

From: ACUS Information nfo@acus.gov
Subject: FW: Public comment regarding small claims court
Date: August 29, 2022 at 4:20 PM
To: [REDACTED]

From: Michael Barrett [REDACTED]
Sent: Monday, August 29, 2022 3:47 PM
To: ACUS Information <info@acus.gov>
Cc: Mic Barrett [REDACTED]
Subject: Public comment regarding small claims court

I tried to download my comments and did not receive any indication that I was successful. I was informed that the "CAPTCHA code was entered incorrectly. Try again." Which I did, several times.

My comment is as follows:
August 29, 2022

To: United States Patent & Trademark Office

From: Michael J. Barrett, Small Business Person, and repeat inventor with multiple patents

Re: Request for Comments on Patent Small Claims

Docket No. PTO-P-2012-0050

I respectfully submit my comments in response to the above request for comments.

Topic 1: Benefits of a Small Claims Court

The needs for such a court are significant. My comments, therefore, focus on two primary benefits.

First, a patent small claims court can benefit small inventors and small businesses. I believe the associated benefits will positively impact the local economies and well as to the national economy, and not just benefit the small inventors. If, and when, small businesses, inventors, and individuals are able to attempt to enforce their intellectual property rights in court, at a cost that they can afford, they are more likely to do so. These small businesses, inventors, and individuals will be more willing to invest more time and effort into developing additional intellectual property.

As a means of illustration, let me share my first-hand experience with two large, publically listed firms. Each decided to proceed to infringe on my small firm's awarded patents. An executive of the first firm candidly told me that I cannot afford to enforce my IP, so get over it. This executive did not disagree that his firm was copying the contents of my firm's awarded patents. An executive at the second firm informed me that although I had a strong position for enforcement, it would take 5 or so years and millions of dollars to attempt to enforce my firm's IP. He also informed me that he would be retired and it would exhaust all of my time even attempting to enforce my firm's IP.

The proposed Small Claims Court must be expeditious. The proposed Small Claims Court must be affordable! Please!

Topic 2: The Shape of Small Claims

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Venue

The venue should be such that region of the USA have access. Excessive travelling greatly increases the associated expenses. These Courts should be specialized and limited to cases involving at least one firm with gross revenues up to a certain dollar value, like \$25 million, \$100 million, etc.

Subject matter

Subject matter should be limited to patent infringement, non-prior art invalidity efforts, and monetary damages. Please do not make it another means of trying to apply prior art to an awarded patent. The USPTO already addresses this matter. Avoid discovery intensive subjects, whenever possible. Leave that up to the USPTO during its process of awarding patents.

Participation should be mandatory as long as one of the parties is an eligible small business seeking enforcement. Patent disputes involving a defendant with a net worth or gross revenues below some threshold would be eligible. Patent disputes with damages sought below another threshold should be required to litigate in the proposed small claims court.

Jury waiver

I don't think a jury is efficient or needed.

Filing fees

All small claims court fees should be affordable, and scaled in accordance with the size of the small business revenues.

Attorneys

Attorneys should be allowed, but not mandatory. Small businesses, individuals, and inventors should be able to represent themselves without being experts in admitting evidence and court procedures. The judge will act accordingly to ensure the evidence and allegations are fairly expressed.

Injunctive relief

This remedy to restrain one party from manufacturing and to continue making sales based upon infringing another's patent is essential to fairness. Enforcing the rights of the IP holder and requiring a party to act in a certain way will alter their adverse behavior. It is generally applied when irreparable harm will result to the patent awardee if the relief is not granted. The injunction relief will inherently increase the settlement pressure.

Fee shifting

Other than shifting for obvious abuses, as determined by the small claims court judge, fee shifting is not necessary.

Mediation

When confronted with injunctive relief, no imposed mediation is desired or beneficial.

Transcription

Audio and video recording are inexpensive and easy to operate. No mandated transcription services are needed.

Precedent

Small claims courts should definitely be responsible for claim preclusion between the parties

Small claims courts should definitely be res judicata/claim preclusion between the parties. Other rulings should also be issue precluded. Otherwise, a plaintiff could continue to sue defendants despite an adverse claim construction or a non-prior-art invalidity finding. Plaintiffs should not be allowed to appeal a judgement on issues of law only, by filing a notice of appeal.

Enforcement

Outcomes should be enforced like all other court judgments.

Review

District Courts should be able to review decisions on issues of law only.

Constitutional Issues

The resolution of Constitutional issues should comply with the procedures in place for these courts.

Self-Support

Patent small claims are to be expeditious and self-supporting, if possible. However, filing fees must remain affordable. The courts funds might be supplemented, if necessary, to allow patentees to enforce their patents. Defendants at a modest cost should also be able to defend themselves.

Evaluation

Damages must include injunctive relief and monetary damages or society as a whole will suffer.

Unintended Negative Consequences

The reason more small business patent owners have not enforced their patents against infringers is that it is far too expensive to do so. A small claims court will be a game changer. Many more small businesses will enjoy the privilege of enforcing the patents and collecting penalties for damages, especially injunctive relief. Many prospective infringers will ultimately rethink their future infringing actions if their plans are no longer profitable.

Very truly yours,

/s/

Michael J. Barrett

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