

# EXHIBIT 28



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## 'Rocket Dockets' Gaining On Popular E. Texas Court

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The U.S. District Court for the Eastern District of Texas has become the most popular court in the U.S. for patent lawsuits, but the wait time for a trial has increased from under one year to about two years. As a result, other venues are being used by plaintiffs that want their cases decided as soon as possible.

According to various attorneys around the country, the Western District of Wisconsin and the Eastern District of Virginia are currently the best examples of IP "rocket dockets," with cases generally going to trial within a year from the time they're filed.

"The rocket docket was perceived as the place to go if you really wanted to put pressure on the defendant," said Frederick S. Frei, a partner in **Andrews Kurth** LLP's Washington, D.C., office.

"If you are a defendant and totally unprepared — say a patent infringement suit comes out of the blue — and all of a sudden you have to do everything in a six-month period, you're really disadvantaged," he added.

He pointed to a case he's working on in the Eastern District of Virginia, in which a patent counterclaim was filed at the beginning of November. The counterclaim was answered, depositions were taken and expert reports were all prepared by the end of January, he said.

Paul Janicke, a professor of law at the University of Houston Law Center who tracks patent filings, said that lawyers have taken note of the Western District of Wisconsin over the last six months or so for similar reasons.

According to statistics he compiled, 41 patent cases were filed in the Western District of Wisconsin in fiscal year 2007, making it the 17th most popular venue in the country, and 39 cases were filed in the Eastern District of Virginia, making it the 19th most popular venue in the country.

In fiscal year 2006, the Wisconsin court did not make the Top 25, while the Virginia court was ranked 25th.

However, the two courts still lag far behind the Eastern District of Texas, which had 352 patent cases filed in fiscal year 2007.

Gary Hoffman, a partner with **Dickstein Shapiro** LLP, said the Western District of Wisconsin "periodically" transfers patent cases to other courts, while the Eastern District of Virginia "typically" transfers cases to other courts.

"If a judge is going to transfer me out ... it doesn't do me any good to file there," Hoffman said. "I'm going to pick some place I have a very good chance of staying in."

Frei added that in the Eastern District of Virginia, patent cases often come into the Alexandria division, only to be transferred to other divisions within the same court that are not true rocket docket.

"They're reluctant to file there because you could end up in Richmond or Norfolk or Newport News, and you may not want to be there," he said.

The Eastern District of Texas, on the other hand, almost always keeps its cases, according to Frei.

The Eastern District of Texas has also become exceedingly popular because it is perceived as pro-plaintiff, because its judges are experienced with patent cases, because cases move along relatively quickly, and because it has patent rules for claims construction and other litigation activities, attorneys say.

But Janicke dismissed those theories, saying the court has mainly become popular simply because plaintiffs more often survive summary judgment motions and win settlements before trial.

"You have a better chance of getting to trial in eastern Texas because they deny summary judgment, and I think that's the lure," Janicke said.

For his part, Hoffman said the court had become much friendlier to defendants over the last couple of years.

"It is a much more balanced court, and if anything, pro-defendant today," Hoffman said. "Now, the people out there blasting the court will tell you it's still pro-plaintiff, but it's not borne out by statistics."

Either way, the number of cases in the Eastern District of Texas continues to skyrocket, and it passed the Central District of California as the most popular patent court in fiscal year 2007.

According to Janicke's statistics, 12.7% of all patent cases filed in the United States last year were filed in the Eastern District of Texas. Less than a decade ago, virtually no patent cases were filed in the Eastern District of Texas.

Hoffman predicted that the number of cases in the Eastern District of Texas would continue increasing but that a smaller ratio of them would go before Judge T. John Ward, the inventor of the court's patent rules who is based in Marshall.

He estimated that about 60% of the cases currently filed in Marshall stay with Judge Ward, while the remaining 40% are transferred to other divisions.

"Judge Ward works incredibly hard, but because of the increase in filings, he has gotten backlogged," Hoffman said.

"I don't think you're seeing a falling off — there are still a lot of cases being filed — but I think you're going to see more cases being filed in other places," added Jim Repass, the co-head of **Fulbright & Jaworski's** IP practice group.

He said that the Southern District of Texas, which recently implemented its own patent rules, could take on some of the caseload that previously went to the Eastern District of Texas.

Of course, if the Patent Reform Act becomes law, it could change things dramatically.

"It's going to be very difficult to sustain venue in eastern Texas, except for a few oil company cases that could be lodged in Beaumont," Janicke said. "But all the software cases will have to go, and all the medical cases will have to go. I don't think companies are going to change their headquarters to fit this sort of thing."

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