

Len Stark Will Be ‘Fair, Diligent and Wise’ Judge at Federal Circuit

Patrick Wingrove

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No one has had anything bad to say about Leonard Stark since he became President Joe Biden’s latest nominee to the Court of Appeals for the Federal Circuit last week.

That’s not surprising for two reasons. The first is that once he’s confirmed by the Senate – and there’s little doubt that he will be – Stark, 52, will become one of the judges responsible for deciding the fates of hundreds of appealed patent matters.

Even if someone did have a small grievance against the former chief judge for the District Court for the District of Delaware, who is set to replace circuit judge Kathleen O’Malley after she retires in March 2022, it’s unlikely they’d air it.

The second – and this is why criticisms of the man would probably be small – is that Stark is extremely well-respected as a judge, and especially when it comes to patent cases.

That was the case before he was nominated to the Federal Circuit. In a Managing IP poll of 54 in-house counsel last year, 28% of respondents said the District of Delaware was the best court for patent matters, and several of those said Stark was the main factor in their decisions.

And it’s the case now. In-house and private practice counsel, with both Democratic and Republican leanings, tell Managing IP that Stark would be a fair, diligent and wise circuit judge, pointing to the way he managed the District of Delaware for seven years and handled complex cases.

“He’s a great choice – he is a very smart and fair judge who is thorough and has had a lot of experience with patent cases,” says Stephanie Donahue, principal counsel for patent litigation at Sanofi in New Jersey.

“If he’s confirmed, and I suspect he will be without issue, it will be great for the Federal Circuit.”

Stark was nominated to the District of Delaware, where he served as chief judge between 2014 and 2021, by President Barack Obama on March 17, 2010.

Before that, Stark worked as a magistrate judge at the same court from 2007 to 2010. He graduated from the University of Delaware, University of Oxford and Yale Law School.

Fair and wise

Each of the five lawyers Managing IP spoke to for this article said Stark was one of the fairest judges they’d come across.

Blair Jacobs, principal at McKool Smith in Washington DC, says Stark is probably the most reasonable judge he has ever known.

“Stark has this incredible drive to always be fair and not let emotions or personal views enter into his decision making,” he says. “That is a quality that will be welcomed by the Federal Circuit and practitioners alike, because you can be certain with Stark that he will give you a fair shake.”

They also noted that Stark was extremely knowledgeable, especially when it came to pharma matters – which might not be surprising when Delaware has just four judges, including Stark, and receives more than half of abbreviated new drug application (ANDA) cases each year (141 matters in 2020).

“He has a ton of experience handling almost any type of patent case you can think of,” says the head of litigation at a large generics company. “In particular, he has handled a lot of ANDA cases and pharmaceutical cases – I can’t think of another judge who has had his experience.”

Donahue at Sanofi agrees, adding that Stark is particularly knowledgeable when it comes to issues of written description and enablement, set out under Section 112 under Title 35 of the US Code.

“I think his presence on the Federal Circuit will broaden the court’s dislike of certain types of broad functional claims – which would be a welcome development for those companies that have attacked those types of claims.”

Trial savvy

But sources say the best quality Stark is likely to bring to the Federal Circuit is trial court experience. Last week, O’Malley told Managing IP she was thrilled that a district court judge had been chosen to replace her – she was, after all, a judge at the District Court for the Northern District of Ohio between 1994 and 2010

The associate general counsel at an international pharma innovator says she and her team have really appreciated O’Malley because she’s been the only Federal Circuit judge with district court experience for the past 11 years, and that they’ll probably appreciate Stark too.

“There’s really not a lot of that experience at the Federal Circuit right now,” she says. “We’re happy another district court judge has been nominated.”

Fred Cottrell, director at Richards, Layton & Finger in Delaware, agrees, adding that Stark’s trial court experience should give him a rounded perspective.

“That experience is so important when it comes to looking at what happened below” he says. “Having done the job themselves, former trial judges can really look at the lower decision and understand whether something was an error or whether the jury made a mistake.”

Jacobs at McKool says this experience should help with mandamus petitions too, including those seeking transfers out of the District Court for the Western District of Texas.

He adds that appellate court has more actively granted mandamus petitions over the past two years, noting that the former Delaware chief judge should bring a new perspective to the court on that issue.

“I don’t know if it will change anything, but it is certainly good to have someone who has had mandamus petitions filed against him in the past now sitting at the Federal Circuit and knows how they disrupt cases.”

Work and leadership

Stark isn’t just a fair and clever man though, he’s also a hard worker and a good leader.

Sources say it’s not uncommon for the Delaware judge and his clerks to only get a couple hours sleep each night during long trials because they’re up reading documents and ensuring everything is running correctly.

And as the chief judge at the District of Delaware, Stark oversaw a lot of the changes made to adapt court proceedings to the COVID pandemic.

Judge Colm Connolly, the current chief judge at the District of Delaware, credits his predecessor with the court’s smooth return to trials after social distancing rules throughout the US limited courts’ ability to conduct jury trials for much of 2020 and 2021.

“Trials are going very well largely thanks to Judge Stark who really devoted an incredible amount of time to setting forth policies and educating folks on the court to enable us to have trials with juries – and at this point we are conducting jury trials every week.”

In his time as chief judge, Stark also introduced several initiatives, including so-called 101 days. During these days, the judge and some of his colleagues would try to resolve Section 101 motions as efficiently as possible to make a dent in the court’s patent eligibility docket.

Section 101 under Title 35 of the US Code sets out what is ineligible for patent protection in the US.

His chances

Of course, none of this will mean anything unless Stark is confirmed to his new position. Fortunately, most sources believe he is a shoo-in.

Cottrell at Richards, Layton & Finger says Stark will easily get bipartisan support, even though Stark has been nominated by the Democratic Party.

“I’ve not been thrilled with all the president’s selections because I’m a life-long Republican, but this is a nomination that will get immediate bipartisan and perhaps even unanimous support from the Senate,” he says.

“I would be very surprised if his nomination were not approved quickly and overwhelmingly.”

Stakeholders will be sorely disappointed if that doesn’t turnout to be true for whatever reason, because clearly Stark is an extremely well-liked and respected judge who should bring a lot to the appellate court next year.