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# *Reign Turns to Clouds—The Western District of Texas Fundamentally Changes Its Assignment Procedure for Patent Cases*

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On Monday, July 25, the Chief Judge for the Western District of Texas issued [an order](#) altering how patent cases are assigned in that District. The order implements a “random assignment” procedure that now prevents plaintiffs from selecting a specific Division within the District and, in effect, eliminates the ability of patent plaintiffs to choose Judge Alan Albright of the Waco Division as their presiding judge. Judge Albright is [the only district court judge](#) to sit in the Waco Division, and maintains—by far—the largest percentage of patent cases nationwide. Going forward, the order may have a significant impact on where patent plaintiffs choose to file their cases, particularly those directed to non-U.S. companies.

## **Background**

Almost immediately after joining the bench in September 2018, Judge Albright began [openly inviting](#) patentees to file suit in his court. And patentees listened. In 2021, 932 patent cases, or [23% of all patent cases](#), were filed before Judge Albright in the Waco Division. Compare this to the Waco Division receiving a total of [five patent cases combined](#) in the two years before Judge Albright’s tenure.

The increasing rate of patent cases before Judge Albright quickly caught the public’s attention, culminating with a November 2021 letter from U.S. Senators Thom Tillis and Patrick Leahy to Chief Justice Roberts of the U.S Supreme Court. The letter expressed concern over the “[extreme concentration](#)” of patent cases before Judge Albright, and asked that the Judicial Conference conduct a study of “actual and potential abuses” flowing from forum shopping. One month later, the Chief Justice issued his [2021 Year-End Report](#) where he directed the Judicial Conference to review “judicial assignment and venue for patent cases.”

## **Takeaways**

Monday’s order is meaningful for a few reasons.

- It is hard to disentangle the political scrutiny from Senators Tillis and Leahy and the subsequent judicial action taken. We cannot know to what extent (if any) the senators’ letter had on Chief Justice Roberts, and what role (if any) the Chief Justice played in bringing about Monday’s order. But the timing is notable.

- It is likely that Monday's order will cause the number of patent cases before Judge Albright, and likely within the entire Western District of Texas, to drop precipitously moving forward because patentees will [recalibrate their recent strategy](#). Specifically, it is likely that at least some plaintiffs will look elsewhere to bring suit, particularly in cases against non-U.S. companies.
- It is unclear whether the order will cause a new court to surface as the "go-to" patent litigation venue. Judge Albright's court was not the first where patent litigation coalesced; from 2007-2017, the Eastern District of Texas had gained its own reputation as a hotbed for patent litigation, which at one point oversaw approximately [37% of the nation's patent lawsuits](#). The order may ultimately swing the pendulum back in that direction.

### Where Will Patent Cases Go?

Venue selection for cases against U.S. companies will continue to be driven by the requirements of *TC Heartland*, which established that U.S. companies can be sued where they reside (*i.e.*, are incorporated) or have an established place of business. The new order, however, has the potential to more significantly impact venue selection for non-U.S. companies, which can be sued in any venue where there is personal jurisdiction.

Now that patentees cannot guarantee that Judge Albright will preside over their cases, or even that their cases will remain in Waco, patentees will likely look elsewhere for plaintiff-friendly venues. Patentees often look for venues with quick times-to-trial and established patent procedural rules, and favorable jury pools. The Eastern District of Texas checks all of these boxes, but time will tell if patentees who previously contemplated filing suit in Waco now target the Eastern District of Texas for future filings.

In addition to the Eastern District of Texas, the Eastern District of Virginia is another possible patentee-friendly venue, largely because of that district's [reputation](#) for a fast time-to-trial, and close proximity to the growing tech sector in and around Washington, D.C. Finally, it is likely we will see an uptick in ITC filings as well, although NPEs often cannot meet the domestic industry requirement to sue in that forum.

### Conclusion

Whatever the fallout, the Paul Hastings intellectual property practice group is ready to assist our clients in navigating the changing circumstances.



*If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:*

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