



The Current State of U.S. Patent Litigation: Have We Reached the Bottom Yet?

April 9, 2020

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[squirepattonboggs.com](https://www.squirepattonboggs.com)

Steven M. Auvil



Steven M. Auvil
Partner, Washington, D.C. and
Cleveland
E steven.auvil@squirepb.com
T +1 202 626 6632
T +1 216 479 8023

Steve Auvil leads the Squire Patton Boggs Intellectual Property & Technology Practice Group's litigation practice in the US, and his practice is focused on litigation of intellectual property (IP) disputes. As an engineer and patent lawyer, he has been exposed to a wide variety of technologies, including control systems, power electronics, communication systems, medical devices, steel production, complex mechanical systems and software systems. Steve has been listed in Chambers USA Leading Lawyers since 2007 and The Best Lawyers in America since 2006.

In more than 25 years of practicing law, Steve has served as lead trial counsel and successfully represented clients in numerous patent, trade secret, copyright and trademark/trade dress cases in federal district courts throughout the US. He has also argued several patent-related appeals before the US Court of Appeals for the Federal Circuit. In addition, he has handled a significant number of disputes before US administrative agencies, including 337 actions before the US International Trade Commission and proceedings before the Patent Trial and Appeals Board. Finally, Steve has represented clients in IP-related disputes before arbitration tribunals.

While Steve's practice focus is in litigation, he also has considerable non-litigation experience, including counseling clients on IP matters, preparing and prosecuting patent applications, and negotiating agreements that involve IP. Steve is a frequent speaker on IP law topics and has spoken to clients, industry groups and IP organizations throughout the US and abroad on topics ranging from US Supreme Court jurisprudence to patent law to the Defend Trade Secrets Act.

Tamara D. Fraizer



Tamara D. Fraizer
Partner, Palo Alto, CA
E tamara.fraizer@squirepb.com
T +1 650 843 3201
T +1 408 507 1768

Tamara Fraizer is a partner in the Squire Patton Boggs Intellectual Property & Technology Practice Group, with a practice focused on patent disputes. Tamara helps her clients assess, leverage and enforce patent rights, and defend against patent claims.

Tamara was educated as a biologist and earned her PhD in Population Biology, which involves computer and mathematical modeling of biological systems as well as data analytics. Her legal experience spans the life sciences and technology, including biotechnology, medical devices, pharmaceuticals, computers and software, analytics, and consumer products.

Over the last 18 years, Tamara has litigated countless patent cases in federal courts across the nation and at the US International Trade Commission. She has been recognized as a California Super Lawyer in IP Litigation since 2011. Tamara is also a registered patent attorney with experience prosecuting patents before the USPTO, and she both pursues and defends against post-grant challenges before the PTAB.

A former lecturer in science at the University of California, Tamara now enjoys speaking about and discussing IP issues with other professionals and mentoring younger lawyers. Tamara is also the editor of the firm's *Global Intellectual Property & Technology Blog*.

Major Law Changes Impacting Patent Litigation

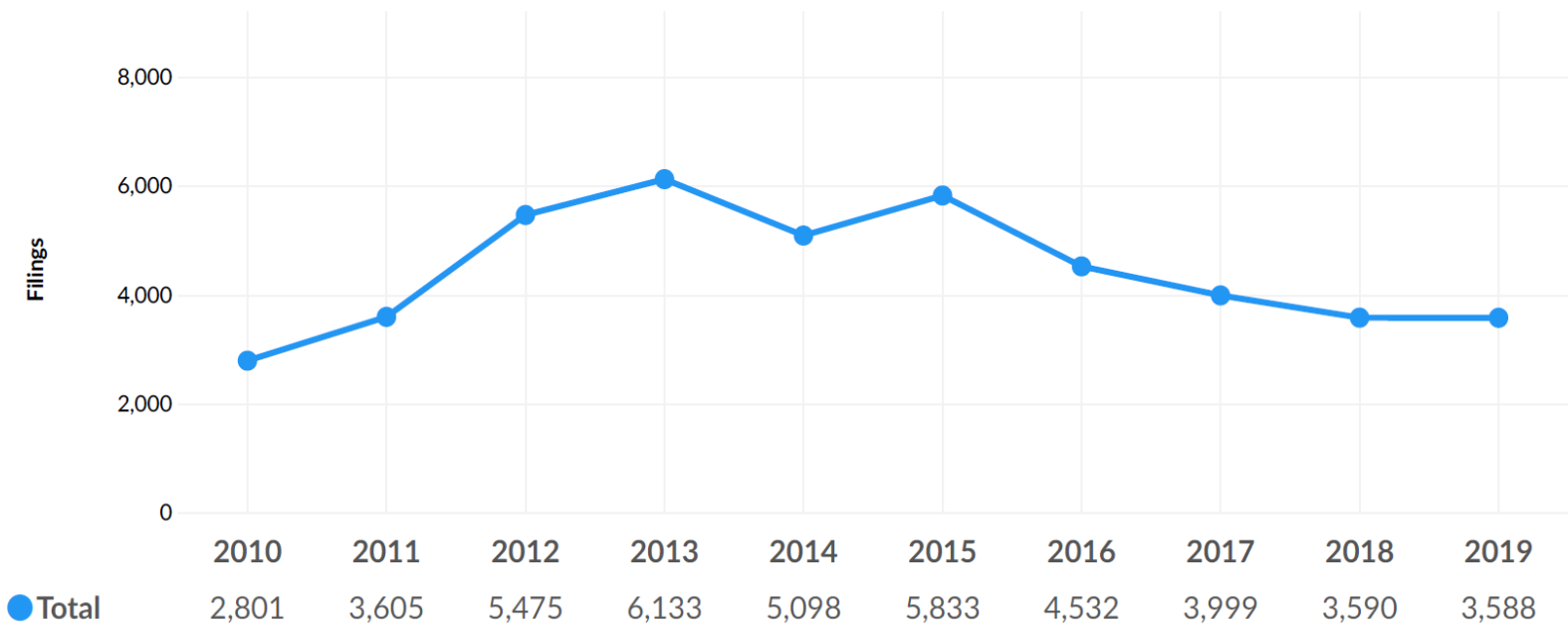
- *eBay* (2006) made it considerably more difficult to obtain an injunction
- AIA (2011) introduced post-grant challenge proceedings with lower standard of proof than in court, and amended joinder rules to limit joinder
- *Mayo* (2012)/*Alice* (2014) raised bar for patent eligibility
- *Nautilus* (2014) raised the bar for claim definiteness / clarity
- *Octane Fitness/Highmark* (2014) lowered the bar for fee shifting
- FRCP amendment (2015) eliminated Form 18 allowing generalized pleading
- *TC Heartland* (2017) limited venue for patent infringement cases

A blurred background of a business meeting with people in suits. A teal rectangular overlay is positioned on the right side of the image, containing white text. In the foreground, a person's hand is visible, holding a gold pen and pointing at a document on a clipboard. The document features a line graph with a blue shaded area.

