Bylined Article

Judges' Use of Case Management Rules to Effect Patent Reform

Dina Hayes and James Lyons

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Over the past two decades, the number of patent cases brought in federal courts has grown exponentially. In particular, new business models have resulted in the increased filing of cases with dubious merit. Although talk of reform is now common, legislative reform is a slow process that takes time and can be divorced from on-the-ground practice. Active patent litigators, however, have seen substantial reform taking place in district courts, where individual judges, faced with rapidly growing patent dockets, have exercised their substantial case management authority to develop administrative policies and mechanisms to make patent litigation more efficient and cost effective.

These individual rules have immediate consequences for the parties involved and have the potential bring about substantial change in patent litigation practice as judges experiment with procedural innovations aimed at winnowing out non-meritorious claims early in litigation.

The Emergence of Individual Patent Rules

As the frequency with which judges encounter patent cases has increased, so too has the number of district courts adopting local patent rules, often governing issues related to how the court handles filings related to the interpretation of patent claims. In the past six years, the number of district courts with local patent rules has roughly tripled from fewer than a dozen in 2008 to more than thirty today. In developing these rules, courts have relied on their own experience, issues of sister jurisdictions, the input of academics, and the advice of the local bar.

The past three years have also seen a surge in the number of individual judges issuing standing orders governing the patent cases that come before them. Not surprisingly, these judge-by-judge reforms have been instituted primarily by judges with heavy patent dockets and often go beyond the local patent rules already in place in the district. Like local rules, judges implementing standing orders considered input from practitioners and academics as well as the practice of other courts. Often, a successful case management order curtailed to patent cases will be adopted from judge to judge within a court. Perhaps this is most evident in the Northern District

of California, where the practice with regard to special patent rules varies significantly from courthouse to courthouse.

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Delaware Reforms as a Sign of the Times

Recently, much attention has been given to the actions of Judges Robinson and Stark in the District of Delaware, who have instituted new practices with regard to the management of patent cases. In total, roughly a fifth of the patent cases filed nationwide in 2013 were filed in this four-judge court. Thus, any activity by these judges can be significant, particularly since Judge Stark's docket alone contains more patent cases than the dockets of any federal district court other than the Eastern District of Texas and, of course, the District of Delaware.

Delaware has an average of 370 patent cases per district judge, which vastly exceeds the national average of ten, and patent cases make up a majority of the cases pending before the court. In light of this deluge, the court established a "Patent Study Group" consisting of attorneys, law firms, and companies spread across a variety of industries. Chief Judge Stark and Judge Robinson engaged in hours of discussion with this group to determine ways to improve docket management and to identify best practices for case management. While efforts by judges to involve interested parties in developing improved practices in patent litigation are not unique to the District of Delaware, this may have been the largest and most formalized program to date.

Based on these discussions, Judge Robinson overhauled her case management process and issued a new scheduling order, which applies to patent cases. Chief Judge Stark followed suit, issuing his own revised policies. While there are differences between the rules announced by Judges Stark and Robinson, they both follow a pattern similar to that adopted by other courts and judges, which emphasizes early disclosure of infringement claims, invalidity contentions and damages; attempts to limit the costs and scope of discovery; and supports the active involvement of magistrate judges in case management—all with the intent of eliminating lengthy delays and successively narrowing the number of issues contested before the court, as well as significantly reducing the time and effort wasted on trivial matters and frivolous claims and defenses.

Conclusion

As the recent and rapid changes in the District of Delaware have made clear, district court judges are taking active roles in reforming patent litigation. As different models of case management continue to develop, patent holders should be aware of this important forum for reform. Parties bringing patent cases need to be acutely aware of not only the local rules currently in effect, but also the general attitudes of judges in the district and should often be

prepared to utilize the procedures to raise substantive issues early in cases and to benefit from the early disclosure requirements aimed at eliminating meritless claims and minimal damage cases.

Dina Hayes is Counsel in the Intellectual Property Department focusing on patent and trademark matters. She can be reached at dina.hayes@kayescholer.com.

James Lyons is an Associate in the firm's Intellectual Property Department. He can be reached at james.lyons@kayescholer.com.

About the Authors

Dina M. Hayes
dina.hayes@kayescholer.com
+1 312 583 2394

Dina Hayes is Counsel in the Intellectual Property Department focusing on patent and trademark matters. Dina is experienced in all facets of full scale multiple-patent and multiple-party patent litigation in a variety of industries. Her diverse experience includes handling complex patent cases involving biomedical infusion devices, power wheelchair suspension systems, cardiac ablation devices and techniques, and digital audio fingerprinting methods.

James M. Lyons
james.lyons@kayescholer.com
+1 212 836 7143

James Lyons is an Associate in the firm's Intellectual Property Department. James works on a range of intellectual property matters across a variety of industries. In particular, he is currently working on patent litigations involving genetic testing and pharmaceutical technologies.