From: **ACUS Information** nfo@acus.gov
Subject: FW: Sma c a ms court and a ternat ve therefore
Date: May 23, 2022 at 11:24 AM
To: [redacted]

From: Shalom Wertsberger [redacted]
Sent: Sunday, May 22, 2022 10:13 AM
To: ACUS Information <info@acus.gov>
Subject: Small claims court and alternative therefore

While the idea of small claims court for patents clearly improves on the present situation, I worry that it will be highly skewed in favor of large corporations which could pay small amounts for very valuable inventions.

I would like to propose a less expensive system which may replace small claims patent court, or operate as a parallel venue: Special patent arbitration.
I propose that the USPTO would certify such arbitrators, the arbitration would be optional, however the courts would be allowed to draw positive or negative inference based not only on the arbitration results, but also on willingness or refusal of each side to engage in such arbitration.
In more details: The USPTO would certify arbitrators in a manner similar to agents and attorneys. Arbitrators would have to show CLE specific to patent law currency. I propose that an arbitrator would be certified in a (broad) technical field, e.g. chemical, mechanical, electrical. More specific fields should remain a personal choice. Arbitrators are protected from law suits except for cases of corruption or gross negligence.

When a patent dispute arises, each side may offer arbitration. Such offer would not be considered as 'standing on the steps of the court". The sides may agree on an arbitrator, or each side may elect his own arbitrator and pay his fees. Two arbitrators may elect a third, who's fees will be limited by regulations and adjusted from time to time, to prevent a wealthy party from forcing an arbitrator outside the financial reach of a low funded party. Similar certain limits may be placed on the depth of discovery, and the like, to limit the likelihood of nuisance demands. If one side decides to terminate an arbitration prematurely the arbitrator(s) shall issue a report detailing that step, and finding to that point.

After an arbitration, which must end with a reasoned statement of assumed validity, infringement, etc. each side may approach the courts. However, by law, the courts will be allowed (at the court discretion) to give full weight to the arbitration report, to facts found therein, to non-participation of a party, etc. Furthermore, the courts would be allowed to assess treble court costs on litigants that the court will find act in bad faith. Reliance on favorable arbitration opinion is a valid defense against such fine. Refusal of arbitration is also a defense for the side agreeing to the arbitration against attorney costs. The courts will be allowed (at the court discretion) to rely on the arbitration all the way to a process similar to summary judgement.

I believe that the ability of a court to consider professional and unbiased opinion would limit nuisance laws suites, when each side knows the risks. The potential additional costs (again, and always, at the court discretion) would limit nuisance law suites and will clear

much of the courts patent dockets.
The total cost of the process would be minimal: the USPTO will need to develop criteria and examinations for arbitrators. This can easily fall within the realm of the Office of Enrollment and Discipline. This costs are minimal and will be covered by examination fees. Arbitrators will be paid by the parties (and I believe that a top cost should be set, to keep the process affordable). The courts will have a relatively inexpensive set of experts which may be recruited, even in cases which were not arbitrated, when the court needs an unbiased opinion. All is done at the cost of drafting fair legislation, and a minimal budget. The process is fully voluntary, and the courts maintain full freedoms they currently enjoy, except for the prohibition against asserting legal and attorney costs to a side that relies on favorable arbitration or on avoidance thereof.

Shalom Wertsberger -
[redacted]
++
[redacted]
