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Forum Shopping in Patent Cases

Because patents rights are based on Federal law, forum shopping has always been a part of patent litigation. Some plaintiffs choose the convenience or perceived security of a local courthouse while others go in search of districts with more favorable patent rules or juries. In the years leading up to the formation of the Court of Appeals for the Federal Circuit (CAFC), forum shopping was in full swing because of the varying treatment given to patent rights in the circuit courts of appeals. The Seventh Circuit, for instance, treated many issues differently than did the Second Circuit. In the end, some circuits were entirely avoided by thoughtful patentees because of their track-record of invalidating or narrowing patent rights. More recently, the “rocket docket” of the Eastern District of Virginia was a great place to obtain a quick decision. Today, however, the hot spot is the Eastern District of Texas (EDT) because of the impressive string of large jury verdicts.

EDT is so popular that it has its own specialized patent blog coverage — by attorney Michael Smith. (who I recently met at the AIPLA Chicago meeting). In a recent series of postings, **Smith noted a milestone in the EDT history — the first defense verdict in years**. In *Sensormatic v. WG Security Products, Inc.*, the jury came back with a verdict of non-infringement. According to Smith:



The parties put on 14 live witnesses and 4 video-only witnesses in the space of four days plus one hour on Friday morning, which is about par for the length of a patent trial in Judge Ward's court. This is the 21st patent verdict in the district in recent years that I am aware of, and the first defense verdict by a jury.

For those of you interested in patent defense insurance — it appears that the defendant here was insured by Intellectual Property Insurance Services of Louisville, Kentucky.