

# EXHIBIT 16

## ■ IP LAW

# East Texas now busiest patent litigation venue

Eastern District of Texas rockets past Calif.; swift time to trial a factor.

By Marcia Coyle

STAFF REPORTER

AFTER THREE YEARS of skyrocketing patent suit filings, the U.S. District Court for the Eastern District of Texas has edged out the Central District of California as the busiest patent litigation venue in the country.

Professor Paul Janicke of the University of Houston Law Center, who conducted the survey of 2,772 patent suits filed nationally in fiscal 2007 (ending Sept. 30), noted that the Texas district had virtually no filings a decade ago and ranked sixth in the nation just three years ago.

"The filings in the last few years have been rocketing up for reasons that are controversial," said Janicke.

Nationwide, he said, summary judgment of noninfringement is by far the most prevalent tool for resolving contested patent judgments. Trial, he said, is a

dinosaur, but, he added, that is not the case in the Eastern District of Texas.

"Patent owners lose most of the cases in the country and by summary judgment. That doesn't happen in Tyler, Texas, and Marshall, Texas, and so on," he said. The disinclination of judges in the Texas district to use summary judgment and a swift time to trial, he explained, distinguish the district from the rest of the country.

### New Jersey edges up

Janicke confirmed others' observations that the number of filings in the District of New Jersey has also been increasing steadily during the past seven to eight years.

"I'm not sure why," he said of the New Jersey numbers. "It seems to coincide with filings going down for the Southern and Eastern districts of New York. Maybe it's just that law firms don't like going to Brooklyn or Foley Square and prefer going to Newark now. That's a mystery. Unlike the Eastern District of Texas, we have no good reason why it's going that way. The settlement rate there is also high."

Others have theorized that patent

## BUSIEST PATENT DISTRICTS

2007 rank	2006 rank	U.S. district court	2007 filings	% of total
1	2	Eastern District of Texas	352	12.7
2	1	Central District of California	308	11.1
3	3	Northern District of California	181	6.5
4	4	District of New Jersey	174	6.3
5	7	District of Delaware	147	5.3
6	5	Northern District of Illinois	128	4.6
7	6	Southern District of New York	103	3.7
8	11	Southern District of Florida	78	2.8
9	9	Northern District of Georgia	66	2.4
10	8	District of Massachusetts	57	2.1

Source: University of Houston Law Center Prof. Paul Janicke

does come with a price for the district, noted Janicke. Delays and excessive judicial workloads are mounting in the Eastern District of Texas.

Patent reform legislation now being considered in Congress would change what is now viewed as patent forum shopping. Under current law, an action can be brought in any district in which the defendant is subject to personal jurisdiction—personal jurisdiction, however an infringing product is sold. The bills would limit venue to districts where either a party resides or where the defendant has committed the infringement and has a regular place of business.

Before becoming a judge on the U.S. Court of Appeals for the Federal Circuit, Kimberly Moore, in 2005 testimony before a House committee studying patent litigation, said: "Plaintiffs, who are patentees in 85% of the patent suits, forum shop and their preferences change over time, which undermines any expertise judges in a given district do develop in patent cases."

The House in September approved patent reform legislation, with venue changes, on a vote of 220-175. The legislation is pending in the Senate. ■

suits are filed increasingly in New Jersey because it is home to big drug manufacturers, and thus the likely locus of so-called ANDA litigation.

Under the Hatch-Waxman Act of 1984, a generic drug company can make an abbreviated new drug application (ANDA) for a generic version of a patented drug before the patent expires. The generic company must claim that its drug does not infringe on the underlying patents or that those patents are invalid.

The act also allows the brand-name company to sue the generic company for patent infringement within 45 days of an ANDA filing. There has been an explosion of ANDA litigation in recent years, according to patent scholars and litigators. Popularity as a patent litigation venue

## ■ EMPLOYMENT LAW

# Latest FMLA ruling: Workers may lose paid holidays

Holidays that fall during

leave do employees have," Alvarez said. "This [ruling] is an example of where the

Monday, and then takes off Tuesday, would the paid holiday be considered.

who take two days of intermittent FMLA leave—with a paid holiday in between—