

Intellectual Property Alert

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Judge Gilstrap to Require Letter Briefing for Alice Motions Before Claim Construction

Judge Gilstrap of the Eastern District of Texas has implemented a new letter brief requirement to rein in the number of so-called “101” or “*Alice*” motions filed in one of the country’s busiest patent dockets. The Supreme Court’s June 2014 decision in *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347 (2014) held that claims to a generic computer implementation of abstract ideas—such as those that are able to be performed by people without a computer—are invalid under 35 U.S.C. § 101. Following the *Alice* decision, defendants nationwide have successfully challenged the validity of patents under *Alice* in numerous cases. Judge Gilstrap remarked that he has seen a flurry of *Alice* motions and that they “could become standard procedure in every case.” The court desired to limit the number of such motions.

In past years, a similar measure was adopted to limit the numbers of summary judgment motions that were previously filed in most cases in the Eastern District of Texas. Now, before filing for summary judgment, a party is required to file a letter brief seeking leave to do so.

Following that model, Judge Gilstrap’s new *Alice* rule requires parties to seek leave by submitting a five-page letter brief outlining their arguments to show good cause if the party intends to file a 101 motion before the Court has issued its claim construction order. Although claim construction is not necessary to invalidate a patent, many judges are hesitant to rule on the ineligibility of the subject matter before determining the meaning of the claims. Thus, the new rule does not require a letter brief to be filed to make a 101 challenge if done so within two weeks after the issuance of the claim construction order.

The requirement is included in the court’s sample docket control order that can be found [here](#) from the Eastern District of Texas’ website.

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