


# Nonpracticing Entities



The significant number of suits involving non-practicing entities in Delaware is a recent phenomenon. While district judges are managing these suits to the best of their abilities, it is reasonable to think, given the number of such suits and amount of wealth distribution, that some of the proposed legislation to stop these suits will be enacted by Congress.

**BY FREDERICK L. COTTRELL III,  
ANNE SHEA GAZA,  
AND TRAVIS S. HUNTER**

# Come to Delaware

While the District of Delaware historically has been a preferred venue for patent litigation, it now faces a new wave brought by a relatively new type of plaintiff. In 2000, there were 97 patent cases filed in the district. Many involved suits between competitors, often with cross-patents at issue. Only a few of the cases were filed by the actual inventors of the patents or by entities that did not compete with the defendants. In 2012, there were 997 patent cases filed the district, and more than two-thirds were filed by non-practicing entities (NPE), also referred to as patent monetization entities. Even after factoring in the provision of the Leahy-Smith America Invents Act (AIA) that generally prohibits multidefendant complaints, the number of new patent cases filed in 2012 represents a dramatic increase in the number of NPE suits in Delaware.

Several factors led to the increase, including the transfer law present in other “patent” jurisdictions such as the Eastern District of Texas, the issuance of business-method patents, the financing of such suits by investors, the jurisdiction of incorporation of many of the target defendants and, of course, the expertise of the District of Delaware in handling patent litigation. While Congress is considering various forms of legislation to curtail NPE suits, the District of Delaware will find itself managing these cases for at least several more years regardless. The manner in which the district handles these suits and whether the cases stay in Delaware are considered below.<sup>1</sup>

## History of NPEs

While not unheard of historically, the significant number of NPE suits is a recent phenomenon. In 2011, the Government Accountability Office commissioned a study to assess the effects of NPEs on patent litigation nationwide. Based on the sample of patent cases analyzed for the study, the number of cases filed by NPEs increased “from 22% of the cases filed five years ago to almost 40% of the cases” filed in 2011. As further evidence of this trend, the authors of the study determined that, of the 500 cases sampled, four of the five litigants who filed the most patent infringement claims were NPEs. By comparison, the number of filings in the District of Delaware has increased significantly compared to the nationwide statistics documented by the study.<sup>2</sup>

The District of Delaware ranks first in the number of average weighted case filings per judge by the Administrative Office of the U.S. Courts.<sup>3</sup> In only the first five months of the year, 1,031 cases were filed in the District of Delaware (criminal and civil). With the growing number of patent cases filed, each of the four Article III judges designated for the district now carries from 400 to 500 patent cases.

## Passage of the AIA and Surge in Filings

The AIA became law on Sept. 16, 2011. Of significance to NPE litigation was a provision that allows joinder of accused infringers only if:

- (1) right to relief is asserted against the parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process; and
- (2) questions of fact common to all defendants or counterclaim defendants will arise in the action.<sup>4</sup>

Prior to passage of the AIA, Congress explained that the provisions were meant to “end[] the abusive practice of treating as codefendants parties who make completely different products and have no relation to each other’ except that they allegedly infringed the same patent.”<sup>5</sup>

The act's passage has contributed to a significant increase in NPE litigation in Delaware. Recent statistics demonstrate that NPEs are undeterred by the AIA and have continued to file numerous lawsuits. Previously, NPEs would simply join multiple defendants in a single lawsuit. Now, NPEs file nearly identical complaints against separate defendants on the same day, on the same patents, and in the same courts. In addition to Delaware, Texas and California have become preferred venues for such cases.<sup>6</sup>

Even though certain provisions of the AIA were intended to curtail NPE suits, NPEs are swamping certain district courts. Indeed, the joinder prohibition has led to a large increase in the number of lawsuits filed per year and has put an increased burden on the judges handling such cases. For example, in 2010, 259 patent cases were filed in the District of Delaware. In 2011, the number rose to 486. However, in 2012 (the first full year of the AIA), the number of cases ballooned to 997. The trend continues in 2013, as 604 patent cases were already filed in the first five months of the year. Although the judges have adopted a variety of methods to manage the growing number of NPE cases, the large volume of cases suggests that the AIA has not slowed the rate of filings by NPEs in the District of Delaware.

