EXHIBIT 25

Austin American-Statesman
statesman.com

FROM OUR ARCHIVES: 04.16.06

A litigation boom

By Chuck Lindell
AMERICAN-STATESMAN STAFF
Thursday, May 22, 2008

MARSHALL - The closest major airport is in Louisiana. The most luxurious night's sleep is in a roadside motel. And cell phone service is spotty.

Yet every week, in ever-rising numbers, some of the world's largest companies travel to this dot on the Northeast Texas map to wage multimillion-dollar legal battles.

Thanks to accommodating judges and juries willing to stick up for the little guy, the self-styled Pottery Capital of the World has emerged as an unlikely venue for high-stakes lawsuits over patent rights. Global companies can be sued just about anywhere they do business, so when corporations and patent holders disagree over who might be stealing the other's ideas, the patent holder often runs to Marshall.

A new patent case arrives at Marshall's one-story federal courthouse about every other business day, bringing fleets of hotshot lawyers and interna- tional executives to the Piney Woods. They rent entire office buildings and fill motels. One even dropped $6,250 on the grand champion steer at last month's junior livestock show.

The surge in court activity has filled once-empty storefronts on Marshall's downtown square with restaurants, shops and expanding law offices. An abandoned eight-story hotel, once the largest pigeon roost in East Texas, will become condos with a rooftop dance hall.

Ecstatic civic and business leaders hope to keep the good times rolling, while courts in Pennsylvania and Madison, Wis., are eager to siphon away Marshall's patent business.

The euphoria is not universal.

U.S. Supreme Court Justice Antonin Scalia recently dismissed Marshall as a "renegade jurisdiction" that unfairly favors litigious patent holders. And complaints are growing that quick-buck artists try to win settlements by merely threatening a trip to Marshall, where jurors tend to mistrust large corporations.

"There are a lot of our Pacific Rim clients who know what you mean when you say 'Marshall, Texas,' and they're not happy about it. (Marshall) has a legend; it has a lore to it," said Craig Tyler, an Austin patent lawyer. "There's a reason you have an Australian company suing a Canadian company, or a Taiwanese company sued by a Japanese company, in tiny Marshall, Texas."

High-profile settlements also cement Marshall's reputation as a plaintiffs' paradise, including Texas Instruments Inc.'s billion-dollar score in 1999 and the recent $40 million hit taken by Web retailer Amazon.com.

But whether by settlement or verdict, cases decided in this town of 24,000 can reverse corporate fortunes and ripple across the economy, especially with a docket that reads like the Fortune 500. Apple Computer Co. and Dell Inc., Intel Corp. and DirecTV, Motorola Inc. and Cisco Systems Inc. - all have sued or been sued for patent infringement in Marshall.

TiVo Inc., which has never turned a profit, last week won $74 million from a Marshall jury that found that the much larger EchoStar Communications Corp. had copied technology to pause and rewind live TV.

Beyond supplying much-needed cash, TiVo expects that the win will pressure other companies to license TiVo technology. The hearing drew Wall Street analysts to Marshall, and the verdict produced a 20 percent jump in TiVo's stock price.

"This is what keeps 'em coming" to Marshall, Tyler said.

Speeding up process

When a gang of New York lawyers blew into town in a caravan of black sedans a few years back, they swaggered into court with an attitude - "We're going to show you rural folks how it's done," one local lawyer described it - and then staggered out with their smugness erased.

U.S. District Judge T. John Ward, who hears most of the patent cases filed in Marshall, runs a no-nonsense courtroom, lawyers on both sides of the aisle agree.

Ward also has a grasp of the numbingly complex and highly technical aspects of patent law, longtime Marshall attorney Blake Erskine said.

"Judge Ward, he tried patent cases as a lawyer," Erskine said. "He has a real deep and abiding interest in technology and studies the cases, each and every one. I guarantee he reads everything (submitted) in a case."

Ward, who became a federal judge in 1999, created Marshall's busy docket more by accident than design when he established rules to complete most patent cases in 12 to 14 months, shaving six months to a year off the typical court timetable.

With millions of dollars often at stake, companies frequently want patent cases resolved quickly, limiting uncertainty that can depress stock prices or paralyze business. Speed also limits legal fees.

"It's not quite as simple as just wanting to win a big verdict. Companies want their disputes resolved one way or another so they can make business decisions about what they're going to do," said Michael Smith, a Marshall patent lawyer.

