

Lex Machina

Patent Litigation

Year in Review 2015



 **Lex Machina™**
a LexisNexis® Company

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Executive Summary

Lex Machina's third annual Patent Litigation Year in Review examines the key trends in the legal landscape of 2015 and places them in the context of recent years, showcasing the value of Legal Analytics® in informing business and strategic decisions about litigation.

This report provides insight into the quantitative aspects of patent litigation. Practitioners can find data to give them an edge at all stages of a case: from top parties and firms for business development or outside counsel selection, to jurisdictional analysis, the timing of key case events, the likelihood of winning invalidity or infringement findings, all the way to data on damages. Regardless of which side of a complaint (or retainer agreement) one finds oneself, understanding the data behind the business of patent litigation has become indispensable to assessing strategic opportunities and risk, and to budgeting accordingly.

This report examines the key axes of legal data and their interactions, drawing upon Lex Machina's platform that combines data from PACER, the Patent Trial and Appeal Board (PTAB), the U.S. International Trade Commission (ITC), the U.S. Food and Drug Administration (FDA) Orange Book on Abbreviated New Drug Applications (ANDAs), and more.

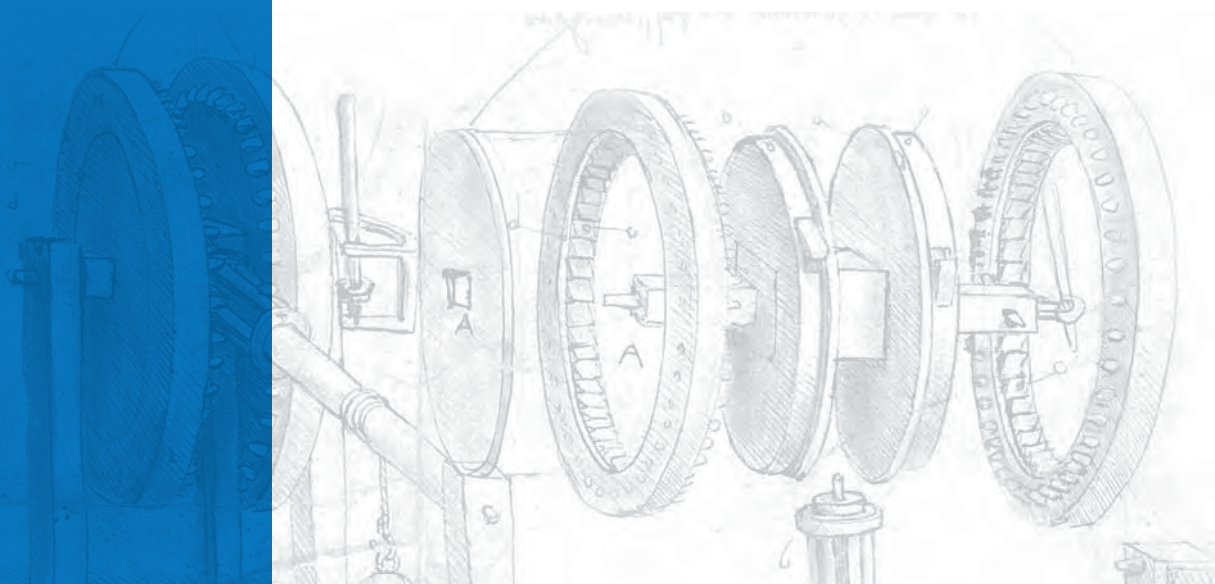
Lex Machina's 2015 Patent Litigation Year in Review surveys and summarizes the key trends that have emerged over the last year.

Based on the same data driving Lex Machina's platform, this report examines filing trends, case timing, motions, judges, top law firms, patent trends, parties and damages to showcase the power of Legal Analytics.

Key trends and highlights from 2015 include:

Filing Trends:

- 5,819 patent cases were filed in 2015 - a 15% rise from 2014 but not more than were filed in 2013.
- November 2015 set a record for most patent cases filed in a month at 845, but the 281 cases filed in December 2015 constitute a low not seen since 2011.
- 43.7% of patent cases filed in 2015 were filed in the Eastern District of Texas (2,540 cases).



Case Timing

- Both Central and Northern Districts of California saw faster median times to claim construction (about a year) than any of the Eastern District of Texas, the District of Delaware, or the national average (all a year and a half).

Motion Metrics

- The Eastern District of Texas, the District of Delaware, and the Northern District of California all had similar grant rates of around two out of three, while the Central District of California exhibited a higher rate of motion denial (a pattern seen last year as well).

Design Patent and ANDA Litigation

- Design patent and ANDA case filings remain much more constant than patent litigation generally.
- Design patent litigation is concentrated in the Central District of California, while ANDA cases are concentrated in the District of New Jersey and the District of Delaware.

Judges

- Judge Gilstrap (E.D.Tex.), responsible for 80% patent cases filed in Marshall during much of 2015, received an incredible 1686 new cases in 2015.
- Judge Andrews (D. Del.) led for the most merits decisions, followed by Judges Robinson (D.Del.) and Stark (D.Del.) whose many decisions were in related cases.

Parties

- The parties filing the most patent lawsuits in 2015 are all patent monetization entities (PMEs). eDekka remains the most litigious party for the second year in a row.
- Samsung has overtaken Apple as the most-sued patent defendant in 2015.

Law Firms

- The Austin Hansley firm filed an astonishing 425 cases, representing such plaintiffs as eDekka LLC, Olivistar LLC, Wetrol LAN LLC, and Data Carriers LLC and making it the top plaintiff-side law firm in Texas (as well as nationally) by cases filed in 2015.

Patents and Patent Findings

- Findings of infringement tend to come from either trial or from consent judgment, while findings of non-infringement or invalidity are as likely as not to have come from summary judgment.

Remedies and Case Resolutions

- The median time for a preliminary injunction is 3.7 months, and for permanent injunction is 10.6 months.
- Comparing cases terminating in 2015 with those from 2009-2014, more cases are settling in 2015 (76.1%) than before (73.2%), and claim defendants are winning more often (4.2% to 3.7% in 2015, contrasted with 4.3% to 6.9% in 2009-2014)

Damages

- Compensatory damages continue to be awarded in few cases, around 1.8% of the terminated cases filed since the year 2000.
- 2015 saw the award of approximately \$750m total in compensatory damages.
- Of damages granted since 2000, juries have granted about seven times more than judges (\$15 billion versus \$1.9 billion).

This report illustrates the impact that Legal Analytics can have on key aspects of the business and practice of patent law in generalized way. The full power of Legal Analytics is revealed, though, when users engage with the platform, tailoring their analysis to produce the tactical or strategic insights particular to their circumstance. When users have the ability to “twist the dials,” the results provide a competitive advantage in landing clients, winning cases, and closing deals by making data-driven decisions.

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Lex Machina's Data, Methodology, and Terminology

This report draws on data from Lex Machina's proprietary intellectual property litigation database. Although some of our data is derived from litigation information publicly available from PACER (federal court system), EDIS (the ITC system), or the PTAB website, Lex Machina applies additional layers of intelligence to bring consistency to, and ensure the completeness of, the data. Beyond the automation, key areas of Lex Machina's data are either human-reviewed or hand-coded by a dedicated team of attorneys to ensure accuracy.

This report analyzes trends in patent litigation. To determine whether a case is a patent case, others may blindly trust the Cause-of-Action (CoA) and Nature-of-Suit (NoS) codes entered in PACER. But Lex Machina actively analyzes complaints to ensure that patent cases filed under mistaken CoA/NoS codes (or a CoA/NoS code corresponding to a different claim, e.g. contract in a combined patent/contract case) are not missed. This same system also allows Lex Machina to filter out the many spurious cases that have no claim of patent infringement despite bearing a patent CoA/NoS code (e.g. false marking cases).

Moreover, due to inherent design limitations, PACER often shows inaccurate or corrupted information for older terminated cases. For example, when a lawyer leaves one firm for another, PACER may show closed cases that the lawyer worked on at the old firm as having been handled by the new firm. When combined with law firm splits, acquisitions, and mergers, these inaccuracies accumulate to render PACER data less reliable for older cases. Lex Machina, however, has a historic record going back to the first days of electronic filing on PACER (and other data going back even further). These snapshots, unique to Lex Machina, give us access to normalized contemporary data and enable us to provide more accurate data for older cases than someone using PACER today.

Lex Machina's data is focused on the lower courts (District Courts, PTAB, and ITC) and does not include appeals or modifications of judgments on appeal.

What is an ANDA case?

The sale of new drugs in the United States is regulated by the Food and Drug Administration (FDA). Pharmaceutical companies launching new, branded drugs must file NDAs (New Drug Applications). The FDA also approves applications for new generic drugs, and makers may file abbreviated applications, either an ANDA or paper NDA (hybrid of a full NDA and an ANDA, also known as a "Section 505(b) (2)" application).

These abbreviated applications assert that the generic is a duplicate of a branded drug (ANDA) or differs from a branded drug but meets safety and efficacy standards based on published studies (paper NDA). Although ANDA and paper NDA cases differ in some important respects, this report considers them together as "ANDA cases" as they represent less than 3% of Hatch-Waxman litigation.

The Hatch-Waxman Act put in place the expedited approval processes for generics and in doing so launched a new type of patent litigation — cases with accused infringing products that are not yet on the market or even approved by the FDA at the time the lawsuit is filed. These cases are often tried by a judge and the generic maker frequently stipulates to infringement. The remedies sought often include injunctions with specific date bounds.

Lex Machina identifies as ANDA cases those patent infringement cases prompted by the filing of an ANDA or paper NDA by a prospective generic maker. This definition, however, does not include cases involving investigational new drugs, over-the-counter drugs or any process or product not requiring FDA approval, therapeutic biologic applications (biosimilars), or generics authorized by the branded drug maker.

Overview

Figure 1: New cases filed, 2007-2015, by year

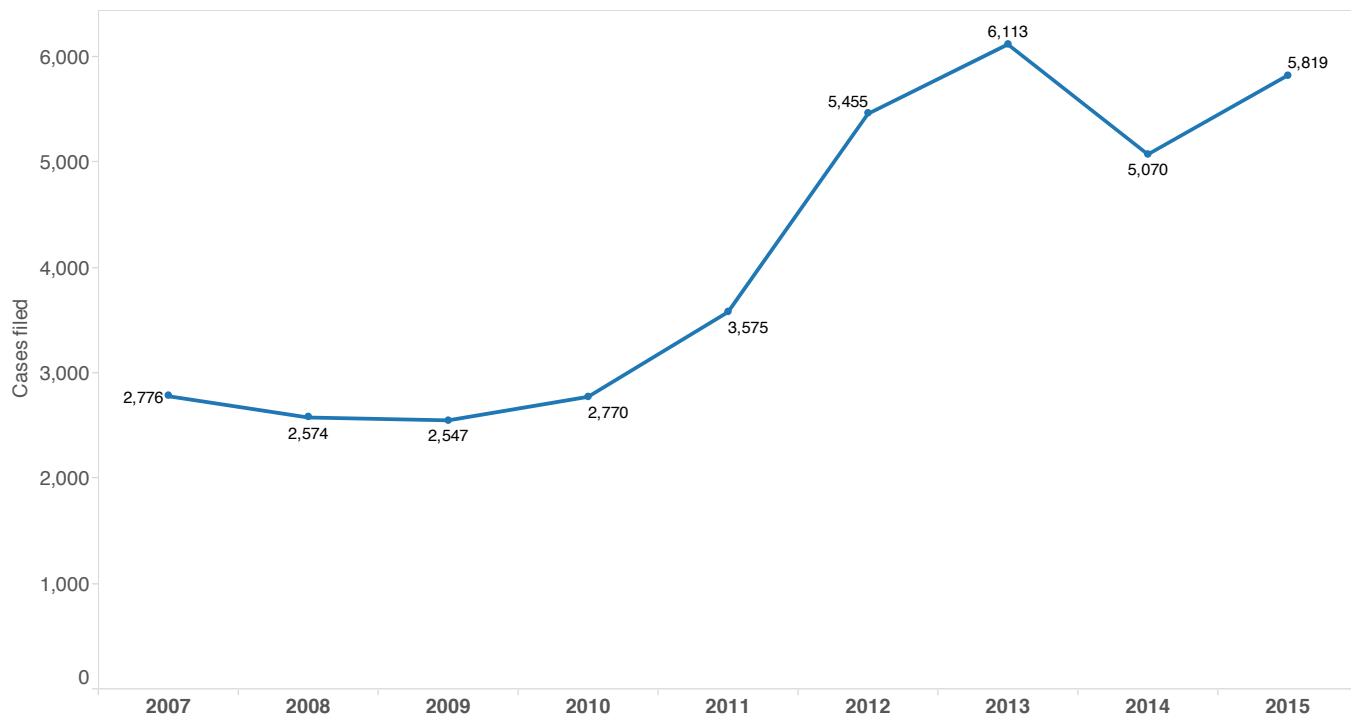
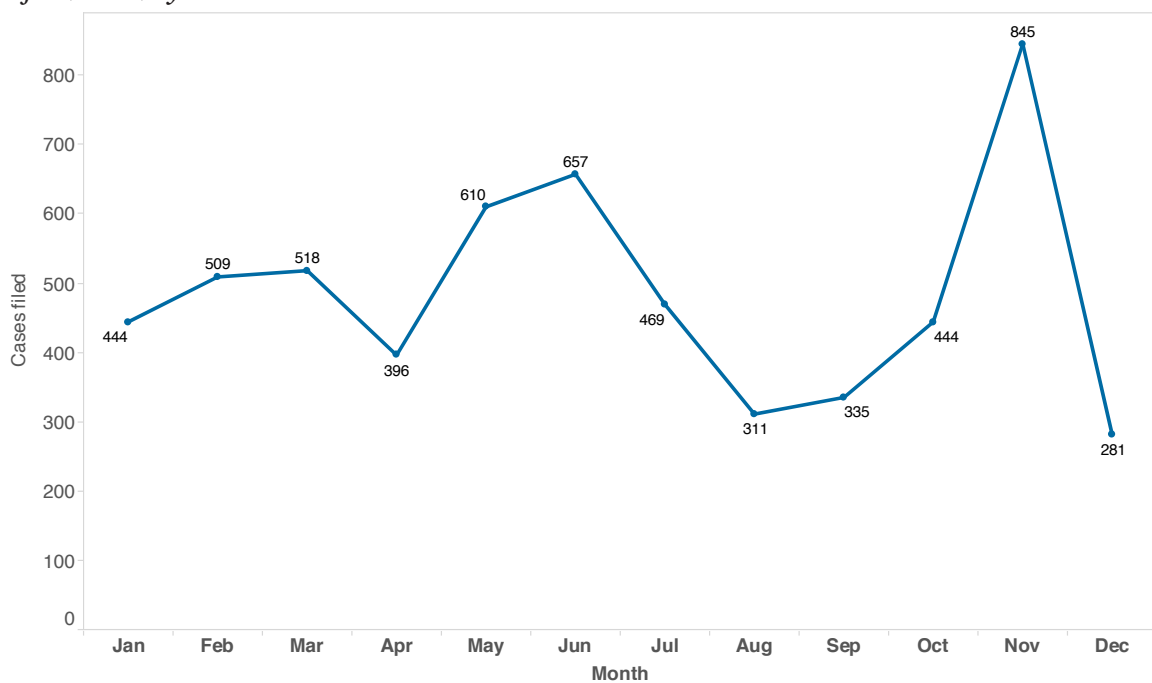


