



## What Judge Leonard Stark's Departure Means for the US's Second-Busiest Patent Court

IAM

Angela Morris

February 14, 2022

[\[Link\]](#)

Next month, Leonard Stark will take his place as a judge on the US Court of Appeals for the Federal Circuit. His extensive IP experience will be the appellate court's gain, but his move is also a loss for the second-busiest patent court in the nation.

IAM turned to [Docket Navigator](#) to discover what Stark's departure means for the US District Court for the District of Delaware and the litigants in 944 patent cases that are pending there. Stark had been assigned to the largest percentage of these and now his docket of 233 disputes must be reassigned.

Stark's departure may make the Delaware court more favourable to defendants, as Docket Navigator shows he has issued the highest rate of patent owner victories compared to his colleagues.

President Joe Biden [nominated Stark to the Federal Circuit](#) on 3 November 2021, and the Senate confirmed him to the position on 9 February by a 61-35 vote. He will replace Judge Kathleen O'Malley, who announced her retirement last autumn, but will remain in her position until 11 March.

Stark told IAM in a statement that he is grateful to the president and Senate for nominating and confirming him.

"I am honoured to be succeeding Judge O'Malley, the first former district judge to serve on the Federal Circuit. I have enjoyed being a district judge and look forward to continuing serving in the federal judiciary in a new and challenging role," Stark said.

Speaking exclusively to IAM, Delaware's Chief Judge Colm Connolly says that the district court will distribute Stark's cases to the other three district judges, four magistrate judges and visiting judges.

"As chief judge I have been working very closely with Judge Stark to make the necessary arrangements for a smooth transition of his cases to other judges," explains Connolly. "We will do whatever we have to do to make sure those cases are handled in as efficient and fair a manner as possible."

The Delaware bench last had vacancies in 2018, when both Connolly and Judge Maryellen Noreika were confirmed to their seats.

There will again be a vacancy on the court until the president nominates a new judge and the Senate confirms him or her to the bench. The nomination process typically begins with a judicial selection commission, made up of local attorneys chosen by the state's two senators, taking applications and vetting potential nominees. They present their finalists to the senators – in Delaware they are Chris Coons and Tom Carper – who make a recommendation to the president. Though the Senate has moved quickly to confirm judges in Biden's presidency, it still took more than three months for Stark to be confirmed to the Federal Circuit.

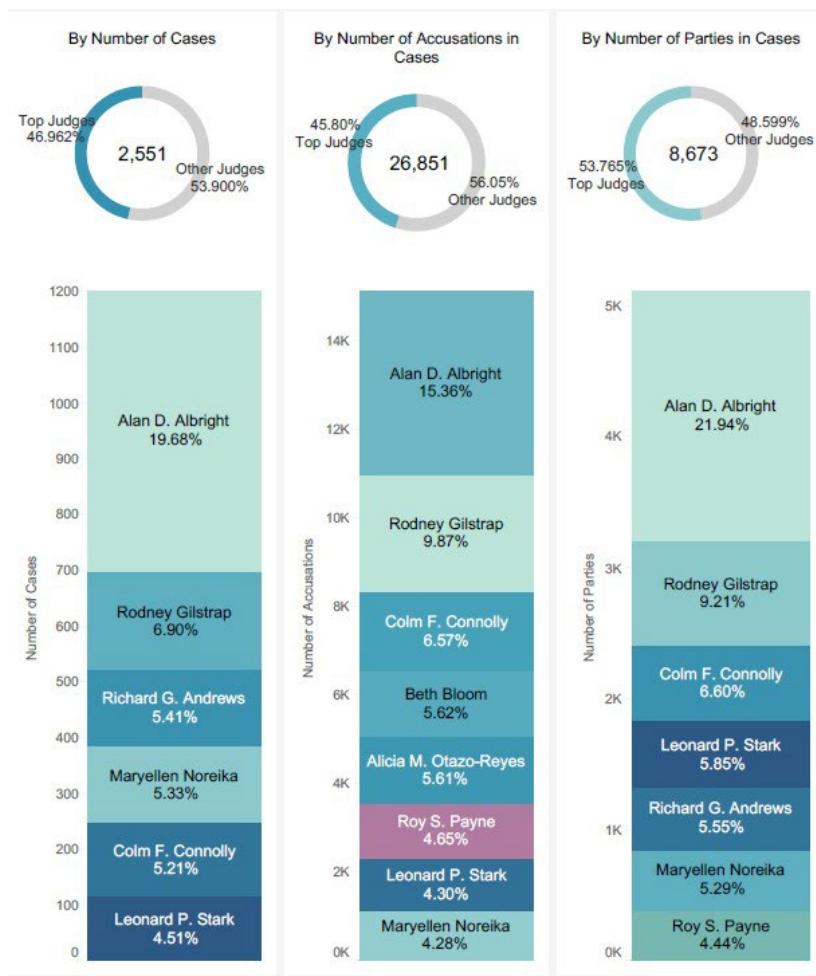
This means the other Delaware district judges, magistrates and visiting judges are looking at a heavier caseload at least into the summer, perhaps longer.

