

Patent Litigation Procedure After the America Invents Act

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My work-in-progress relates to the effect of the Leahy-Smith America Invents Act on the procedures governing patent infringement litigation. This Article is at least in part a companion piece to a previous article where I provided a comprehensive analysis of the provision in the Act that created 35 U.S.C. § 299, which now governs joinder and consolidation for trial in most patent cases. In my previous article I analyzed the reasons for the enactment of § 299, the divergent policies behind it as compared to the Federal Rules of Civil Procedure, and its proper interpretation and application. In this new Article I analyze how courts have interpreted and applied this new statutory section restricting joinder and consolidation for trial in most patent cases. As part of this analysis, I study how it has affected joinder and consolidation in practice, but I also study how it has affected other aspects of patent infringement litigation, including transfers and stays. I also identify remaining and new questions highlighted by courts grappling with the statutory language, including problems the new statutory section either did not solve or that it created. Moreover, I use this Article as an opportunity to analyze more recent legislative reform efforts and whether any additional reform is needed to address continuing problems with the procedures governing patent infringement litigation. This last aspect of the Article is particularly relevant and timely given that Congress is currently considering additional significant changes to the procedures governing patent infringement litigation.

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