Figure 2: New cases filed, 2015, by month



Note: All charts reflect patent litigation in the U.S. District Courts except where otherwise stated.

Figure 4: New cases filed, 2015 vs 2013, by month, cumulative

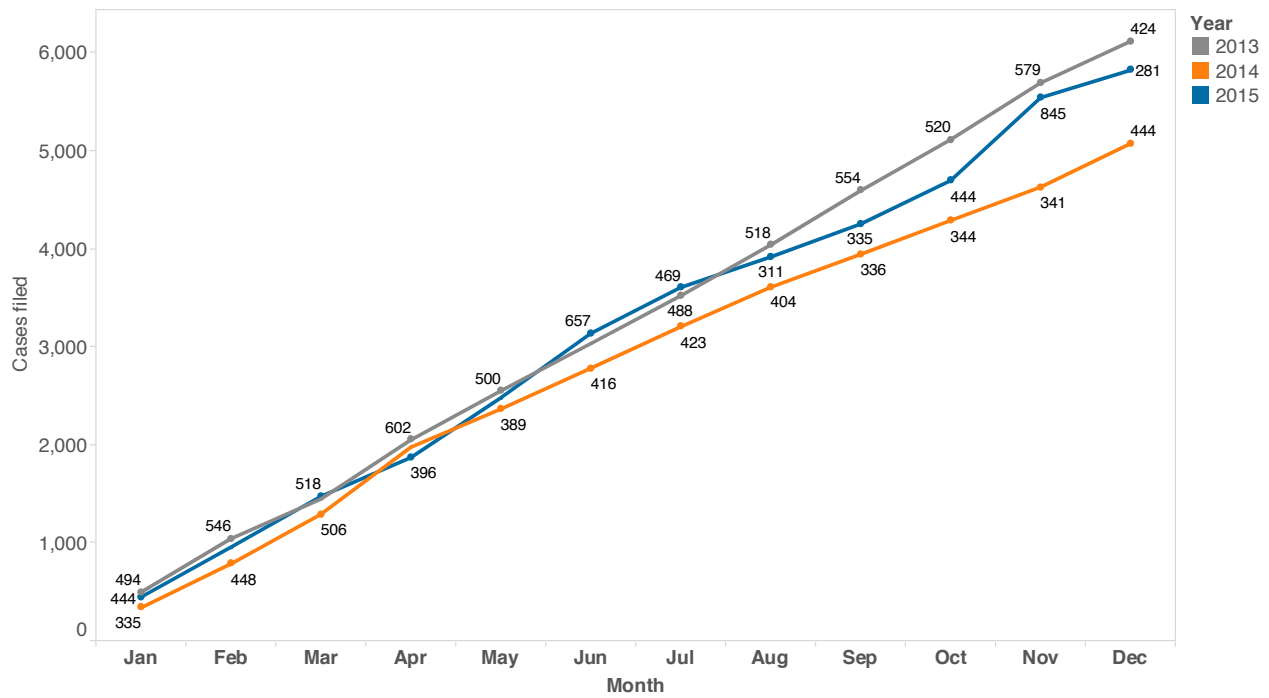
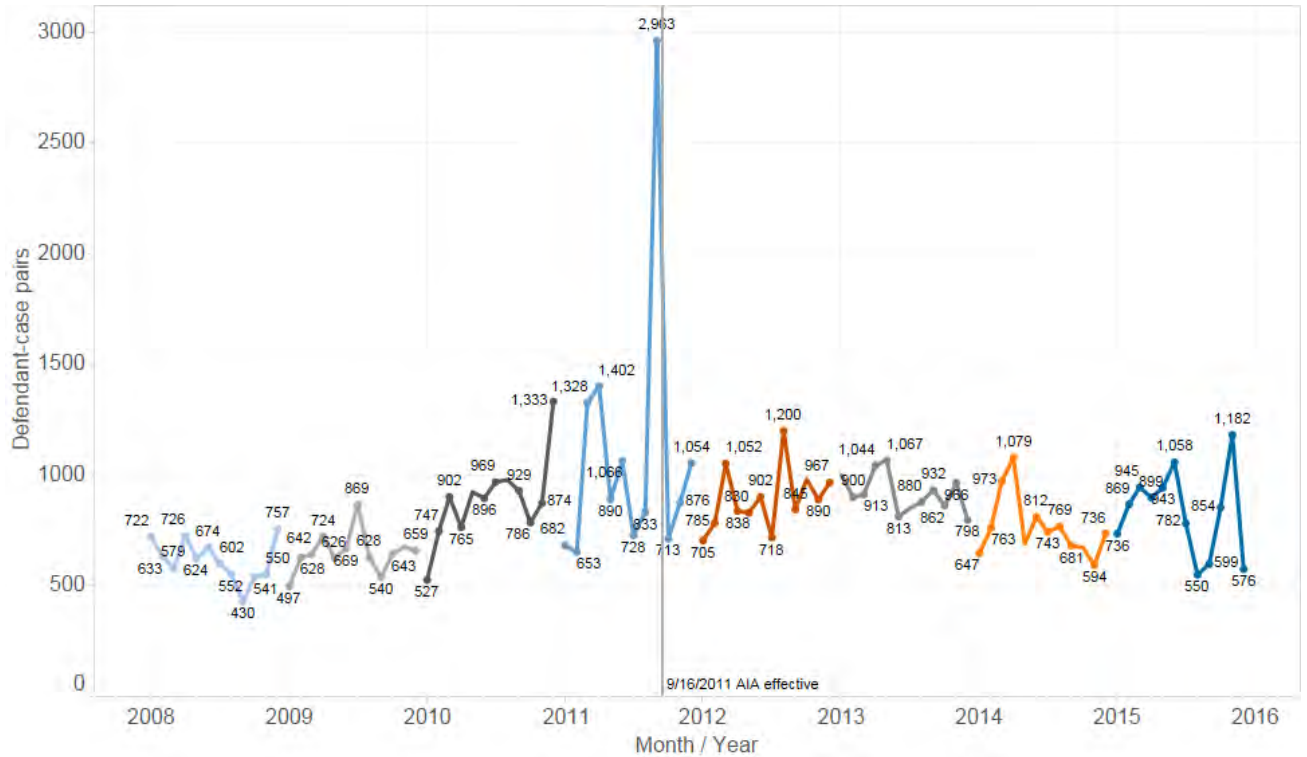


Figure 5: Defendant-case pairs, 2008-2015, by month



The America Invents Act (AIA), which became effective in September 2011, limited the number of defendants a plaintiff could sue in a single case. These anti-joinder provisions make case filing rates from before its enactment in 2011 incomparable with those from afterwards. For example, the AIA's restriction on suing multiple defendants in the same case means that a plaintiff would have to file more patent cases in 2015 than it would have in 2010 to sue the same number of defendants.

In order to understand the increase in litigation and what happens afterwards, it helps to count litigation in a way that is not affected by the AIA's change of rules, such as counting each defendant in a case separately (counting defendant-case pairs).

Measured by defendant-case pairs, the AIA did not dramatically reduce patent case filings, as the quarters from late 2011 to mid 2013 follow a trajectory consistent with those from 2009 to early 2011. This data also shows that litigation dropped in the last half of 2014 to a level more commensurate with 2009 and 2010 than the raw case filings alone would suggest. In 2015, the first few months remained consistent, but the second half set both highs and lows not seen in recent years.

The dramatic spike seen above corresponds to the large number of cases filed in a small number of days against numerous defendants; this influx included plaintiffs eDekka and Olivistar (discussed below) and coincided with the cut-off date in a circulated piece of proposed reform legislation affecting the ability to recover attorneys fees.

U.S. District Courts Top Districts

Figure 6: New cases in 2015, by district

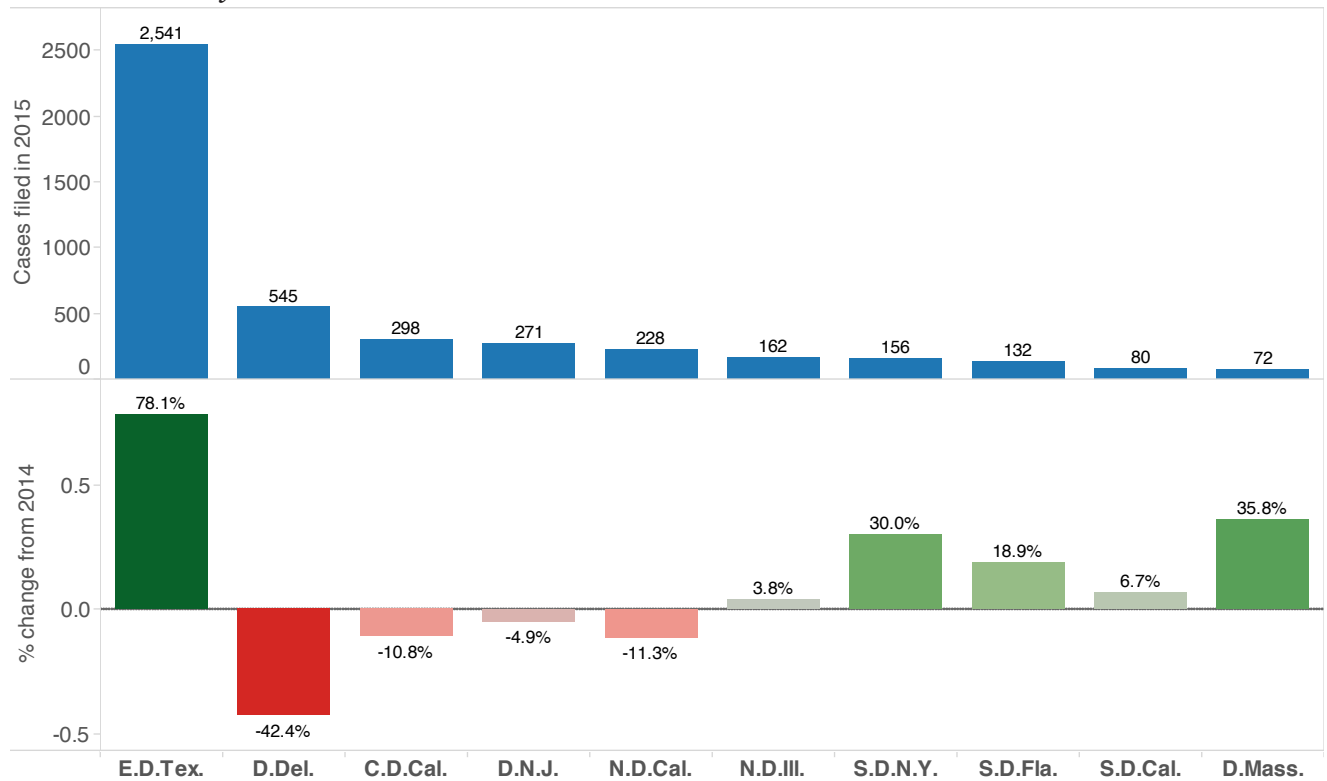
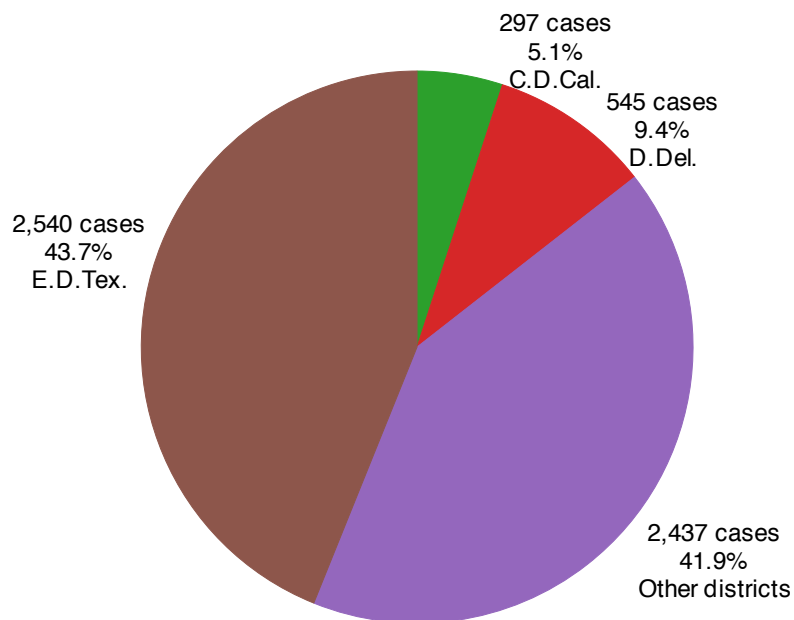


Figure 7: New cases pie, 2015, by district



Patent litigation is very unevenly distributed between the districts.