Patent Litigation Trends – Overall Activity

Patent Case Filings 2010-2019

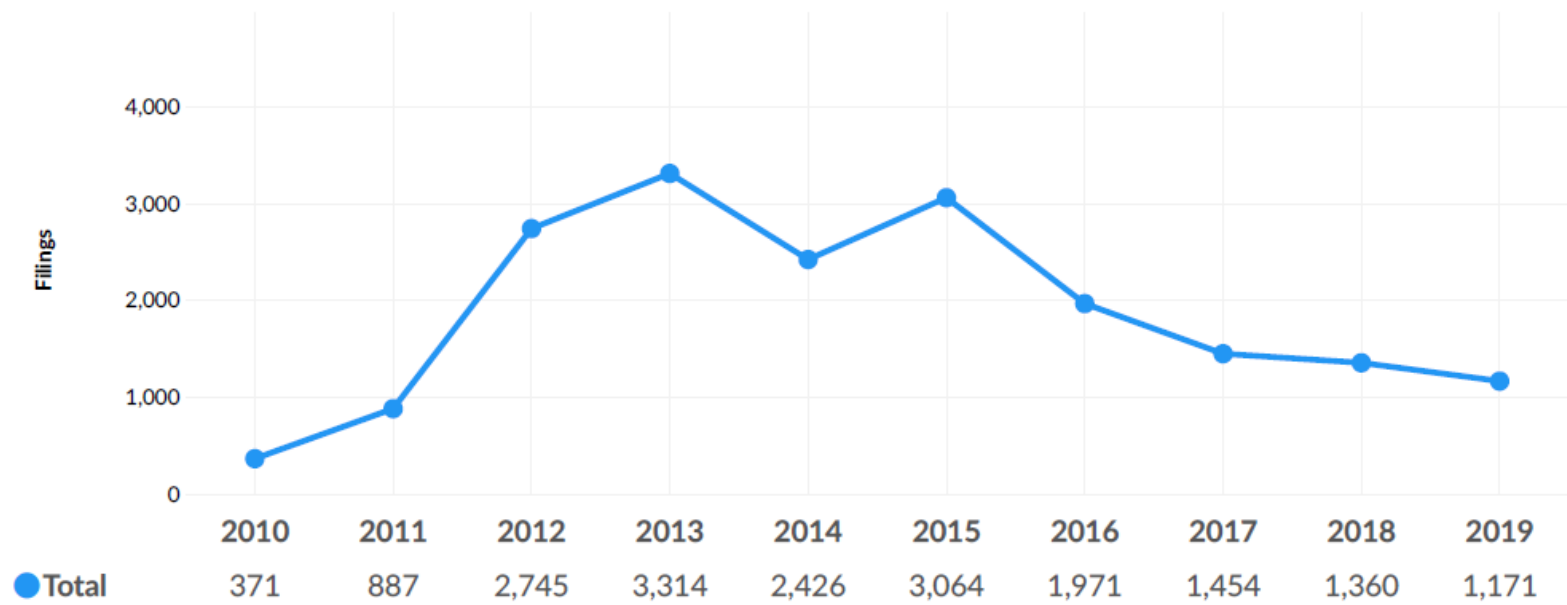
U.S. District Court



Source: Lex Machina Patent Litigation Report February 2020

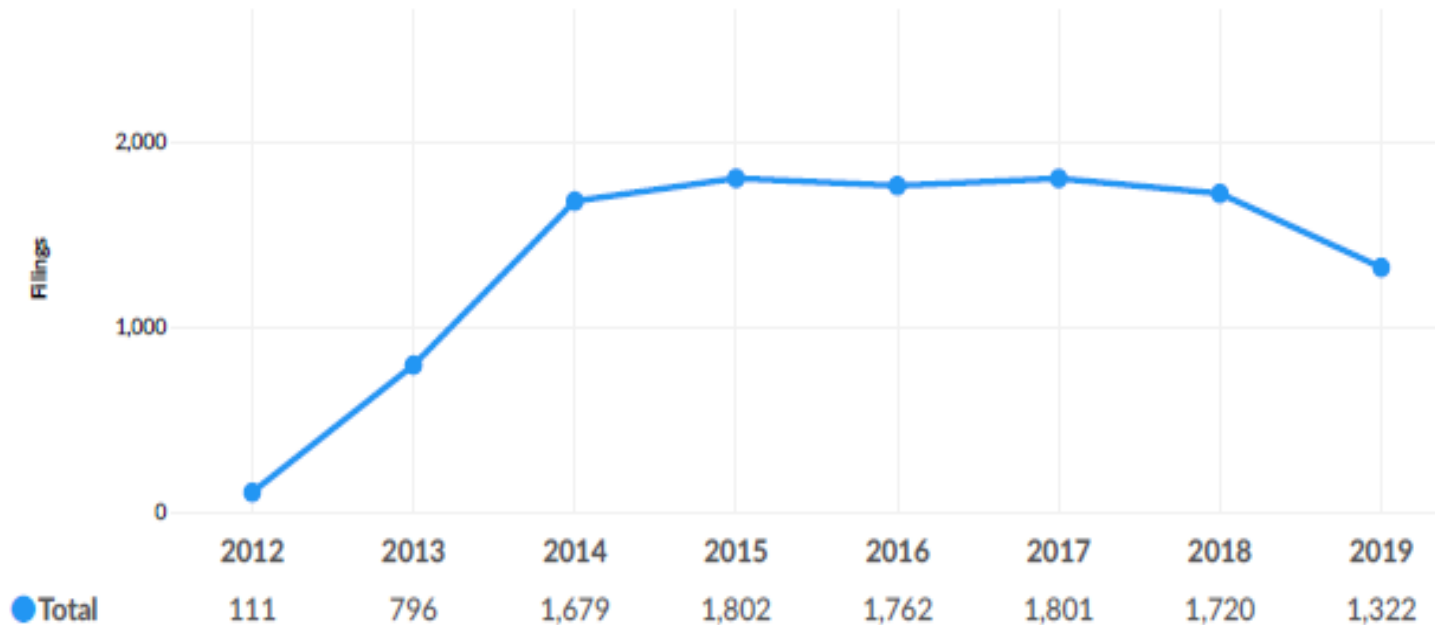
High-Volume Plaintiffs' Case Filings 2010-2019

