

## Patent Lawyers Ask Appeals Panel to Move Cases From Texas Court

By Susan Decker

March 27 (Bloomberg) -- The nation's largest group of patent lawyers asked a U.S. appeals court to make it easier to transfer patent-infringement lawsuits from eastern Texas, the busiest district for such litigation.

The 5th U.S. Circuit Court of Appeals in New Orleans, which handles cases heard in federal courts in Louisiana, Texas and Mississippi, is considering a standard that would require a greater connection between the parties of a lawsuit and where complaints are filed.

The **American Intellectual Property Law Association** yesterday filed papers urging a change, saying patent owners misuse the Texas court, thinking they can get a financial windfall by filing suits there. The number of patent suits filed in the court jumped from 23 filed in 2000 to 368 last year, more even than districts in California where many technology companies are based, the group said.

There is a "widespread belief" that eastern Texas courts provide a "substantial litigation advantage to a patent holder -- but without much risk that such cases will be transferred even if a more logical venue exists," the group, which has 17,000 members, said in the filing.

Patent-licensing companies, often criticized for their litigation tactics by technology companies such as **Microsoft Corp.** and **Intel Corp.**, choose where they sue. The patent owners argue the only connection to a court that is needed is, for example, that the product involved in the dispute is sold at a local Wal-Mart store or can be bought over the Internet from a computer in the district.

### Product Liability

Eastern Texas also is considered friendly to people filing product-liability cases. The case before the appeals court involves a suit against **Volkswagen AG** over a traffic accident.

U.S. District Judge **T. John Ward** in Marshall, Texas, rejected Volkswagen's argument that the case belonged in Dallas, near where the accident occurred. He said it could stay in Marshall, 150 miles from Dallas, because that's where the people suing Volkswagen wanted the case heard.

A three-judge panel of the 5th Circuit in February 2007 split 2-1 in affirming Ward's ruling, while a different panel in November, reconsidering the case, voted 3-0 to overturn the judge and ordered the case heard in Dallas. The

entire circuit has agreed to consider the issue. A hearing is tentatively scheduled for the week of May 19.

The Texas district has ``developed some notoriety as a plaintiff-friendly venue," said patent lawyer Brad Wright of Banner & Witcoff in Washington, who teaches law at George Mason University. He said the 5th Circuit might have decided to review the case because of the publicity.

#### Transfer Standards

The **U.S. Court of Appeals for the Federal Circuit** in Washington, which handles patent appeals, defers to the regional circuits on the standards for transferring cases. In February, the Federal Circuit ruled that, when there are competing lawsuits, the cases should be heard in whichever court is most convenient to the parties and witnesses. That's the standard patent lawyers want for 5th Circuit cases as well.

Congress is considering legislation that would require a specific connection to a court district before a suit can be filed. The provision, prompted by the number of suits in eastern Texas, is one of several changes to U.S. patent law approved by the House last year. The Senate is scheduled to begin debating those changes next month.

The case is In Re. Volkswagen AG, 07-40058, 5th U.S. Circuit Court of Appeals (Washington).

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