IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: IMPLEMENTATION OF PATENT PILOT PROGRAM	))))	Misc. No. 11-283

ORDER

WHEREAS, this court has been designated as a district court in which the Pilot Program in Certain District Courts related to patents and plant variety protection, Pub. L. No. 111-349, 124 Stat. 3674, 28 U.S.C. § 137 ("Patent Pilot Program") will be carried out; and

WHEREAS the Court's participation in the Patent Pilot Program is subject to certain statutorily required procedures and processes; and

WHEREAS the Court must establish internal operating procedures to comply with these statutory requirements and to ensure the efficient and orderly administration of the Patent Pilot Program;

NOW THEREFORE IT IS ORDERED as follows:

1) The Chief Judge has designated Judge Gary L. Lancaster, Judge Joy Flowers Conti, Judge Arthur J. Schwab, and Judge Nora Barry Fischer (hereinafter the "Designated Patent Judges") to hear cases in which one or more issues arising under any Act of Congress relating to patents or

plant variety protection are required to be decided (other than a "false marking" case under 35 U.S.C. § 292) (hereinafter "Patent Cases"). Any other district judge wishing to serve as a Designated Patent Judge shall so notify the Chief Judge in writing;

2) Commencing on September 19, 2011, all Patent Cases that are newly filed in, or thereafter transferred to, this court will be assigned randomly to an Article III Judge pursuant to Local Civil Rule 40(C);

3) If a Patent Case is randomly assigned to a district judge who is not a Designated Patent Judge, that judge may decline the assignment. A judge wishing to decline the assignment of a patent case must do so within seven (7) days of receiving the assignment, and must do so by entering an Order Declining Assignment in the format reflected in Attachment A to this Order. The case will remain on the docket of the initially assigned judge unless or until the

assignment is declined within this seven (7) day period;

4) Upon entry of an Order Declining Assignment, the Clerk of Court will reassign the case to a Designated Patent Judge by using a separate electronic assignment deck comprised only of the Designated Patent Judges (the "Patent Assignment Deck"). Each Designated Patent Judge's name will appear in the Patent Assignment Deck an equal number of times. The Clerk will randomly draw a card from the Patent Assignment Deck, thus removing one of that Designated Patent Judge's cards from the deck. The Patent Assignment Deck will be automatically shuffled after each case assignment draw, and will be replenished when it is nearing exhaustion, thereby ensuring a truly random selection;

5) Magistrate judges are not eligible to serve as Designated Patent Judges. However, a Designated Patent Judge, in his or her discretion, and after consultation with the parties, may assign pre-trial management duties to a randomly selected magistrate judge. If a magistrate judge conducts pre-trial management of a Patent Case, the Designated Patent Judge will nevertheless decide all dispositive motions. In addition, the Designated Patent Judge will preside over the Markman hearing, and any related proceedings, such as technical tutorials, and will issue the claim construction opinion. However, the Court's Local Patent Rules regarding the use of special masters for purposes of claim construction remain unchanged and fully applicable during the Patent Pilot Program;

6) When a Patent Case is closed by this court's Clerk of Court and later re-filed in an identical, or nearly-identical, form, the re-filed case shall not be eligible for transfer to

a Designated Patent Judge unless the previous case had been assigned to a Designated Patent Judge;

7) Should a Patent Case be retained by a non-Designated Patent Judge who thereafter is unable to preside over the case for whatever reason, including recusal or disqualification, said Patent Case shall be randomly transferred to another non-Designated Patent Judge;

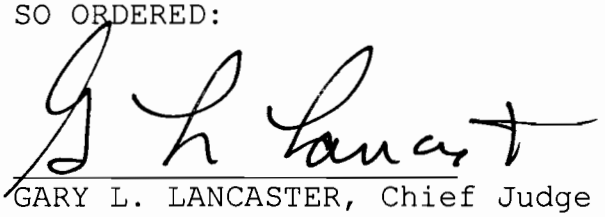
8) A Designated Patent Judge must accept a Patent Case randomly assigned to him or her pursuant to Paragraph 4 above, unless said Judge must recuse. In such event, the Patent Case will be randomly reassigned to another Designated Patent Judge;

9) If a motion to disqualify a Designated Patent Judge is granted, that Patent Case will be randomly reassigned to another Designated Patent Judge;

10) The Chief Judge, in conjunction with the Clerk of Court, has the authority to implement a process for caseload equalization between the Designated Patent Judges and the non-Designated Patent Judges.

Date: October 12, 2011

SO ORDERED:



GARY L. LANCASTER, Chief Judge
United States District Court
Western District of Pennsylvania

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

[PLAINTIFF],	)	
Plaintiff,	)	
v.	)	Civ. Action No. __-____
	)	
[DEFENDANT],	)	
Defendant.	)	

ORDER DECLINING ASSIGMENT

IT IS HEREBY ORDERED, this ___ day of _____, 20__, that, in accordance with Section 1(a)(1)(C) of Public Law 111-349, Pilot Program in Certain District Courts, the undersigned judge declines to accept assignment of this case.

BY THE COURT,

_____
United States District Judge, W.D. Pa.