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The author cites multiple reasons for the increasing prominence of two Florida district courts in patent infringement litigation practice.

Florida Patent Litigation: A Popular Venue for Patentees (Not Just Retirees)

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Florida has been one of the busiest locations for patent cases for the past few years, with both the U.S. District Courts for the Southern and Middle Districts of Florida each regularly landing in the top 10 out of the 94 federal courts around the country in the number of cases filed.[1] In 2014, the Southern District of Florida was #8 and the Middle District was #9 in the number of filings across the nation. The rest of the list of top patent jurisdictions are the usual suspects: California, New Jersey and Illinois (where many companies are headquartered), as well as Delaware and the Eastern District of Texas, which are typically regarded as plaintiff-friendly venues for patent litigation.[2]

Patent Litigation Is on the Rise in Florida (and Elsewhere)

The majority of patent litigation is filed these days by non-practicing entities, companies that seek to monetize patents by licensing their patents (and filing lawsuits if necessary to secure those licenses) instead of producing goods or services. Some of the world's best known inventors, such as Thomas Edison or the Wright Brothers, did not "practice" their patents by producing goods or services, instead allowing others to manufacture their inventions. More and more people are getting patents these days, as the general public becomes more aware of the value of intellectual property, and the U.S. Patent and Trademark Office (PTO) has made it easier for people to file patent applications. According to the PTO, the number of patent filings has doubled in the past 15 years, from approximately 300,000 in 1999 to approximately 600,000 in 2014.

Non-practicing entities are formed to license and litigate, so they file more cases than operating companies, which typically focus more on selling goods and services. Thus, a plethora of patent litigation has been brought by non-practicing entities in the past 15 years. Various legislative efforts have sought to slow down this type of litigation, but 2015 is still on track to have more cases filed (over 6,000 nationally) than ever before.[3] By contrast, as recently as 2009, only 2,600 were filed.

There are a number of reasons for the popularity of non-practicing entity cases in Florida, which comprise anywhere from 40 to 70 percent of all patent cases in Florida (depending on how a non-practicing entity is

[1] All case data is gathered from Docket Navigator, www.docketnavigator.com.

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[2] *See* Docket Navigator, "2014 Most Active Courts," www.docketnavigator.com/stats.

[3] *See id.*

defined). Florida has not typically been a haven for patent litigation; not many manufacturers have traditionally been based there. But patent litigation in the state has grown largely because of the volume of cases filed by non-practicing entities (although operating companies still do file some patent litigation cases in Florida).

Florida Federal Courts' Local Rules Encourage Fast-Paced Schedules Relative to Other Jurisdictions

Filing in Florida is popular first of all because the local rules for federal cases in Florida mandate that cases move along relatively quickly, and this includes all civil cases, such as patent cases. Thus, the Southern District is seen as a ''rocket docket'' for patent cases relative to the timing for patent cases nationally. The Middle District moves at a relatively fast pace as well. While the median time to trial nationally in patent cases is 2.5 years, the Civil Local Rules of both districts require that a trial date be set more rapidly.

Patent cases are typically designated as ''Standard Track'' cases in the Southern District and ''Track Two'' cases in the Middle District, both of which specify that trials should be scheduled more quickly for all civil cases and use no special protocol for patent cases. Pursuant to Southern District Local Rule 16.1(a)(2)(B), discovery in Standard Track cases in the Southern District must be completed within 180-269 days from the date of the Scheduling Order, which is typically two to three months from filing, so most cases receive a 12-14 month timeframe until trial starts. Some of the judges in the Southern District do not automatically grant extensions, even in complex cases such as patent cases, often adhering to the attitude in the local rules to resolve matters expeditiously.[4]

Meanwhile, Middle District Local Rule 3.05(c)(2)(E) states that it is the goal of ''Track Two'' cases in the Middle District for the trial to be conducted within two years, so most cases receive a 14-18 month timeframe until trial starts. Because this District has made clear its attitude towards resolving cases, judges often have little patience for dilatory tactics.[5] In *Zamperla v. I.E. Park*, the court demanded that defendant not drag its feet on submitting the joint claim construction statement and threatened sanctions for non-compliance.[6] In addition, to expedite the resolution of the matter, the court *sua sponte* reduced the number of claim terms to be construed to five. Other examples show that parties in the Middle District must make a significant good cause showing to extend deadlines.[7]

Additionally, cases continue on a ''rocket docket'' because there are no local patent rules as have been adopted by many other jurisdictions. Such rules provide a uniform schedule for the parties to disclose certain information, exchange claim terms and take other required procedural steps. For example, a party in the Southern District tried to rely on the Northern District of California's Patent Local Rules and related case law, but a judge in the Southern District refused to follow those rules, stating that ''[t]his Court has no such local rule and there is no prior Court order imposing such a requirement.''[8] In *Atlas v. Biotronik*, the judge required the parties to disclose their positions quickly, citing the Eleventh Circuit's prior statement that allowing litigants to delay providing their positions (even in simple cases) creates a ''discovery goat rodeo.''[9]

There are other rules in these districts that encourage speedy resolution, especially relating to resolving discovery issues that often slow down cases. For example, Southern District Local Rule 26.1(g)(3)(B) requires that a party responding to discovery requests with a privilege objection provide that information at the time of the response, requiring parties to quickly review and assess their own documents. Many magistrate judges in both the Southern and Middle Districts have also eschewed lengthy discovery hearings in favor of short telephone conferences to reduce time spent on discovery.

