



MEETING RECAPITULATION

THE PAULINE NEWMAN IP AMERICAN INN OF COURT

WEDNESDAY,
APRIL 20, 2016

The last substantive Inn meeting of the 2015-2016 year was a joint meeting with the Giles S. Rich Inn of Court, held in the courthouse of the Alexandria Division of the U.S. District Court for the Eastern District of Virginia. A reception with food and non-alcoholic drinks began at 6:00 p.m. (Alcohol is not allowed in the courthouse.)

The subject of the program was the Patent Pilot Program, which was passed by Congress early in 2011 a few months before the American Invents Act. It began shortly after 7:00 p.m.

The Patent Pilot Program (“PPP”) is designed to encourage designated federal district court judges to develop expertise in patent litigation. Reasons for the PPP include that most district judges rarely hear patent cases, and the high rate of reversal of district judges in patent cases by the Federal Circuit. Thirteen district courts are participating in the program. In each court, several judges have volunteered to be designated. Patent cases are initially assigned at random to any judge (whether PPP designated or not) on the district court, in the same manner as other cases. If the judge assigned is not a designated judge, he may then keep the case if he chooses, or ask to have it reassigned to one of the designated judges. For a district court to have been chosen to participate in the PPP, it must either have been one of the fifteen district courts with the greatest volume of patent litigation, or have adopted patent local rules. (Plant Variety Protection cases are also included in the PPP.) Some district courts with a substantial volume of patent litigation (including the Eastern District of Virginia) have chosen to not participate in the PPP. In some districts, magistrates have been PPP designated. The PPP will sunset after ten years, if Congress does not renew it.





The three panelists were District Judge Marvin J. Garbis of the District of Maryland (a PPP designated judge), District Judge Mark R. Honark of the Western District of Pennsylvania (also a PPP designated judge), and District Judge James L. Robart of the Western District of Washington (which does not participate in the PPP).

Judge Robart said that one reason for participating in the PPP was that the economy of the Western District of Pennsylvania has become very knowledge-based. Judge Robart pointed out that the District of Maryland is the only district in the Fourth Circuit participating in the PPP. Judges with an engineering background are likely to be designated under the PPP. Judges in many districts are reluctant to participate in the PPP because they resist with “religious fervor” any hint of specialization. Judge Robart said that the

Western District of Washington regularly has patent cases, but has decided not to participate (by a 9 to 8 vote of the judges) because of a strong belief by some judges in the random assignment of all cases (even though they once had a single judge who was given all the district’s admiralty cases).

The bill creating the PPP originally included an appropriation for training and technical assistance, but this was stripped out of the act passed by Congress. Judges who do not like patent cases are not likely to do as good a job as judges who volunteer to be designated. Judges who take senior status have not asked to be PPP designated. Non-designated judges who transfer patent cases to designated

judges may be required to take other cases. Cases are “weighted” to balance the load between judges, but the weights may not be realistic. District judges tend to handle patent cases by themselves (with perhaps the assistance of special masters) without bringing in magistrates. Periodic reports on the PPP are required from the Administrative Office of the U.S. Courts.



Judge Newman closed the meeting by remarking that the motivation for creating the PPP was similar to the motivation for creating the Federal Circuit. Patents are a very specialized area of the law for which some degree of specialization on the part of judges would be beneficial. In no other area of the law is there a similar program for designating particular district judges to hear cases in that

area. An act of Congress was required to allay constitutional concerns that would arise if the courts decided to adopt a similar program by themselves. But it “warms my heart” that some judges who are not PPP designated chose to voluntarily keep patent cases, and that some district courts have chosen to not participate in the PPP because they want to “share the fun” of patent cases among all the judges of their district.

The program ended shortly after 8:00 p.m.



Respectfully submitted,

Stephen Christopher Swift
Secretary