There are a number of reasons why NPEs are filing more cases in Delaware. One is that many of the target defendants are organized in Delaware. Approximately 64 percent of the Fortune 500 companies and 50 percent of publicly traded companies are incorporated in Delaware. Therefore, for many NPE plaintiffs Delaware avoids the cost of jurisdictional discovery and motions.<sup>7</sup> Even if a target defendant is not organized in Delaware, the nature of a defendant's business frequently establishes a basis for personal jurisdiction in the state. Thus, at least from a jurisdictional standpoint, cases brought in Delaware tend to stay in Delaware.

Moreover, Delaware is often perceived as a favorable district for patent holders. One authority has ranked Delaware second overall as a district favorable to patent holders. The study considered the district's relatively short time to trial (roughly two years), average success rate for patent holders (41.7 percent), and median damages awarded (\$20,636,247).<sup>8</sup> Further, *Markman* hearings and summary judgment are often deferred until later in the litigation. This delay allows NPEs more time to forge settlements with defendants concerned with rising litigation costs.<sup>9</sup>

### Will the Cases Stay in Delaware?

Rather than simplifying or eliminating NPE litigation, the AIA seems to have added the extra steps of multiple filings, coordination of the related suits by district court judges, and consideration of early matters such as transfer and dismissal. As the volume of NPE litigation increases, more defendants are filing motions to dismiss and motions to transfer venue. Additionally, more defendants are taking advantage of the new re-examination provisions contained in the AIA, which has led to increased filing of motions to stay the pending district court litigation.

As the number of cases filed continues to climb, one question is whether the cases will stay in Delaware. The answer historically has been "yes," although a few recent decisions show that is not always the case.

The large volume of NPE litigation in Delaware has generated an increase in the number of motions filed by defendants. Specifically, more defendants faced with NPE litigation are moving to transfer

venue or to stay the litigation entirely in favor of re-examination under the new U.S. Patent and Trademark Office (USPTO) review process. As the volume of litigation increases, it is likely that Delaware will see a corresponding increase in the number of motions filed in such cases.

In NPE cases, defendants frequently consider transfer motions, which offer them an opportunity to move the cases to jurisdictions they perceive as more favorable or convenient and also create an opportunity for them to disperse multiple cases involving the same patent to multiple jurisdictions. Litigating similar cases in multiple jurisdictions can create a logistical nightmare for NPEs because not all cases are guaranteed to move at the same speed and reach the same results.

Recently, Delaware has seen a rise in motions to transfer in NPE cases. For example, in *Signal Tech, LLC v. Analog Devices, Inc.*,<sup>10</sup> Judge Richard G. Andrews granted a defendant's request to transfer the case to the District of Massachusetts. The case was filed on Nov. 2, 2011, (a mere two months after the AIA became operative). The plaintiff, a recently incorporated Delaware company, had filed suit against three defendants in three separate lawsuits. The defendant, a Massachusetts corporation with a principal place of business in Massachusetts, filed a motion to transfer to the District of Massachusetts and argued that the case had little connection to Delaware. Judge Andrews agreed and found that the plaintiff was the equivalent of a non-Delaware corporation because it had no employees or principal place of business in the state. Judge Andrews concluded that "Delaware is simply not the plaintiff's turf."

Although Judge Andrews' decision in *Signal Tech* was one of the first involving a motion to transfer an NPE case post-AIA, the trend has continued.<sup>11</sup> Recently, Chief Judge Gregory M. Sleet granted 46 defendants' motions to transfer to the Eastern District of Michigan. *Beacon Navigation GmbH v. Chrysler Group LLC, et al.*,<sup>12</sup> involved 46 post-AIA cases brought by a single NPE. A number of the defendants were incorporated in Delaware and had their headquarters and/or principal places of business in the Eastern District of Michigan. Other defendants were incorporated in Delaware but had their headquarters and/or principal places of business elsewhere. Some defendants were not incorporated in Delaware but had their headquarters and/or principal places of business in the United States. Seventeen defendants were not incorporated and did not have their headquarters or principal places of business in the United States. After weighing the relevant facts, Chief Judge Sleet concluded that only the plaintiff's forum preference weighed against transfer, and that preference was not afforded maximum deference because it was not the plaintiff's home turf. More factors weighed in favor of transfer, such as the defendants' forum choice, the location where the claims arose, the convenience of the parties, the location of relevant books and records, and practical considerations that might make trial easy or inexpensive.

