

Patent Pilot Program: Status Update

December 2013

On January 4, 2011, President Obama signed into law legislation establishing a ten-year pilot program addressing the assignment of patent cases in certain U.S. district courts (Pub. L. No. 111-349, codified at 28 U.S.C. § 137, note). The legislation instructs the Director of the Administrative Office of the U.S. Courts, in consultation with the chief judges of the district courts participating in the pilot program and the Director of the Federal Judicial Center, to provide certain reports on the pilot program, including periodic reports such as this, to the Judiciary Committees of the House and the Senate.¹

The Patent Pilot Program (“PPP”) legislation instructed the Director of the Administrative Office of the U.S. Courts (“A.O. Director”) to designate no fewer than six district courts, representing at least three judicial circuits, in which the pilot program would be implemented. In response to a request from the A.O. Director, the Judicial Conference appointed its Committee on Court Administration and Case Management (“CACM”) to have oversight of the project. CACM appointed a subcommittee (“Subcommittee”) to oversee the project and asked the Federal Judicial Center (“FJC”) to conduct the study of the pilot program. The A.O. Director implemented the Subcommittee’s recommended (and CACM’s approved) selection of fourteen pilot courts.² The legislation also identified the ten-year duration of the pilot program, and a set of specific questions to be addressed.

In the three years since the creation of the PPP, the FJC has been monitoring the implementation of the pilot within each pilot district and collecting information about case management and the processing of patent cases from the 14 pilot courts. Additionally, the FJC has been in contact with the courts to monitor the implementation of the pilot and how that may differ across the courts. While the FJC periodically updates the Subcommittee on the progress of the pilot, it is much too early in the life of the 10-year pilot project to draw any conclusions. Described below are the preliminary findings from data gathered for all patent cases filed on or after the individual PPP start date designated by each of the 14 pilot courts, through August 1, 2013.

As of August 1, 2013, there were 76 judges currently serving as designated judges across the pilot districts.³ As stated in the February 2013 status update, the number and identity of designated judges continue to fluctuate as individual judges join and leave the bench, or elect to opt into or out of the role of designated judge.

¹ For more information on the implementation of the Patent Pilot Program, see the February 2013 Status Update, available here: [http://cwn.fjc.dcn/public/pdf.nsf/lookup/Patent-Pilot-Program-Status-Update-Feb-2013.pdf/\\$file/Patent-Pilot-Program-Status-Update-Feb-2013.pdf](http://cwn.fjc.dcn/public/pdf.nsf/lookup/Patent-Pilot-Program-Status-Update-Feb-2013.pdf/$file/Patent-Pilot-Program-Status-Update-Feb-2013.pdf).

² 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 New Jersey, District of Nevada, Eastern District of New York, Southern District of New York, Western District of Pennsylvania, Western District of Tennessee, Eastern District of Texas, and Northern District of Texas.

³ “Designated judges” are judges who have volunteered to receive patent cases transferred to them from non-designated judges within their districts, as well as receiving randomly assigned patent cases.

Table 1: Number of Designated Judges, by District, as of August 1, 2013

District	Number of Designated Judges
CAC	5
CAN	4
CAS	5
FLS	3
ILN	11
MD	3
NJ	11

District	Number of Designated Judges
NV	3
NYE	6
NYS	10
PAW	5
TNW	2
TXE	5
TXN	3

The FJC has also compiled information regarding pilot courts' implementation procedures (e.g., a summary of the pilot courts' varied methods for assigning and transferring patent cases) and has made preliminary counts of pilot courts' patent case and pilot case filings, transfers, and terminations. From each court's individual pilot start date through August 1, 2013, just over 5,000 patent cases were filed across the 14 pilot courts. Of these cases, 3,776 fit the study's definition of a "pilot case"⁴ (see Table 2). The filing patterns are very similar to those reported in the February 2013 status update. The Eastern District of Texas continues to dominate the percentage of all patent cases filed in the pilot courts (40%) as well as the percentage of pilot cases (55%).

⁴ For a case to be considered a "pilot case," one of three conditions needed to be met. First, the current judge assigned the case was a designated judge at the time of random assignment. Second, the current judge assigned the case was serving as a designated judge at the time of assignment, and received the case by way of transfer within the time limit established by each court (generally, within 30 days from filing). Third, the current judge assigned the case was a designated judge at the time of assignment, and received the case from another designated judge outside the transfer window. If the case had always been with a designated judge, regardless of the number of transfers, it is considered a pilot case as well. Conversely, patent cases that do not qualify as pilot cases are those that do not meet these requirements – most typically, patent cases assigned to non-designated judges who chose to retain them. Pilot and non-pilot patent cases will be included in the study and compared on measures such as disposition time and reversal rate.

