

Search for new patent hub begins after court ends Waco's hold on U.S. cases

By Blake Brittain

3 minute read



U.S. District Judge Alan Albright speaks during his investiture ceremony in Waco, Texas, on May 1, 2019. U.S. District Court for the Western District of Texas/Handout via REUTERS

Judge Alan Albright in Waco was hearing nearly a quarter of all U.S. patent cases
Dispersing docket could bring patent spotlight to other courts in Texas, Virginia

(Reuters) - A recent move to break up the docket of America's busiest patent judge has lawyers looking out for the next potential patent litigation hot spot.

U.S. District Judge Alan Albright's policies and proximity to Austin's booming tech scene helped make his Waco, Texas, court the top destination for plaintiffs bringing infringement cases. But this week the Western District of Texas ordered new Waco patent cases to be distributed among the district's 12 judges.

Nearly a quarter of all U.S. patent cases are currently pending before Albright, who has been criticized by some for policies said to be overly friendly to patent owners, including so-called "patent trolls."

Albright's chambers did not respond to requests for comment on the order. He told Reuters last year that did not give special treatment to patent cases.

Only Delaware approached West Texas' popularity for patent cases last year, according to Westlaw data. The Eastern District of Texas, where Judge Rodney Gilstrap had the nation's most active patent docket before Albright, had fewer than half as many new cases as West Texas.

Lawsuits that would have been brought in Waco are now more likely to be brought in Delaware, East Texas and other patent-heavy courts in places like California, attorneys said. But some also cautioned that Albright's rise after his appointment in 2018 was unexpected, and the next patent hot spot could also be a surprise.

"Most did not see the Waco phenomenon coming," said Alex Hadjis, a partner with Jenner & Block who has litigated cases there.

Lawsuits that would have been brought in Waco are now more likely to be brought in Delaware, East Texas and other patent-heavy courts in places like California, attorneys said. But some also cautioned that Albright's rise after his appointment in 2018 was unexpected, and the next patent hot spot could also be a surprise.

"Most did not see the Waco phenomenon coming," said Alex Hadjis, a partner with Jenner & Block who has litigated cases there.

Blair Jacobs, a principal at McKool Smith, said a new hot jurisdiction could take a year or so to reveal itself.

"Albright's ascendancy did not occur in a month or two months, it took a while," said Jacobs, who has also practiced before the Waco judge.

He said patent owners may be more inclined to sue in Austin, also in the Western District of Texas, where Judges Lee Yeakel and Robert Pitman have some experience handling patent cases.

"Texas will still remain popular, but without Albright, it's not a silver bullet any longer," said Scott McKeown, a partner at Ropes & Gray.

The Eastern District of Virginia is another jurisdiction that could see more patent litigation. Like Albright's court, the district is known for handling cases quickly, which generally favors plaintiffs.

The area also has a growing tech industry, and a judge there issued an eye-catching \$2.75 billion ruling for plaintiff Centripetal Networks in a 2020 patent dispute with Cisco, McKeown noted. (The decision was later overturned.)

Some patent lawyers in Waco, meanwhile, say they're not going anywhere.

"The general sentiment right now" from law firm managing partners and others in Waco is that "they're staying," said David G. Henry, a Waco-based patent litigation partner at Munck Wilson Mandala who represents both patent plaintiffs and defendants.

"We just don't think patent litigation here is going to dry up," Henry said, noting that Waco also has a growing economy. And there are hundreds of patent lawsuits still pending on Albright's docket.

Those cases "aren't going away overnight," Henry said.