U.S. District Court



Source: Lex Machina Patent Litigation Report February 2020

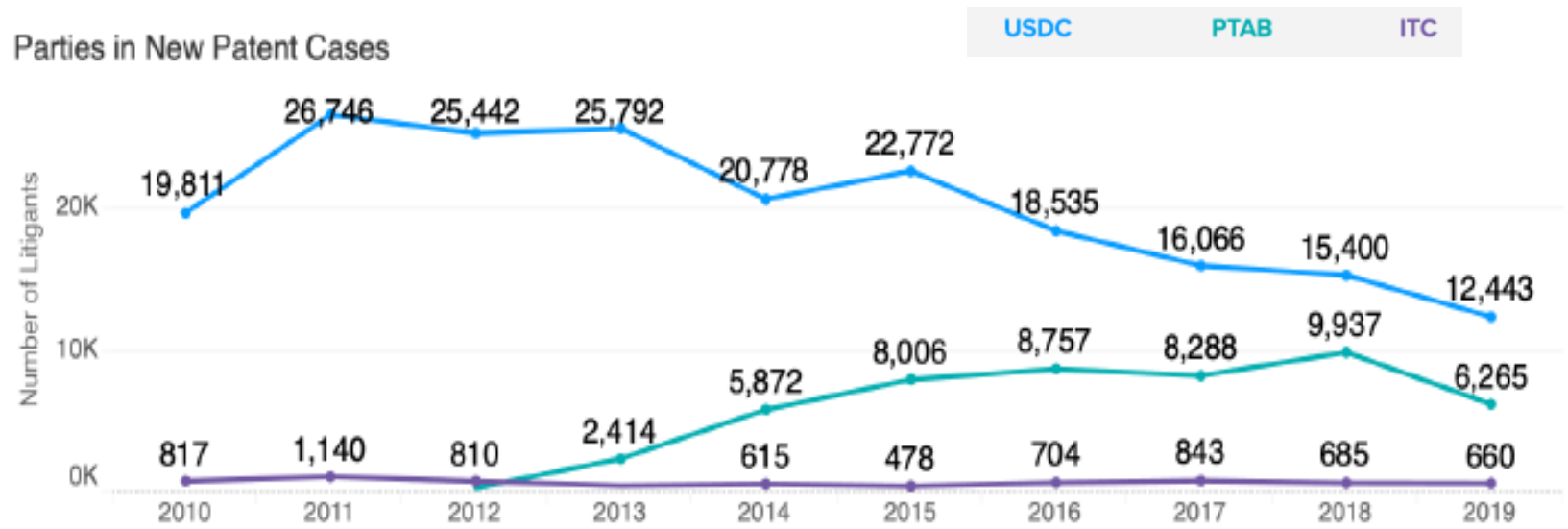
AIA Petitions 2012 to 2019



Source: Lex Machina Patent Litigation Report February 2020

Parties to New Patent Cases

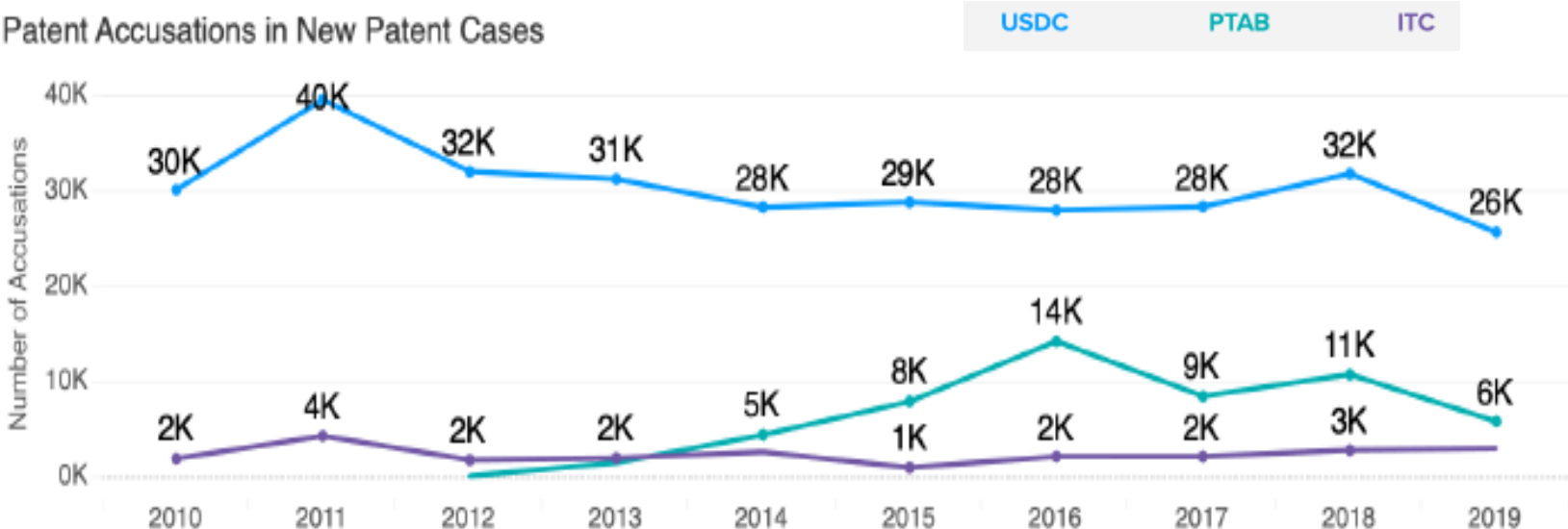
U.S. District Court, PTAB and ITC



Source: Docket Navigator 2019 Year in Review

Patent Accusations in New Patent Cases

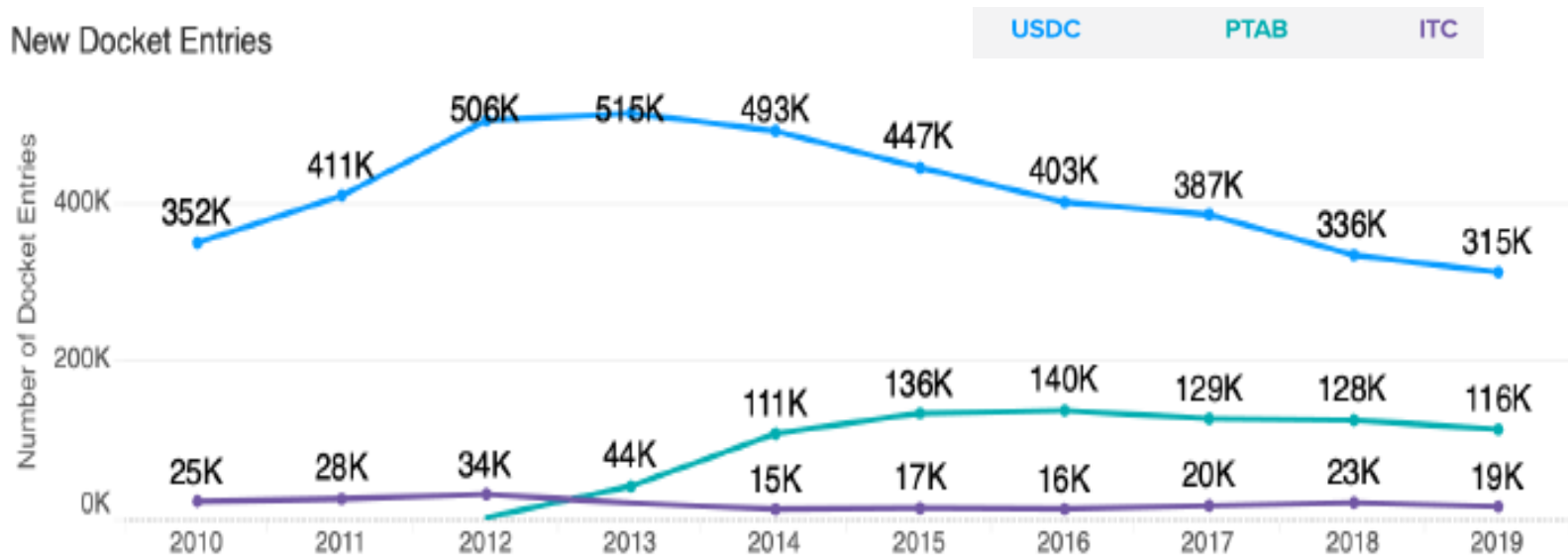
U.S. District Court, PTAB and ITC



Source: Docket Navigator 2019 Year in Review

New Docket Entries in Patent Cases

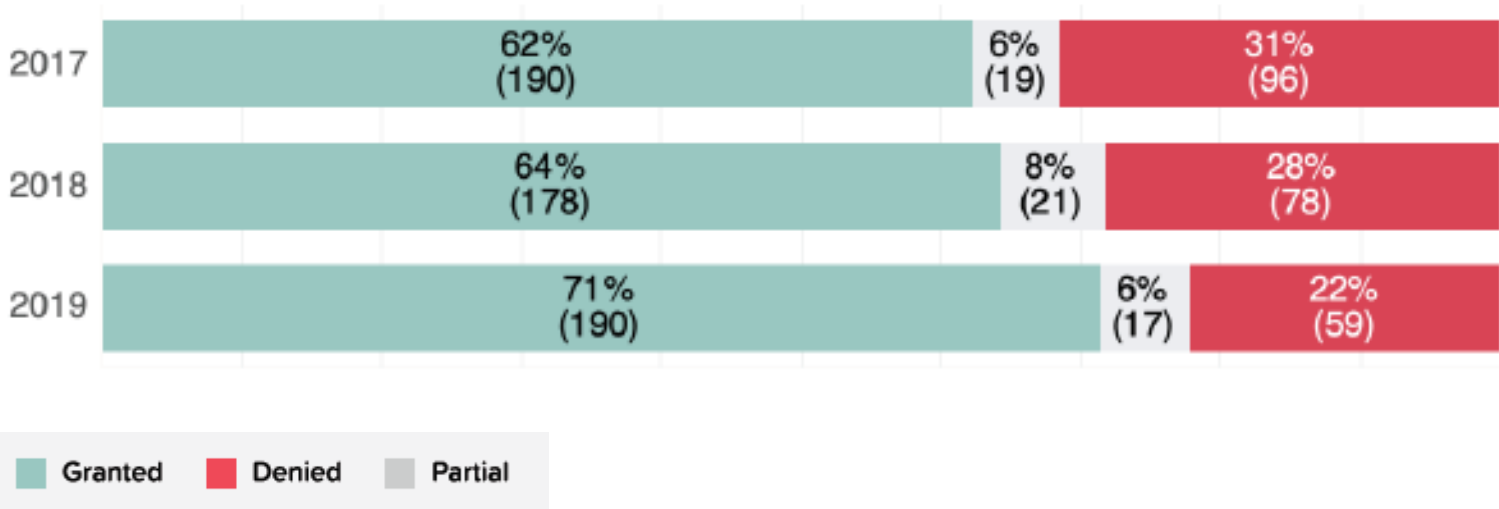
U.S. District Court, PTAB and ITC



Source: Docket Navigator 2019 Year in Review

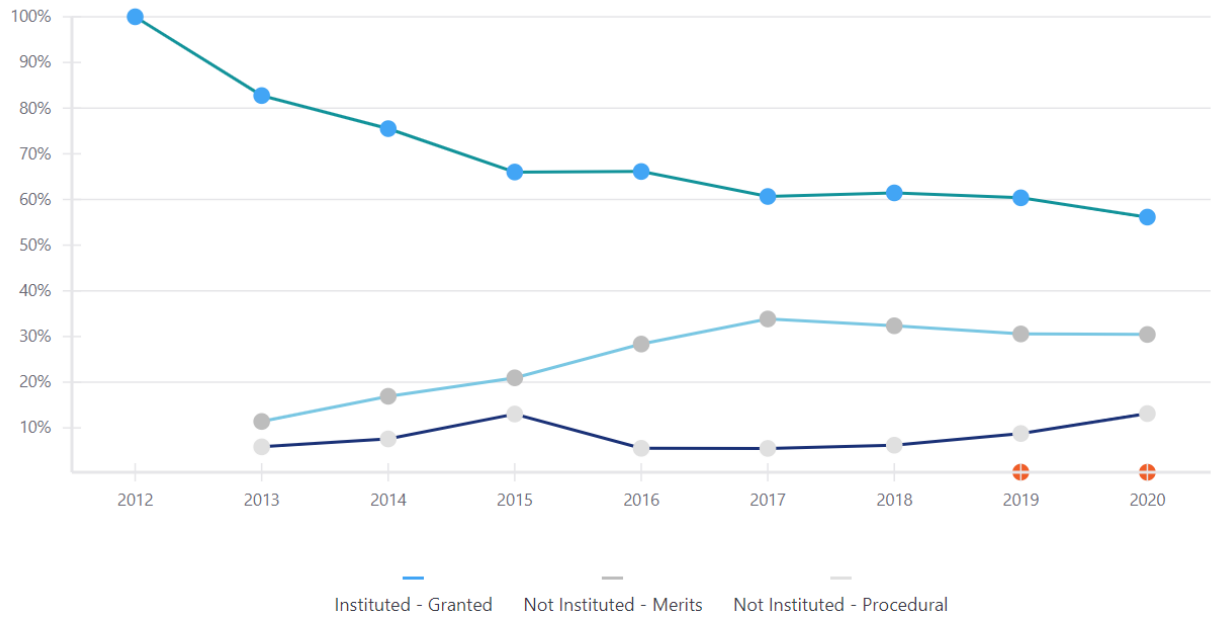
Motions to Stay U.S. District Court Pending IPR – 2017-2019

Motion to Stay Pending Inter Partes Review



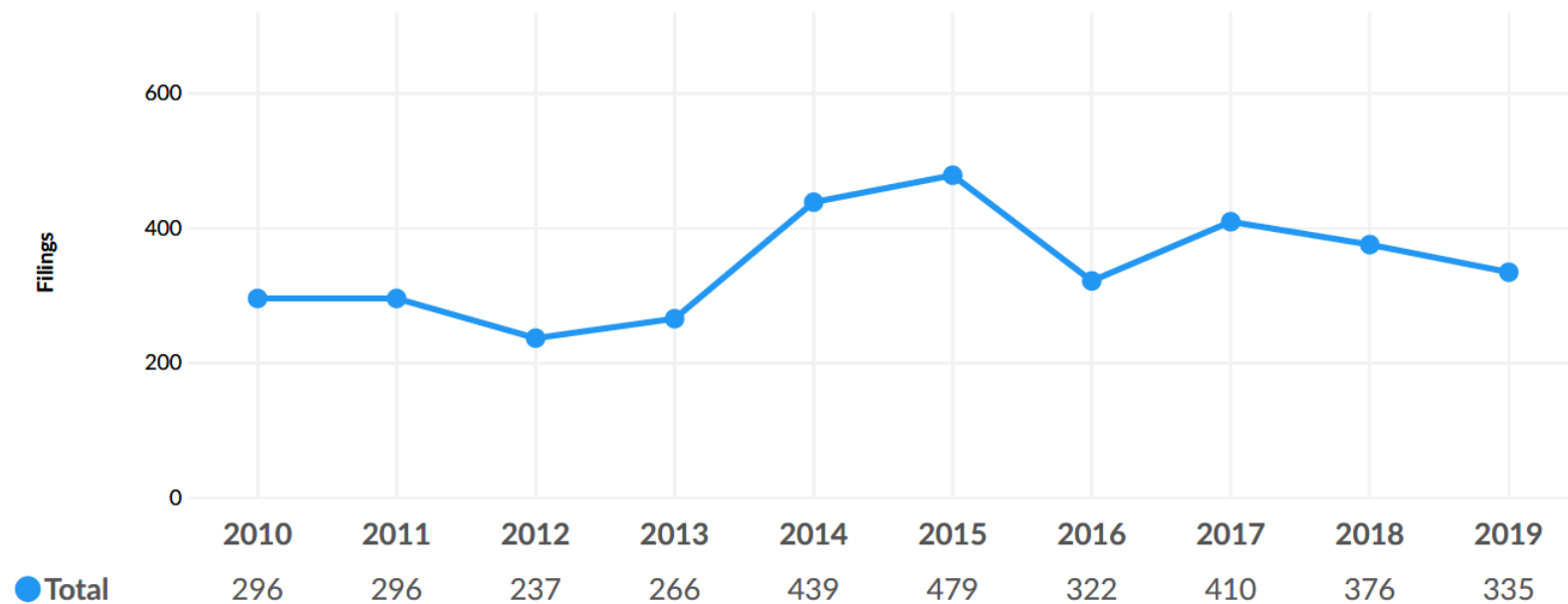
Source: Docket Navigator 2019 Year in Review

