

Patent Pilot Program: Status Update

Federal Judicial Center

December 2014

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 his role as Secretary to the Judicial Conference, the A.O. Director asked the Judicial Conference Committee on Court Administration and Case Management (“CACM”) to have oversight of the project. The CACM Committee asked the Federal Judicial Center (“FJC”) to conduct the study of the pilot program. The legislation also identified the ten-year duration of the pilot program, and a set of specific questions to be addressed.

In the four years since the creation of the PPP, the FJC has been monitoring the implementation of the pilot within each pilot district and collecting statutorily-required information about case management and the processing of patent cases from pilot courts.² 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 CACM Committee on the progress of the pilot, it is too early in the life of the 10-year pilot project to draw any conclusions regarding the effect of the program on patent litigation. Presented below is preliminary information gathered for all patent cases filed on or after the individual PPP start date designated by each of the current pilot courts, through August 2, 2014.

Number of Pilot Districts and Judges

As of August 2, 2014, there were 72 judges serving as designated judges³ across the 13 pilot districts (see Table 1). As stated in past status updates, the number and identity of designated

¹ For more information on the implementation of the Patent Pilot Program, see the February 2013 and December 2013 Status Updates, available here: <http://fjconline.fjc.dcn/content/patent-law-resources-0>.

² There are currently 13 pilot districts: Central District of California, Northern District of California, Southern District of California, 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. The Southern District of Florida withdrew from the pilot effective July 7, 2014, and the results from that district are excluded from this update.

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

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.

Table 1: Number of Designated Judges, by District, as of August 2, 2014

District	Number of Designated Judges
CAC	7
CAN	5
CAS	5
ILN	12
MD	3
NJ	8
NV	3

District	Number of Designated Judges
NYE	4
NYS	10
PAW	5
TNW	2
TXE	5
TXN	3

Judicial Experience with Patent Cases

Designated judges, on average, enter the pilot with more patent litigation experience than their non-designated counterparts, as measured both by the number of patent cases a judge is assigned and the number of patent cases disposed of by the judge. Designated judges are also gaining experience more rapidly during the pilot program than their non-designated counterparts – again, as measured by the number of patent cases assigned and disposed of – which is not surprising, given the nature and structure of the program.

Number of Patent and Pilot Cases

From each court’s individual pilot start date through August 2, 2014, just under 8,000 patent cases were filed across the 13 current pilot courts. Of these cases, 5,901 fit the study’s definition of a “pilot case”⁴ (see Table 2). The Eastern District of Texas continues to dominate in the percentage of all patent cases filed in the pilot courts (46%) as well as in the percentage of patent cases that meet the study’s definition of a pilot case (61%).

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.

Table 2: Number of Patent and Pilot Cases, by District, From Each Court’s Pilot Start Date to August 2, 2014 (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	1,230	559	45%
CAN	550	116	21%
CAS	446	330	74%
ILN	619	366	59%
MD	87	40	46%
NJ	484	287	59%
NV	109	77	71%
NYE	87	61	70%
NYS	383	185	48%
PAW	72	67	93%
TNW	50	48	96%
TXE	3,651	3,603	99%
TXN	205	162	79%
All Pilot Courts	7,973	5,901	74%

Case Transfers

Patent cases become pilot cases either through random assignment to a designated judge or through transfer to a designated judge. These transfers can occur within the court’s transfer window (the most common method of transfer) or from one designated judge to another designated judge outside the transfer window. Overall, there has been a substantial amount of transfer activity in the pilot districts (see Table 3). From the start of the pilot to August 2, 2014, 2,728 patent cases were transferred from one district judge to another (34% of all patent cases in the study). Of those transferred cases, 69% were transferred for purposes of the pilot program (i.e., to a designated judge within the transfer window established by the district). The number of transfers of a single patent case, thus far, ranges from zero to six. However, most patent cases stay with the originally assigned judge. Of those cases that were transferred, the most common number of transfers was one.

Table 3: Patent Cases and Pilot Cases Transferred, by District

District	Number of Patent Cases with at Least One Transfer	Number of Pilot Cases with at Least One Transfer	Percentage of Transferred Cases that Are Pilot Cases ⁵
CAC	767	429	56%
CAN	190	18	9%
CAS	386	299	77%
ILN	227	158	70%
MD	37	28	76%
NJ	110	72	65%
NV	50	31	62%
NYE	46	38	83%
NYS	75	41	55%
PAW	46	43	93%
TNW	20	18	90%
TXE	641	594	93%
TXN	133	110	83%
All Pilot Courts	2,728	1,879	69%

Number of Cases Terminated

Of all patent cases filed in the pilot districts, approximately two-thirds have terminated. The percentage of cases terminated has grown (67% as of August 2, 2014 compared to 53% as of August 1, 2013), not a surprising finding given that cases filed early in the life of the pilot have had more time to reach termination. An average of 73% of terminated cases are pilot cases, meaning terminated cases are more likely to be pilot cases than non-pilot cases and therefore any conclusions about terminated cases are driven by pilot cases.

