

Proposed Topics for Conner Inn Feb. 12th Panel

A. The quality of communications between attorneys, the district court and the appellate court.

1. **[For practicing attorneys]** While judges differ, in general does the district court seem to understand your arguments? Does the appellate court seem to understand your position? What effect does a Federal Circuit Rule 36 judgment (affirmance without opinion) have on you and/or your client? What about a simple denial of a motion for reconsideration in banc? If there is a lack of good communication, who do you blame it on, yourself or the courts.
2. **[For District Court]** While attorneys differ, in general how well and concisely do attorneys present their arguments? What could they do better? If you have doubt, do you request that oral argument be presented? How instructive do you find the appellate decisions reversing your opinions? Do they seem to consider all of the elements of the case you thought were important?
3. **[For Fed. Cir. judges]** While judges differ, in general does the district court seem to clearly explain the reasons for its decision? Do you have the time to fully address the arguments in the cases you hear? What do you think about a rule that would allow something between a Rule 36 opinion and a full opinion, perhaps a paragraph listing and rejecting the arguments?
4. **[All]** Do Supreme Court and Federal Circuit decisions provide necessary consistency? Necessary clarity?

B. Following Case Law

5. **[For practicing attorneys]** How do you keep abreast of developments in the case law? Do you regularly review cases on IP law from the District Courts and the Federal Circuit? Do you rely on Blogs to tell you what is happening? Do you merely do research when you have a particular case?
6. **{For District Court}** Given the wide range of areas of law in cases before you, do you make any attempt to keep up on developing law in general or IP in particular? How often do Constitutional issues come up in your cases.

Do you follow your own cases on appeal to the Federal Circuit or Supreme Court? How do you feel about reversal, affirmance or remand?

7. **[For Fed. Cir. judges]** Do you follow Supreme Court patent and trademark cases? How? What other law do you follow? How often do Constitutional issues come up in your cases.

C. Workload and Timing issues

8. **[For practicing attorneys]** Do you find that the time periods in the Federal Rules or as set by the Court are sufficient to comfortably prepare and file responsive pleadings or motions? What about the time period for filing an Answer? Do you typically ask opposing counsel for more time? What is the longest time it has taken a court to rule on a motion in one of your cases?
9. **{For District Court}** Is your workload such that you have time to respond to motions in a timely manner? How do you define timely? If you are having trouble getting enough time to write an opinion, are there tools available to you from the District, such as an additional clerk from another judge? Do you write the first draft of all of your opinions, or do your clerks write drafts?
10. **[For Fed. Cir. judges]** Are there ways counsel can make the writing of an opinion easier, e.g., non-argumentative statements of fact? Would a rule that required the parties to file an agreed upon statement of facts make your job easier?
11. **[All Judges]** Do you find that judges' advice on trial and appeal advocacy is often ignored? If so, why? Is this a fair criticism?
12. **[For practicing attorneys]** Do you think that you and your colleagues generally follow the advice given by judges on trial and appeal advocacy? If not, why not?

D. Oral Argument

13. **[For practicing attorneys]** Do you find that you are permitted oral argument by the District Court on motions when requested? Is there sufficient time for arguments on appeal to the Federal Circuit? Would oral

argument by phone and/or video conference be more convenient? Are there benefits to appearing in person before the court?

14. **{For District Court}** Do you typically grant oral argument on motions? Do you find it helpful? Do you order it even if not requested to allow you to ask questions? What do you think about oral arguments by phone, e.g., on discovery issues. Would video be helpful?
15. **[For Fed. Cir. judges]** Do you find oral argument to be helpful? The Patent Trial and Appeal Board allows both advocates and Judges to appear via video. Do you think that would be helpful for the court, especially the senior judges who live outside of the DC area.

E. General Questions

16. **[All]** An increasing percentage of the Federal Circuit docket (now over 60%) is patent-related. Do you think this is contrary to the original design of that court? Was the original intent to have the Federal Circuit be a generalist court? Does the growing emphasis on patent cases at the Federal Circuit concern you?
17. **[All]** Does your experience suggest that there is too much patent litigation or at least too much litigation where the plaintiff's position lacks merit? Would fee shifting affect this? If so, would you be open to it?
18. **[For practicing attorneys]** Would bar members like to be district court or circuit judges? If not, why not?
19. **[All]** Do you think private practice experience would be valuable for judges?

F. Audience Questions