Defense lawyers complain that the fast schedule is a disadvantage, hampering the tedious search for evidence that could invalidate a patent. But Ward said he made the change merely to bring order to his existing docket, not expecting the fast docket to bring an explosion of patent lawsuits - 73 last year, up from 30 in 2004. An additional 35 entered the queue this year.

http://statesman.printthis.clickability.com/pt/cpt?action=cpt&title=A+litigation+boom&expi...

In the past four years, 70 percent of all patent lawsuits filed in the 43-county Eastern District of Texas were filed in Marshall.

"Now I have more cases than I can handle," Ward said.

To keep cases moving, Ward enforces rigid deadlines. He famously spanked a Taiwanese technology firm last year with a $500,000 fine and other sanctions for failing to reveal documents in a timely manner. Noting that more than 60 cases were pending, Ward's order said the harsh penalty was meant to deter other litigants from foot-dragging.

Moving in, building up

The smart TBLs - "tall building lawyers" from out of town - partner with a Marshall law firm familiar with the local courtroom's quirks and pitfalls. And like many locals, Erskine more than doubled his office space to handle the dozen lawyers and legal assistants needed to handle a major case.

One law firm rented Clay Allen's mid-size office building, adding a security system, high-speed Internet, phone lines and new wiring in preparation for trial. Then it settled the case.

"They never actually used the building," Allen said. "When these lawyers gear up for these lawsuits, the amount of money they spend - it's amazing; it's amazing to small-town folks. Of course, there's millions at stake. They don't want to cut corners."

Some of that money has spilled into the said. "There is unsatisfied demand. Isn't that every real estate developer's hope?"

Two projects dominate the downtown landscape.

Vacant for at least 25 years, the Hotel Marshall was an eight-story blight of broken windows and grime that has been transformed with $1 million from the city, $500,000 from developer Jerry Cargill and more than $525,000 in donations from locals (including $155 in change from a fifth-grade class) eager to save a local landmark. Cargill will develop the upper floors into condos and offices.

The granddaddy of renovations, however, is taking place in the stately Harrison County Courthouse, where the second-floor courtroom will be restored to its former grandeur - and, not coincidentally, suitable for federal court hearings.

Marshall's civic leaders learned that the legal deluge was slowing down cases, sparking fear that patent holders will look for a rocket docket out of state.

"We wanted to do what Judge Ward said he needed, which was more space. We wanted to keep his business here in Marshall because it's been so good to us," Assistant City Manager Janet Cook said.

Signs of change

Not everybody in Marshall is aware that million-dollar quarrels helped rebuild downtown.

"So many things make sense now, like why we should suddenly have a bank on every corner. We were a sleepy little town," said Patricia McBride, co-owner of Jubilee consign- ment shop, which opened in September.

http://statesman.printthis.clickability.com/pt/cpt?action=cpt&title=A+litigation+boom&expi...

The signs are everywhere. Sleek corporate jets swoop into the county airport about three times a month. Lawyers drink in the Red-Headed Lady bar and grill and go to the Monarch Body Works for $35 massages that would cost $160 in New York.

Short-term office leases are getting harder to find as building owners hold out for the best deal. "Everyone thinks they're the prettiest girl in the dance . . . now that they're getting three calls a week," Allen said.

The result is a curious blend, a small town with a taste of big-city life. For now, the small-town atmosphere prevails.

"Can you find a real nice restaurant with an expensive wine list? No. A Marshall power lunch is when you get a big order of fries," Allen said. "You can still park your car on the square, leave your keys in it, and it'll still be sitting there three days later."

clindell@statesman.com

SOME HIGH-PROFILE MARSHALL CASES

Texas Instruments v. Hyundai

Issue: Texas Instruments accused the South Korean automaker of violating patents on an assembly line manufacturing process.

Result: A Marshall jury ruled in 1999 that Hyundai violated two patents and awarded $25.2 million to the Texas firm. Two months later, Hyundai signed a $1 billion agreement to use Texas Instruments' technology for 10 years.

Soverain Software v. Amazon.com

Issue: The Chicago software developer accused Amazon of violating five patents, including a tracker that lets e-retailers recognize shoppers who return to the Web site.

Result: Amazon settled four days before trial in August, agreeing to pay $40 million to license the technology.

Intergraph v. Intel

Issue: Alabama-based Intergraph claimed Intel's Itanium chip violated patents on a process that increases the number of simultaneous computer calculations.

Result: Intel paid $300 million to settle part of the claims and then an additional $150 million after losing a 2002 trial in Marshall. Two years later, all patent claims were settled with an additional $225 million Intel payment.

Vote for this story!

Buzz up!