Case Disposition Methods

Table 4 reports the disposition method of pilot and non-pilot patent cases in general categories.⁶ Most cases terminated by dismissal, either through a voluntary dismissal or settlement. As a percentage, more non-pilot cases terminated through dismissal than pilot cases, a difference driven mainly by the higher percentage of voluntary dismissals among non-pilot cases. The biggest difference between pilot and non-pilot cases is in the “Other” category, which includes

⁵ This does not include patent cases randomly assigned to a designated judge and never transferred.

⁶ As part of routine reporting, courts indicate a disposition method for each case, using standardized codes. Definitions of those codes can be found in the Civil Statistical Reporting Guide March 30, 2010, found at <http://jnet.ao.dcn/civil-statistical-reporting-guide>.

statistical closings.⁷ These cases will likely eventually be reopened and given a final disposition, replacing the statistical closing. Future analyses will report the results of those terminations.

Table 4: Disposition Method, All Cases and Pilot Cases, as of August 2, 2014⁸

Disposition Method	All Pilot Case Terminations		All Non-Pilot Case Terminations		All Terminations	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Transferred	263	7%	103	7%	366	7%
Dismissed	2,632	67%	1,111	78%	3,743	70%
Judgment	229	6%	147	10%	376	7%
Other	808	21%	70	5%	878	16%

Case Duration

Table 5 shows preliminary information about the number of days from filing to termination for pilot and non-pilot cases. Both pilot and non-pilot cases terminated most often between 31 and 180 days after filing.

Table 5: Case Duration for Cases Terminated as of August 2, 2014⁹

Case Duration	Pilot Cases Only		Non-Pilot Cases Only	
	Frequency	Percent	Frequency	Percent
1 day	7	<1%	2	<1%
2–7 days	19	<1%	18	1%
8–30 days	203	5%	70	5%
31–180 days	1,705	43%	609	43%
181–365 days	1,240	32%	409	29%
More than 365 days	761	19%	325	23%
Number of Cases	3,935		1,433	

⁷ A statistical closing is a docket control method used by courts in which a pending case is administratively closed without final adjudication and without prejudice to the rights of the parties to apply to reopen the case.

⁸ Columns may sum to more than 100% as a result of rounding. Codes for disposition method are from the Civil Statistical Reporting Guide March 30, 2010, found at the following link: <http://jnet.ao.dcn/civil-statistical-reporting-guide>. Transferred cases include inter-district transfers and those marked for participation in multi-district 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 closings and cases stayed pending bankruptcy proceedings. There are five cases, two in the Eastern District of Texas and three in the Central District of California, which have a termination date but, as of August 2, 2014, had no disposition code. Both Eastern District of Texas cases and one of the Central District of California cases were pilot cases.

⁹ Columns may sum to more than 100% as a result of rounding.

Table 6 shows the average number of days from filing to termination, as well as the average duration of pending cases, for patent cases assigned to designated and non-designated judges. On average, the time from filing to termination is longer for patent cases before designated judges than those before non-designated judges, though pilot participation is not the only factor affecting case duration (see below). Conversely, case durations for pending cases are significantly shorter for patent cases before designated judges compared to those before non-designated judges. All duration measures include the days, if applicable, before an assigned case is transferred from a non-designated to a designated judge. The combined effect of shorter duration for pending cases before designated judges and shorter disposition time for terminated cases before non-designated judges means the difference between the two groups for duration of all patent cases is quite small (only 7 days).

Table 6: Average Case Duration in Days, Non-Designated and Designated Judges

Case Status	Average Case Duration	
	Non-Designated Judges	Designated Judges
Terminated Cases Only	223 days	237 days
Pending Cases Only	345 days	287 days
All Cases	260 days	253 days

We found that, across all patent cases in the pilot districts, a number of case events are associated with longer disposition times, including the presence of a transfer, a stay for review by the Patent and Trademark Office or International Trade Commission, a claim construction hearing, and the appointment of a special master or technical advisor.¹⁰ However, because events like claim construction hearings and third party appointments occur infrequently in these cases, it is impossible to draw conclusions about differences between pilot and non-pilot case duration at this point. A separate analysis that accounted for a number of case factors (i.e., case’s pilot status, number of transfers, and a measure of judicial patent experience) found that pilot cases are disposed of somewhat faster than non-pilot cases. While it is too soon to know if this pattern will hold over time, the number of factors affecting disposition time show the complexity of understanding the effect the PPP is having on case terminations. Work in this area will continue in the future.

Future Analyses and Reports

Future analysis will expand our ongoing preliminary reviews of serially filed cases, MDL proceedings, and trial and appeal activity (which are too premature for reporting at this time). The FJC plans to conduct a second survey of judges, and a survey of attorneys, to assess

¹⁰ It is important to keep in mind that the associations between case events and longer duration times do not imply that the presence of the event caused the case to remain open longer. For example, a special master or technical advisor may be appointed *because* a case has been pending a significant amount of time.

respondents' impressions and reactions once the pilot program has had an opportunity to stabilize and progress. 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 CACM Committee overseeing the project.

Incorporating information from the FJC project team, the CACM Committee 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, as well as 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 CACM Committee will actively monitor and address any issues that arise with the potential to affect the operation of the pilot program within the pilot courts.