The Eastern District of Texas continues to lead the nation by number of new cases filed in 2015 - 1,427 cases were filed there in 2015, representing a 78% increase over the district's 2014 total (the largest percentage gain of any district over last year).

The Eastern District of Texas saw 43.7% of the cases filed in 2015. For comparison, Delaware, the next most popular district, saw less than 10%. The Eastern District share is more than the combined totals for all districts other than the top 3 (E.D.Tex., D.Del., and C.D.Cal.).

New case filings in the District of Delaware, historically the second top district, declined in 2015 by an alarming 42.4% - the largest percentage decrease over last year.

Figure 8: Net increase (left) and decrease (right) in new cases filed in 2015

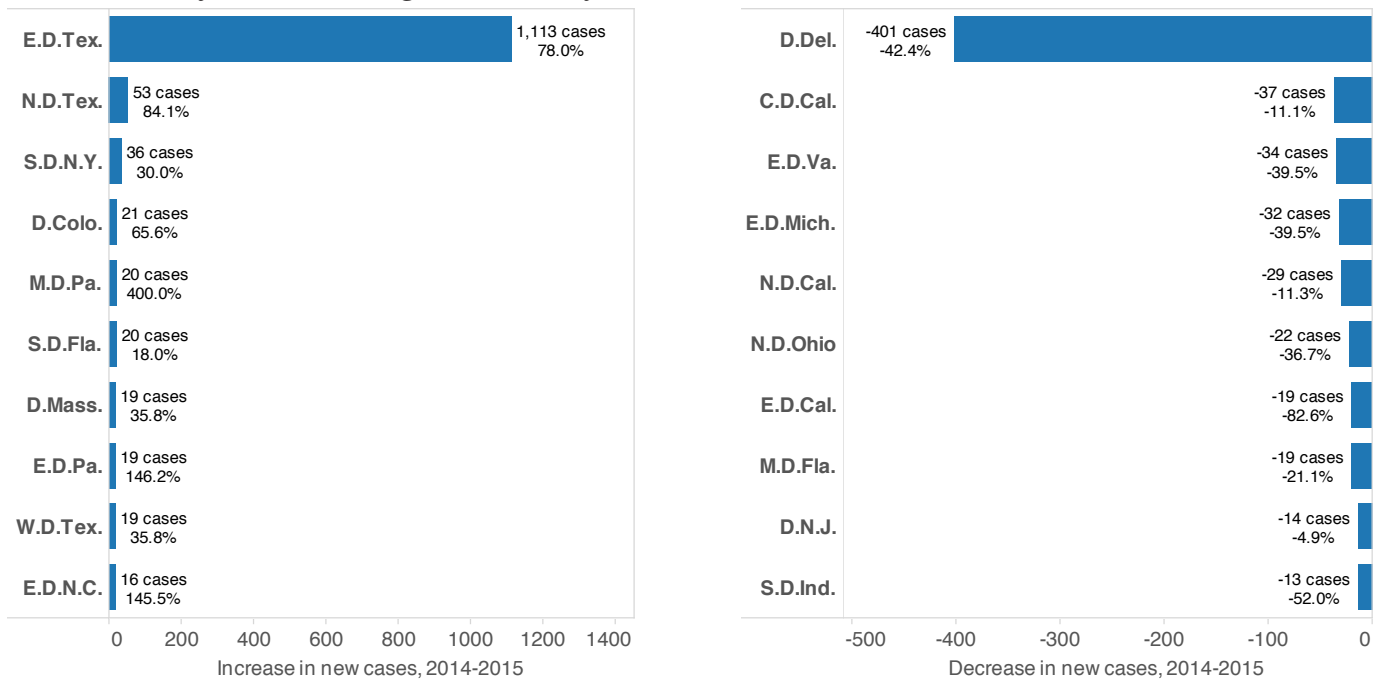


Figure 9: New cases, 2007-2015, by year

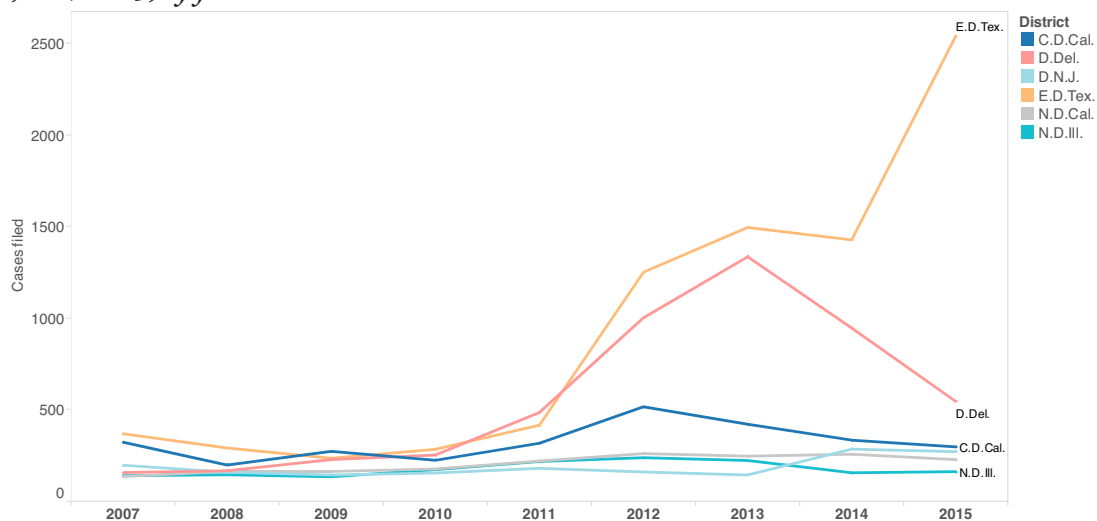
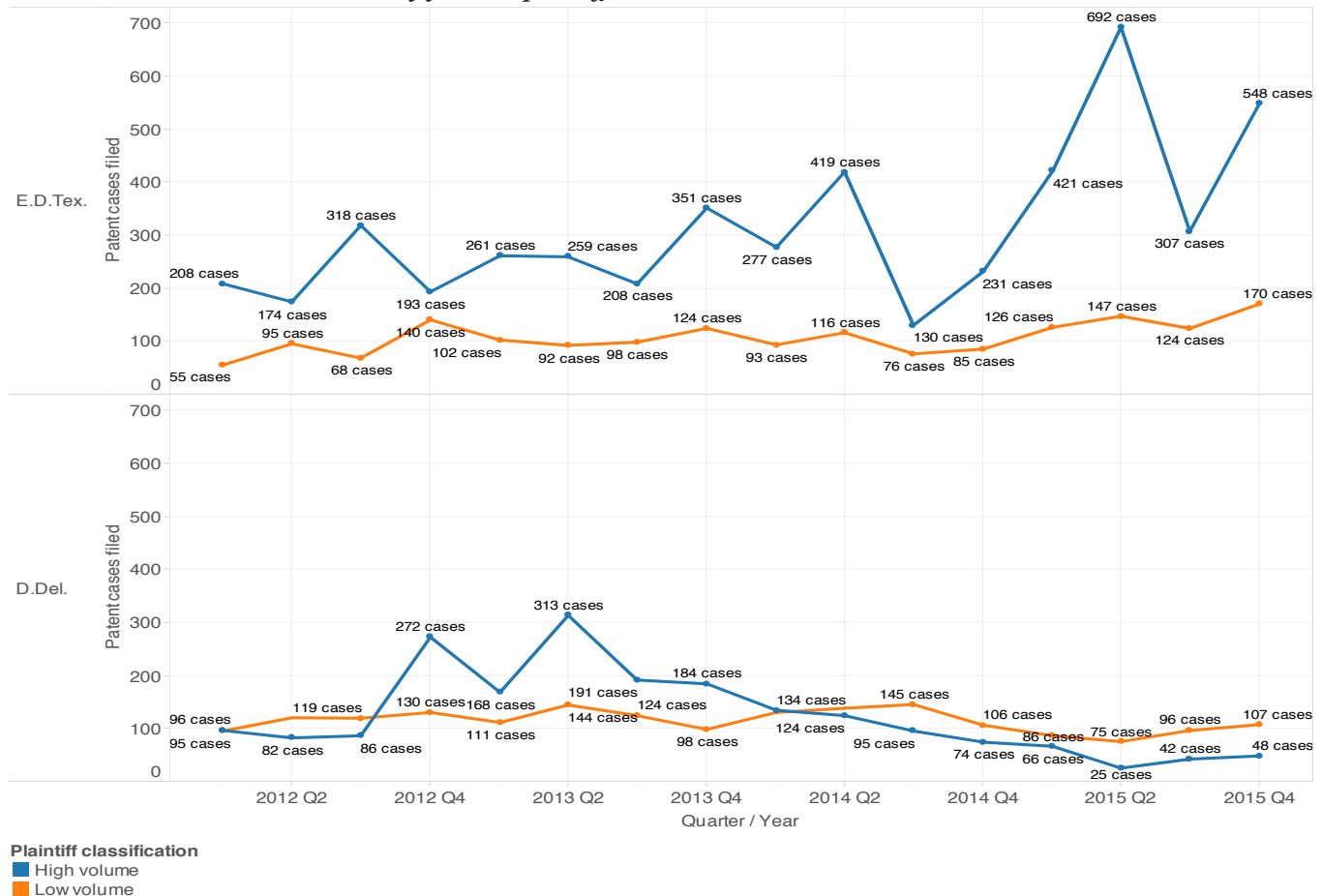


Figure 10: New cases in D. Del. and E.D. Tex., by year and plaintiff volume class



Timing and Motions in Top Districts and Nationally

Lex Machina's timing analytics can help companies and counsel alike by providing data with which to make key decisions about strategy and budgeting.

For example, litigants in both Central and Northern Districts of California can budget less time and money on claim construction, as those districts saw faster median times to claim construction (about a year) than any of the Eastern District of Texas, the District of Delaware, or the national average (all a year and a half).

However, when it comes to trials, Delaware and Eastern Texas offer less variability - 75% of trials in both districts occur several months before the same can be said of either California districts. Of the districts, Central California shows the most variability, more so than the national average, making it less predictable and more difficult to budget for.

Figure 11: For top districts, cases filed 2005-2015 and reaching a claim construction hearing in 2012-2015

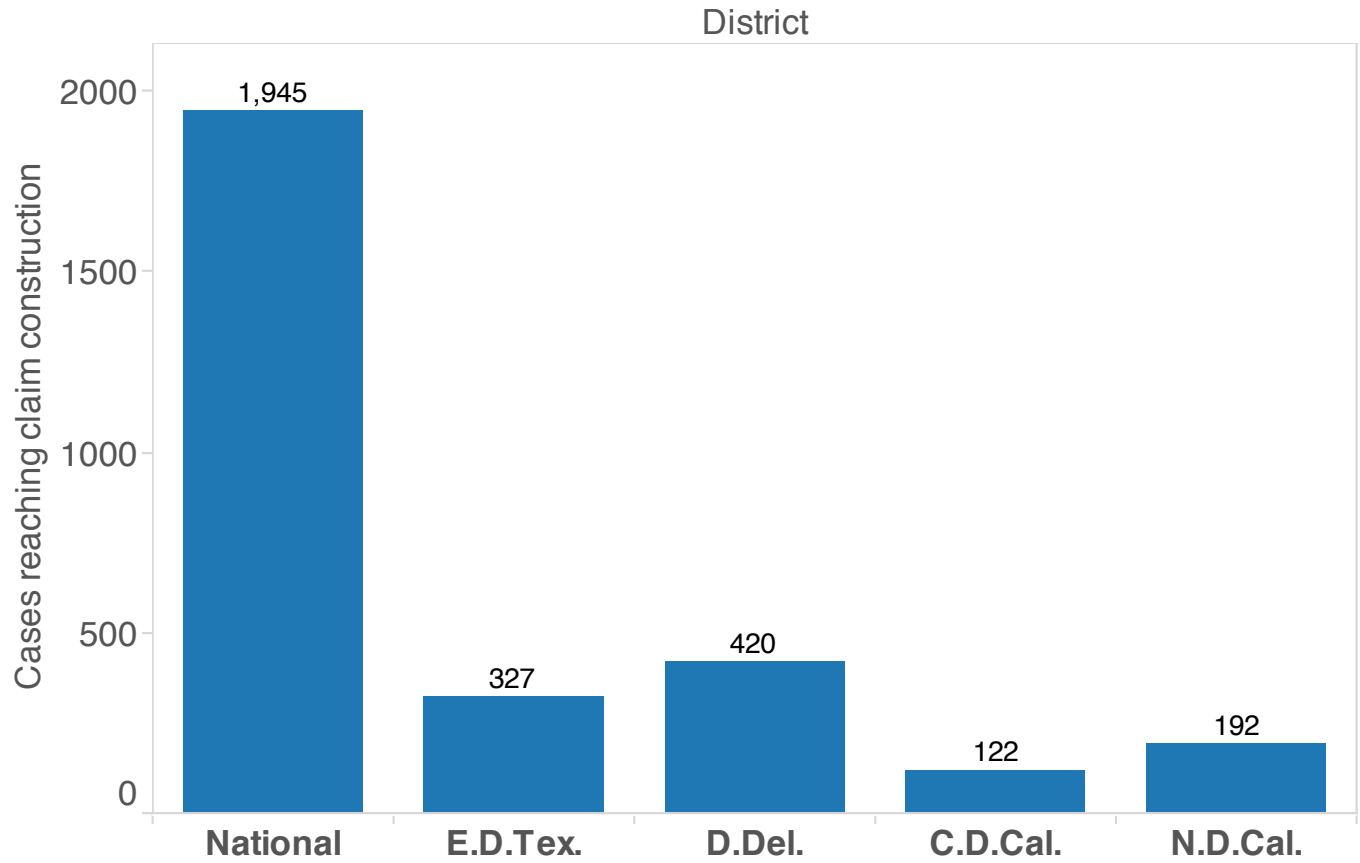


Figure 12: For top districts, timing by cases filed 2005-2015 and reaching a claim construction hearing in 2012-2015