The PTAB's Rate of Institution Has Decreased



<https://portal.unifiedpatents.com/ptab/annual-report?year=2020>

ANDA Case Filings 2010 to 2019



Source: Lex Machina Patent Litigation Report February 2020

Most Active Plaintiffs and Defendants

Plaintiffs

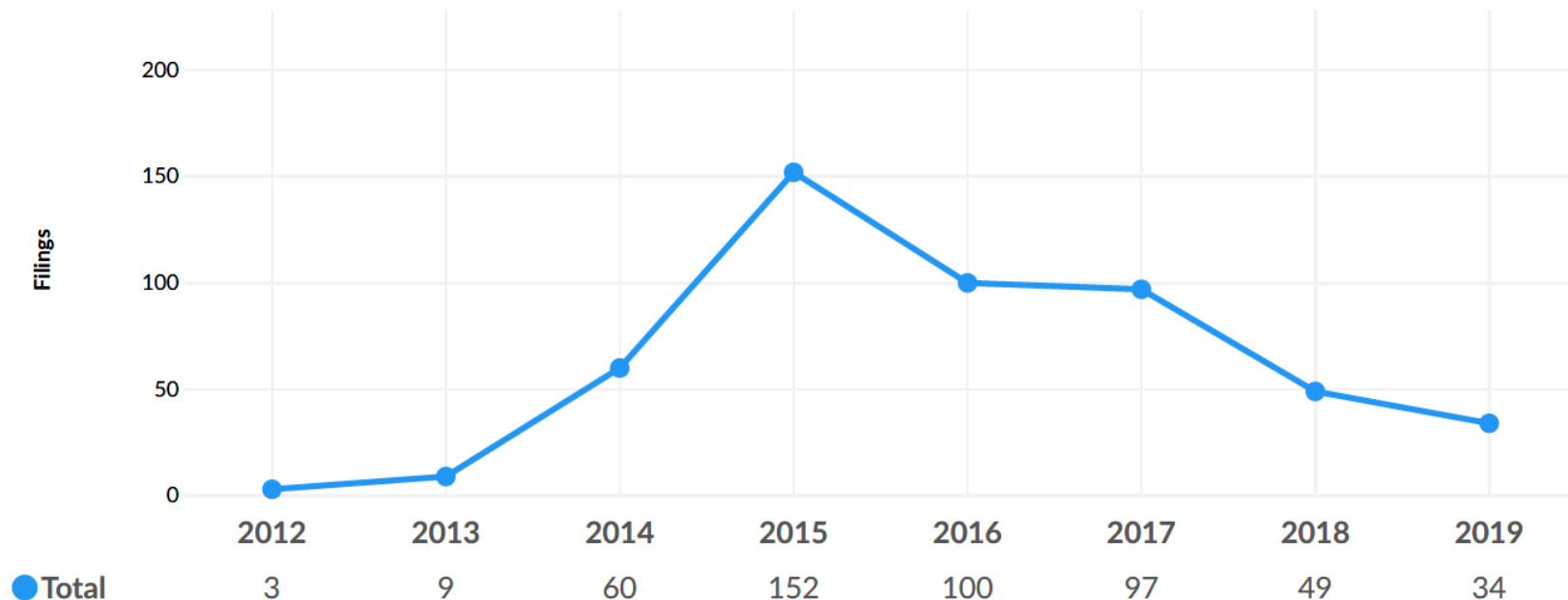
2010 to 2019			2019		
Party	Case Filings	Districts	Party	Case Filings	Districts
Uniloc USA, Inc.	460	8	Uniloc 2017 LLC	44	7
Uniloc Luxembourg S.A.	396	8	Symbology Innovations, LLC	40	14
Melvino Technologies Limited	371	20	Cedar Lane Technologies Inc.	31	10
ArrivalStar S.A.	370	20	Lighthouse Consulting Group, LLC	31	3
eDekka LLC	251	1	Genentech, Inc.	30	1
Hawk Technology Systems, LLC	205	60	Coding Technologies, LLC	28	12
Uniloc 2017 LLC	205	9	InterMune, Inc.	27	1
Data Carriers LLC	195	2	Data Scape Limited	26	6
Blue Spike, LLC	181	8	Pebble Tide LLC	26	9
Pfizer, Inc	173	12	Rondevo Technologies, LLC	24	9
Shipping and Transit, LLC	172	5	Wave Linx LLC	24	5
Symbology Innovations, LLC	172	20	LILLEbaby, LLC	23	8
PersonalWeb Technologies LLC	168	6	Pfizer, Inc	22	4
Level 3 Communications, LLC	165	7	Pfizer PFE Ireland Pharmaceuticals Holding 1 B.V.	22	4
Eclipse IP LLC	164	15	PF Prism C.V.	22	4
			Technical LED Intellectual	22	10

Defendants

2010 to 2019			2019		
Party	Case Filings	Districts	Party	Case Filings	Districts
Apple Inc.	528	37	Apple Inc.	45	9
Samsung Electronics America, Inc.	417	30	Samsung Electronics America, Inc.	43	7
Amazon.com, Inc.	385	44	Samsung Electronics Co., Ltd.	39	6
Samsung Electronics Co., Ltd.	345	24	Amazon.com, Inc.	26	9
LG Electronics, Inc.	321	21	Mylan Pharmaceuticals, Inc.	26	4
Mylan Pharmaceuticals, Inc.	290	18	Teva Pharmaceuticals USA, Inc.	26	4
Microsoft Corporation	269	28	Microsoft Corporation	25	6
Teva Pharmaceuticals USA, Inc.	265	14	Aurobindo Pharma USA, Inc.	24	2
HTC Corporation	254	19	Aurobindo Pharma Ltd.	22	2
AT&T Corp.	230	21	Zydus Pharmaceuticals (USA) Inc.	20	2
Dell Inc.	225	19	HP Inc.	19	5
Google Inc.	224	27	Lupin Ltd.	19	3
AT&T Mobility LLC	214	21	Google LLC	18	7
Mylan, Inc.	213	15	Lupin Pharmaceuticals, Inc.	18	3
Apotex Inc.	212	13	LG Electronics, Inc.	17	8
Hewlett-Packard Company	206	21			

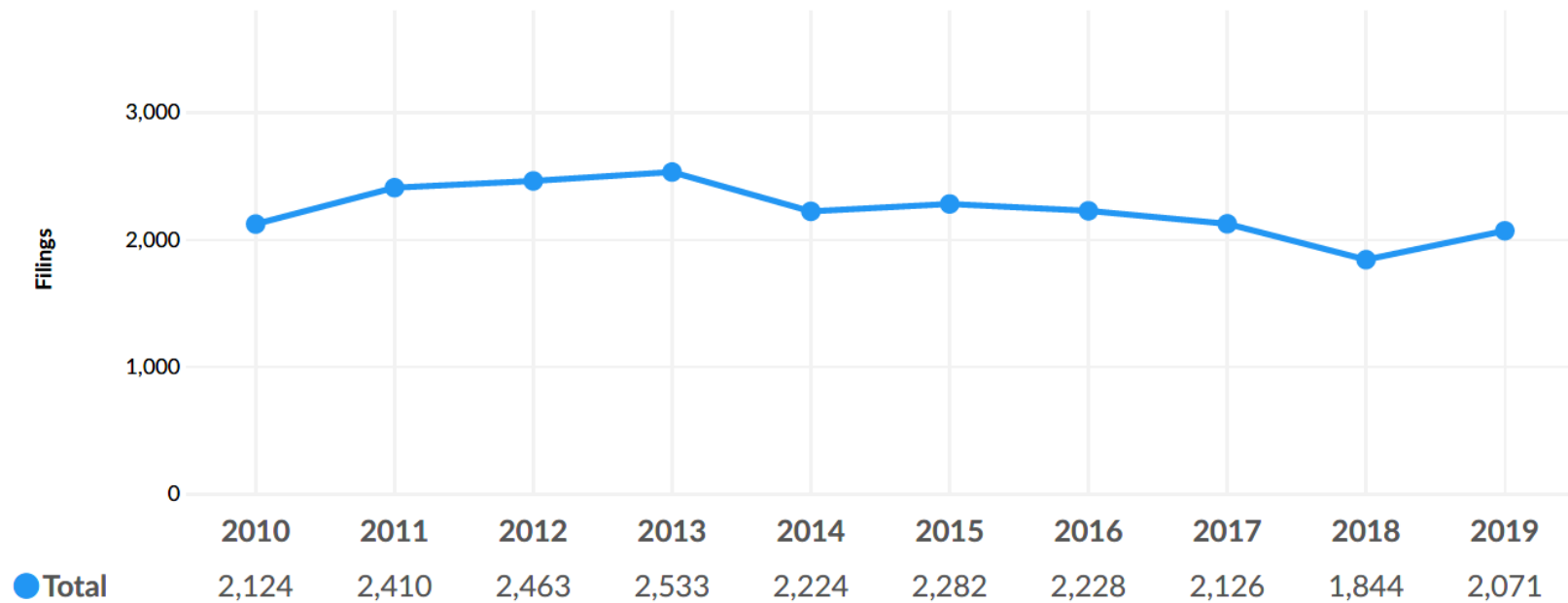
Source: Lex Machina Patent Litigation Report February 2020

