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The Future of Patent Infringement Litigation in the EDVA

Virginia Rocket Docket Blog

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The Eastern District of Virginia has long been one of the country's most active venues for patent litigation, primarily because of its speedy docket. A few years ago, Robert Angle and I wrote an article, found here, that takes a deep dive into why patent litigants file suit in the EDVA and how parties can navigate the many pitfalls and traps created by the rapid EDVA civil case schedule and the EDVA-specific patent case management practices.

In the time since our article was published, there have been several new district judges appointed in the EDVA, bringing new perspective and approaches to management of patent cases. The practices and procedures addressed in the article, in areas such as pretrial scheduling, discovery, motions practice and pretrial preparation and trial, remain largely the same.

Each of the new judges has brought their own individual refinements to case management procedures such as pretrial orders, but there has always been significant variability in how individual judges and the different EDVA divisions manage patent litigation. The EDVA's long-standing practice of randomly assigning patent cases among all the district judges in the court's three divisions has always required litigants to familiarize themselves with the practices of individual judges.

Significantly, the great majority of the new EDVA district judges served as magistrate judges in the EDVA and so have experience in the pretrial issues that routinely arise in patent litigation. As magistrate judges, these new judges also often handled settlement conferences in patent disputes and so are already versed in unique patent law topics such as claim construction, infringement and invalidity. Patent infringement in the EDVA will continue to evolve, as it has over the last decade or more. As the court sees more patent cases, the court's procedures for handling patent-specific issues, from claim construction to subject matter eligibility to experts, can be expected to become more uniform across the district. While the EDVA does not have any patent local rules or uniform patent procedures, the judges tend to use approaches already adopted by their fellow judges. As the new district judges forge their own path, they can be expected to look for new ways to streamline and improve upon current procedures.

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