Similarly, motions to stay patent case pending review in the USPTO are increasing. Now that the AIA's new validity procedures are effective, more defendants seem to be taking advantage of them. Although few Delaware cases have addressed motions to stay post-AIA, several recent cases provide guidance on how the district is handling such motions.

For example, in *Market-Alerts Pty. Ltd. v. Bloomberg Finance L.P.*, Chief Judge Sleet considered a motion to stay pending post-

grant review.<sup>13</sup> The plaintiff brought six lawsuits against multiple defendants alleging infringement of a single patent. Shortly after the litigation began, several defendants filed a petition for post-grant review of the patent under 35 U.S.C. § 321 and § 18 of the AIA. Certain defendants then moved to stay the litigation pending post-grant review pursuant to § 18(b). The court granted defendants' motion to stay pending post-grant review of a covered

***In NPE cases, defendants frequently consider transfer motions, which offer them an opportunity to move the cases to jurisdictions they perceive as more favorable or convenient and also create an opportunity for them to disperse multiple cases involving the same patent to multiple jurisdictions. Litigating similar cases in multiple jurisdictions can create a logistical nightmare for NPEs because not all cases are guaranteed to move at the same speed and reach the same results.***

business method patent pursuant to § 18(b) of the AIA. The court acknowledged that, in addition to the three factors the court reviews when assessing a motion to stay pending *inter partes* or *ex parte* re-examination, the statutory test set forth in § 18(b)(1) requires a fourth factor—whether a stay will reduce the burden of litigation on the parties or the court—which was included, in part, to ease the movant's task of demonstrating the need for a stay. In granting the defendants' motion to stay, the court found that all four factors weighed in favor of granting a stay pending resolution of the covered business method review proceedings. While *Market-Alerts* involved a stay pursuant to § 18 of the AIA, the result may be different if the stay being sought is related to *inter partes* review and not all claims are reviewed.

In *Clouding IP, LLC v. Oracle Corp.*, the defendant moved to stay litigation in favor of *inter partes* review under the AIA, but the court denied the motion.<sup>14</sup> In so holding, the court found that a stay would simplify some issues, but only slightly because no *inter partes* review was requested for two-thirds of the claims. The court concluded that judicial resources had been spent in preparing for a motion to dismiss and preparing a scheduling order, which weighed against a stay. Similarly, the court found that the case was one of multiple, related cases proceeding in a coordinated fashion and concluded that a stay of only one case would exacerbate the degree of piecemeal litigation. Finally, the court found some prejudice to the NPE plaintiff because a stay would deprive the NPE of its chosen forum for determining the validity of its patent and would make it more difficult for the NPE to obtain licenses.

Overall, the contrary results in *Market-Alerts* and *Clouding IP* can, in part, be explained by the type of re-examination proceeding involved. *Market-Alerts* involved a covered business method (CBM) review, while *Clouding IP* involved an *inter partes* review. CBM review requires the application of an additional factor in the stay analysis: “whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.”<sup>15</sup> Additionally, the court's denial of the request for a stay in *Clouding IP* highlights the need for coordination among defendants involved in NPE litigation because the court noted that a stay would exacerbate piecemeal litigation. Although motions to stay post-AIA are still in their infancy, more defendants are making such applications and taking advantage of the new re-examination procedures.<sup>16</sup>

Finally, target defendants are often successful in challenging at least part of the NPE complaints by filing motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). While motions to dismiss direct infringement claims have had limited success,<sup>17</sup> motions to dismiss indirect or willful infringement claims have been granted.<sup>18</sup>