Florida's Number of Cases Did Not Drop With Withdrawal from Patent Pilot Program

In recent years, filings have risen in both the Southern and Middle Districts of Florida, nearly tripling in number since 2008. That was one reason why Congress chose the Southern District as one of 14 districts to participate in its Patent Pilot Program—so that efficiencies could be specifically studied in popular jurisdictions. Congress allowed any judge to transfer a patent case to one of the judges in the pilot program.

However, about a year ago, the Southern District of Florida ended its participation in the Patent Pilot Program. Many observers expected patent litigation to fall off dramatically because patent plaintiffs could no longer have near certainty as to which judge would handle a case; instead they would be randomly assigned to any judge on the ''random'' assignment wheel used for all civil cases. However, patent litigation in the Southern District appears to not have slowed down. From July 2014-December 2014, the first six months after opting out of the program, there were 63 patent cases filed in the Southern District, a little over 10 a month. In the first six months of 2015 (January through June 2015), there were 62 patent cases filed, so it is clear that the absence of this program has not deterred plaintiffs.

Florida Also Popular Venue Because Many Innovators Based Here

Another reason for the popularity of patent cases in Florida, which appears to be an explanation for why withdrawal from the pilot program had no effect on the number of filings, is the number of plaintiffs who live in Florida. A growing number of these non-practicing entities are located in Florida, partly due to the sheer

[4] *See, e.g., CTP Innovations, LLC v. Solo Printing*, No. 1:14-cv-21499-UU (denying plaintiff's unopposed motion for an extension of time to file its infringement contentions because the parties have previously agreed on a date in their joint scheduling report).

[5] *See Zamperla Inc. v. I.E. Park SRL*, No. 6:13-cv-1807-Orl-37KRS (finding that parties' wrangling over patent-specific deadlines was akin to a ''mutual mud wrestle'' and giving plaintiff ''one opportunity to bring this case back on track'').

[6] *Id.*

[7] *See, e.g, Enpat Inc., v. Tenrox, Inc.*, No. 6:13-cv-948-Orl-31KRS (denying motion for extension with a one sentence order saying that there was not good cause for an ''overly broad and unwarranted'' extension).

[8] *See Atlas IP, LLC v. Biotronik, Inc.*, No. 14-cv-20602-SEITZ.

[9] *Id.* (citing *Paylor v. Harford Fire Ins. Co.*, 748 F.3d 1117, 1127, 2014 BL 97347 (11th Cir. 2014)).

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population size (third most populous state[10]) and also because many older or retired individuals who secured patents intending to commercialize them have now retired or moved to Florida, and the best way to monetize those assets at this point in their lives is often through licensing, and typically, litigation. Sorting through many of the filings of these non-practicing entities shows that the asserted patents were oftentimes held (and practiced) by a prior company that is now associated with the current patent owner and plaintiff. In many situations, it was a company located in the northeast (or sometimes in Florida) that is no longer attempting to practice the patent; rather, the patent has been assigned to a non-practicing entity whose sole purpose is to enforce the patent.

One of the most active non-practicing entities in Florida (and nationally) was named Arrivalstar, although it has re-branded recently with the name Shipping and Transit. The inventor of the Arrivalstar patents, Martin Kelly Jones, had a company in Georgia named Global Research Systems with a satellite office in Delray Beach, Florida. The company originally intended to focus on goods and services, then in the early 2000s turned to monetizing Jones' patent portfolio. The patents were moved to another company and licensed to Arrivalstar. Because of Jones' prior location in Florida, it is no surprise that many of the patent filings were filed in Florida by attorneys based in the Delray Beach area and in the Florida courts.

Another example is Rothschild Storage Retrieval Innovations, which in 2014 began filing an extensive number of patent litigation cases in Florida. The inventor, Leigh Rothschild, began filing patents while leading Florida-based technology companies in the 1990s. Mr. Rothschild eventually moved his patent portfolio to a non-practicing entity and filed a number of cases in Florida for infringement of those patents. In filings, the plaintiffs in those matters indicated that they filed in Florida because that is where the inventor lived and where the inventions were conceived.

In addition, unbeknownst to many, Florida has been at the center of many recent innovations: IBM's first personal computer was developed at its Boca Raton campus in 1981 and the world's first smartphone debuted in 1993 at Florida's Wireless World Conference (from IBM and BellSouth Cellular). A slew of technology companies have large facilities in the state, and even more are moving here all the time to take advantage of the low tax rates and relatively low cost of living. Florida has an entrepreneurial culture, repeatedly being ranked highly in surveys of the places with the most new businesses and most entrepreneurs, including #2 in the Kaufmann Foundation's most recent rankings.[11]

All of this contributes to the number of filings here, as Florida is increasingly populated by patent owners.

Conclusion

Florida's status as one of the most popular places to file a patent case has many underpinnings, related in large part to the recent rise in filings by non-practicing entities. A review of the filings over the past few years reveals that the ''rocket docket'' based on the local rules and practice, as well as the number of inventors and companies based in Florida, are two of the most significant reasons for this recent increase. If the current trend of non-practicing entity cases continues, look for Florida to remain one of the most popular venues for patent litigation.

[10] *See* ''Florida Surpasses New York to Become 3rd Most Populous State, http://time.com/3645739/florida-third-most-populous/#3645739/florida-third-most-populous/.

[11] *See* Kauffman Foundation Index, http://www.kauffman.org/microsites/kauffman-index.