PTAB Orange Book Patent Filings 2012 to 2019



Source: Lex Machina Patent Litigation Report February 2020

Patent Case Filings to 2019 excluding High-Volume Plaintiff, ANDA, and MDL Associated Cases



Source: Lex Machina Patent Litigation Report February 2020

A background image showing a business meeting. Two people in light blue shirts are seated at a wooden table, looking at documents. One person's hand is pointing at a document. The scene is brightly lit, suggesting a window in the background. A teal semi-transparent box is overlaid on the right side of the image, containing the title text.

Patent Litigation Trends – Merits Outcomes

Case Resolutions for Cases Terminating 2010-2019

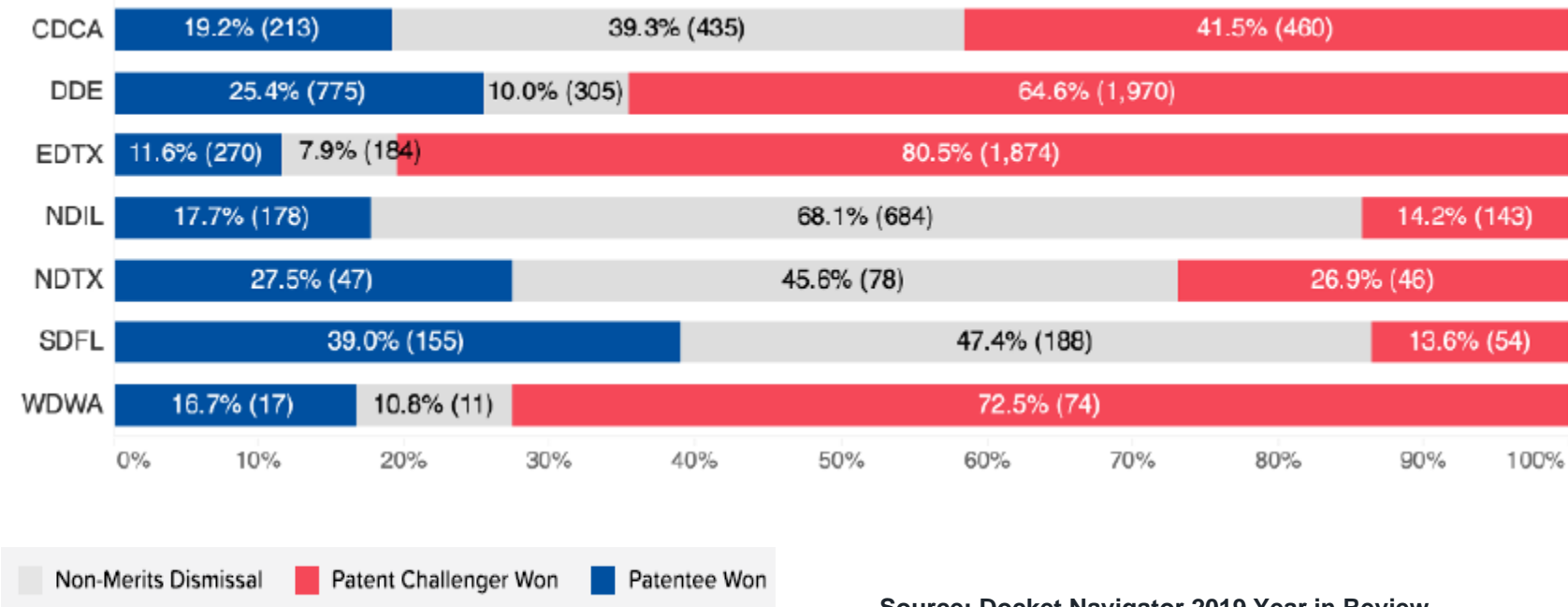
Claimant Win	2,695	6%
Default Judgment	389	1%
Consent Judgment	1,565	4%
Judgment on the Pleadings	2	0%
Summary Judgment	201	0%
Trial	516	1%
Judgment as a Matter of Law	22	0%
Decision on Bankruptcy Appeal	0	0%
Claim Defendant Win	1,639	4%
Default Judgment	19	0%
Consent Judgment	337	1%
Judgment on the Pleadings	228	1%
Summary Judgment	805	2%
Trial	219	0%
Judgment as a Matter of Law	31	0%
Decision on Bankruptcy Appeal	0	0%



Likely Settlement	33,071	75%
Plaintiff Voluntary Dismissal	11,305	26%
Stipulated Dismissal	21,766	49%
Procedural Resolution	6,675	15%
Contested Dismissal	896	2%
Dismissal	1,286	3%
Consolidation	1,339	3%
Severance	14	0%
Interdistrict Transfer	1,786	4%
Intradistrict Transfer	143	0%
Stay	648	1%
Multidistrict Litigation	563	1%
No Case Resolution	0	0%

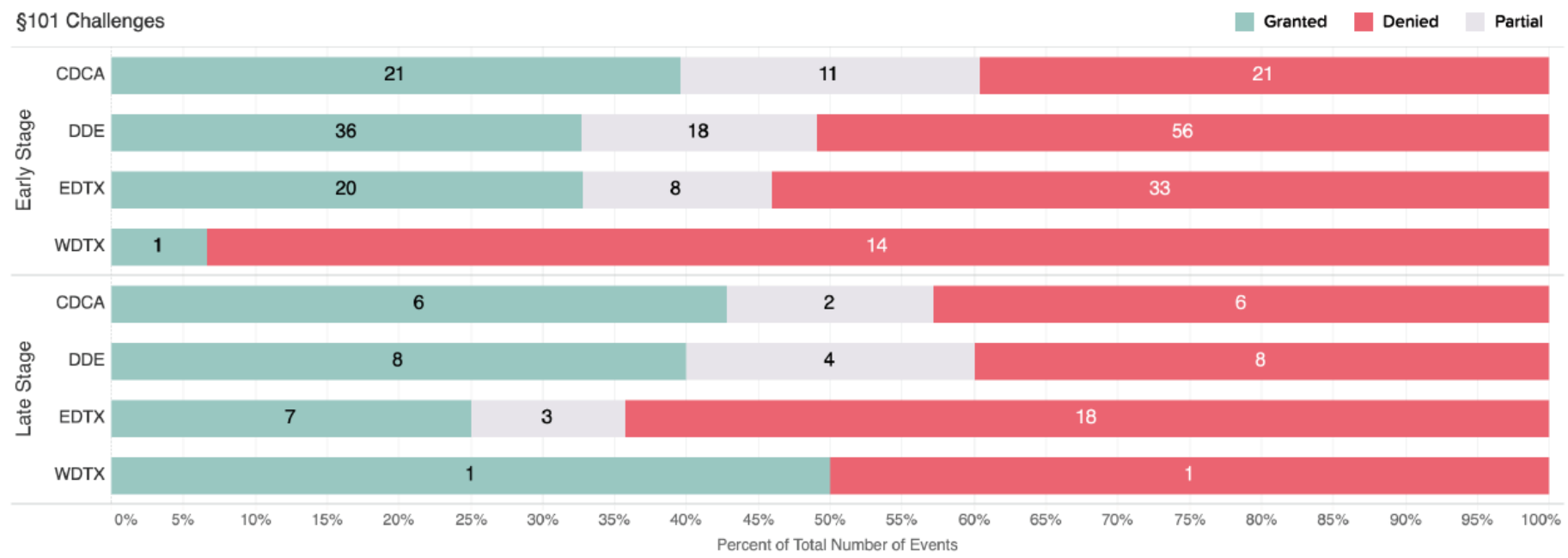
Source: Lex Machina Patent Litigation Report February 2020

