



Hon. Theodore R. Essex

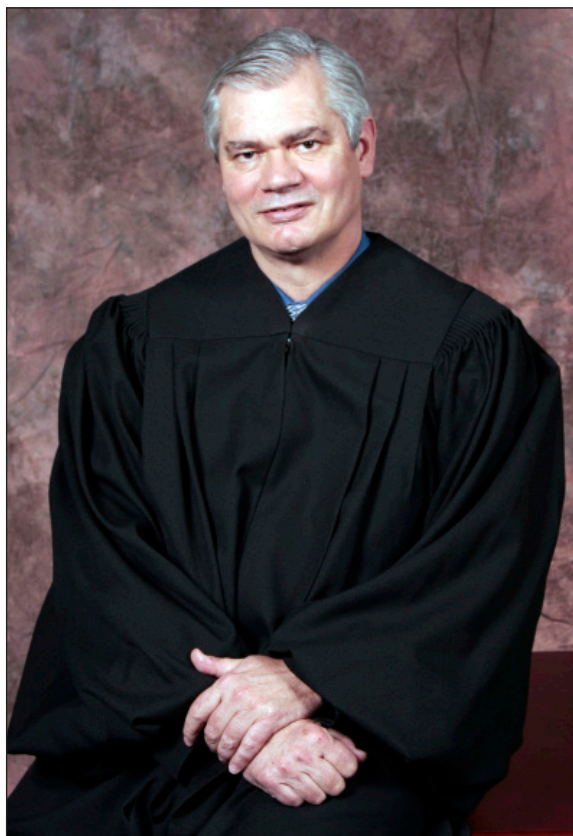
Administrative Law Judge

U.S. International Trade Commission

Judge Theodore R. Essex—known to his colleagues and friends in America, Asia, and Europe as “Ted”—is as comfortable in his role as unofficial ambassador to intellectual property lawyers and judges on those continents as he is in his capacity as administrative law judge for the U.S. International Trade Commission (USITC). Although licensed to practice law in Ohio and Louisiana and as a qualified solicitor for England and Wales, it is primarily as an administrative law judge that he brings his expertise in patent and trademark law to practitioners around the world. But more about that later.

Born in Athens, Ohio, in 1955, Judge Essex grew up in Ohio and holds a J.D. from the Ohio State University and a B.A. from Miami University of Ohio. In the early 1980s, he worked as a trial attorney in Cleveland and Marietta, Ohio, and served as public defender for Franklin County (the county encompassing Columbus, Ohio). From 1985 to 2005, he held a variety of positions with the U.S. Air Force, including chief of the General Torts Branch in Arlington, Va.; chief of aviation law with the Air Education and Training Command; deputy staff judge advocate with the Air Intelligence Agency; chief of operations law at the U.S. Air Force Headquarters in the United Kingdom; deputy staff judge advocate based in Belgium and later in Norway; and attorney advisor in the Office of International Claims and Investment Disputes at the U.S. Department of State.

Judge Essex spends a lot of time with his children, Flynn (11) and Willow (9), with whom he enjoys swimming, hiking, and rollerblading. A natural athlete, he went to Miami on a track scholarship, where he lettered for two years before a knee injury permanently sidelined him. But he enjoys sharing the active life with his children, as



well as touring the Smithsonian Museums in the nation's capital. “Both children share my flair for the international,” he notes, “having dual citizenship as Norwegians and Americans.”

Suffice it to say, Judge Essex's European experiences



Judge Jim Fraiser is an administrative law judge in Jackson, Miss. He has written 15 books about the history, architecture, and culture of the Deep South.

with the Air Force whetted his appetite for international law. Nowhere is his flair for the international more available to him than as an administrative law judge with the International Trade Commission, for which he received his appointment in 2007. The independent, nonpartisan quasi-judicial federal agency provides trade expertise to both the legislative and executive branches of the government; determines the impact of imports on U.S. industries; and directs actions against certain unfair trade practices, such as patent, trademark, and copyright infringement.

As a purveyor of knowledge regarding intellectual property issues, Judge Essex has brought American know-how to practitioners around the world. He has also served as president of the Giles S. Rich American Inn of Court and is a lecturer in law at George Washington University Law School. In both that capacity and as an administrative law judge, he has lectured on intellectual property law at such diverse venues as the Georgia Bar Association and the District of Columbia Intellectual Property Section, as well as the law schools at Howard University, the University of Texas, John Marshall, and George Mason.

But the “international” in International Trade Commission means precisely that. Judge Essex recently shared his expertise in intellectual property before a wide variety of international attorneys and judges, including the International Judges Conference in Brussels, Belgium; the Ministry of Knowledge and Economy (and the Korean Bar) in Seoul, Korea; the Peking University Law School and Intellectual Property School in Peking, China; the Nation of Taiwan University and Ministry of Economy Affairs; and the Seoul National University Law School.

He is quick to note that the exchange of information goes both ways. He has hosted several judges and scholars from different Asian nations in support of his international advocacy for consistent intellectual property laws. “The educational process,” he says, “has become more important in recent years with the significance of international trade in intellectual property. And we have found our Asian colleagues to be eager to learn about the American system of patent and trade jurisprudence, incredibly gracious toward us, and that our trips to Asia have led to positive exchange between their hosts and our visiting lawyers and judges. Similarly, the best moment I’ve had during these

exchanges came when we hosted Korean judges here at the Commission.”

Judge Essex explained that when he hosted two Korean judges in America, he requested they attend patent litigation hearings and also meet with the general counsel’s office, the Office of Unfair Import Investigations, and the chairman. “One of my proudest moments,” Judge Essex says, “came when we were saying goodbye, and their Supreme Court justice declared that many people in Korea wondered if they could get a fair trial at the USITC, but that he was now convinced that we offer a fair and impartial process. It is gratifying to share our process with these distinguished foreign jurists and have them go away thinking we’ll deal with them in an honest and forthright way.”

His other passion, apart from writing plays and fishing the Potomac River—for crappie, bass, and, as he says, whatever “else wants to bite”—is working with the courts to reduce what he terms the outrageous costs of patent litigation, which he finds largely attributable to discovery expenses. A survey released in 2011 by the American Intellectual Property Law Association indicates that Judge Essex has reason to be concerned. For infringement litigation with potential damages of less than \$1 million, the mean cost of litigation is \$490,000. For cases involving damages in excess of \$1 million, the mean costs are \$916,000, with the highest third being more than a million. Litigation expenses—for patent cases with damages of \$1 million to \$25 million—average between \$1.6 million and \$2 million in the D.C. area. “Intellectual property owners are becoming increasingly worried,” he observes, “that they can no longer afford a remedy for infringement, the costs of which are among the highest in any kind of American litigation. We must act to reign in those costs if we are to offer justice to those who have done the hard work and now rely upon the courts to protect the fruits of their labors.”

As I have heard Judge Essex say on more than one occasion, we must not only do justice, we must be seen to do justice. And who better than an accomplished intellectual property judge, international lecturer, and advocate for consistent intellectual property laws and reasonable litigation costs to try to make that hope a reality? ☺