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## Some Surprises Among the Courts Selected for Patent Pilot Program

On June 7, 2011, the director of the Administrative Office of the U.S. Courts announced that 14 district courts have been selected to participate in a 10-year pilot program to enhance expertise in patent cases among federal judges. Many of the selected districts are known for their busy patent dockets, but some are not. The participating courts are:

- Central District of California
- Northern District of California
- Southern District of California
- Southern District of Florida
- Northern District of Illinois
- District of Maryland
- District of Nevada
- District of New Jersey
- Eastern District of New York
- Southern District of New York
- Western District of Pennsylvania
- Western District of Tennessee
- Eastern District of Texas
- Northern District of Texas

Because many of the most popular jurisdictions for patent plaintiffs have been selected for the program – including the Eastern District of Texas, the Northern District of California, and the Southern District of New York – the flow of cases may not change significantly. But some sleeper districts – such as the District of Nevada, the Western District of Pennsylvania, and the Western District of Tennessee – could see increased traffic if plaintiffs are seeking courts with less-crowded dockets that are eager to hear patent cases.

The Judicial Conference Committee on Court Administration and Case Management will help implement the pilot program, and the Federal Judicial Center is creating a special web page to provide the pilot courts with case management and patent law resources. Previous versions of this program also included additional funding to hire clerks and provide other support. This funding did not make it into the final program.

The pilot program is designed to make complex patent litigation more efficient by steering patent cases to judges who have an interest in hearing the cases. In the participating courts, new patent cases initially will be assigned at random among all of the district judges, including those who have not made a request to hear patent cases. Judges assigned patent cases who have not opted in to the program have a choice to keep or decline the cases. Declined cases will be reassigned at random among the judges designated to hear patent cases.

The program attempts to balance the goal of making patent litigation more efficient versus preserving random assignment of cases to avoid forum shopping by litigants. The hope is that by concentrating patent cases in certain courts, ensuring those courts have effective patent local rules, and providing supporting resources, the program will increase the expertise of judges and their clerks, resulting in more efficient resolution of patent disputes. It remains to be seen whether forum shopping becomes a problem

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due to a concentration of patent cases among certain judges. The pilot program calls for periodic reports to Congress to determine whether the program speeds up patent litigation, reduces reversal rates, and encourages forum shopping.

To be eligible for the pilot program, which was signed into law on January 4, 2011, district courts either had to be among the 15 districts with the largest number of patent cases in 2010 or to have adopted or certified their intention to adopt local rules for patent cases. The participating courts were selected from among the eligible courts.

The pilot program begins in most of the participating courts in July.



*If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.*

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