### **Handling of NPE Actions**

Assuming initial motions are not successful in completely dismissing or staying the action and the case remains in Delaware in whole or in part, there is a certain sense of predictability for how such cases will be handled, albeit with some differences between the judges' practices and procedures. One common aspect in multidefendant NPE cases in Delaware is pretrial coordination. Historically, none of the judges in the District of Delaware have handled multiple, related NPE cases as separate actions for case management purposes. Generally, once defendants have appeared, the court will order a single Rule 16 conference among all parties. For example, Judge Sue L. Robinson will issue an order asking the common-plaintiff to inform the court if coordinated proceedings are desired. During the joint Rule 16 conference, the court typically will enter a unified scheduling order covering all of the related cases with shared hours for depositions, one deposition of each inventor, joint briefing for *Markman* and summary judgment, a joint *Markman* hearing, and common dates for deadlines and court appearances.

Another aspect of coordination of multiple cases is early patent disclosures and discovery of electronically stored information. Delaware was one of the first district courts to have a default standard for discovery of electronically stored information. In 2011, the district adopted an updated and revised “Default Standard for Discovery, Including Discovery of Electronically Stored Information” (Default Standard) and a “Default Standard for Access to Source Code.”<sup>19</sup> While not local rules or standing orders, the default standards serve as a guide to litigants, particularly patent litigants. With continued emphasis on the parties first trying to reach an agreement on how to conduct discovery and on proportionality throughout the discovery process, the Default Standard provides much-needed guidance for every stage of the discovery process.

Two key features of the Default Standard are the initial disclosures and the initial discovery in patent litigation. Intended to complement the Rule 26 initial disclosures, a party providing initial disclosures under the Default Standard must identify 10 custodians most likely to have relevant information, from most likely to least. The initial disclosures must also include identification of



noncustodial data sources and provide notice to opposing counsel of any issues related to ESI, third-party discovery, and information subject to privacy protections.

The initial discovery in patent litigation provides a framework for the exchange of early discovery between the parties. Expressly intended to be initial, so as to be subject to supplementation, this process requires the plaintiff to specifically identify the accused products and the asserted patent(s) each defendant allegedly infringes and to produce the file history for each asserted patent. Within 30 days after this identification, defendants must produce to the plaintiff the core technical documents related to the accused products. Production of the core technical documents triggers the plaintiff's obligation to provide defendants with an initial claim chart relating each accused product to the asserted claims each product allegedly infringes. The last step in this process is the defendants' production of their initial invalidity contentions. Depending on the case, full discovery may proceed apace with the initial discovery process or may be informally stayed pending completion of the initial discovery process.<sup>20</sup>

A key aspect of recent NPE suits is the *Markman* hearing. Each judge in the District of Delaware will often hold one *Markman* hearing with all defendants participating. Similarly, the judges generally will set a coordinated schedule for the exchange of claim terms, the submission of joint claim construction charts (and perhaps appendices of intrinsic evidence), and the briefing of claim construction issues. *Markman* hearings are typically limited to attorney argument on the record, with extrinsic testimony only rarely granted.

Assuming the defendants are still present after initial motions, discovery, and *Markman* disposition, NPE plaintiffs typically face motions for summary judgment. Given the number of patent cases, the court could easily be confronted with an overwhelming number of motions for summary judgment. To that end, certain judges have established procedures to help stem the flow of paper. For example, each party filing dispositive motions in patent cases pending before Judge Leonard P. Stark is limited to a combined total of 40 pages for all opening briefs, 40 pages for all answering briefs, and 20 pages for all reply briefs.<sup>21</sup>

Chief Judge Sleet has adopted a letter briefing procedure for parties wishing to seek leave to file motions for summary judgment.<sup>22</sup> These parties may submit a three-page opening brief, followed by a three-page answering brief by the responding party and a two-page reply brief. The court may then hold a teleconference to determine whether a party will be granted leave to file a summary judgment motion.

