

## Judge Albright Now Oversees 20% Of New US Patent Cases

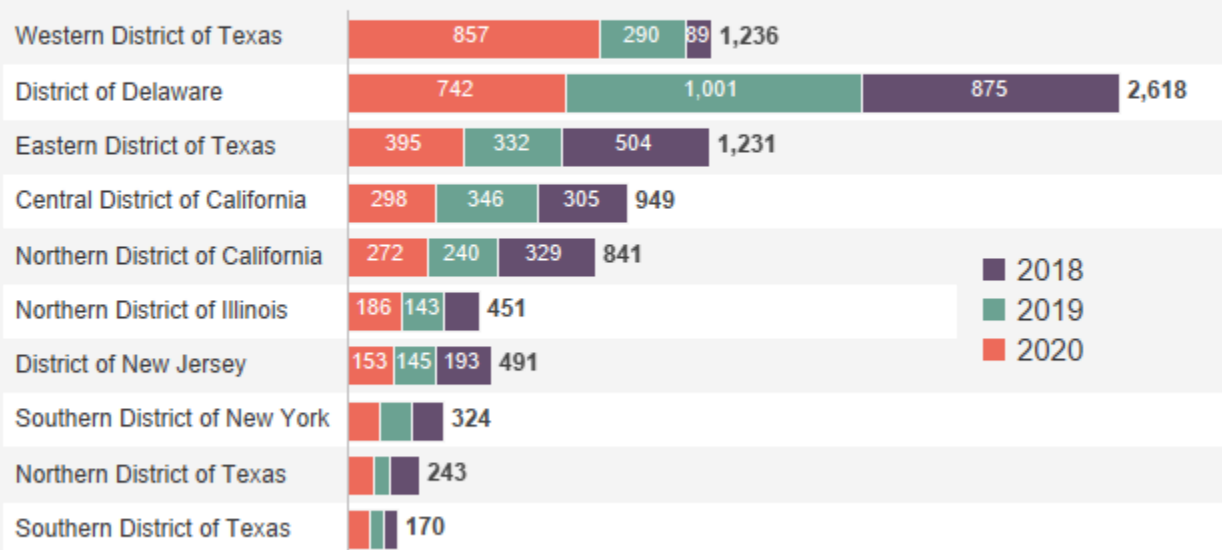
By Dani Kass

*Law360 (March 10, 2021, 11:05 PM EST)* -- U.S. District Judge Alan Albright's passion for patent law and his fast-paced docket have officially made his Western District of Texas courtroom the busiest hub for patent litigation in the country, featuring nearly a fifth of the country's new patent cases in 2020.

According to a new report from Lex Machina, the Western District of Texas saw 857 patent cases filed last year, 793 of which went to Judge Albright. The judge's caseload represents 19.5% of the country's new patent cases for the year.

### The Busiest Courts for Patent Cases

The Western District of Texas took over as the No. 1 patent litigation court in 2020, with more than 20% of the country's newly filed cases.

