



THINK FORWARD

Update from the Eastern District of Texas

November 05, 2013

The Eastern District of Texas conducted its 17th Annual Bench Bar Conference last week in Plano, TX. The Eastern District traditionally has used this forum to discuss potential changes to the local rules or introduce model orders, particularly in the patent area. More recently, the Federal Circuit Bar Association has actively participated at EDTX's bench bar, also using the conference to present ideas for improvement of the patent bar, not only in the Eastern District, but in federal courts throughout the country. This year's conference showcased progress being made in case management and promoted interesting discussions regarding the efficacy of patent laws and litigation. A few highlights are discussed below.

Chief Judge Randall R. Rader's Commentary on Patent Law and Litigation Abuse

The CAFC's Chief Judge Randall R. Rader addressed the current state of patent law. After commending the Eastern District of Texas for its leadership and commitment to the patent system, Chief Judge Rader directed his comments to the perceived loss of confidence in the patent law system among private business, Congress, and the public. He emphasized that the purpose of patent law is to promote the progress of science and useful arts and that it should not be used as an alternate means to govern competition or protect manufacturers. Chief Judge Rader discussed how patent law continually and consistently has provided the practical benefit of incentivizing innovation and converting ideas into useful technology. He also cautioned against blaming patent law for litigation problems that are outside the purposeful realm of patent law. In addressing litigation abuse, he suggested that the proper remedy was judicial correction—not legislative intervention. Among other suggestions, Chief Judge Rader advocated for the liberal use of summary judgment for meritless cases; use of fee reversal for exceptional cases; and the continued evaluation and reform of litigation expenses.

Chief Judge Rader's speech is available [here](#).

Model Order Focusing Patent Claims and Prior Art to Reduce Costs

The EDTX's Chief Judge Leonard Davis recently signed a General Order (GO-13-20) that adopts a Model Order Focusing Patent Claims and Prior Art to Reduce Costs. This Model Order uses the recent Federal Circuit Advisory Council's Model Order as a baseline. The EDTX Model Order focuses on limiting the number of asserted claims and prior art references, through a series of deadlines keyed off of case events. The commentary accompanying the EDTX Model Order discusses the rationale behind the staged deadlines. The deadlines are as follows:

The first exchange: Upon the completion of claim construction discovery, the plaintiff must identify preliminarily no more than 10 claims per asserted patent, but no more than 32 asserted claims in total. Within 14 days later, the defendant must identify preliminarily no more than 12 prior art references for each asserted patent, with a limit of 40 overall references.

The second exchange: No later than 28 days before the service of expert reports by the party with the

burden of proof,

plaintiff must finally elect no more than 5 claims per asserted patent, but no more than 16 asserted claims in total. In

response, and simultaneous with the exchange of expert reports, the defendant must finally elect no more than 6 prior art references for each asserted patent, with a limit of 20 overall references, and with each obviousness combination counting as a separate reference.

The EDTX Model Order is available [here](#).

If you have any questions, please contact your [Brinks attorney](#).

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