While not typically allowed in the court, at least one of the judges has also permitted early summary judgment motions to be filed. For example, Judge Robinson granted leave for defendants to file early summary judgment motions in a series of related cases filed by CyberFone Systems LLC, resulting in a dramatic reduction in the number of defendants involved.<sup>23</sup> In those cases, the defendants were permitted to file an early summary judgment motion related to their contention that one of the patents asserted against 52 defendants was invalid under 35 U.S.C. § 101. The court granted the motion, resulting in the complete dismissal of two civil actions.<sup>24</sup> In other CyberFone cases, the court granted the defendants' request for early claim construction.<sup>25</sup>

Given the recent implementation of the AIA and the evolution

of NPE suits, the nature of trials of such cases in Delaware is not settled. However, Delaware does have experience with NPE trials from cases filed before the enactment of the AIA. As recently as December 21, 2012, Chief Judge Sleet held a jury trial in a pre-AIA NPE case.<sup>26</sup> In *Finjan*, a patent holding company filed suit in July 2010 and alleged infringement of two patents related to protection of computer systems from hostile downloadables.<sup>27</sup> The case was tried to a jury, and a verdict was rendered in favor of the defendants on infringement and validity. Currently, many post-AIA cases are still working their way toward trial. It is too early to tell how Delaware will manage such trials, and it remains to be seen how successful NPEs will be once they get to trial.

### Mediation of NPE Cases

Given the number of patent cases pending in Delaware, the court-sponsored mediation program is an indispensable tool for disposition short of trial. Depending on the nature of the patents, the industry sues, and even the identity of the counsel, there are various opportunities for settlement short of trial. In Delaware, most patent cases are referred to one of the three magistrate judges to discuss potential alternative dispute resolution. The assigned judge typically schedules an initial call with the common-plaintiff and all defendants. At that time, the judge will decide whether to hold a

**Although the legislative reforms attempt to target specific areas that have allowed NPE litigation to proliferate, it remains to be seen whether any of the proposed reforms will become law. Moreover, it is difficult to predict what effect any proposal may have. In the meantime, NPE litigation is growing in volume in the District of Delaware and will be part of the docket for the near term.**

second call with all parties or a series of calls between the plaintiff and each defendant. During those calls, mediations are often scheduled either early in the case or after issuance of the *Markman* decision. It is rare for defendants to agree to a common mediation. Instead, a series of days may be scheduled, with each defendant receiving a full day or a half-day for mediation with the plaintiff.

### Possible Legislative Reforms for All Courts

As NPE litigation continues to consume more judicial resources, there have been increased calls for patent reform. Recently, the "White House issued five executive actions and seven legislative recommendations designed to protect innovators from frivolous litigation."<sup>28</sup> Legislative reform is also moving forward. While states such as Vermont have attempted to address NPE suits or demands at the state level,<sup>29</sup> one can safely assume that any legislative solution lies with Congress. Even though the AIA took years to pass

and went through a series of modifications, there has been a rush of recent bills from Congress urging reformative measures against NPEs. Most are receiving bipartisan sponsorship, although it is too early to determine if any will have widespread support.

What is clear, however, is that the impetus for legislative reform is growing. A number of legislative reforms have already been proposed that are designed to make it more difficult for NPEs. For example, many of the proposed legislative reforms would heighten pleading requirements in patent cases, allow for greater transparency, and permit greater awards of attorneys' fees.

Another option being considered to help ease the burden associated with NPE litigation is the creation of a small claims court process for patent litigation.<sup>30</sup> The idea has gained momentum in the past year, and the USPTO is now seeking comments on whether the federal government should move forward with developing a small claims court for patent enforcement proceedings. The process would ease the burden on district court judges by removing many smaller cases from their dockets.

Although the legislative reforms attempt to target specific areas that have allowed NPE litigation to proliferate, it remains to be seen whether any of the proposed reforms will become law. Moreover, it is difficult to predict what effect any proposal may have. In the meantime, NPE litigation is growing in volume in the District of Delaware and will be part of the docket for the near term.

## Conclusion

While patentees who do not practice invention, including holding companies, subsidiaries or divisions of large corporations, and the inventors themselves, have always brought suits, the flood of NPE suits in the District of Delaware and elsewhere is a relatively recent phenomenon. While district judges are managing these suits to the best of their abilities, it is reasonable to think, given the number of such suits and amount of wealth distribution, that some of the proposed legislation will be enacted by Congress. Of course, one key to any of this reform may be distinguishing certain types of NPEs, such as universities and inventors, from patent monetization entities.