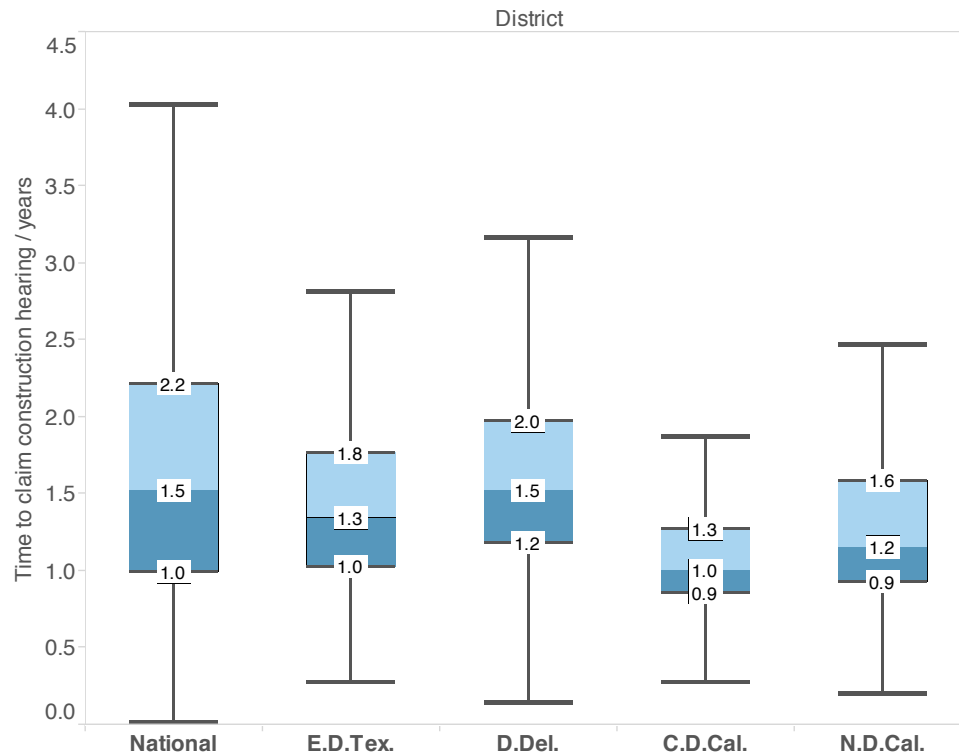


Figure 13: For top districts, cases filed 2005-2015 and reaching trial in 2012-2015

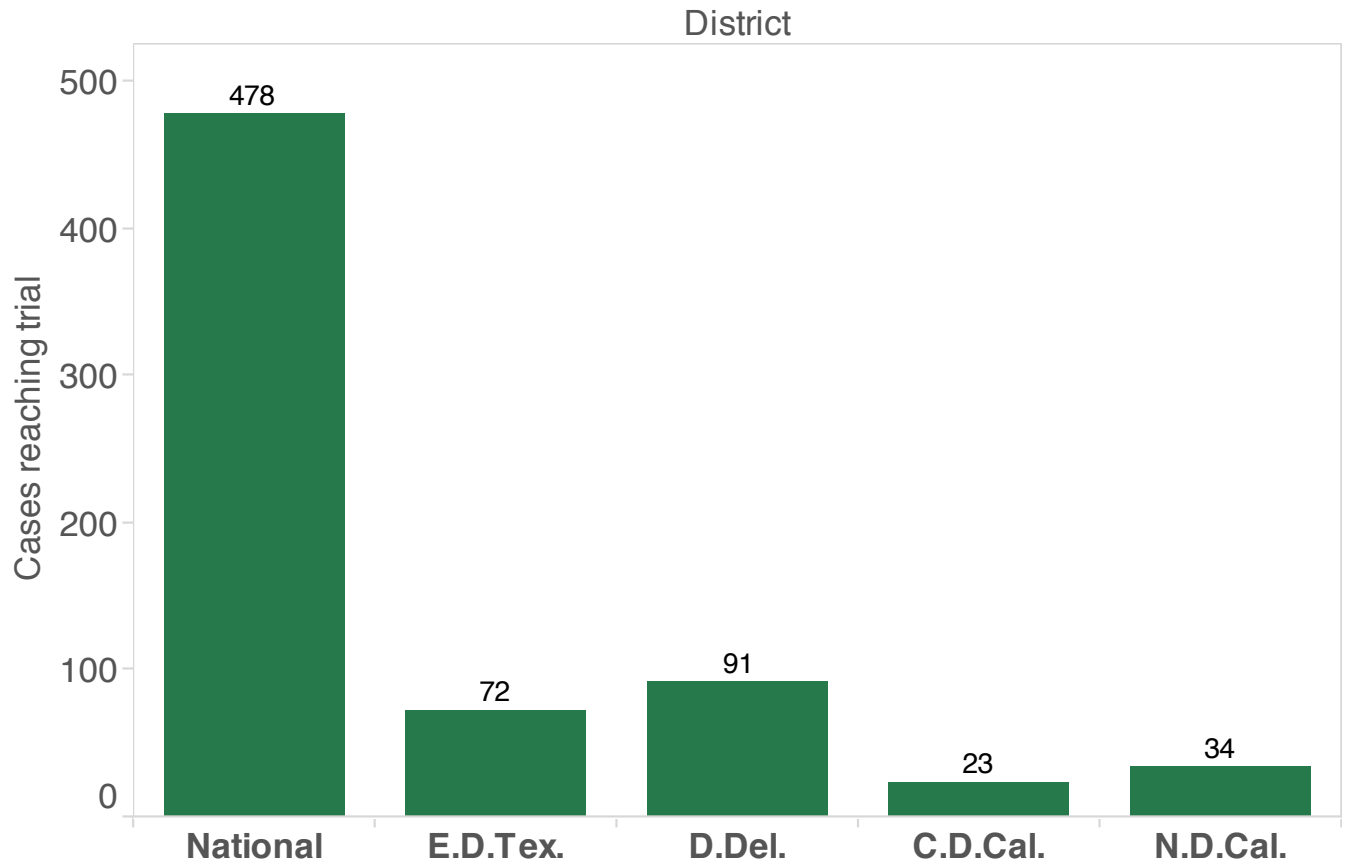


Figure 14: For top districts, timing by cases filed 2005-2015 and reaching trial in 2012-2015

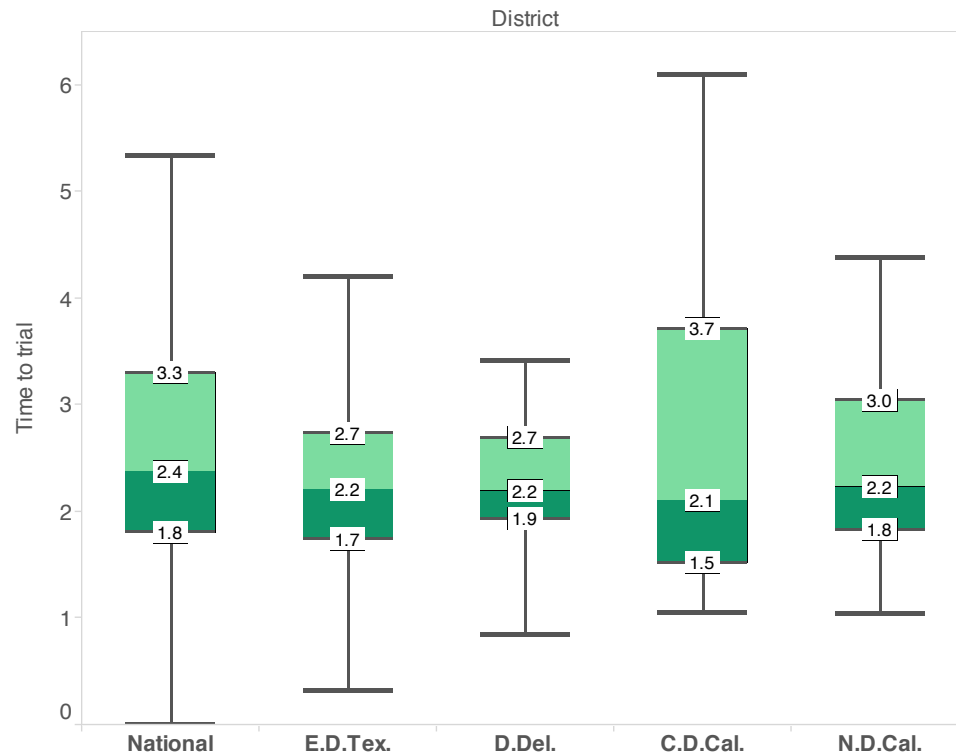
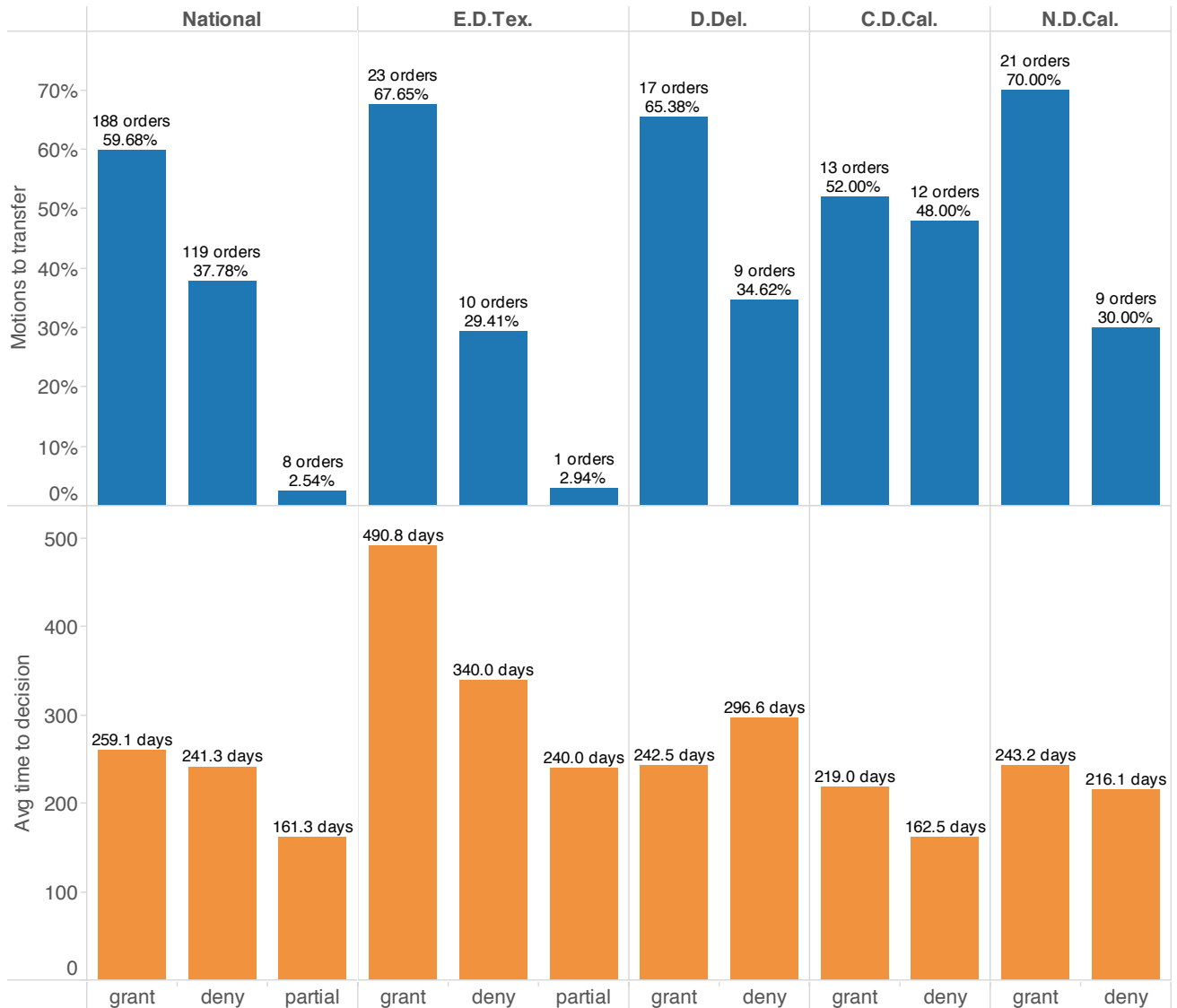


Figure 15: For top districts, timing and success of motions to transfer decided in 2015



Note: decisions by magistrate judges not included.

