

Patent Pilot Project: Status Update

February 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). 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.

The Patent Pilot Program 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 courts¹. The legislation also identified the ten-year duration of the pilot program, and a set of specific questions to be addressed.

Shortly after the fourteen pilot districts were selected, the FJC project team began to monitor the implementation of the pilot within each district and periodically to collect information from each pilot court. The FJC also conducted a survey of designated judges² in the pilot courts, and plans to conduct future surveys and interviews of judges, attorneys, and other key personnel. The FJC periodically briefs the Subcommittee on items such as the pilot courts’ demographic information, pilot program implementation procedures, and preliminary counts of patent case activity in the pilot courts. The FJC also briefed the Subcommittee on the results of its survey of designated judges in the pilot courts. With only somewhat over a year completed of the ten-year program, it is much too early to draw any conclusions about the outcomes of the pilot program.

Representative demographic information compiled by the FJC includes the dates on which the districts began the pilot program and each pilot court’s number of designated judges. Of the fourteen pilot courts, ten began the pilot in September 2011. One court adopted a start date in July 2011, one court adopted a start date in November 2011, and two courts adopted start dates in January 2012. As of September 2012, there were seventy-seven designated judges across the fourteen pilot courts (see Table 1)³. The number of designated judges will fluctuate as individual judges join or leave the bench, or elect to opt into or out of the role of designated judge.

¹ 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.

² “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.

³ The number and identity of designated judges will, of course, change over the ten years of the pilot project. Table 1 shows a count of designated judges as of September 10, 2012. Judges designated after this date will be counted in future updates.

Table 1: Number of Designated Judges, by District, as of September 10, 2012

District	Number of Designated Judges	District	Number of Designated Judges
CAC	5	NV	4
CAN	4	NYE	6
CAS	5	NYS	10
FLS	3	PAW	5
ILN	10	TNW	2
MD	3	TXE	5
NJ	12	TXN	3

The FJC has also compiled information regarding pilot courts' implementation procedures (e.g., a summary of the courts' varied methods for assigning and transferring patent cases and for equalizing the workloads, when applicable, of designated and non-designated judges) 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 mid-September, 2012, approximately 2,500 patent cases were filed across the fourteen pilot courts. Of these cases, about 1,800 fit the study's definition of a "pilot case"⁴ (see Table 2). However, as mentioned above, only a little over a year into a ten-year project is much too early to draw any conclusions from the pilot data currently available.

Table 2: Number of Patent and Pilot Cases, by District,
From Each Court's Pilot Start Date to September 10, 2012⁵
(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	402	148	37%
CAN	139	54	39%
CAS	131	116	89%
FLS	103	59	57%
ILN	260	178	68%
MD	44	12	27%
NJ	174	110	63%
NV	32	29	91%
NYE	19	15	79%
NYS	122	72	59%
PAW	32	31	97%
TNW	14	14	100%
TXE	937	936	100%
TXN	69	54	78%
All Pilot Courts	2,478	1,828	74%

⁴ For a case to be considered a "pilot case," a designated judge had to be the current district judge assigned to the case, and the designated judge must have been assigned the case directly, or received the case by way of transfer within the time limit established by each court (generally, within thirty days from filing). 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.

⁵ Cases filed late in the day on September 10, 2012 may not be included in these counts. Such cases will be counted in future updates. Future updates will also identify the number of cases that are serially filed and the number that are involved in multidistrict litigation.

At the request of the Subcommittee, the FJC also conducted a survey of designated judges in the fourteen pilot courts, focusing on the judges' impressions of and experiences with the early stages of the pilot program's implementation. Fifty-two designated judges responded to the survey (a 68% response rate). Their impressions of the early stages of the pilot were largely positive; over 90% reported experiencing no problems with the implementation or early stages of the pilot. Several clear patterns emerged in the survey responses—e.g., respondents expressed a strong interest in access to potential new resources (see Table 3). The survey specifically addressed the USPTO's July 2012 proposal of a program that would detail one or more USPTO employees to the pilot courts (see Table 4).

Table 3: Summary of Responses to the Survey Question:
 "If available, how likely is it that you would make use of the following resources?"

Resource	Likelihood of Use (52 respondents; most common response per resource shown in bold)				
	Very Unlikely	Somewhat Unlikely	Neutral	Somewhat Likely	Very Likely
Additional educational programs on patent law or litigation.	3.8% (2)	5.8% (3)	3.8% (2)	23.1% (12)	63.5% (33)
Periodic meetings of designated judges from the fourteen pilot courts.	7.7% (4)	7.7% (4)	9.6% (5)	28.8% (15)	46.2% (24)
Information about other pilot courts' Patent Pilot Program implementation procedures.	9.6% (5)	3.8% (2)	9.6% (5)	34.6% (18)	42.3% (22)
Information about other designated judges' case management procedures for patent cases.	5.8% (3)	5.8% (3)	3.8% (2)	42.3% (22)	42.3% (22)
Law clerk with a technical/science background.	5.8% (3)	3.8% (2)	11.5% (6)	21.2% (11)	57.7% (30)
New administrative fees charged upon filing of patent litigation, to be spent on patent issues at individual pilot courts' discretion.	15.4% (8)	7.7% (4)	19.2% (10)	17.3% (9)	40.4% (21)

Table 4: Summary of Responses to the Survey Question:
 "The U.S. Patent and Trademark Office (USPTO) has recently proposed a program whereby it would detail one or more of its employees, at USPTO expense, to the courts taking part in the [Patent Pilot Program]. Details such as proposed number of detailees and length of assignment have not been established at this time. In theory, would you be likely to make use of a USPTO detailee?"

Response	52 respondents	
	Number	Percent
Yes (would be likely to make use of a detailee)	27	51.9%
Unsure	22	42.3%
No (would not be likely to make use of a detailee)	3	5.8%

The FJC will continue to monitor and collect data from patent cases filed in the fourteen pilot courts so the questions identified in Pub. L. No. 111-349 can be addressed. The FJC will, in years to come, also 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 fourteen pilot courts.