

Stark Keeps One Foot in Delaware After Federal Circuit Promotion

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Judge Leonard P. Stark isn't done with Delaware just yet.

The newest judge on the US Court of Appeals for the Federal Circuit has been straddling two courts—the appeals court and his old stomping ground in the US District Court for the District of Delaware—since he was elevated in March. Stark will likely serve on his first Federal Circuit panel in June.

In the meantime, Stark is wrapping up some of his Delaware cases, helping one of the busiest patent venues prevent its docket from bursting and ensuring practitioners can argue in front of a judge experienced with patent matters, said McKool Smith principal [Blair M. Jacobs](#).

“It seems like a natural marriage at some level for him to volunteer to sit by designation on some of the cases that are pending in the District of Delaware,” Jacobs said. “It also helps significantly in alleviating the transitional period that they would face not having a judge for about a year until the new judge is confirmed.”

Stark is now considered a visiting judge in Delaware, part of a system the district has previously used to manage the increased workload due to vacancies, according to the Delaware clerk's office. The clerk's office said it doesn't have an estimate of how many cases Stark still has on his plate.

In March, the court issued an [order](#) saying that most of Stark's cases will be reassigned to other judges.

Attorneys said Stark has held onto cases that were either on the eve of trials or would otherwise cause an unnecessary disruption if a new judge took over.

Stark recently [ordered](#) Wi-Lan Inc. to pay Sharp Electronics Corp. and Vizio Inc. a combined \$4.17 million in attorney's fees and [awarded](#) Emerson Radio Corp. \$6.5 million after its trademarks were infringed.

“From our standpoint, it's welcomed having a judge who's so familiar with patent law, but also has the second level of familiarity with the district court and procedures,” said [Bindu A. Palapura](#), a partner at Potter Anderson & Corroon LLP in Wilmington, Del. “I have a few cases where Judge Stark has maintained the case and continues on, and, essentially, the case is yet to skip a beat just because we continued as we were prior to his elevation.”

Docket Overload

Stark was one of four permanent Delaware judges on a court that saw the second most patent cases [filed](#) in 2021, with 729 filed, behind the Western District of Texas's 992, according to Bloomberg Law data.

The district last had two vacancies from 2017 to 2018, missing two spots for around a year. Stark was chief judge at the time, when Delaware needed to call in visiting judges from the Eastern District of Pennsylvania and elsewhere to help as the docket was “bludgeoned,” Jacobs said. That experience is likely guiding Stark in wanting to “quell any potential issues” surrounding his vacancy, Jacobs added.

Federal Circuit judges, including Timothy B. Dyk, William C. Bryson, Evan Wallach, and Todd M. Hughes, often [volunteer](#) to hear Delaware cases, alleviating some of the workload.

“They issue some very, very helpful opinions because they're thinking of issues from a Federal Circuit panel's perspective, which is sometimes slightly different from an individual district court's opinion,” Jacobs said. “The Federal Circuit frames the law in a broader sense whereas district court judges are looking at the facts in front of them.”

The district still has a backlog of cases because of the pandemic, and Stark's absence could have further disrupted some suits if a new judge needed to take over, said [Christopher Ricciuti](#), a partner at Oblon, McClelland, Maier & Neustadt LLP.

"If Judge Stark has been dealing with pretrial issues and he understands the case and the legal issues and factual issues that the court is going to have to decide throughout trial," Ricciuti said, "it certainly is going to throw a wrench in the spoke of a wheel there if a new judge is going to have to sit in that trial."

Transition Time

Timing has been key for allowing Stark to tie up loose ends, Jacobs said. In other circumstances, such as a judge retiring or going into private practice, it wouldn't be possible to do what Stark is doing.

Quirks of the Federal Circuit's schedule and case assignments have freed up Stark's docket for the time being, giving him room for Delaware. President Joe Biden picked Fox Rothschild LLP partner [Gregory Williams](#) to take over for Stark, though his confirmation is still pending at the US Senate.

The panel distribution and rotation at the Federal Circuit means that not every judge will participate in each month's sitting. Stark was first eligible in May, but didn't serve on any panels. Attorneys expect his first argument session will be in June.

"Given his high propensity for work, he's a little bit underutilized probably from his perspective," Jacobs said. "He's really helping out to make sure that this transition period is as smooth as it possibly can be. Probably by the fall, he'll be pretty much full up with his docket at the Federal Circuit."

Stark may join his peers by continuing to sit by designation.

"It's tough to read the tea leaves there," Ricciuti said. "I think he wants to help the court in the immediate future and he wants to get his footing as an appellate judge. He may want to join his colleagues in being a Federal Circuit judge who sits by designation."