across those three years combined, Judge Albright had the largest percentage of cases at 16.8%, while across that same time period, Chief District Judge Rodney Gilstrap in the Eastern District of Texas secured second place with 10.4%.

But the tides changed for judges as well last year. Judge Gilstrap went from having 365 patent cases in 2022 to 451 in 2023. In comparison, Judge Albright had 700 cases in 2022 and 207 in 2023.

Judge Gilstrap Takes Lead From Judge Albright

Litigants filed more than twice as many cases with Judge Gilstrap than Judge Albright in 2023.

Judge	District	2021	2022	2023	Total	Percent
Alan D Albright	Western District of Texas	937	700	207	1,844	16.8%
James Rodney Gilstrap	Eastern District of Texas	328	365	451	1,144	10.4%
Richard Gibson Andrews	District of Delaware	229	182	106	517	4.7%
Colm Felix Connolly	District of Delaware	233	165	107	505	4.6%
Maryellen Noreika	District of Delaware	238	150	113	501	4.6%
Gregory Brian Williams	District of Delaware	39	123	89	251	2.3%
Leonard Philip Stark*	District of Delaware	219	31	0	250	2.3%
Amos Louis Mazzant III	Eastern District of Texas	59	50	65	174	1.6%
Robert Lee Pitman	Western District of Texas	16	58	80	154	1.4%
Robert William Schroeder III	Eastern District of Texas	19	22	73	114	1.0%



The next highest caseloads were assigned to Judge Richard G. Andrews and his Delaware colleagues, Chief Judge Connolly and Judges Maryellen Noreika and Gregory B. Williams. Judge Andrews took **senior status** at the end of 2023, and Judge Jennifer L. Hall has **taken his seat**.

Judge Leonard P. Stark remained on the list for cases between 2021 and 2023, even though the former Delaware judge was **elevated** to the Federal Circuit in 2022. Judge Stark and his **successor**, Judge Williams, each had 2.3% of patent suits in the three-year period.

The top judges are rounded out by Judges Amos L. Mazzant III and Robert W. Schroeder III in the Eastern District of Texas, and Judge Robert L. Pitman in the Western District of Texas.

Judge Pitman isn't generally associated with patent law, but he is the only sitting judge in Austin, making his caseload particularly large, Buratti said. The judge has offloaded a lot of patent cases to Senior U.S. District Judge David A. Ezra, according to Buratti, but those cases still count toward Judge Pitman in the data.

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