Lex Machina's platform allows users to track and analyze other types of motions, including motions to dismiss, motions to stay, and summary judgment motions. When considering the expense of filing a transfer motion, companies and litigators should know the differing likelihood of winning the motion - which turns out to differ greatly depending on the district.

Of motions decided in 2015, the Eastern District of Texas, the District of Delaware, and the Northern District of California all had similar grant rates of around 2/3, while the Central District of California exhibited a higher rate of motion denial (a pattern seen last year as well).

Budgeting can also be affected by timing - the Northern and Central Districts of California, for example, were faster to decide on motions than either Eastern Texas or Delaware. Texas decision times were lopsided, taking more than twice as long for grants than denials - an important fact to know for budgeting and planning.

The age of litigated patents - the amount of time between the filing of a patent at the PTO, and the first suit alleging its infringement - provides insight into the changing caseload of the district courts and its effect on innovation.

The Eastern District of Texas saw the median age of its litigated patents rise dramatically by more than 4 years between 2009 and 2014, although, 2015 represents a significant drop. Delaware's median patent age declined as well, remaining significantly below the Eastern District of Texas and the national average.

Figure 16: Top districts, age of litigated patents, 2009-2015, by year

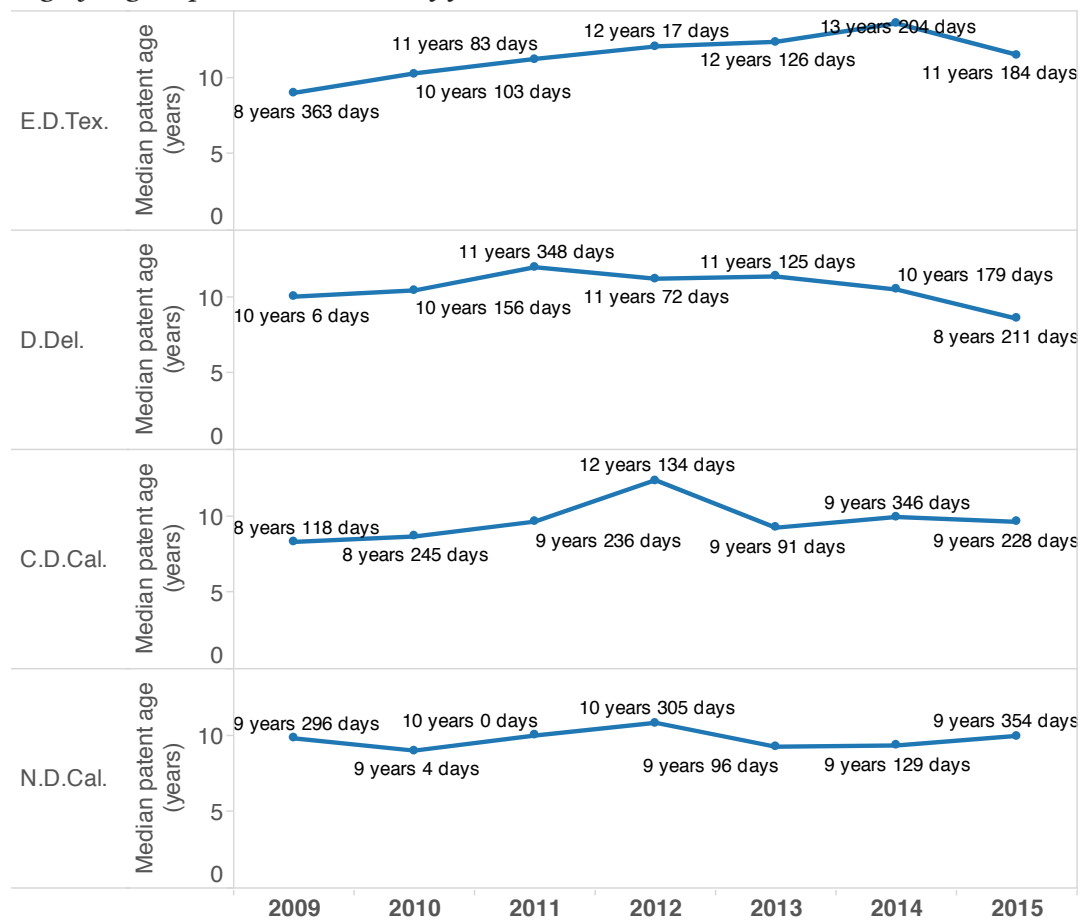
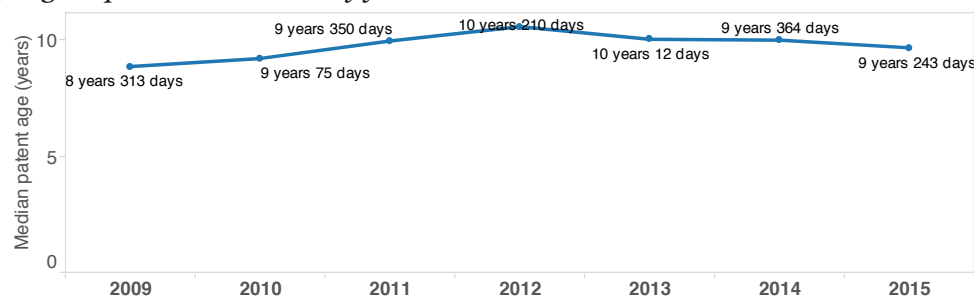


Figure 17: National, age of litigated patents, 2009-2015, by year



Design Patent Litigation

Figure 18: Asserted patents, by design (orange) or utility (blue), by quarter, 2007-2015

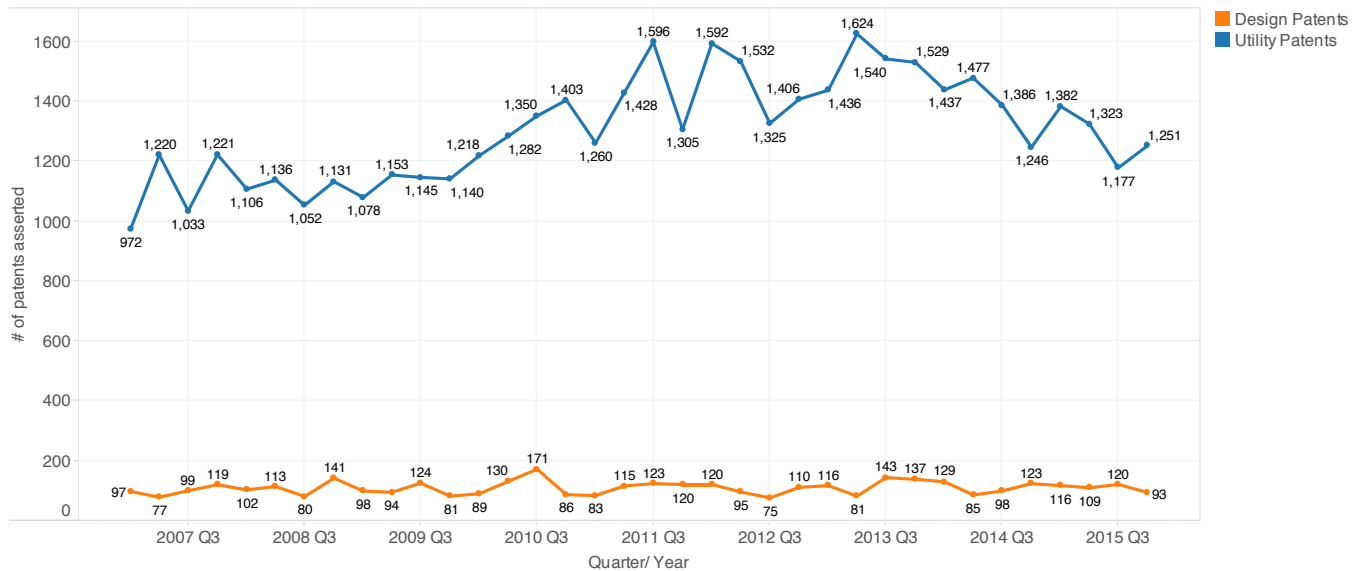
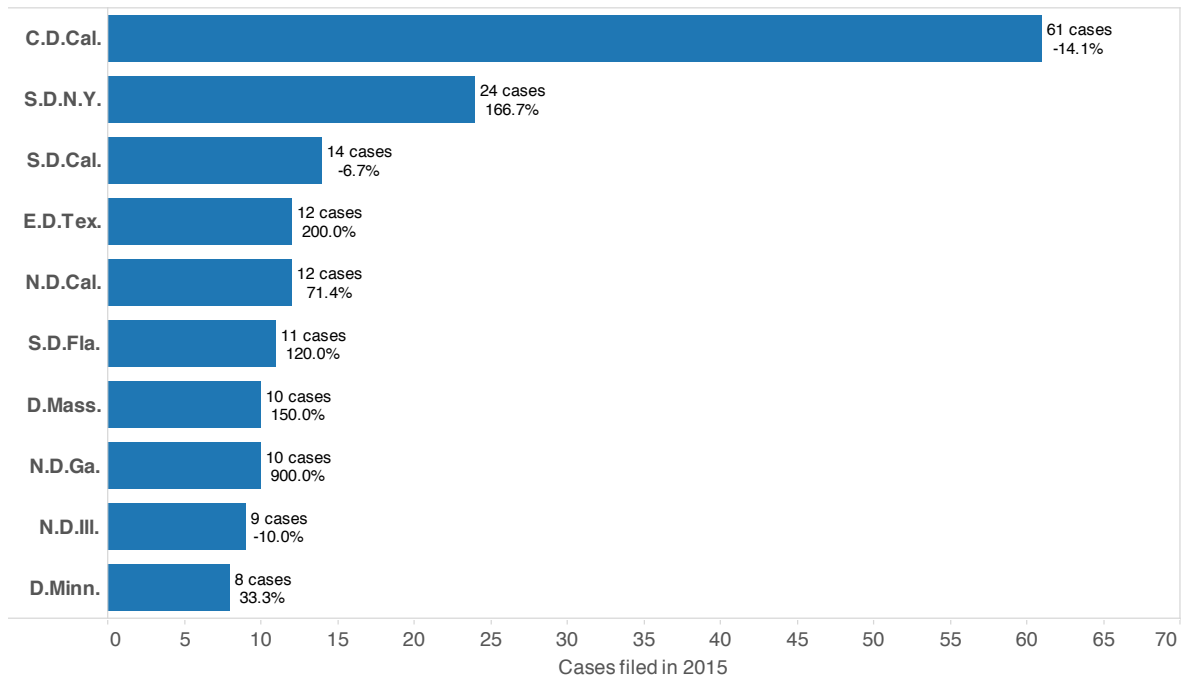


Figure 19: Top districts, by new cases including one or more design patents, 2007-2015 (and showing percentage change from 2014)

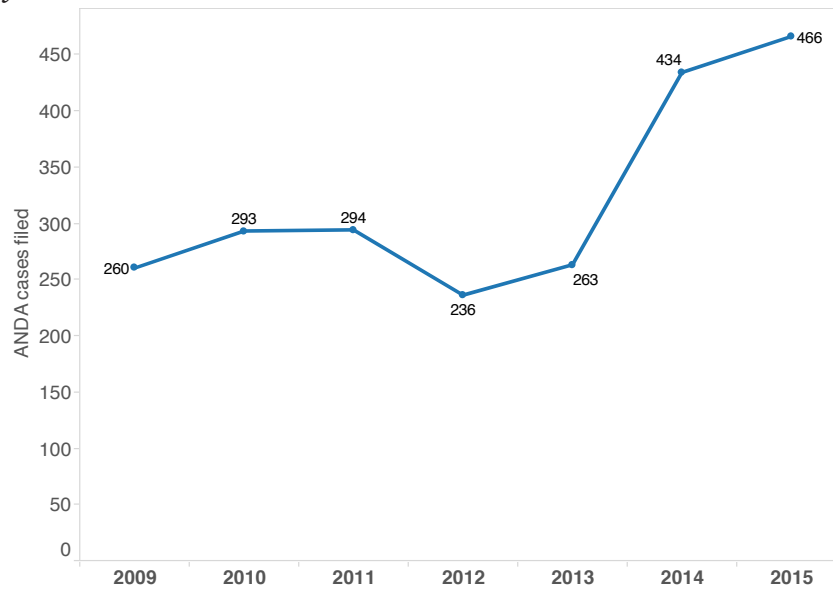


Although they comprise a small fraction of the litigated patents, design patent litigation is far more consistent than utility patent litigation.

Design patent litigation remains highly concentrated in the Central District of California, although that district saw its total decline 14.1% over 2014. The Southern District of New York, still in a distant second place, saw its share increase by 166%.

ANDA Litigation

Figure 20: New ANDA cases, by year, 2007-2015



Lex Machina also enables users to track and analyze ANDA litigation. ANDA (Abbreviated New Drug Application) cases are related to the filing of these drug applications at the FDA. The Hatch-Waxman Act provides a streamlined process with specific timelines for litigation triggered by the application process.