For the short term, at least, it is likely that the District of Delaware will continue to see an increase in such litigation. Litigants defending these suits can take certain concrete steps, such as establishing an early joint defense group, dividing responsibility, and considering early motions, such as transfer, a stay pending PTO proceedings, and even partial dismissals. Thereafter, much of the focus of the litigation will turn to initial disclosures under Paragraph 4 of the Delaware Default Standard, as well as preparing for the *Markman* hearing. At that point, defendants, and even plaintiffs, often turn to the mediation process in place in Delaware, as many of these cases may be settled for less than the cost of continuing litigation. However, should even a small fraction of these cases eventually reach trial, it is yet to be determined how the court will handle multidefendant trials in light of the AIA provisions. While many such cases will settle before trial, it may be a race between legislative reform and mass trials in the courts. ☉

*Frederick L. Cottrell III is a director at Richards, Layton & Finger in Wilmington, Del., where his practice focuses on intellectual property and complex commercial litigation. Anne Shea Gaza is a partner at Young Conaway Stargatt &*

*Taylor LLP in Wilmington, Del., where her practice focuses on intellectual property litigation and complex commercial litigation in Delaware's state and federal courts. Travis S. Hunter is an associate in the litigation department at Richards, Layton & Finger. The views expressed in this article are those of the authors and do not necessarily represent views of their firms, their clients, or the District of Delaware.*

## Endnotes

<sup>1</sup>Due in part to the dramatic increase in patent filings, the district has been approved for a fifth Article III judge. *See* Speech by Hon. Gregory M. Sleet, Hotel DuPont DuBarry Room, June 25, 2013. It is unclear, however, how soon Congress may act on that approval.

<sup>2</sup>*See* Sara Jeruss, Robin Feldman and Joshua Walker, *The America Invents Act 500: Effects of Patent Monetization Entities on US Litigation*, 11 DUKE L. & TECH. REV. 357, 357-89 (Nov. 2012).

<sup>3</sup>*See* [www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2012/appendices/X01ASep12.pdf](http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2012/appendices/X01ASep12.pdf).

<sup>4</sup>35 U.S.C. § 299.

<sup>5</sup>Tracie L. Bryant, *The America Invents Act: Slaying Trolls, Limiting Joinder*, 25 HARV. J.L. & TECH. 673, 695 (2012) (quoting 157 Cong. Rec. H4420-06 (daily ed. June 22, 2011) (statement of Mr. Goodlatte)).

<sup>6</sup>*See* James C. Pistorino, *2012 Trends in Patent Case Filings and Venue: Eastern District of Texas Most Popular for Plaintiffs (Again) But 11 Percent Fewer Defendants Named Nationwide*, 85 PTCJ 485 (Feb. 8, 2013) (noting that in 2012 the Eastern District of Texas, the District of Delaware, and the Central District of California had the largest number of patent cases).

<sup>7</sup>*See* [corp.delaware.gov/aboutagency.shtml](http://corp.delaware.gov/aboutagency.shtml).

<sup>8</sup>*See* PricewaterhouseCoopers, 2012 Patent Litigation Study (2012).

<sup>9</sup>*See* Thomas J. Fisher and Tomoyoshi Furu Kawa, *Recent Trends in NPE Litigation*, OBLON SPIVAK (July 2012), available at [www.oblon.com/publications/recent-trends-npe-litigation](http://www.oblon.com/publications/recent-trends-npe-litigation).

<sup>10</sup>C.A. No. 11-1073-RGA (D. Del. Apr. 3, 2012).

<sup>11</sup>*See* *Chrimar Sys., Inc. v. Cisco Sys., Inc.*, 2013 WL 828220 (D. Del. Mar. 6, 2013) (granting transfer to Northern District of California); *Semcon Tech, LLC v. Intel Corp.*, 2013 WL 126421 (D. Del. Jan. 8, 2013) (granting transfer to Northern District of Texas); *Pragmatus AV, LLC v. Yahoo! Inc.*, 2013 WL 174499 (D. Del. Jan. 16, 2013) (denying transfer to Northern District of California).

<sup>12</sup>No. 11-921-GMS (D. Del. Mar. 20, 2013).

