

EDTX, Patent Plaintiffs, and Law Firms

By Tom Adolph

We have begun an analysis of patent infringement cases filed in the Eastern District so that we can report any interesting trends or relationships. Our analysis will continue until we have completed a review of at least 150 cases which were filed beginning in January 2009 on forward.

While the accumulation and analysis of data is still on-going, the following preliminary (we stress *preliminary*) results may be of interest. These preliminary results concern 49 patent infringement cases filed in the Eastern District from January 2009 through the beginning of April 2009.

Of the 49 cases in our preliminary review, 23 were brought by non-practicing entities (NPEs). One plaintiff was an individual inventor, and 25 plaintiffs were practicing entities or competitors. Thus, 23 out of 49 cases (47%) were filed by NPEs.

While NPEs represent just under half of the patent cases filed in the Eastern District in early 2009, NPEs had a much bigger effect on the number of unrelated defendants who were summoned to the Eastern District. Those 23 NPEs sued 195 unrelated defendants¹ compared with the 67 unrelated defendants sued by the 26 practicing entities. Not surprisingly, the NPEs sue a substantially larger number of defendants than do practicing entities. The NPEs sued an average of 8.5 unrelated defendants, while the practicing entities sued an average of 2.6 unrelated defendants.

On average, the NPEs also tend to be represented by more law firms in a single case than do practicing entity plaintiffs. Ten plaintiffs used just one law firm. Eight of these plaintiffs were practicing entities, and only two NPEs relied on one law firm.

The law firms that represented more plaintiffs than other law firms also represented mostly NPEs in those cases.² When representing plaintiffs, certain law firms and attorneys represented only NPEs.³

We will continue our analysis and report in following issues.

¹ Counting defendants is somewhat subjective. The NPE numbers would be even higher if we counted each named defendant, but we have chosen to count affiliated companies (parents and subsidiaries) as one entity.

² Some of these firms sometimes represented defendants in cases filed in early 2009.

³ Some of these firms sometimes represented defendants in cases filed in early 2009, but when representing plaintiffs in this time period, these firms represented only NPEs.