ANDA cases have continued rising from 2014 into 2015. ANDA litigation is heavily concentrated in the Districts of New Jersey and Delaware.

Stay tuned for the upcoming Lex Machina Hatch-Waxman Report in April!

Figure 21: New ANDA cases, by month, 2013-2015

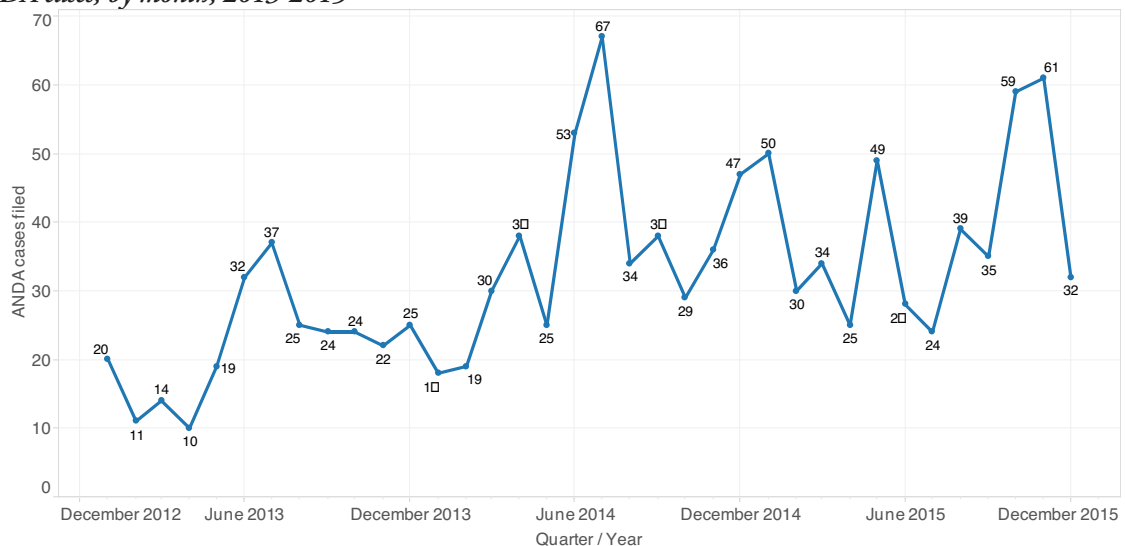


Figure 22: Top districts, by new ANDA cases filed, 2009-2015

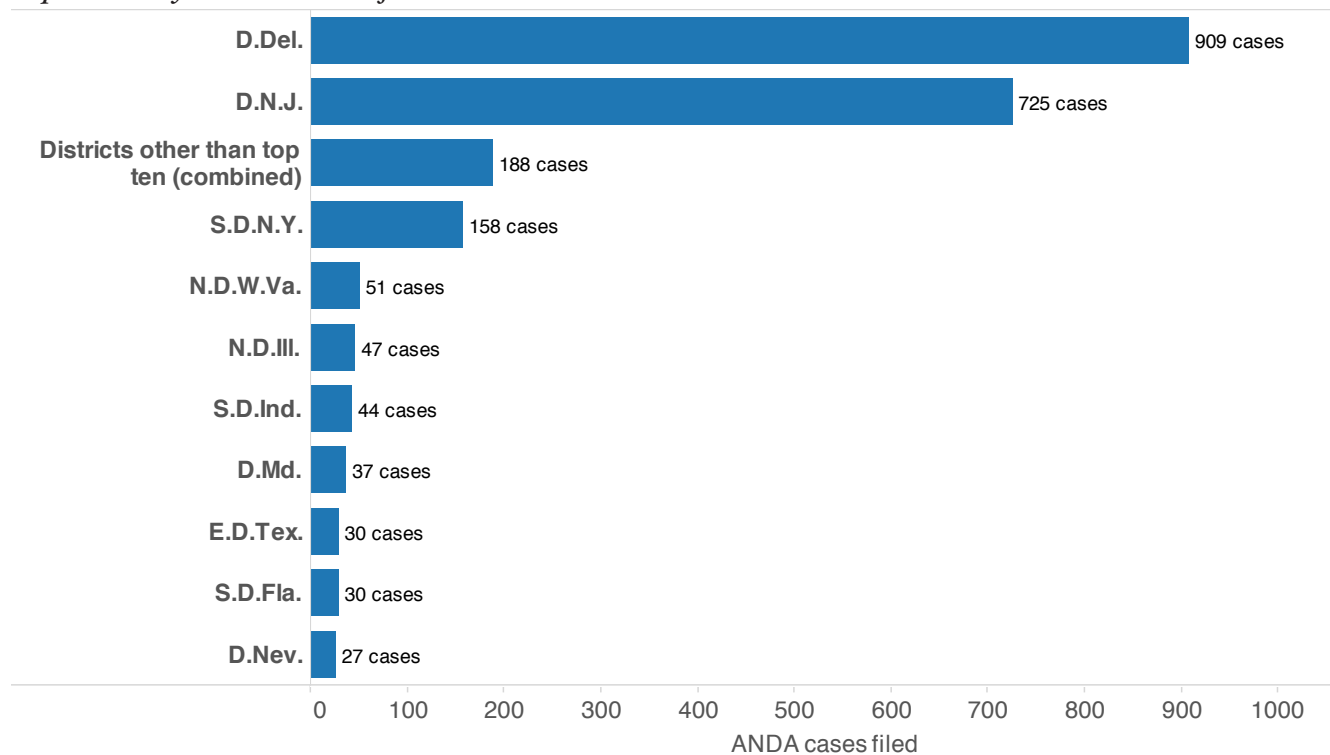
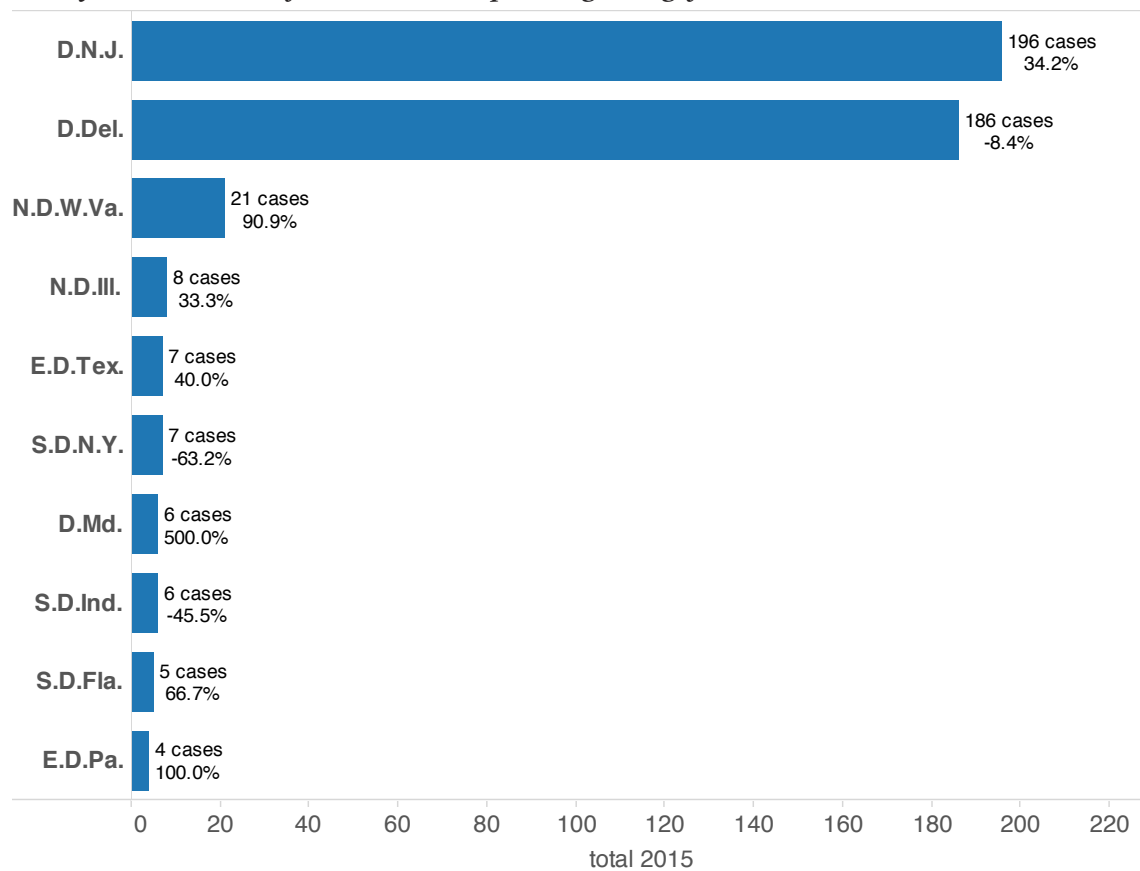


Figure 23: Top districts, by new ANDA cases filed in 2015 (and percentage change from 2014)



Judges

The Districts of Delaware and Eastern Texas dominate the list of top judges by cases filed.

Judge Gilstrap, responsible for 80% patent cases filed in Marshall during much of 2015, received an incredible 1686 new cases in 2015.

Judge Andrews (D. Del.) led for the most merits decisions, after Judges Robinson (D.Del.) and Stark (D.Del.) whose many decisions were in related cases. These judges also led by summary judgment decisions in 2015.

Figure 24: Top judges, by new cases filed in 2015

Rank	Judge	District	Cases
1	Rodney Gilstrap	E.D.Tex.	1686
2	Robert Schroeder	E.D.Tex.	843
3	Richard Andrews	D.Del.	188
4	Gregory Sleet	D.Del.	127
5	Leonard Stark	D.Del.	125
6	Sue Robinson	D.Del.	109
7	Barbara Lynn	N.D.Tex.	58
8	David Godbey	N.D.Tex.	55
9	James Selna	C.D.Cal.	49
10	James Donato	N.D.Cal.	39

Figure 25: Top judges, by cases reaching decisions on patent infringement, validity, or enforceability in 2015

Rank	Judge	District	Cases
1	Richard Andrews	D.Del.	34
2	Sue Robinson	D.Del.	26
3	Leonard Stark	D.Del.	26
4	Rodney Gilstrap	E.D.Tex.	20
5	Gregory Sleet	D.Del.	18
6	Robert Schroeder	E.D.Tex.	11
6	Leonard Davis	E.D.Tex.	11
8	Phyllis Hamilton	N.D.Cal.	10
9	Michael Schneider	E.D.Tex.	9
9	Thomas Griesa	S.D.N.Y.	9

Note: Judge Gilstrap's large caseload comes, in large part, from his being assigned 80% of the patent cases filed during 2015 in the Marshall Division (as well as 20% of cases filed in Texarkana and 30% of those filed in Tyler). See, e.g., http://www.txed.uscourts.gov/cgi-bin/view_document.cgi?document=24811. Also, some of Judge Gilstrap's cases were later transferred away from him by general order (see, e.g., http://www.txed.uscourts.gov/cgi-bin/view_document.cgi?document=25005).

Figure 26: Top judges, by cases having summary judgment on patent infringement, validity, or enforceability (showing judges having 4 or more) in 2015

Rank	Judge	District	Cases
1	Richard Andrews	D.Del.	13
2	Sue Robinson	D.Del.	12
3	Leonard Stark	D.Del.	11
4	Phyllis Hamilton	N.D.Cal.	9
5	Robert Schroeder	E.D.Tex.	7
6	Andrew Guilford	C.D.Cal.	6
6	Leonard Davis	E.D.Tex.	6
8	Cathy Bencivengo	S.D.Cal.	5
9	Edward Davila	N.D.Cal.	4
9	Rodney Gilstrap	E.D.Tex.	4

Parties

The parties filing the most patent lawsuits in 2015 are all patent monetization entities (PMEs). eDekka remains the most litigious party for the second year in a row.

Samsung has overtaken Apple as the most-sued patent defendant in 2015. The appearance of pharmaceutical companies among the top defendants in 2014 continues; the top defendants this year include Mylan, Actavis, Amneal and Apotex.