<sup>13</sup>2013 WL 443973 (D. Del. Feb. 5, 2013).

<sup>14</sup>*See* *Clouding IP, LLC v. Oracle Corp.*, No. 12-642 (D.I. 47) (D. Del. Jan. 25, 2013).

<sup>15</sup>*See* AIA § 18(b)(1)(D).

<sup>16</sup>*See, e.g.,* *Benefit Funding Sys. LLC et al. v. US Bancorp*, No. 12-803-LPS (D.I. 30) (D. Del. Apr. 2, 2013) (moving to stay litigation under § 18(b) of the AIA).

<sup>17</sup>*See, e.g.,* *Pragmatus AV, LLC v. Yahoo! Inc.*, 2013 WL 2295344 (D. Del. May 24, 2013); *HSM Portfolio LLC v. Fujitsu Ltd.*, 2012 WL 2580547 (D. Del. July 3, 2012); *IpVenture Inc. v. Lenovo Grp. Ltd.*, 2012 WL 2564893 (D. Del. June 29, 2012); *Eon Corp. IP Holdings LLC v. Flo TV, Inc.*, 802 F. Supp. 2d 527 (D. Del. 2011); *Xpoint Techs., Inc. v. Microsoft, Corp.*, 730 F. Supp. 2d 349

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* at 1309.

<sup>22</sup>*Id.* at 1318.

<sup>23</sup>*Id.* at 1306.

<sup>24</sup>709 F.3d 1117 (Fed. Cir. 2013).

<sup>25</sup>*Id.* at 1119-20.

<sup>26</sup>*Id.* at 1120 (citing *Move, Inc. v. Real Estate Alliance Ltd.*, 413

F. App'x 280, 296 (Fed. Cir. 2011)).

<sup>27</sup>*Id.*

<sup>28</sup>*Id.* at 1122.

<sup>29</sup>*Id.*

<sup>30</sup>*Id.* at 1123.

---

## PATENTS IN PARADISE continued from page 61

<sup>43</sup>*Id.*

<sup>44</sup>*Id.* § 1001 *et seq.*

<sup>45</sup>*Id.* § 1003.

<sup>46</sup>*Id.* § 1004.

<sup>47</sup>*Id.* § 1005.

<sup>48</sup>*Id.* § 1004 (a).

<sup>49</sup>*Id.* § 1004 (b).

<sup>50</sup>The motto of Guam is "Where America's Day Begins."

<sup>51</sup>Guam has no sand whatsoever. Its beaches are, in reality, covered with ground coral.

<sup>52</sup>GUAM CODE ANN. Title 5, ch. 20, art 4, § 20405(b).

<sup>53</sup>*Id.* § 20405(a).

<sup>54</sup>*Id.* § 20406.

<sup>55</sup>*Id.* § 20402.

<sup>56</sup>*Id.* § 20403.

<sup>57</sup>*Id.* § 20414.

<sup>58</sup>*Id.* § 20408.

<sup>59</sup>*Id.* § 20410(a).

<sup>60</sup>*Id.* § 20410(b).

<sup>61</sup>*See, generally*, GUAM CODE ANN. Title 9, ch. 47, §§ 47.10 *et seq.* (Trademark Counterfeiting Act).

<sup>62</sup>*Id.* § 47.10(a).

<sup>63</sup>*Id.* § 47.20.

<sup>64</sup>*Id.* § 47.30.

<sup>65</sup>*Id.* § 47.40.

<sup>66</sup>*Id.* § 47.60(a).

<sup>67</sup>*Id.* § 47.60(b).

<sup>68</sup>*Id.* § 47.70.

<sup>69</sup>27 AM. SAMOA CODE ANN. § 27.0302.

<sup>70</sup>*Id.* § 27.0303.

<sup>71</sup>*Id.* § 27.0304.

<sup>72</sup>*Id.* § 27.0306.

<sup>73</sup>*Id.* §§ 43.1301 *et seq.*

<sup>74</sup>*Id.* § 43.1309.

<sup>75</sup>*Id.* § 43.1311.

<sup>76</sup>*Id.* § 43.1313.

---

## NPEs IN DELAWARE continued from page 67

(D. Del. Aug. 12, 2010).

