

## **Alert** | Intellectual Property Litigation

July 2022

### **Patent Cases Filed in Waco, Texas No Longer Automatically Assigned to Judge Alan Albright**

New patent cases filed in Waco, Texas are to be “randomly assigned” to 12 judges across the state, pursuant to a [July 25 order from the Western District of Texas](#) (the Order). In other words, patent cases filed in Waco are no longer necessarily destined for Judge Alan Albright.

Judge Albright, a former patent litigator, had openly invited patent practitioners to file cases in his court. His message was well-received – according to the latest Lex Machina report, close to 29% of the patent cases filed in the past three years were filed with Judge Albright in Waco.<sup>1</sup> Prior to Judge Albright taking the bench in September 2018, “only 10 patent litigation cases were filed in Waco during the entire history of that division.”<sup>2</sup> Among other things, Judge Albright is known for promoting accelerated trial schedules and staging discovery to streamline patent cases,<sup>3</sup> which some perceived as welcoming plaintiffs to file in Waco. Judge Albright also has denied bids for transfers, citing his accelerated trial schedules. *See, e.g., In re Adobe Inc.*, 823 F. App’x 929, 930 (Fed. Cir. 2020) (Judge Albright stating, “the court had no difficulty ‘setting a trial within that anticipated window’”).

In view of “the volume of new patent cases,” however, Judge Albright appears to have loosened his grip on patent cases. Pursuant to the Order, the following judges now share Judge Albright’s caseload: Judges

<sup>1</sup> As of July 26, 2022, data from Lex Machina shows 2,238 cases filed with Judge Albright from 2020 to 2022.

<sup>2</sup> *See* IPWatchdog.com, “The Newest Patent ‘Rocket-Docket’: Waco, Texas,” Feb. 18, 2019.

<sup>3</sup> *See, e.g., Judge Albright’s Standing Order Governing Proceedings (OGP) 4.1—Patent Cases* (April 14, 2022) at 3, Appendix A.

Orlando Garcia, Fred Biery, Xavier Rodriguez, Jason Pulliam, and David Ezra of the San Antonio division; Judge Alia Moses of the Del Rio division; Judges Kathleen Cardone and Frank Montalvo of the El Paso division; Judges Lee Yeakel and Robert Pitman of the Austin division; and Judge David Counts of the Midland/Odessa and Pecos divisions.

Thus, “until further order of the Court,” those heading to Waco on or after July 25 are no longer guaranteed Judge Albright’s fast-paced patent docket. The Order stresses “equitably distribut[ing]” patent cases among judges and explicitly requires random assignment. It remains to be seen if judges will hold onto those cases that are “randomly assigned” under the Order, which does not overturn the Court’s May 10, 2021 Amended Order Assigning the Business of the Court and thus leaves open the possibility that judges reassign cases “by mutual consent” pursuant to the earlier order.<sup>4</sup> It also remains to be seen how patent plaintiffs will react to the Order. Will Waco continue to be the nation’s “rocket docket” for patent cases, or will patent plaintiffs flock to another court? In any event, practitioners can expect patent cases to continue being filed in courts such as the District of Delaware, the Eastern District of Texas, the Central District of California, and the Northern District of California, each of which is a hotspot for patent litigation.

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<sup>4</sup> See Amended Order Assigning the Business of the Court (May 10, 2021) at Item XVIII(a) (permitting a judge to “reassign any case, matter or proceeding to another judge by mutual consent”); the Order at n.1 (“With the exception of new patent assignments addressed herein, the Court’s ‘Amended Order Assigning the Business of the Court’ filed on May 10, 2021, remains in full force and effect.”).