U.S. District Court Outcomes – 2016 to 2019



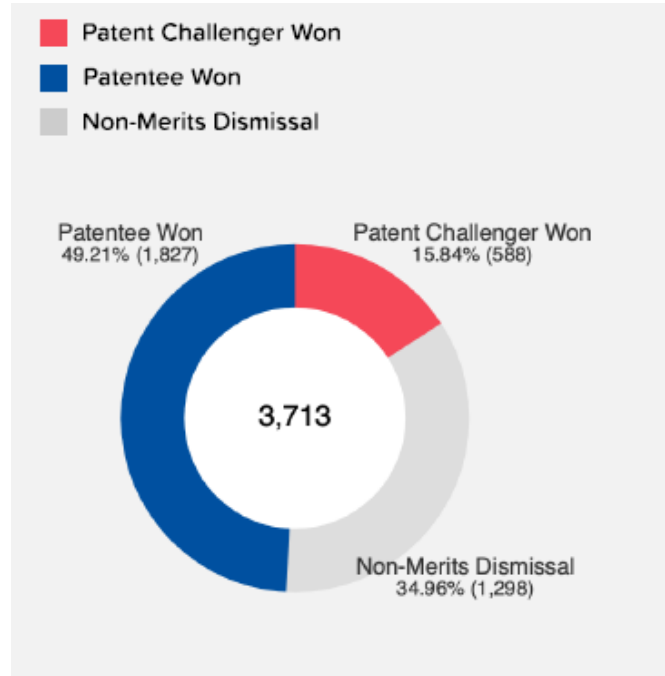
Source: Docket Navigator 2019 Year in Review

U.S. District Court 101 Challenges – 2016 to 2019



Source: Docket Navigator 2019 Year in Review

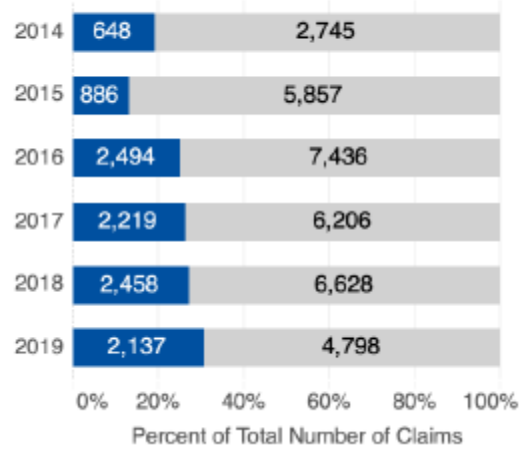
ITC Outcomes—2016 to 2019



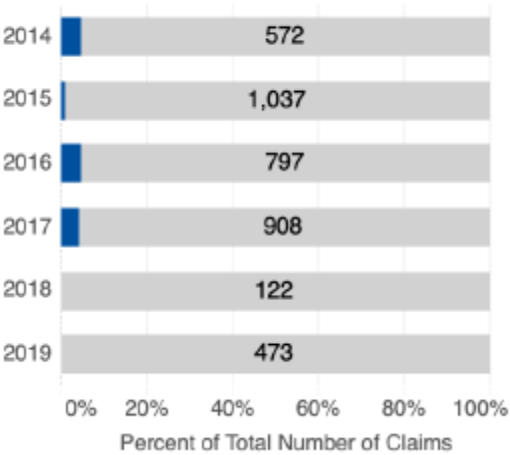
Source: Docket Navigator 2019 Year in Review

PTAB Final Written Decisions

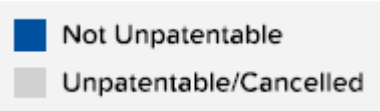
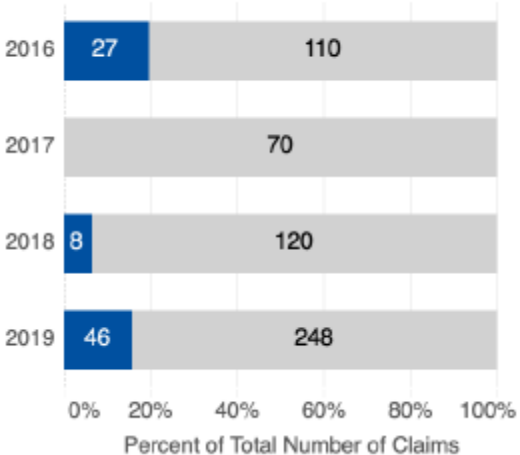
Claims Challenged in IPR



Claims Challenged in CBM



Claims Challenged in PGR



Source: Docket Navigator 2019 Year in Review



Patent Litigation Trends – Damages Awards

Total Patent Damages Awarded 2010 to 2019

Year	Cases	Amount
2019	54	\$1,460,278,344.76
2018	54	\$1,279,753,552.48
2017	55	\$879,079,331.12
2016	56	\$320,433,449.50
2015	50	\$739,480,271.83
2014	56	\$1,904,054,479.38
2013	58	\$1,664,866,196.99
2012	73	\$3,919,306,401.52
2011	76	\$1,464,755,425.08
2010	76	\$2,407,578,165.06

Source: Lex Machina Patent Litigation Report February 2020

Top Patent Jury Awards 2010 to 2019

Date	Amount	Case
2012-12-26	\$1,169,140,271.00	CARNEGIE MELLON UNIVERSITY v. MARVELL TECHNOLOGY GROUP, LTD. et al
2012-08-01	\$1,000,000,000.00	Monsanto Company et al v. E.I. Dupont De Nemours and Company et al
2019-12-13	\$585,000,000.00	Juno Therapeutics, Inc. et al v. Kite Pharma, Inc.
2018-04-12	\$502,567,709.00	VirnetX Inc. et al v. Apple Inc.
2011-01-28	\$482,000,000.00	Saffran, M.D., Ph.D., v. Johnson & Johnson et al
2014-10-01	\$466,774,783.00	Masimo Corporation v. Philips Electronics North America Corporation et al
2018-06-15	\$400,000,000.00	KAIST IP US LLC v. Samsung Electronics Co., LTD., et al
2014-01-15	\$393,600,000.00	Edwards Lifesciences LLC et al v. Medtronic Corevalve LLC et al
2012-11-06	\$368,160,000.00	VirnetX Inc., et al v. Apple Inc.
2011-09-09	\$328,654,806.00	Versata Software, Inc. et al v. SAP America, Inc. et al
2013-11-21	\$290,456,793.00	Apple Inc. v. Samsung Electronics Co. Ltd. et al
2015-10-19	\$234,277,669.00	Wisconsin Alumni Research Foundation v. Apple Inc.
2019-11-06	\$200,000,000.00	United Services Automobile Association v. Wells Fargo Bank, N.A.
2014-04-24	\$181,000,000.00	Viasat, Inc. et al v. Space Systems/Loral, Inc.
2012-03-08	\$170,195,000.00	General Electric Company v. Mitsubishi Heavy Industries Ltd et al
2019-02-05	\$155,190,264.00	Bayer Healthcare LLC v. Baxalta Incorporated et al
2012-07-13	\$147,200,000.00	Information Technologies, Inc. v. BlackBerry Limited et al
2015-12-17	\$139,800,000.00	Power Integrations, Inc. v. Fairchild Semiconductor International, Inc. et al
2017-03-03	\$139,800,000.00	Sprint Communications Company L.P. v. Time Warner Cable Inc. et al
2019-11-26	\$137,250,000.00	Roche Diagnostics Corporation v. Meso Scale Diagnostics, LLC

Source: Lex Machina Patent Litigation Report February 2020



Patent Litigation Trends – Injunctions

Rulings on Permanent Injunctions in Cases Terminating 2010 to 2019

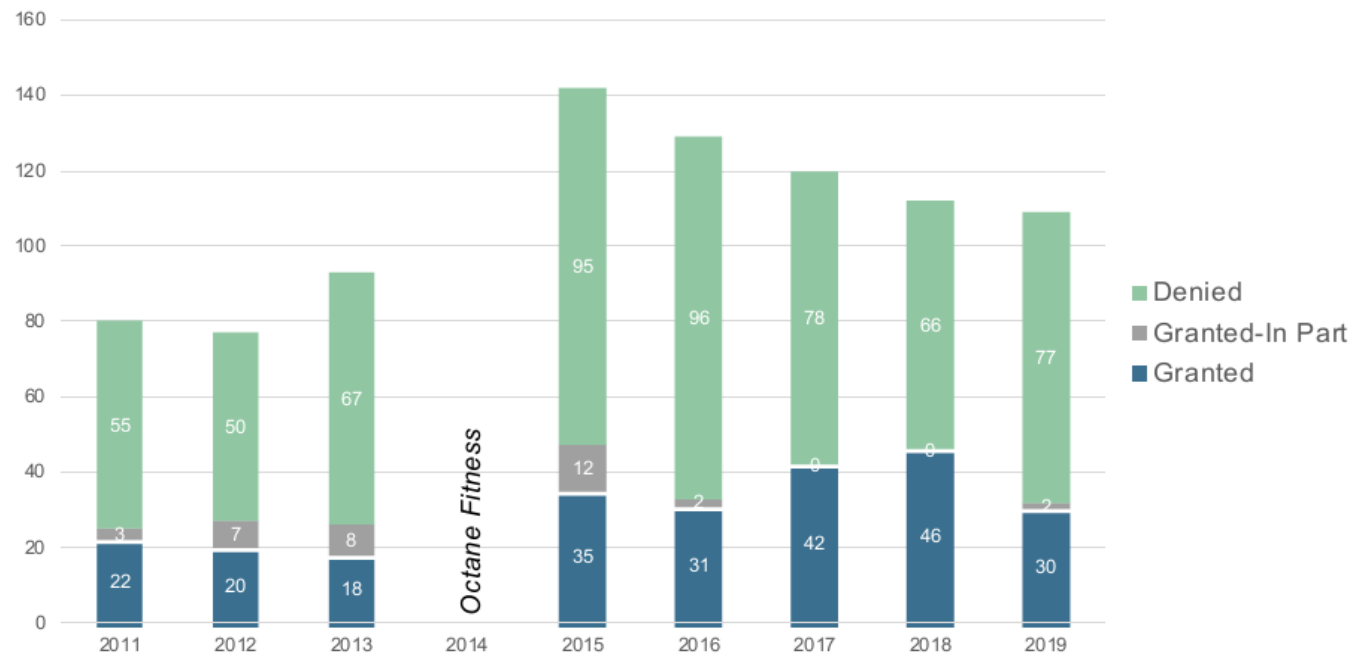
Year	CJ Granted	DFJ Granted	DFJ Denied	Merits Granted	Merits Denied	Overall Granted	Overall Denied
2019	125	28	0	13	2	166	2
2018	167	29	0	15	3	211	3
2017	209	26	0	36	2	271	2
2016	188	43	2	28	7	259	9
2015	135	29	0	28	3	192	3
2014	194	27	1	22	7	243	8
2013	164	25	0	33	2	222	2
2012	200	49	0	28	6	277	6
2011	192	53	0	29	7	274	7
2010	175	38	1	30	10	243	11

