Small Claims Patent Court Comments

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Each of PTAB, Alice, and eBay, and especially all of them combined, disproportionally harm small entities over large corporations. Since patents are often the only asset that a small entity can collateralize to attract investment, especially at the earliest stages of development, early-stage funding of startups has migrated from the U S to Shenzhen, China This is now a national security crisis and must be resolved

1. The Focus Should be Small Entities, not Small Claims

Patent infringement litigation is among the most expensive and complicated litigation in the U.S. Teams of lawyers, mostly working for accused infringers, run costs into the millions of dollars. Often dozens of motions are filed that must be answered, and a single case can have several appeals to the Court of Appeals for the Federal Circuit (CAFC). Cases can take ten years to fully resolve. Due to the high costs, extremely long pendency, and the high chance that the patents will be invalidated in the PTAB or as an abstract idea, and because injunctions are no longer available for most small entities, very few law firms will take a case on a contingent fee basis. This means that small entities need millions of dollars to defend their rights. Small entities, whether the patent holder or the accused infringer, cannot shoulder the financial burden

Also, small entities often invent pioneering technologies. These inventions are knocked off by huge corporations that massively commercialize them and run the small entity out of business. This means that many small entities do not have small claims, but they still cannot afford the millions of dollars to defend their rights Therefore, a small claims court is not a practical solution, and any new process must focus on the size of the entity rather than the size of the claim.

The infringer lobby has repeatedly pushed a narrative the small entities are the target of patent lawsuits If this is indeed the case, then small entity defendants must also be considered in any solution.

2. It must be an Article III court, not an Administrative Tribunal

As we all have witnessed through the PTAB's excessively high invalidation rates and their focus on invalidating small entity patents on the request of huge multinational corporations, administrative tribunals do not work This is because the PTAB violates core Constitutional constructs of due process and separation of powers. An administrative tribunal cannot adjudicate patent litigation cases for the same reasons. That leaves Article III courts. However, as we have found in the CAFC, the concentration of adjudicative power in a few judges can lead to a dangerously unbalance court Over the years, a large number of anti patent judges have been put on the CAFC. These judges have repeatedly and unfairly decided cases against small entities and for huge multinational corporations. This could not happen if patent appeals were distributed across all appeal courts.

The CAFC has demonstrated that it will override sound judges on venue transferring cases to the headquarters of the infringer This practice will prohibitively raise costs for small entities because they will need to travel, take excessive time off work and hire local counsel in courtrooms often thousands of miles away. If a separate Article III court is created to hear small entity cases, those small entities not near that court will have the same disproportionate cost increase. Small entities must be able to file lawsuits in the courthouse nearest to them. The solution is to create small entity rules in the Federal Rules of Civil Procedure (FRCP) that Article III courts must follow upon request by either party if that party is a small entity. This allows a small entity to file suit in the federal district court most convenient to the small entity.

3. Small Entity Qualifications

To qualify as small entity, the individual or business' revenue must be no more than 500MM and 499 employees.

Upon request by either party, the small entity FRCP rules must be followed by the Article III court.

4. Motion Practice Limits

Excessive motion practice is common in patent cases. Largely this practice is intended to drive up costs for the party least able to afford the cost increase. Therefore, limiting the number of motions each party can file is important Limiting the number of motions forces each party to consider the importance of the motions so that it files only those motions that have a material effect on the adjudication of the case. Frivolous motions are avoided by this limit.

5. PTAB Reviews Optional

PTAB reviews must be optional for small entity patent holders If the PTAB becomes a fair solution, many will accept the PTAB to adjudicate validity. If it remains as it is now (corrupt) many will not accept a PTAB review.

6. Injunction is the Default Remedy

Injunctive relief drives settlements. As a case moves to its final trial date, each party learns the risks related to infringement and validity In nearly all cases, when the parties are anticipating an injunction, a settlement occurs before trial. This will increase the opportunity of settlement prior to trial thereby eliminating the costs of trial. Injunctive relief brings a market value for the infringement because damages would be negotiated in a free market by willing buyer and a willing seller. In cases where the practical life on the patents do not allow for injunctive relief or in cases where the patent holder does not request injunctive relief, disgorgement of all profits must be the remedy for past infringement and rules of thumb should be established for ongoing licensing fees.

Reestablishment of injunctive relief not only keeps with the Constitution's construction of a patent solely as an "exclusive Right", but it also eliminates all the costs incurred by litigating damages, which can match or exceed infringement litigation and are impossible for small entities to afford.

Thank you kindly,

Jay C

Individual inventor