

PATENT LAW IN PITTSBURGH: PERSPECTIVES FROM THE BENCH

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Judge Joy Flowers Conti has served as a district judge for the United States District Court for the Western District of Pennsylvania since 2002, when she was nominated by President George W. Bush. Prior to her service as a district judge, Judge Conti served as a law clerk to a Pennsylvania Supreme Court Justice, was a partner in private practice at Kirkpatrick & Lockhart, LLP, and a shareholder at Buchanan Ingersoll. She also served as a member of the faculty at Duquesne University School of Law. Judge Conti is a member of the Allegheny County Bar Association, the Pennsylvania Bar Association, the American Bar Association, the Women's Bar Association of Western Pennsylvania, the Federal Bar Association and the American Inns of Court. She received a Bachelor of Arts Degree from Duquesne University in 1970, and a JD degree summa cum laude from Duquesne University School of Law in 1973.

This spring, members of the Pittsburgh Journal of Technology Law and Policy had the great honor to sit down with Judge Conti to discuss the growth and sophistication of Patent Law in the Pittsburgh area.

JTLP: In bringing patent law cases in general, do you feel it is advantageous or disadvantageous to bring those cases in Pittsburgh?

JUDGE CONTI: Well, I think it's advantageous. Our court has a moderate caseload so that they can get fairly quick attention here. We have a very good Patent Bar. We have local patent rules that we adopted when I was the Chair of our court's Local Rules Committee. Our Patent Bar worked on those, and our court adopted them. That has been viewed very favorably around the country. Also we have judges who are interested in patent law. There is some new legislation under which at least ten courts around the country will be selected to participate in a pilot project for patent work, and we've applied to do that. We qualify to be part of it because we have more than ten judges, we have local patent rules, and we have four judges who have indicated a willingness to be part of this project-Judge Lancaster, Judge Fischer, Judge Schwab, and myself. My understanding about the pilot project is that it is coming out of our federal judiciary in

response to recent legislation. Under the project, when a judge is assigned to a patent case in this court, if that judge didn't want to hear that case, the judge could assign it to one of us. So we would have a cohesive group of judges who would be getting more patent cases and getting more experience in that area. I think that would be viewed favorably with the Patent Bar. We haven't heard back yet whether we were selected for that program.

JTLP: Pittsburgh has unique patent rules. What aspect of those rules do you think would be the most beneficial for other courts to look at or adopt?

JUDGE CONTI: Well, there are a couple of things. We have a process to try to fast track the cases for resolution of the claims construction issues, because that seems to be very important to early settlement or trial of the case. Some cases are settled before that, but a lot of times there's a substantial dispute between the parties, and until you get through the claims construction, it is hard to get the case moving. We have very strict processes with scheduled time frames where the parties have to set forth what their contentions are. Then there's briefing, and early in the case management process, we will set the time for the claims construction hearing. We also have a procedure for utilizing Special Masters, particularly if it is a type of technology that may be difficult for a judge to understand. We encourage the use of Special Masters because that makes it possible to have a quicker hearing and decision. When I have appointed a Special Master, I encourage the Special Master to have a hearing in my courtroom so I can go and observe the hearing and become educated about the technology and what the issues are, which has worked well.

JTLP: What do you read to keep up with rising patent law issues and what would you recommend local patent law lawyers appearing in your courtroom read to be aware of specific patent issues.

JUDGE CONTI: Well, the United States Supreme Court has been very active over the last several years in patent-related issues, and it's very important to keep abreast of the cases that are making their way up to the Supreme Court. Also, you can always look for en banc decisions by the Federal Circuit. My understanding is that the Federal Circuit doesn't have a policy where one panel can bind another panel; sometimes there are decisions that are at odds with each other. The only time that Circuit speaks as a whole and binds the entire Circuit is when it sits en banc. If there is an en banc decision, that decision carries a great deal of weight. I try to look for those cases that are making their way to the Supreme Court as well as any en banc decisions by the Federal Circuit. There are also programs that our Patent Bar puts on here throughout the year,

and I try to attend those when I am in town and am not in trial. We have a wonderful Patent Bar. We have invited patent lawyers to our judges' meetings, and they will give us an update, a review of what has been going on around the country in case law, things to look for, trends to look for, and that has been very helpful as well.

JTLP: Specifically on the case law, what is the percentage of patent law cases that you hear in your courtroom?

JUDGE CONTI: It's very small here – under 5 %. But we have been trying to be a good forum for patent cases. Often times lawyers in the patent arena are both Plaintiff's lawyers and Defendant's lawyers. You do not have the same kind of tension between the Bar members that is often seen in other areas of practice. I think that's very good.

JTLP: Are you really interested in patent law?

JUDGE CONTI: I like it. I find it very intriguing and interesting. It is the kind of law where, once you get involved with it, you say, "Well, this is how the world works." It is a difficult area because of the Federal Circuit's policy not to have one panel bind another panel. With the first patent case I was assigned, I would read one side's brief and decisions it relied upon and say, "Oh yeah, they seem to be right," and then I'd read the other side's brief and decisions and think, "Yeah, they're right." Trying to reach the right decision under those circumstances was very difficult. Patent law is like anything else-the more you do it, the more proficient you become.

JTLP: Thank you, Judge Conti.

The Pittsburgh Journal of Technology Law and Policy thanks Judge Conti and her staff for their assistance and time in contributing to this piece.