Figure 27: Top plaintiffs, by new cases in 2015

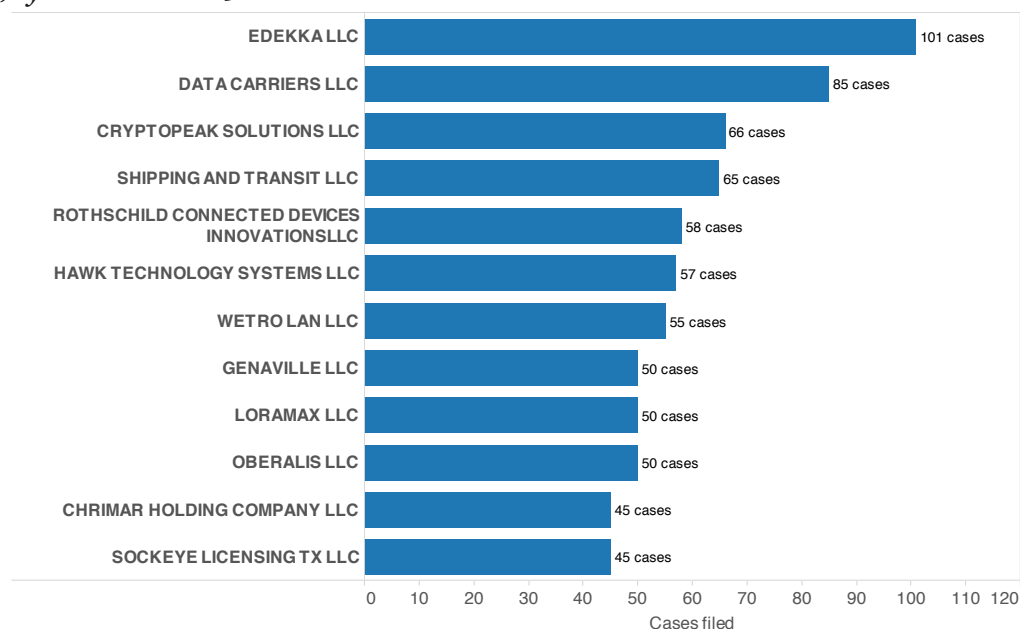
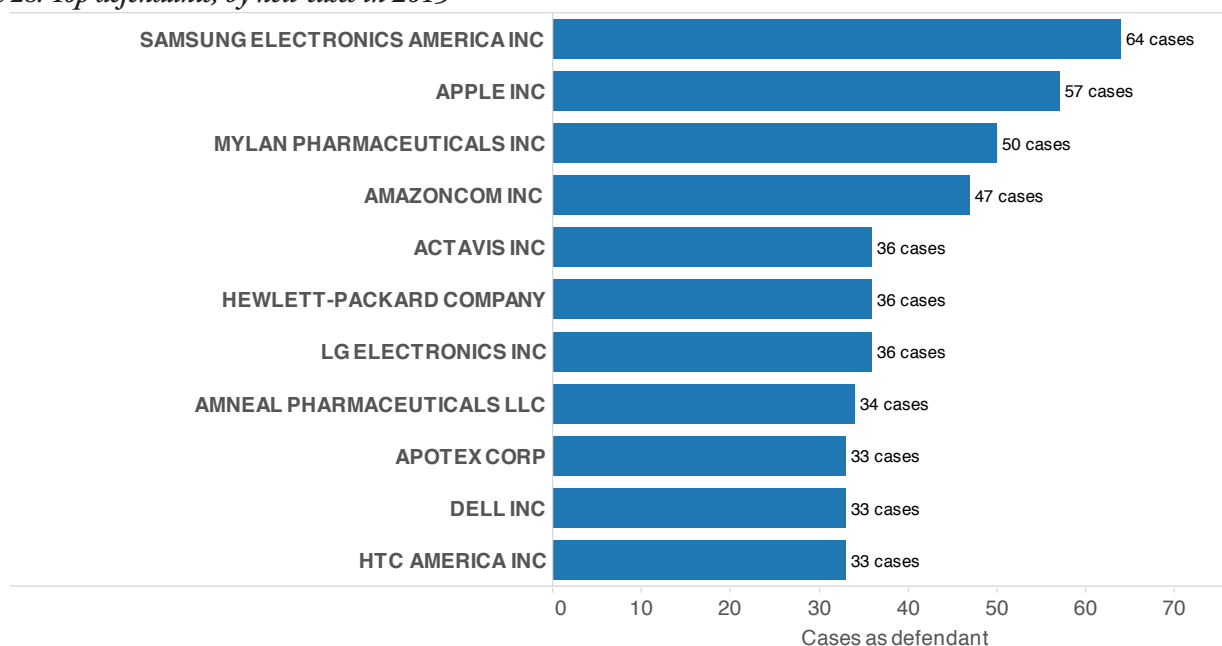


Figure 28: Top defendants, by new cases in 2015



Law Firms

To provide better insight, this report considers law firms based primarily in Texas or Delaware separately from large national or international firms and boutiques with national reach (described below as “national”).

Among the top national law firms, McCarter English represented plaintiffs in the most cases filed in 2015 (121 cases). Cotman IP Law Group, a firm based in LA came in second with 74 cases, followed by Finnegan with 71 cases.

On the defense side, Fish & Richardson had a dominating lead in 2015, representing defendants in 287 new cases. Following Fish & Richardson, DLA Piper represented defendants in 88 cases and Winston Strawn in 80 cases.

In Texas, the Austin Hansley firm filed an astonishing 425 cases, representing such plaintiffs as eDekka LLC, Olivistar LLC, Wetrot LAN LLC, and Data Carriers LLC.

Among Delaware firms, Morris, Nichols, Arsht, and Tunnell leads with 251 cases, followed by Stamoulis Weinblatt (161 cases) and Potter Minton (158 cases).

Figure 29: National law firms, by cases filed in 2015 representing plaintiffs

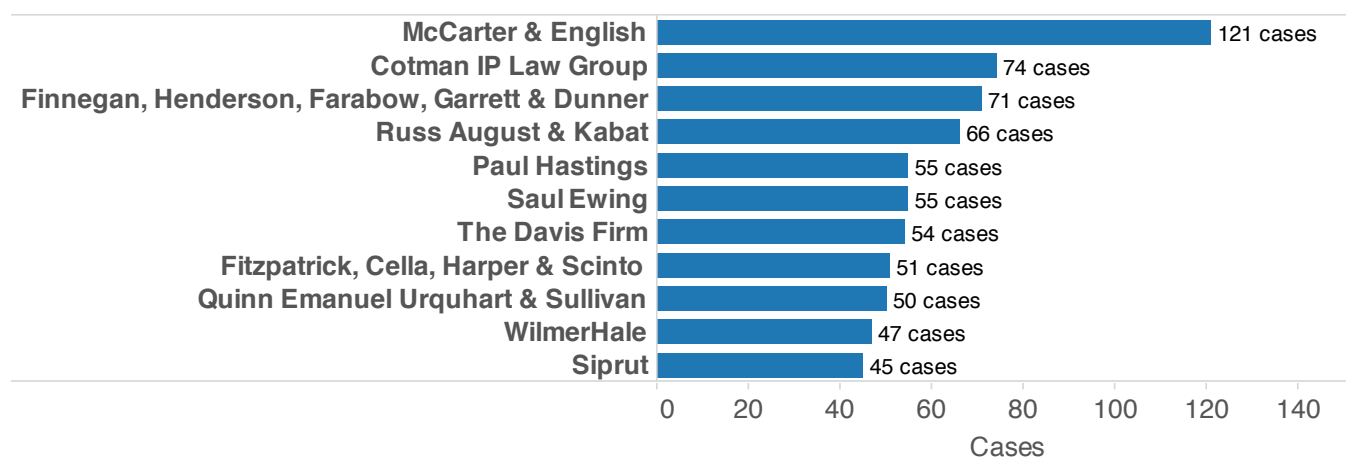
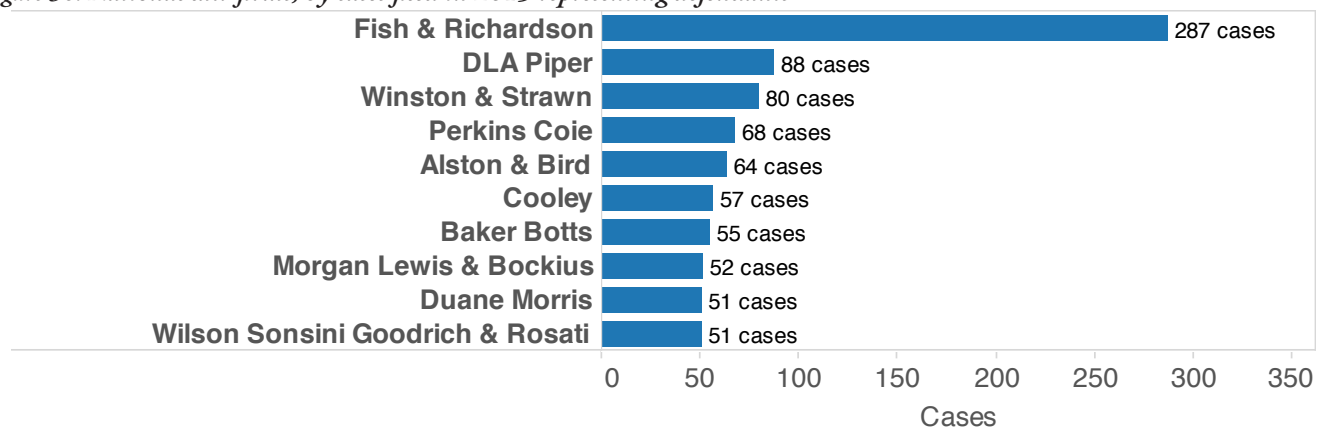
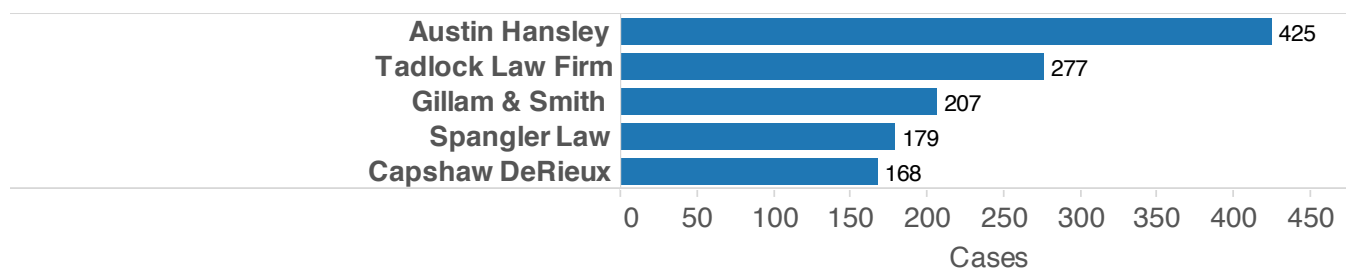
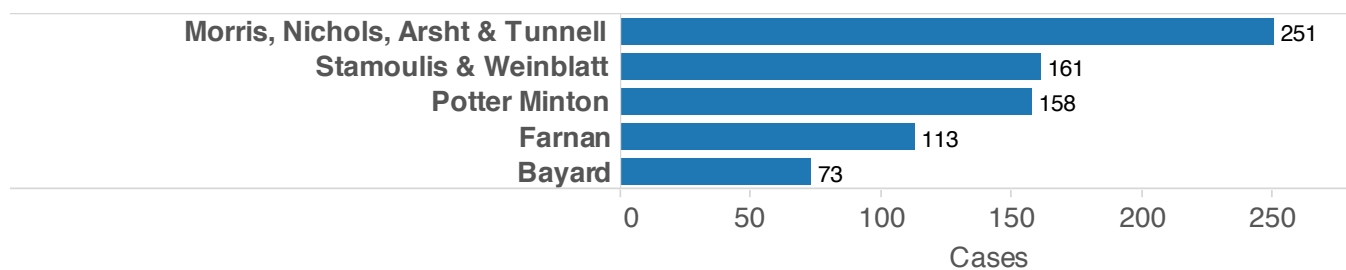


Figure 30: National law firms, by cases filed in 2015 representing defendants*Figure 31: Texas law firms, by cases filed in 2015**Figure 32: Delaware law firms, by cases filed in 2015*

Patents and Patent Findings

Figure 33: Most frequently asserted patents in 2015

Rank	Patent	Cases	Original assignee or inventor(s)	Plaintiff
1	6266674	101		eDekka LLC
2	5388198	85	Symantec Corp.	Data Carriers LLC
3	7400970	79	Melvino Technologies Ltd.	ArrivalStar SA, Melvino Technologies Ltd.
4	6202150	66		CryptoPeak Solutions, LLC
5	8788090	58	Reagan Inventions LLC	Rothschild Connected Devices Innovations, LLC
6	RE43462	56	Barry H. Schwab and Kinya Washino	Hawk Technology Systems LLC
7	6795918	55		Wetro Lan LLC
8	8879987	54	Michael D. Harold, Zamboola LLC	Sockeye Licensing TX, LLC
8	8135342	54	Michael D. Harold	Sockeye Licensing TX, LLC
10	5999927	50	Xerox Corp.	Genaville LLC
10	5911140	50	Xerox Corp.	Oberalis LLC

Note: Excludes declaratory judgment cases.

Figure 34: Titles of most frequently asserted patents

Rank	Patent	Title
1	6266674	Random access information retrieval utilizing user-defined labels
2	5388198	Proactive presentation of automating features to a computer user
3	7400970	System and method for an advance notification system for monitoring and reporting proximity of a vehicle
4	6202150	Auto-escrowable and auto-certifiable cryptosystems
5	8788090	System and method for creating a personalized consumer product
6	RE43462	Video monitoring and conferencing system
7	6795918	Service level computer security
8	8879987	System, method and apparatus for using a wireless device to control other devices
8	8135342	System, method and apparatus for using a wireless cell phone device to create a desktop computer and media center
10	5999927	Method and apparatus for information access employing overlapping clusters
10	5911140	Method of ordering document clusters given some knowledge of user interests

Note: Excludes declaratory judgment cases.

Lex Machina's platform recognizes patent findings (any determination on the validity, infringement, and/or unenforceability of a patent). These findings reveal useful relationships between the type of finding and the procedural method used to reach the finding.

For example, findings of infringement tend to come from either trial or from consent judgment, while findings of non-infringement or invalidity are as likely as not to have come from summary judgment.

On June 19, 2014, the Supreme Court decided *Alice v. CLS Bank*, a case interpreting how 35 U.S.C § 101, the statute governing patentable subject matter, applies to computer-implemented inventions. In the wake of the decision, invalidations under § 101 have rose to record levels. In 2015, invalidations under § 101 have swung wildly by quarter.

