

How Do Texas Courts Rank In Factors Affecting Patent Litigation?

By Tom Adolph

In a recent article in *AIPLA Quarterly Journal*,¹ Professor Mark Lemley provides an interesting and comprehensive analysis of the differences between the US district courts with respect to outcomes favoring patent owners or accused infringers, time to resolution, time to trial, and other statistics of interest in choosing venue. With respect to Texas district courts, the article provides some expected statistics, but also numerous surprises.

No surprise, the Eastern District is one of the busiest in the nation for patent cases.

From 2000 to 2010, as expected, the Eastern District of Texas is among the top districts in numbers of patent cases litigated. The Eastern District saw more than twice the number of patent cases of any Texas district, and more than five times the number of patent cases as the Western District.

District	Number of patent cases	Rank
EDTX	1024	4
NDTX	405	16
SDTX	343	21
WDTX	200	31

The Northern District is the most pro-patent owner district in the nation.

The Eastern District is pro-patent owner.

The Western District and the Southern District are close to average.

A surprising statistic shows that the Northern District, not the Eastern District, has the highest patent owner win rate for cases that are resolved by judgment. In fact, the Northern District has the highest patent owner win rate for any district in the country that litigated more than 25 patent cases during 2000 to 2010, and it is almost twice the rate in the Southern District. Professor Lemley reports that overall nationally, patent owners won 32.5% of all patent cases that resulted in judgment in this period.

Professor Lemley reports that the patent owner win rate in a district is a significant factor given that the patent owner win rate varies from a high of 55.1% in the Northern District of Texas to a low of 11.5% in the Northern District of Georgia. Compared with the national average and with the ranges identified by Professor Lemley, the Northern District and the Eastern District are decidedly pro-patent owner, while the Western District and the Southern District are close to the national average.

¹ Lemley, Mark, "Where to File Your Patent Case," *AIPLA Quarterly Journal*, Vol. 38, No. 4, Fall 2010, p.401.

District	Cases to Judgment	Patent Owner Win Rate	Rank by Patent Owner Win Rate
NDTX	49	55.1%	1
EDTX	129	40.3%	6
WDTX	27	33.3%	11
SDTX	58	29.3%	16

A patent case is twice as likely to go to trial in the Eastern District as in any other Texas district.

The Eastern District is second nationally in the percentage of patent cases that went to trial. Given the large number of defendants on average in Eastern District cases, this statistic is not surprising, but it is surprising that the rate in the Eastern District is twice the rate in any other Texas district and more than three times the rate in the Northern District. Professor Lemley reported an average of only 2.8% of patent cases going to trial and a range from a high of 11.8% in the District of Delaware to a low of 0.0% in the District of Columbia. Only the Northern District of Texas is below the average.

District	Percent of Cases Tried	Rank
EDTX	8.0%	2
WDTX	4.0%	8
SDTX	3.5%	10
NDTX	2.5%	17

Time to resolution is close to one year in each district, but surprisingly, the Eastern District is the slowest to resolution.

Surprisingly, the Eastern District is last among all Texas districts in the average time to resolution of a patent case and one of the slowest in the country. However, the differences seem insignificant among the Texas districts since the slowest (the Eastern District) and the fastest (the Northern District) differ by no more than about three months. Nationally, Professor Lemley reports a range from 0.56 years to resolution in the Western District of Wisconsin to 1.32 years to resolution in the Eastern District of Pennsylvania.

District	Time to Resolution (years)	Rank
NDTX	0.97	10
WDTX	0.98	11
SDTX	1.06	16
EDTX	1.24	28

Time to trial is just over 2 years in each Texas district, and the Eastern District is the fastest, just beating the Northern District average by about one month.

The Eastern District is the leader among Texas districts in the time to trial. Again, however, the differences here seem insignificant among the Texas districts. Nationally, Professor Lemley reports a range from 0.67 years to trial in the Western District of Wisconsin to 3.51 years to trial in the neighboring Eastern District of Wisconsin.

District	Time to Trial (years)	Rank
EDTX	2.13	7
NDTX	2.26	10
SDTX	2.38	11
WDTX	2.52	16

The fact that the Eastern District is the slowest in average time to resolution, but the fastest in average time to trial suggests that the Eastern District is less likely than the other Texas districts to resolve a motion for summary judgment early in the process.

Summary

In summary, the Professor Lemley's statistics on the Texas districts in patent cases appear in the following table. The numbers in parentheses in the table show the national rank among the 33 districts that litigated 25 or more patent cases from 2000 to 2010.

District	Number of cases	Patent Owner Win Rate	Percent of Cases Tried	Time to Resolution (years)	Time to Trial (years)
EDTX	1024 (4)	40.3% (6)	8.0% (2)	1.24 (28)	2.13 (7)
NDTX	405 (16)	55.1% (1)	2.5% (17)	0.97 (10)	2.26 (10)
SDTX	343 (21)	29.3% (16)	3.5% (10)	1.06 (16)	2.38 (11)
WDTX	200 (31)	33.3% (11)	4.0% (8)	0.98 (11)	2.52 (16)