

## Don't Expect a Drop-Off in Patent Litigation

Article By:

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### Patent Pilot Program Terminated in the Southern District of Florida

In July 2011, [Congress launched the Patent Pilot Program](#). This program allows a small number of judges within a district court to take on the lion's share of patent cases within the district, with the hope that these judges will develop an expertise in patent cases promoting efficiency within the judicial system. The Southern District of Florida was one of 14 district courts across the country selected to take part in this program. Since the implementation of the Patent Pilot Program, the number of patent litigations filed in the Southern District of Florida has skyrocketed. Three years later, however, Chief Judge Federico Moreno signed an order terminating the Southern District of Florida's participation in the Patent Pilot Program.

Thanks to the permissive jurisdictional rules of [28 U.S.C. §1400](#), plaintiffs in patent cases have a large amount of leeway in choosing where to file their claims. Indeed, patent cases can be filed in any jurisdiction in which an allegedly infringing product is marketed or sold and the defendant maintains some business operations. This leads to plaintiffs filing in jurisdictions they believe are "friendly." Several factors make the Southern District of Florida an attractive venue for plaintiffs prosecuting patent claims even without a designated panel of judges for patent cases.

Plaintiffs in patent cases have flocked to the Southern District of Florida in large part because of the ease of getting to trial. First, each case in the Southern District of Florida must be assigned to one of three "case tracks." Even the most complex cases are set on a track that limits discovery to a maximum of 365 days, with the aim of having such cases tried within 16 months of the initial case scheduling order. Second, the Southern District of Florida has not established special rules governing patent cases like many other district courts around the country. This means that claim construct hearings, more commonly known as Markman hearings, are not set as a matter of course in the Southern District of Florida. Such hearings may occur in the Southern District, but they are not required. Finally, many of the magistrate judges in the Southern District of Florida have set procedures for expediting discovery disputes. Rather than requiring full briefing on discovery disputes, many magistrate judges hold "informal" discovery hearings that can usually be heard and ruled upon within one week.

While the Southern District of Florida will no longer have designated "patent judges," we expect that South Florida will continue to be a hotbed of patent litigation.

*This article was written with contributions from Jerry Goldsmith.*

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