



Innovative Case Management Techniques in the ED Texas: Judge Davis' Mini-Markman

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In March 2010, Plaintiff and non-practicing entity Parallel Networks, LLC originally brought four separate lawsuits for patent infringement in the Eastern District of Texas against over 100 defendants, alleging infringement of US Patent No. 6,446,111. One year later, in March 2011, the court held a status conference to discuss the most efficient way to proceed in these cases. At the request of the defendants, who indicated that three claim terms would be dispositive for nearly all of them, Judge Davis adopted an innovative and unusual early claim construction/“Mini-Markman” and summary judgment procedure, rather than proceeding with full discovery.

The court conducted a hearing in June and issued its Markman opinion on August 12, 2011, construing the three claim terms. Based on those constructions, the court granted summary judgment to 99 of 112 defendants. Judge Davis concluded his opinion as follows:

As of the filing of Defendants’ claim construction brief and summary judgment motion, 112 Defendants remained in the case. The summary judgment motion on the “dynamically generated” issue has resolved this case as to 99 of the 112 Defendants. The Court notes that in many patent cases before it involving multiple defendants, it is frequently faced with motions for severance and transfer to many different districts. Had the Court taken that approach in this case, Parallel and Defendants would be litigating this patent all over the country in many districts at great additional expense to all parties and the judiciary.

The Court commends the parties in this case for working together to identify issues common to nearly all Defendants and moving the case to resolution of these important issues in a timely and economic manner. By doing so, this case was resolved in a manner of months—as opposed to years—for the vast majority of Defendants. By all Defendants remaining in one case in one District, the Court was able to resolve the controversy in the most judicially economic manner sparing many other courts from repetitive work, and at the same time saving the parties very significant sums of money in attorneys fees.

At the request of the plaintiff, on January 12, 2012, the Court entered an order severing the defendants who received summary judgment into a separate case, dismissing those defendants’ counterclaims without prejudice, and entering final judgment, so that Parallel Networks can appeal the Court’s decisions. In addition, the Court decided to stay the case against the remaining defendants until the outcome of the appeal.

Other folks, including [Law.com](#), [EDeTexweblog.com](#), and the [Southeastern Texas Record](#) have reported on Judge Davis’ revised and innovative approach to patent infringement cases involving large numbers of

defendants. While ultimately this may be of less import now that section 299 of the America Invents Act has been implemented, there are still numerous multi-defendant patent cases pending around the country that were filed prior to its enactment.

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