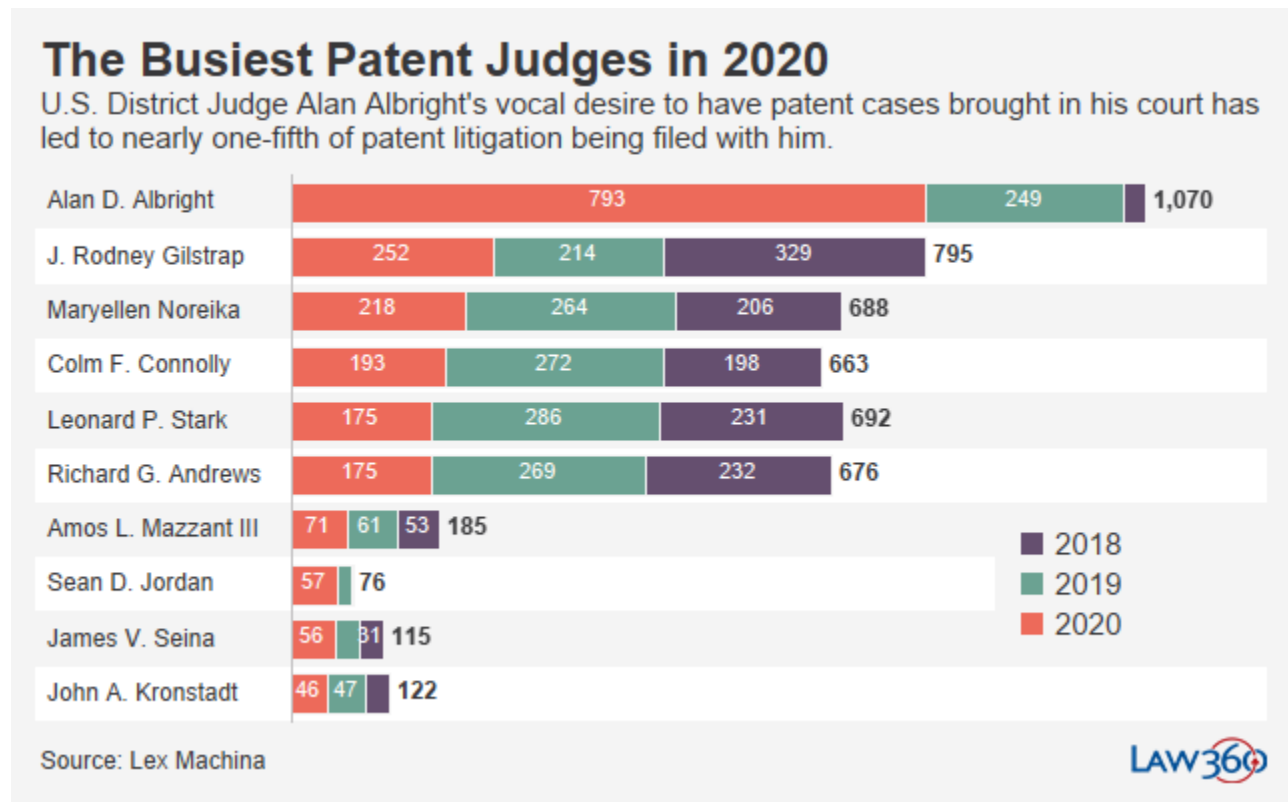


Source: Lex Machina

Following the Western District of Texas is Delaware with 742 cases, the Eastern District of Texas with 395, the Central District of California with 298 and the Northern District of California with 272.

For judges, the Eastern District of Texas' Chief District Judge Rodney Gilstrap had 252 new cases, putting him in second place. Delaware's judges hold the next few spots: District Judge Maryellen Noreika with 218, District Judge Colm F. Connolly with 193, and Chief District Judge Leonard Stark and District Judge Richard G. Andrews tied with 175 each.

Then-President Donald Trump appointed Judge Albright to the bench in 2018, and during his first year, he took on 28 patent cases. By 2019, he had 249 patent cases filed with him, and then he saw his caseload skyrocket to 793 last year, according to Lex Machina.



"He's very knowledgeable on patent law," said Naman Howell Smith & Lee PLLC member Andy Powell of Judge Albright. "He really knows the case law very well, and he has an absolute passion for it."

Powell, who is based in Judge Albright's Waco division and has been practicing in the Western District for nearly 20 years, said that the judge's predecessor, Judge Walter Scott Smith Jr., barely touched patents: Over 32 years, there were only 45 patent cases before Judge Smith.

"The number of patent cases that have been filed here has just gone up astronomically," Powell said.

The influx is by Judge Albright's design. The former Bracewell LLP patent litigator has made clear that he welcomes patent litigation before his court and wants to get decisions out on the fastest timeline possible.

His quick docket, where he refuses to issue stays for Patent Trial and Appeal Board fights, has led to PTAB challenges being warded off by patent owners, only adding to the popularity of his court. Additionally, he's kept a hold on cases whenever possible, fighting off motions to transfer with varying degrees of success.

But Winston & Strawn LLP partner Danielle Williams said that fast growth in Texas isn't necessarily out of the ordinary.

"When Judge Gilstrap took the bench, he saw a similar increase in his docket," she said. "It wasn't [249] to 793, but it was something like 500 cases in 2012 to over 1,600 cases in 2015. [U.S. District Judge Robert W. Schroeder III] saw that as well when he took the bench."

In October, the first patent jury trial out of Judge Albright's court in Waco wrapped with a defense verdict. This month, the second jury trial closed with a massive \$2.1 billion verdict for the plaintiff.

"It is interesting to see the two data points, and I guess maybe we have the two extremes laid out on our line. Then we'll see what happens in between," Williams said. "Any time you have a complete defense verdict or a nearly complete plaintiff's verdict, it's an opportunity to reflect on: Was it the case? Was it the facts? Or is there something about the jurisdiction? Right now, I don't think we're close to having any definitive information about the jurisdiction."

The judge had addressed perceptions of his court in December, saying at a conference that he wants to make sure he's being seen as unbiased.

"I never wanted to be perceived that the reason people would file patent cases in my court was because someone believed that there was an advantage to being a plaintiff in my court," he said, adding later that his goal was "to make sure that lawyers felt, and could assure their clients, that when they were in front of me, it would be in front of someone who was as fair and unbiased as possible, but who understood why they were arguing these things."

Judge Albright further explained that he's not looking to hold a monopoly on patent cases and that other judges are free to copy his practices to lure patent cases to their courts.

One of those practices is to have an early claim construction or Markman hearing, which McKool Smith principal Alan L. Whitehurst said can help set the tone of a case early.

"He gets the merits of the case out front, where for some patent owners, it's a sobering reality check. They can get to Markman and realize their case isn't as strong as they thought," he said. "For other defendants, it's a wake-up call, and they may have some liability here. But in either case, it's getting the merits out in front before getting into the costly discovery."

Whitehurst added that it'll be interesting to see the first case to go before Judge Albright asking him to set fair, reasonable and nondiscriminatory licensing terms for standard-essential patents — and if he's willing to embrace doing so.

"If he says, 'Yes, I'm willing to set FRAND rates,' I think you're going to see an even bigger uptick in the Western District of Texas," Whitehurst said.

--Editing by Steven Edelstone.

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