

# **Small-Claims Patent Court: Alternative Route to Remedies?**

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# Introduction:

## Motivation for Sm.-Clms. Patent Court

- **Cost and Length of U.S. Patent Litigation**
  - Commonly millions of dollars and years
- **Hope for Streamlined Proceedings**
  - Greater Practical Access
    - e.g., for less well-capitalized patentees or even to well-capitalized patentees with small claims
  - Limiting Uncertainty in Time and Scope
  - *More or Less Work for Lawyers?*

# Small-Claims Patent Court: USPTO Request for Comments

- Dec. 18, 2012
  - Initial Request Published
- Mar. 6, 2013
  - Extension of Deadline to  
April 30, 2013

# Small-Claims Patent Court: USPTO Request for Comments

- **Some Issue Areas Identified by USPTO**
  - Need or Lack Thereof
  - Venue (e.g., district courts, Ct. of Fed. Claims)
  - Jurisdiction, including that of counterclaims
  - Jury or No Jury
  - Appellate Review
  - Precedential Weight and Preclusive Effect
  - Procedure and Fees
  - Remedies
    - Injunctions? Damages floors or ceilings?

# Select Challenges/Questions

- **Jury or No Jury**

- Jury anticipated to be costly

- No jury → Likely constitutional concern unless both parties waive civil jury right

# Select Challenges/Questions

- **Venue**

- Court of Federal Claims?

- New Article I Court(s)?

- District Courts?

- Judges, Magistrates, or Adjuncts?

# Select Challenges/Questions

- **Remedies**

- Injunctions Available?
- Damages Ceilings and/or Floors?
  - What value for ceiling/floor?

# Potential Partial Model?

## Patents County Court

- **Able to Hear Various IP Rights Claims**
- **Injunctions Available**
  - But not preliminary injunctions on small-claims track for claims worth no more than £5,000
- **Cap on Damages = £500,000**
- **Streamlined Procedure**
  - Cost-benefit test



# Conclusion

- **Intriguing Idea**
- **But Is It a Good One?**
  - USPTO Comment Period Open Until Apr. 30!