Source: Lex Machina Patent Litigation Report February 2020



Patent Litigation Trends – Fee Shifting

Section 285 Fee Awards Pre and Post-*Octane Fitness*



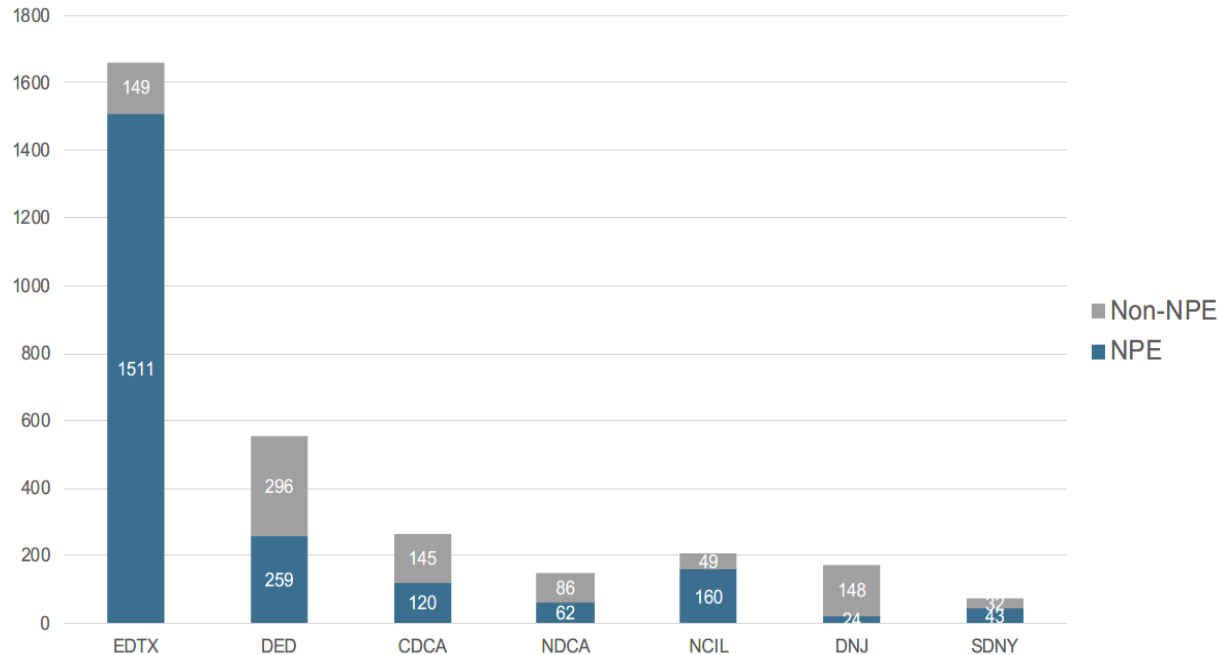
10

<https://www.law.berkeley.edu/wp-content/uploads/2019/12/Panel-16-Alyssa-Caridis.pdf>

The background of the slide is a photograph of a modern glass skyscraper, likely the Burj Khalifa, viewed from a low angle looking up. The building's glass facade reflects the sky and surrounding environment. A semi-transparent teal rectangular box is positioned in the upper right quadrant of the image, containing the title text in white.

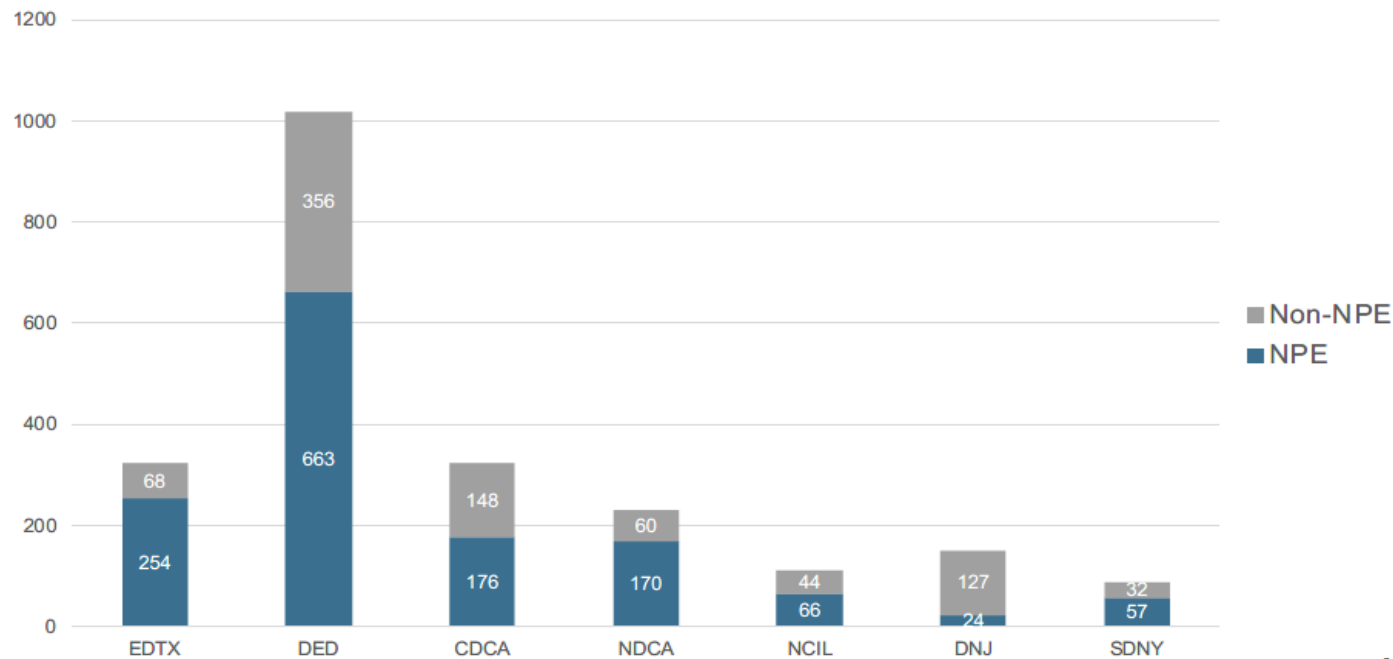
Patent Litigation Trends – Venue

One Year Before *TC Heartland*



<https://www.engine.is/news/category/patents-in-the-heartland-one-year-after-tc-heartland-texas-npes-migrate-to-greener-pastures>

One Year After *TC Heartland*



<https://www.unifiedpatents.com/insights/2019/12/30/q4-2019-patent-dispute-reportPa>

Top 5 Patent Courts

Figure 9: Districts with the Most New Patent Cases in 2010

District	Cases	Percent
E.D.Tex.	285	10.17%
D.Del.	253	9.03%
C.D.Cal.	228	8.14%
N.D.Cal.	178	6.35%
N.D.Ill.	175	6.25%

Figure 10: Districts with the Most New Patent Cases in 2015

District	Cases	Percent
E.D.Tex.	2,546	43.65%
D.Del.	544	9.33%
C.D.Cal.	298	5.11%
D.N.J.	272	4.66%
N.D.Cal.	230	3.94%

