

THE PATENT LITIGATION PREDICAMENT IN THE UNITED STATES

*Judge James F. Holderman**
*in collaboration with Halley Guren***

Something has to change when your boss, upon reviewing your work, continues to tell you year after year that you are doing your job incorrectly about one-third to one-half of the time, and your customers continue to tell you their costs are too high. That is the predicament in which we United States district court judges have collectively found ourselves during the past decade when presiding over patent litigation. Five years ago, I gave a keynote address during the 2002 International Intellectual Property Conference in Chicago in which I expressed my concerns on this topic as well as my views on trial-level specialization in patent cases, as previously reported in this publication.¹

As an updated expression of my continuing concerns about the predicament, this article will describe its root bases, discuss contributing factors, and present possible solutions, as well as potential remedies, that are either underway or have been proposed to help resolve the patent litigation predicament in the United States.

The United States Court of Appeals for the Federal Circuit, headquartered in Washington, D.C., is the only Article III appellate court which has its jurisdiction defined by subject matter and not geography.² It is the appellate court that reviews all appeals involving claims of patent infringement from all of the United States district courts across the country.³

* Chief Judge, United States District Court, Northern District of Illinois (2006 to present; District Judge, 1985 to present); J.D., University of Illinois College of Law 1971; B.S., University of Illinois 1968.

** Senior Law Clerk to Chief Judge Holderman (2005-2007); J.D., Harvard Law School, 2003; B.A., Duke University, 1999. The authors gratefully acknowledge and thank Amy Dickerson, Executive Law Clerk to Chief Judge Holderman, and Christopher Stine, Law Clerk Extern to Chief Judge Holderman, for their invaluable assistance on this article.

1. James F. Holderman, *Judicial Patent Specialization: A View from the Trial Bench*, 2002 U. ILL. J.L. TECH. & POL'Y 425 (2002).

2. H.R. REP. NO. 96-1307, pt. 1, at 3 (1980), available at http://ipmall.info/hosted_resources/lipa/patents/House_and_Senate.pdf.

3. 28 U.S.C. § 1295 (2000). In addition to patent appeals from the United States district courts, the United States Court of Appeals for the Federal Circuit hears appeals from the United States Board of Contract Appeals, the United States Court of International Trade, the United States Court of Federal Claims, the United States Court of Appeals for Veterans Claims, the Department of Veteran Affairs, the International Trade Commission, the Merit Systems Protection Board, the United States Office of Compliance of the United States Congress, the United States Patent and Trademark Office ("PTO"), as well as from decisions of the Secretary of Agriculture, the Secretary of Commerce, and the Office of Personnel Management. *Id.*