"We hope the president and Congress can work quickly to fill the vacancy, because we are one of the busiest courts in the country," says Connolly.

Docket Navigator case data backs up his claim.

Delaware came in as the second busiest for patent cases in 2021, handling 22% of the nation's patent docket. All four of Delaware's district judges rank on a list of the nation's busiest for patent cases. Only Judges Alan Albright in Western Texas and Rodney Gilstrap in Eastern Texas received more new cases.

### Top patent judges in 2021



Source: Docket Navigator

Docket Navigator statistics show that with 27% of the District of Delaware's 944 active patent cases, Stark had the greatest workload in this area. Connolly is a close second at 26%. Judges Richard Andrews handles 24% and Noreika handles 23%.

### Delaware district judge case metrics

Judge	Took the bench	Active cases	Jury trials	Bench trials

Leonard Stark	2010	233	31	30
Richard Andrews	2011	213	29	31
Colm Connolly	2018	223	4	4
Maryellen Noreika	2018	204	5	1

Source: Docket Navigator

Delaware's four US magistrate judges also handle proceedings within the same cases as the district judges. Judge Christopher Burke currently has 102 active patent cases; Jennifer Hall has 71; Sherry Fallon has 42; and Mary Pat Thyng has 15. Also, four visiting judges are overseeing 47 active patent suits, according to Docket Navigator.

Docket Navigator data show that Stark case outcomes are positive for patent owners more than those handled by his three former colleagues. Stark has often declined to stay a case pending an *inter partes* review, whereas other Delaware judges routinely granted stays in 2021.

But there is not much difference in how the four judges have handled early-filed dispositive motions, and there is no clear pattern in their handling of motions for summary judgment.

#### Case and motion outcomes by judge

Note: Use the red scroll-bar at the bottom to view the whole chart.

Judge	Patent challenger wins	Patentee + mixed result wins	*Motion to dismiss	Motion to stay pending IPR	Patentee motion for summary judgement	Patent challenger motion for summary judgement
Leonard Stark	75% of 223 cases	25% of 223 cases	Denied 57% of 44 motions; Granted or partially granted 41%	Denied 75% of 4 motions; granted 25%	*Denied 72% of 14 motions; granted or partially granted 21%	*Denied 76% of 26 motions; granted or partially granted 24%
Richard Andrews	79% of 197 cases	21% of 197 cases	Denied 61% of 39 motions; granted or partially granted 36%	Denied 25% of 4 motions; granted 75%	Denied 25% of 16 motions; Granted or partially granted 75%	Denied 70% of 34 motions; granted or partially granted 30%
Colm Connolly	79% of 106 cases	21% of 106 cases	Denied 62% of 34 motions; granted or partially granted 38%	Denied 17% of 6 motions; granted 66%	Denied 100% of 6 motions	Denied 67% of 18 motions; granted 33%
Maryellen Noreika	94% of 49 cases	6% of 49 cases	Denied 71% of 49 motions; granted or partially granted 29%	Denied 33% of 3 motions; granted 67%	Denied 43% of 7 motions; partially granted 43%	Denied 80% of 15 motions; partially granted 20%

*Source: Docket Navigator. Note: case outcomes cover the judge's entire term on the bench. The motion to dismiss column also includes motions for judgment on the pleading and motions to strike pleadings. Motion outcomes are for 2021, except for Stark's patentee and patent challenger motion for summary judgment numbers, which use 2020 numbers because he handled no or few MSJs in 2021*

Blair Jacobs, partner in McKool Smith in Washington DC, says the need to replace Stark quickly is urgent.

Though the [skyrocketing number of cases filed in the Western District of Texas](#) has pulled some litigation away from Delaware, there are signs that the trend could reverse. [Prominent senators have expressed concern about venue shopping](#) and US Supreme Court Chief Justice John Roberts has pledged to investigate the situation.

"If cases stop being filed at the same rate in the Western District of Texas and Eastern District of Texas, then the District of Delaware is a primary landing spot. It is foreseeable the patent caseload will increase there," Jacobs explains. "I think the Biden administration will be very active in filling this position and there are a number of very qualified candidates – because you have experienced magistrates there."