<sup>18</sup>*Clouding IP, LLC v. Amazon.com, Inc.*, 2013 WL 2293452 (D. Del. May 24, 2013) (dismissing indirect infringement but not willfulness); *Eon Corp. IP Holdings LLC v. Flo TV, Inc.*, 802 F. Supp. 2d 527 (D. Del. 2011); *Xpoint Tech., Inc. v. Microsoft Corp.*, 730 F. Supp. 2d 349 (D. Del. 2010) (dismissing indirect infringement but not willfulness); *Chalumeau Power Sys. LLC v. Alcatel-Lucent*, 2012 WL 6968938, at \*2 (D. Del. July 18, 2012) (dismissing willfulness and indirect infringement); *see Execware, LLC v Staples, Inc.*, 2012 WL 6138340, at \*7 (D. Del. Dec. 10, 2012) (recommending dismissal of claims of indirect infringement and willfulness without prejudice).

<sup>19</sup>*See* [www.ded.uscourts.gov/court-info/local-rules-and-orders/guidelines](http://www.ded.uscourts.gov/court-info/local-rules-and-orders/guidelines).

<sup>20</sup>*Compare CyberFone Sys. LLC v. Amazon.com, Inc., et al.*, No. 11-831 (D.I. 91) (D. Del. Mar. 8, 2012) *with Platte Chem. Co. v. Fuzion AG, Inc. et al.*, No. 11-1159 (D.I. 41) (D. Del. Apr. 10, 2012).

<sup>21</sup>Judge Stark, Standing Order Regarding Case Dispositive Motions in Patent Cases, [www.ded.uscourts.gov/sites/default/files/Chambers/LPS/StandingOrders/Standing\\_Order\\_Case\\_Dispositive\\_Motions-Patent.pdf](http://www.ded.uscourts.gov/sites/default/files/Chambers/LPS/StandingOrders/Standing_Order_Case_Dispositive_Motions-Patent.pdf).

<sup>22</sup>Judge Sleet, Important Note to Counsel About Contacting Chambers and Page Limigs for Briefing, [www.ded.uscourts.gov/judge/chief-judge-gregory-m-sleet](http://www.ded.uscourts.gov/judge/chief-judge-gregory-m-sleet).

<sup>23</sup>*See* Nos. 11-827-SLR, 11-829-SLR, 11-831-SLR, 12-113-SLR, 12-116-SLR.

<sup>24</sup>*Cyberfone Systems, LLC v. Cellco Partnership*, 885 F. Supp. 2d 710 (D. Del. 2012).

<sup>25</sup>*See, generally*, No. 11-833-SLR (D.I. 182).

<sup>26</sup>*See Finjan, Inc. v. Symantec Corp. et al.*, C.A. No. 10-593-GMS.

<sup>27</sup>Briefing in the case noted that Finjan had divested itself of all operations in November 2009. No. 10-593 (D.I. 18).

<sup>28</sup>Press Release, The White House, Fact Sheet: White House Task Force on High-Tech Patent Issues (June 4, 2013) [www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues](http://www.whitehouse.gov/the-press-office/2013/06/04/fact-sheet-white-house-task-force-high-tech-patent-issues).

<sup>29</sup>Vermont H.299; *see also* Parija Kavilanz, Vermont fights back against 'patent trolls', CNN MONEY (May 24, 2013) [money.cnn.com/2013/05/24/smallbusiness/patent-trolls/index.html](http://money.cnn.com/2013/05/24/smallbusiness/patent-trolls/index.html) (explaining Vermont bill).

<sup>30</sup>Paul Shakovsky, Key Players Update AIPLA on Growing Momentum for Patent Small Claims Court, BLOOMBERG BNA, [www.bna.com/key-players-update-n17179873839/](http://www.bna.com/key-players-update-n17179873839/); Gene Quinn, PTO Considering Patent Small Claims Proceedings, IPWATCHDOG (Feb. 10, 2013) [www.ipwatchdog.com/2013/02/10/pto-considering-patent-small-claims-proceedings/id=35154](http://www.ipwatchdog.com/2013/02/10/pto-considering-patent-small-claims-proceedings/id=35154).