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Kilgore's intellectual property attorneys can help you protect your investment in your proprietary rights. We provide assistance to individuals, small businesses, and large corporations in protecting the rights to intellectual property, trade secrets, and other valuable information. Our lawyers provide the following services and assistance to our intellectual property clients:

- Trade secret litigation
- Patent, copyright, and trademark infringement litigation
- Litigation of non-compete agreements.

For more information and to read a full copy of the PwC study, paste this link into your browser:

[www.pwc.com/us/forensics](http://www.pwc.com/us/forensics)

### NEW STUDY ON EASTERN DISTRICT OF TEXAS AS A FORUM FOR PATENT LITIGATION

The Summer 2010 edition of the *Texas Intellectual Property Law Journal* just published a new study by Mark Liang, *The Aftermath of TS Tech: The End of Forum Shopping in Patent Litigation and Implications for Non-Practicing Entities*. There were a number of interesting facts including the following:

1. In 2007 the Federal District Court for the Eastern District of Texas set a standing record for the number of patent cases filed in any district in any year with 368 patent cases.
2. Four judges — Judge Ward, Judge Clark, Judge Folsom and Judge Davis — received 80 percent of those cases.
3. The fast-track litigation has slowed considerably to a filing-to-trial time of 25.5 months.
4. The District grants summary judgment at a rate of 10 percent versus 40 percent nationwide and 70 percent in Northern California.
5. The patentee-plaintiff jury trial win rate in the District is 90 percent, as compared to 68 percent nationwide.

The study goes on to report that since the *TS Tech* case, fewer patent cases have been filed in the District but it grants motions to transfer venue only a third of the time as compared to 50 percent nationwide. The District continues to be a go-to forum for filing patent cases.

### REPORT ON PATENT LITIGATION TRENDS AND THE INCREASING IMPACT OF NONPRACTICING ENTITIES<sup>1</sup>

According to a report by PricewaterhouseCoopers LLP (PwC), the debate over patent reform has become more strident in the past few years as many of the world's largest companies face increasing threats of litigation from competitors and organizations known as NPEs that do not design, manufacture, or distribute products. PwC has compiled and maintained a thorough database of patent damages awards (from 1980 through 2008), collecting information about patent holder success rates, appellate reversals and modifications, time-to-trial statistics (from 1995 through 2008), and practicing versus nonpracticing entity statistics (from 1995 through 2008).

"Companies are continuing to realize value from patents -- whether protecting their product commercialization initiatives, or through their enforcement and other monetization efforts of patents -- they see the upside of using patents for competitive advantage," said Chris Barry, PricewaterhouseCoopers Advisory partner in the Forensic Services practice.

"With U.S. patent trial success rates at their highest level in history, patent holders are winning considerable awards for damages."

Key findings from PwC include:

- Annual median damages awards ranged from \$2.2 to \$10.6 million.
- Damages awards for NPEs have averaged more than double those for practicing entities.
- NPEs have been successful 29 percent of the time overall versus 41 percent for practicing entities, due to the relative lack of success for NPEs at summary judgment; however, both have roughly a 2/3 win rate at trial.
- The disparity between jury and bench awards has widened and is likely a contributing factor to the significant increase in use of juries since 1995.
- Reasonable royalties continue to be the predominant measure of damages awards.
- Alleged infringers increase their trial success rates slightly as plaintiffs seeking declaratory judgment.
- While the median time-to-trial has remained fairly constant since 1995, significant variations exist between jurisdictions.
- Certain federal district courts (particularly Virginia Eastern and Texas Eastern) continue to be more favorable to patent holders, with shorter time-to-trial, higher success rates, and higher median damages awards.

<sup>1</sup> PR Newswire, United Business Media, New York, January 25, 2010, *Report on New Patent Litigation Trends and the Increasing Impact of Nonpracticing Entities Released by PriceWaterhouseCoopers*