Table 2: Number of Patent and Pilot Cases, by District, From Each Court's Pilot Start Date to August 1, 2013 (Cases with District Judge Participation Only)

District	Number of Patent Cases Filed	Number of Pilot Cases	Percent of Patent Cases That Are Pilot Cases
CAC	830	349	42%
CAN	337	82	24%
CAS	262	210	80%
FLS	304	178	59%
ILN	451	274	61%
MD	62	23	37%
NJ	309	179	58%
NV	69	50	72%
NYE	62	41	66%
NYS	241	125	52%
PAW	57	52	91%
TNW	43	39	91%
TXE	2,133	2,085	98%
TXN	124	89	72%
All Pilot Courts	5,284	3,776	71%

Just over half of all cases in the pilot courts had terminated as of August 1, 2013, and a substantial percentage of the terminations (69%) are pilot cases. Table 3 reports the disposition method of pilot and non-pilot cases in general statistical categories. Overall, while terminated cases are, on average, more likely to be pilot cases than non-pilot cases, the method by which cases are terminated does not vary much across pilot and non-pilot cases.

Table 3: Disposition Method, All Cases and Pilot Cases, as of August 1, 2013⁵

Disposition Method	All Pilot Case Terminations		All Non-Pilot Case Terminations		All Terminations	
	Percent	Frequency	Percent	Frequency	Percent	Frequency
Transferred	9%	168	8%	69	9%	237
Dismissed	69%	1,327	77%	660	71%	1,987
Judgment	4%	79	8%	69	5%	148
Other	18%	355	6%	54	15%	409

Of course, the study of the PPP is tasked with not only examining how cases are terminated, but also how quickly. Table 4 shows preliminary results of the number of days cases were open by the case's pilot status. While there are slightly more non-pilot cases in the shorter duration categories, and slightly more pilot cases in the longer duration categories, the differences at this point are small, likely due to the need for transfer of pilot cases and the use of stays. Once we account for multiple factors, including transfers and if the case is a pilot case, we find that pilot cases are terminated faster than non-pilot cases. While it is too soon to know if this pattern will hold over time, the finding does show the complexity of understanding the effect the PPP is having on case terminations. Work in this area will continue in the future.

⁵ Columns sum to more than 100% due to rounding. Codes for disposition method were found in the Civil Statistical Reporting Guide March 30, 2010, found at the following link: <http://jnet.ao.dcn/civil-statistical-reporting-guide>. Transferred cases include interdistrict transfers and those marked for participation in multidistrict litigation. Dismissed cases include those voluntarily dismissed or settled, among other categories. Judgment includes cases disposed of on pre-trial motion, as well as those going to trial. The Other category is a mix of statistical close and cases stayed pending bankruptcy proceedings. Three cases terminated but did not have reported disposition methods as of August 1, 2013; two of these were pilot cases.

Table 4: Case Duration for Cases Terminated as of August 1, 2013

Case Duration	Number of Cases (Percentage)	
	Pilot Cases Only	Non-Pilot Cases Only
1 day	5 (<1%)	1 (<1%)
2–7 days	12 (1%)	11 (1%)
8–30 days	77 (4%)	59 (7%)
31–180 days	1,059 (55%)	465 (55%)
181–365 days	614 (32%)	238 (28%)
More than 365 days	164 (8%)	79 (9%)
Number of Cases	1,931	853

The FJC will continue to monitor and collect data from patent cases filed in the 14 pilot courts so the questions raised in Pub. L. No. 111-349 can be fully addressed. Included in these are questions relating to the use of claim construction hearings, Special Masters, summary judgment practice, and the frequency of appeals, all of which are too early to address. The FJC will, in years to come, conduct a second survey of judges, and a survey of attorneys, to assess respondents' impressions and reactions once the pilot program has had an opportunity to progress and stabilize. Finally, the FJC anticipates conducting future interviews with key personnel in the pilot courts, including judges and clerks, to obtain their feedback and insights. The FJC will continue to provide briefings to the Subcommittee overseeing the project.

Incorporating information from the FJC project team, the Subcommittee and CACM will collaborate with the A.O. Director, in consultation with the chief judge of each pilot district and the Director of the FJC, to produce additional periodic reports, and the five-year and ten-year reports to the Judiciary Committees of the House and the Senate required by the program's implementing legislation. The Subcommittee and CACM will actively monitor and address any issues that arise with the potential to affect the operation of the pilot program within the 14 pilot courts.