Figure 11: Districts with the Most New Patent Cases in 2019

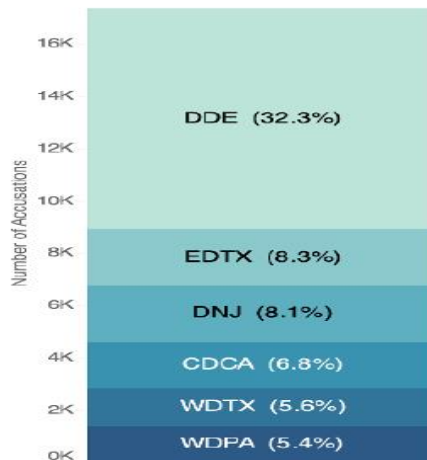
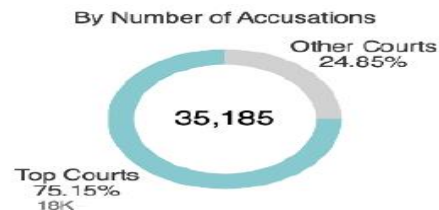
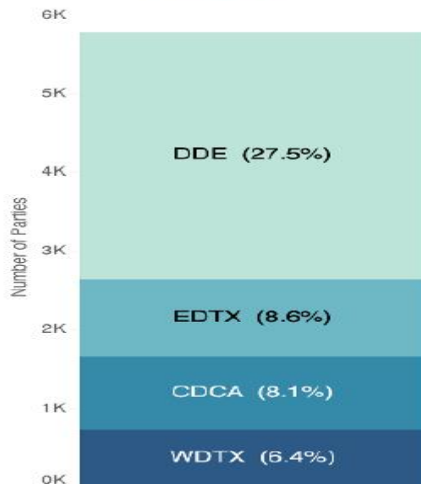
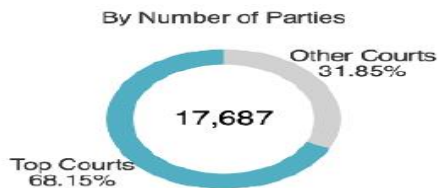
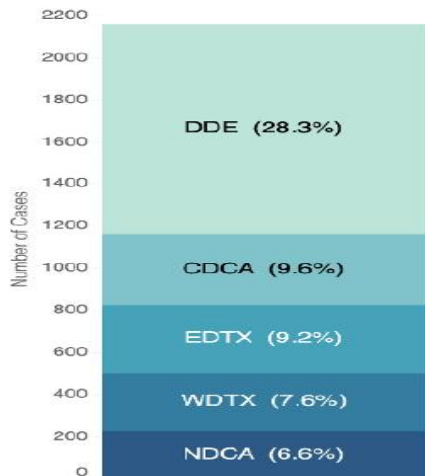
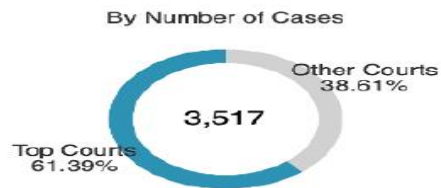
District	Cases	Percent
D.Del.	1,001	27.9%
C.D.Cal.	346	9.64%
E.D.Tex.	333	9.28%
W.D.Tex.	279	7.78%
N.D.Cal.	240	6.69%

Source: Lex Machina Patent Litigation Report February 2020



Patent Litigation – 2019 Snapshot

Top U.S. District Courts in 2019



Source: Docket Navigator 2019 Year in Review

Case Resolutions for Cases Terminating in 2019

Claimant Win	241	7%
Default Judgment	37	1%
Consent Judgment	137	4%
Judgment on the Pleadings	1	0%
Summary Judgment	18	1%
Trial	47	1%
Judgment as a Matter of Law	1	0%
Decision on Bankruptcy Appeal	0	0%
Claim Defendant Win	130	4%
Default Judgment	1	0%
Consent Judgment	25	1%
Judgment on the Pleadings	38	1%
Summary Judgment	49	1%
Trial	16	0%
Judgment as a Matter of Law	1	0%
Decision on Bankruptcy Appeal	0	0%



Likely Settlement	2,593	73%
Plaintiff Voluntary Dismissal	1,091	31%
Stipulated Dismissal	1,502	42%
Procedural Resolution	581	16%
Contested Dismissal	44	1%
Dismissal	146	4%
Consolidation	74	2%
Severance	0	0%
Interdistrict Transfer	108	3%
Intradistrict Transfer	29	1%
Stay	131	4%
Multidistrict Litigation	49	1%
No Case Resolution	0	0%

Source: Lex Machina Patent Litigation Report February 2020

Cases Terminated in 2019 with Findings

Findings	Judgment on the Pleadings Consent Judgment Default Judgment		Summary Judgment		Judgment as a Matter of Law Trial		Any Judgment Event	
Infringement	39	73	0	15	38	1	161	
No Infringement	3	38	1	62	27	4	120	
Invalidity	2	6	44	66	10	0	123	
No Invalidity	5	68	0	25	48	1	134	
Unenforceability	0	1	0	2	1	0	4	
No Unenforceability	4	58	1	7	3	1	74	

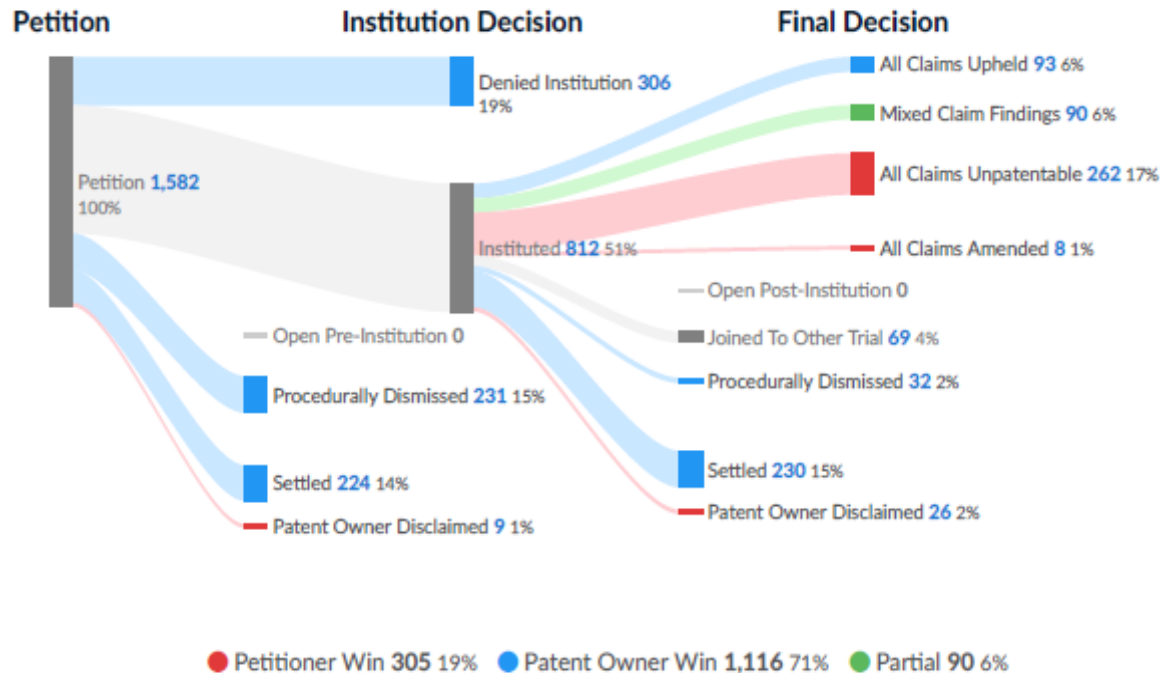
Source: Lex Machina Patent Litigation Report February 2020

Cases Terminated in 2019 with Patent Invalidity Reasons

Invalidity Reasons	Default Judgment	Judgment on the Pleadings	Summary Judgment	Judgment as a Matter of Law	Trial	Any Judgment Event	
101 Subject Matter	0	0	43	14	2	0	57
102 Anticipation / Novelty	0	1	0	8	2	0	11
102(f) Derivation (pre-AIA)	0	0	0	0	1	0	1
102(g) Interference (pre-AIA)	0	0	0	0	0	0	0
103 Obviousness	0	1	0	2	4	0	7
112 Best Mode (pre-AIA)	0	0	0	0	0	0	0
112 Definiteness	0	4	1	37	3	0	43
112 Enablement	0	0	1	1	0	0	2
112 Written Description	0	1	1	5	1	0	8
133, 371 Application Abandonment	0	0	0	0	0	0	0
171 Improper Design Patent	0	0	0	0	0	0	0
132, 251, 255, 305 Defective Correction	0	0	0	1	0	0	1
Obviousness-Type Double Patenting	0	0	0	1	1	0	2
No Invalidity Reason Specified	2	0	0	0	0	0	2

Source: Lex Machina Patent Litigation Report February 2020

PTAB Trial Flow for Trials Terminated in 2019



All %s out of 1,582 Petitioned trials

Source: Lex Machina Patent Litigation Report February 2020

A photograph of three people in a meeting. A woman with long red hair, wearing a mustard-colored sweater, is seated on the left, holding a pen and looking towards the center. A man with a beard and short hair, wearing a light blue button-down shirt, is seated in the center, looking towards the right. Another man with glasses and a beard, wearing a white shirt, is partially visible on the right side of the frame. They are seated around a wooden table with various items on it, including a glass jar filled with pens and pencils, a green mug, a coffee cup, and some papers. The background shows large windows with a grid pattern, letting in bright light. A teal-colored rectangular overlay is positioned on the right side of the image, containing the title text.

Patent Litigation – The Road Ahead

Signs of a Turnaround in Patent Litigation

- Plaintiff enhanced win rates at trial and summary judgment
- Containment of *Mayo/Alice*
- W.D. Texas (J. Albright)
- PTAB more patent owner friendly
- Litigation finance
- Economic downturn?
- March 2020 case filings

Patent Filings Increased in March 2020

Case Filings By Practice Area

Practice Area	March 2018	March 2019	% Change	March 2020	% Change
Patent	312	242	-22.4%	278	+14.9%
Contracts	909	889	-2.2%	872	-1.9%
Copyright	444	476	+7.2%	285	-40.1%
Trademark	325	332	+2.2%	269	-19.0%
Trade Secret	118	128	+8.5%	97	-24.2%
All Other PACER Civil Litigation	4,374	4,454	+1.8%	3,710	-16.7%

Questions?

Please submit questions to presenters:



Steven M. Auvil
Partner, Washington, D.C. and Cleveland
E steven.auvil@squirepb.com



Tamara D. Fraizer
Partner, Palo Alto, CA
E tamara.fraizer@squirepb.com

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Asia Pacific

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- Perth
- Seoul
- Shanghai
- Singapore
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- Tokyo

Country desks and strategic alliances

- | | |
|-----------|-----------|
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| Argentina | Mexico |
| Brazil | Panamá |
| Chile | Peru |
| Colombia | Turkey |
| Cuba | Ukraine |
| India | Venezuela |
| Israel | |

