United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

VIA ELECTRONIC TRANSMISSION

November 2, 2021

The Honorable Chief Justice John Roberts
Presiding Officer
Judicial Conference of the United States
One Columbus Circle, NE
Washington, D.C. 20544

Dear Mr. Chief Justice:

We write you to express our concern about problems with forum shopping in patent litigation. Our understanding is that in some judicial districts, plaintiffs are allowed to request their case be heard within a particular division. When the requested division has only one judge, this allows plaintiffs to effectively select the judge who will hear their case. We believe this creates an appearance of impropriety which damages the federal judiciary's reputation for the fair and equal administration of the law. Worse still, such behavior by plaintiffs can lead individual judges to engage in inappropriate conduct intended to attract and retain certain types of cases and litigants.

We are particularly concerned with this problem in the context of patent litigation. In the last two years our nation has seen a consolidation of a large portion of patent litigation before a single district court judge in Texas. In 2016 and 2017, this single district court heard only, on average, one patent case per year.[1] Last year, however, nearly 800 patent cases were assigned to one judge in this district.[2] This year, this district appears to be on track to have more than 900 cases.[3] This means that roughly 25% of all the patent litigation in the entire United States is pending before just one of the nation's more than 600 district court judges.[4]

The concentration of patent litigation is no accident. We understand that a single judge in this district has openly solicited cases at lawyers' meetings and other venues and urged patent plaintiffs to file their infringement actions in his court.[5] Our understanding is that this single

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[1] *See* Anderson & Gugliuzza, "Federal Judge Seeks Patent Cases," 71 Duke Law Journal __ (2021) (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3668514, at 2.
[2] *See* Dani Kass, "Judge Albright Now Oversees 20% Of New US Patent Cases," Law360, March 10, 2021 (noting that 793 patent cases were assigned to Judge Albright in 2020).
[3] Ryan Davis, "WDTX Now Has 25% Of All US Patent Cases," Law360, Jul. 2, 2021 (noting that "nearly all" of the 489 cases filed in W.D. Tex. have been assigned to Judge Albright).
[4] *Id.* (noting that over the past six months roughly 25% of U.S. patent cases have filed in W.D. Tex. and that almost all of these have been assigned to Judge Albright).
[5] *See* Anderson & Gugliuzza, *supra* n. 1, at 3, 29 (noting that since his appointment, Judge Albright "has spoken at patent law conferences, been the keynote speaker at dinners hosted by patent valuation companies, appeared on law firm webcasts about patent litigation, and presented at numerous patent bar events, all with the express purpose of encouraging patentees to file suit in his court.").

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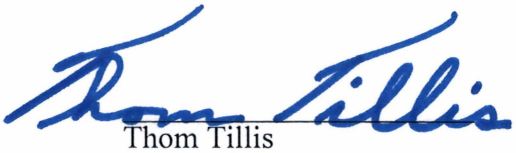
judge has also repeatedly ignored binding case law and abused his discretion in denying transfer motions.[6] This has resulted in a flood of mandamus petitions being filed at the Federal Circuit. The Federal Circuit has been compelled to correct his clear and egregious abuses of discretion by granting mandamus relief and ordering the transfer of cases no fewer than 15 times in just the past two years.[7]

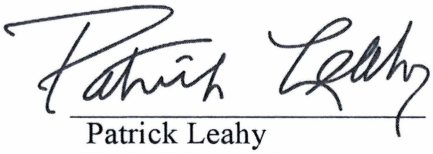
The extreme concentration of patent litigation in one district and the unseemly and inappropriate conduct that has accompanied this phenomenon are, in our view, the result of an absence of adequate rules regulating judicial assignment and venue for patent cases within a district.[8] While we do not know of similar problems occurring in other single-judge districts, it is not hard to imagine similar scenarios arising under a set of rules that allows a plaintiff to effectively choose a particular judge to hear their case. In order to correct these issues, we request that you direct the Judicial Conference to conduct a study of actual and potential abuses that the present situation has enabled. Additionally, we ask that such a study consider and implement appropriate reforms that you can take to address this issue. Finally, we ask that such a report provide legislative recommendations to ensure this problem does not arise in the future.

We ask that you complete this report by no later than May 1, 2022. Thank you for your prompt attention to this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,



Thom Tillis
United States Senator



Patrick Leahy
United States Senator

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[6] *See, e.g., In re: SK Hynix, Inc.*, No. 2021-113 at 2 (Fed. Cir. Feb. 1, 2021) (characterizing Judge Albright's refusal to decide a transfer motion in a timely manner as "amount[ing] to egregious delay and blatant disregard for precedent").

[7] *See In re DISH Network, LLC, No. 2021-182* (Fed. Cir. Oct. 21, 2021); *In re NetScout Sys., Inc.*, No. 2021-173, 2021 WL 4771756 (Fed. Cir. Oct. 13, 2021); *In re Pandora Media, LLC*, No. 2021-172, 2021 WL 4772805 (Fed. Cir. Oct. 13, 2021); *In re Google LLC*, No. 2021-171, 2021 WL 4592280 (Fed. Cir. Oct. 6, 2021); *In re Juniper Networks, Inc.*, No. 2021-156, 2021 WL 4519889 (Fed. Cir. Oct. 4, 2021); *In re Apple*, No. 2021-187, 2021 WL 4485016 (Fed. Cir. Oct. 1, 2021); *In re Google LLC*, No. 2021-170, 2021 WL 4427899 (Fed. Cir. Sep. 27, 2021); *In re Juniper Networks*, No. 2021-160, 2021 WL 4343309 (Fed. Cir. Sep. 24, 2021); *In re Hulu, LLC*, No. 2021-142, 2021 WL 3278194 (Fed. Cir. Aug. 2, 2021); *In re Uber Techs., Inc.*, 852 F.App'x 542 (Fed. Cir. 2021); *In re Samsung Elecs. Co., Ltd.*, 2 F.4th 1371 (Fed. Cir. 2021); *In re TracFone Wireless, Inc.*, 852 F.App'x 537 (Fed. Cir. 2021); *In re Apple Inc.*, 979 F.3d 1332 (Fed. Cir. 2020); *In re Nitro Fluids LLLC*, 978 F.3d 1308 (Fed. Cir. 2020); *In re Adobe Inc.*, 823 F.App'x 929 (Fed. Cir. 2020).

[8] *See* Anderson & Gugliuzza, *supra* n. 1, at 57-61 (discussing potential reforms of randomizing case assignments and requiring divisional venue within a district).