The age (from the patent filing date) of patents at the time of case filing varies significantly across the top 20 busiest districts of 2015: The ANDA-heavy jurisdiction Districts of New Jersey (5 years, 351 days) has a median patent age several years younger than that in Eastern Texas. The Southern District of New York saw a marked increase from 2014, rising from 4 years, 227 days to 11 years 234 days.

Figure 35: Patent judgment types by finding, for findings in 2015

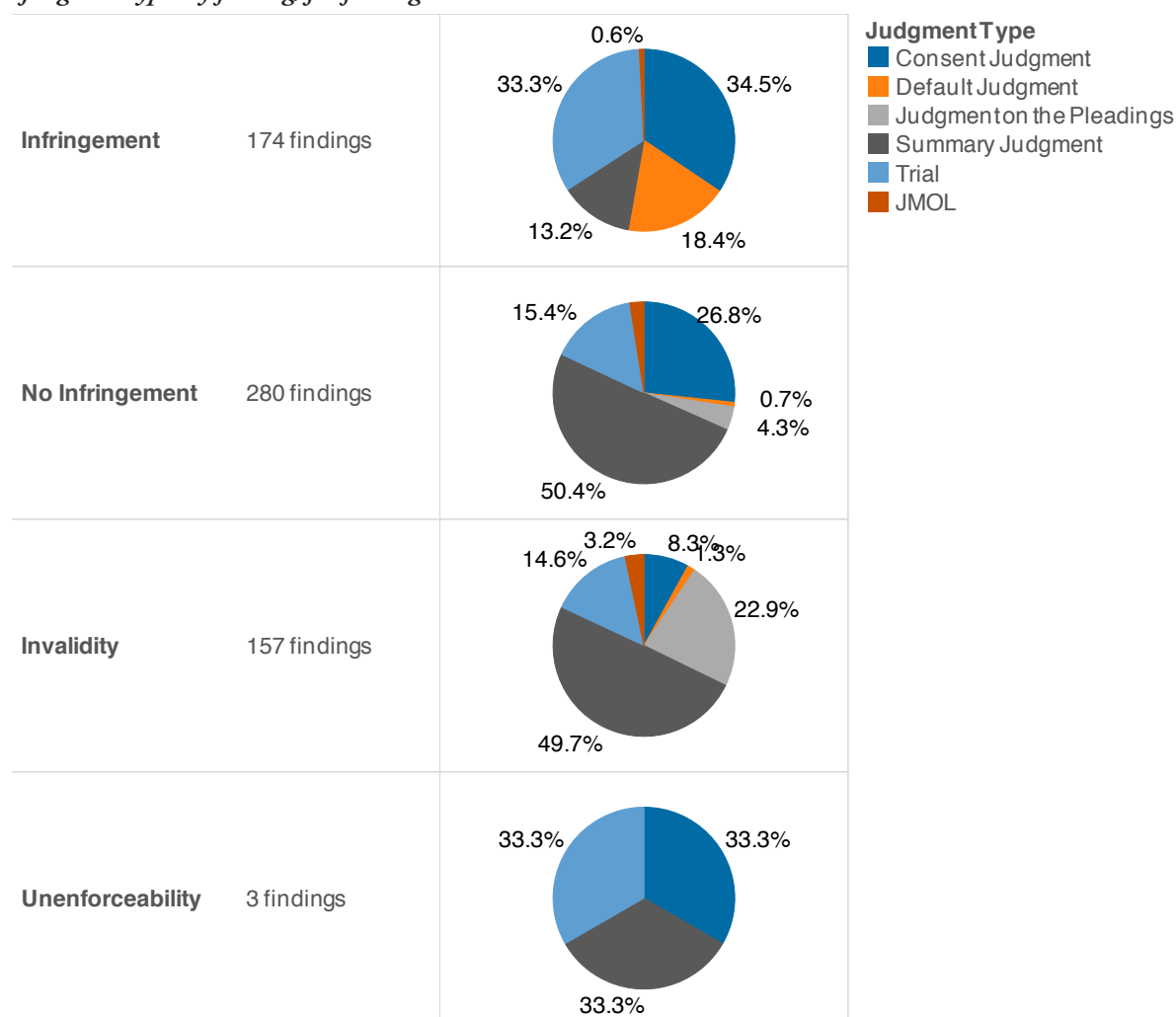


Figure 36: Patent findings by judgment types, for findings in 2015

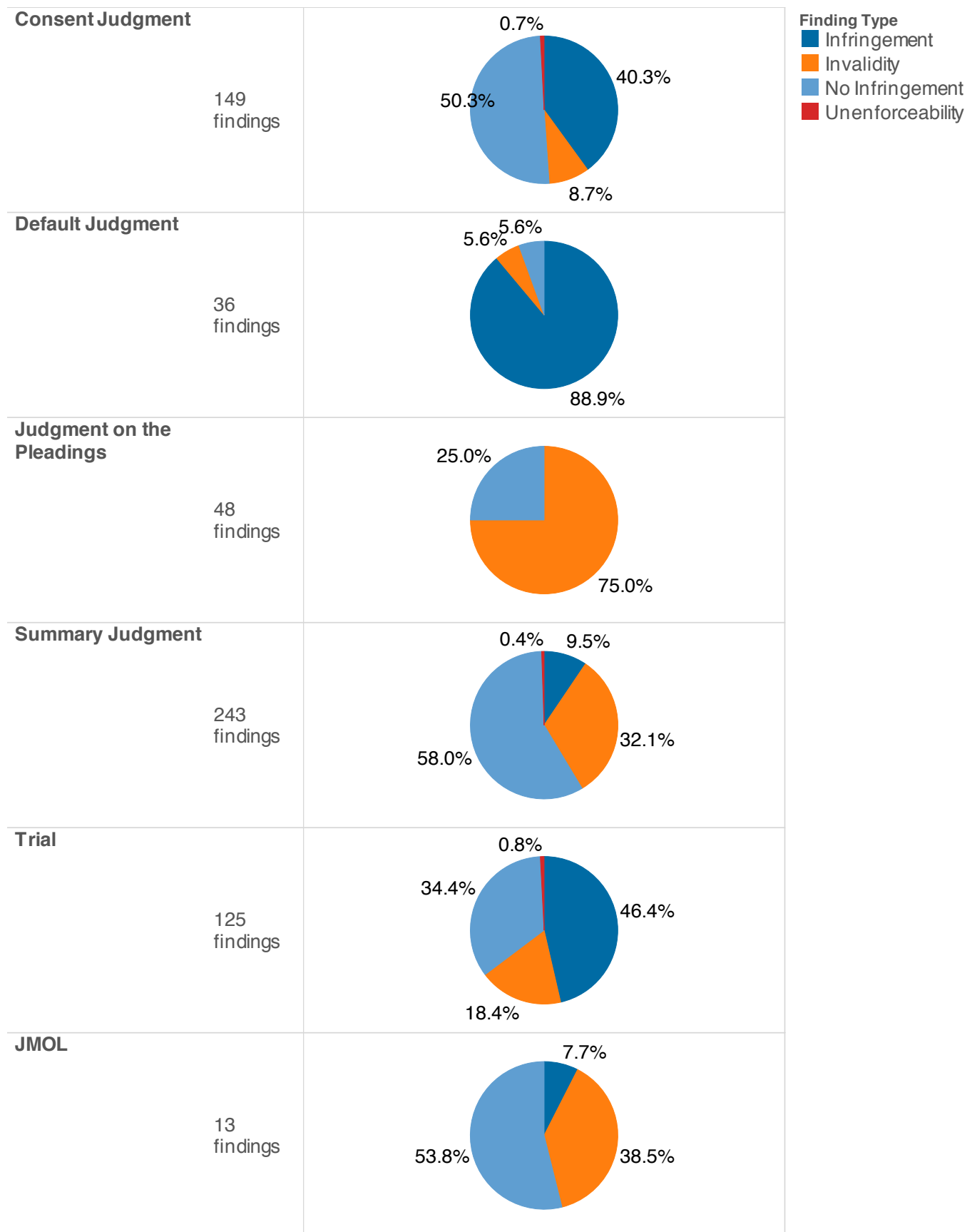


Figure 37: Patents invalidated, 2013-2015, under 35 U.S.C. § 101 for lack of patentable subject matter, by quarter

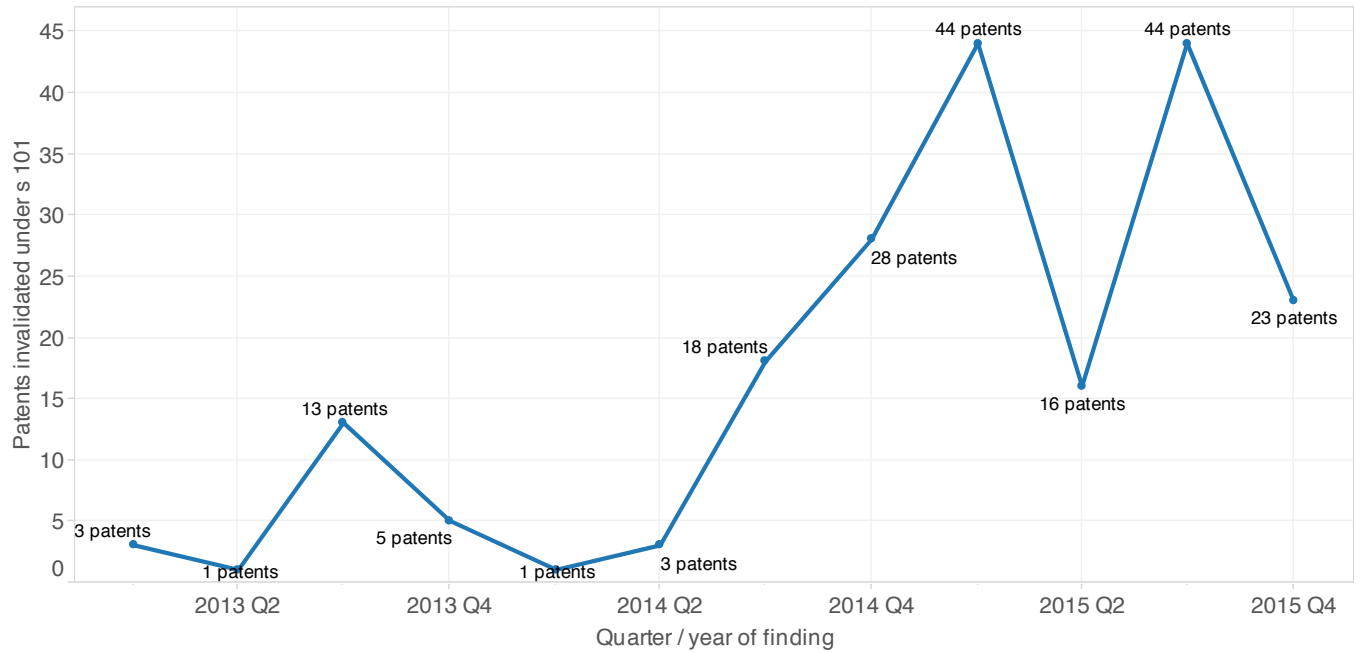
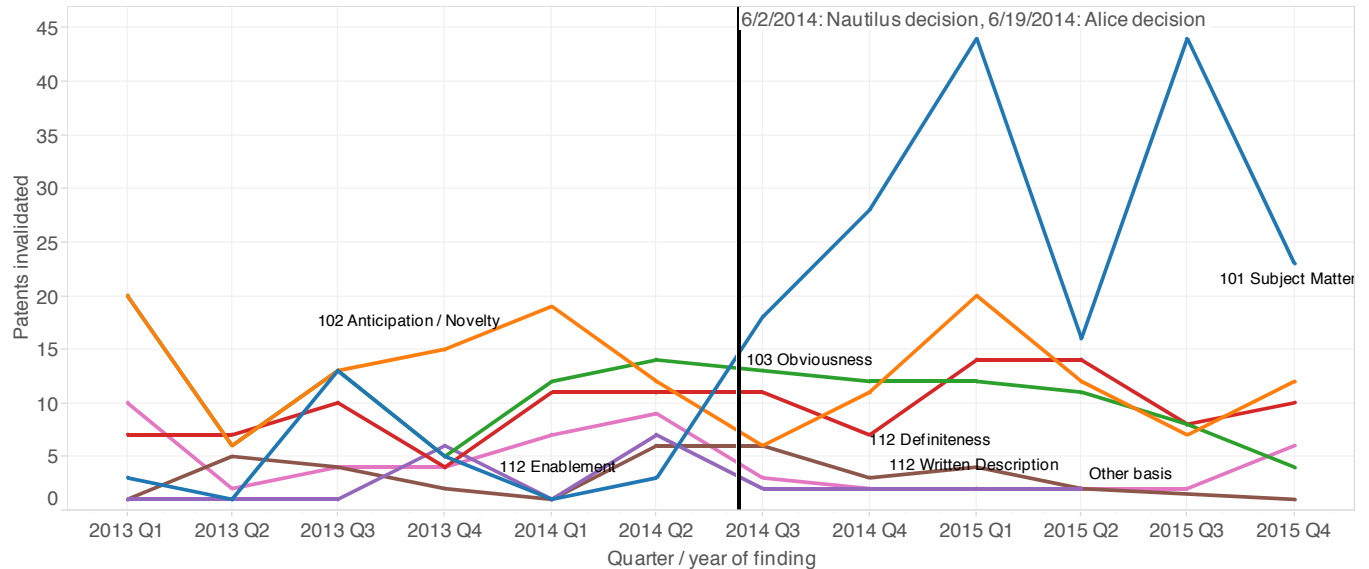
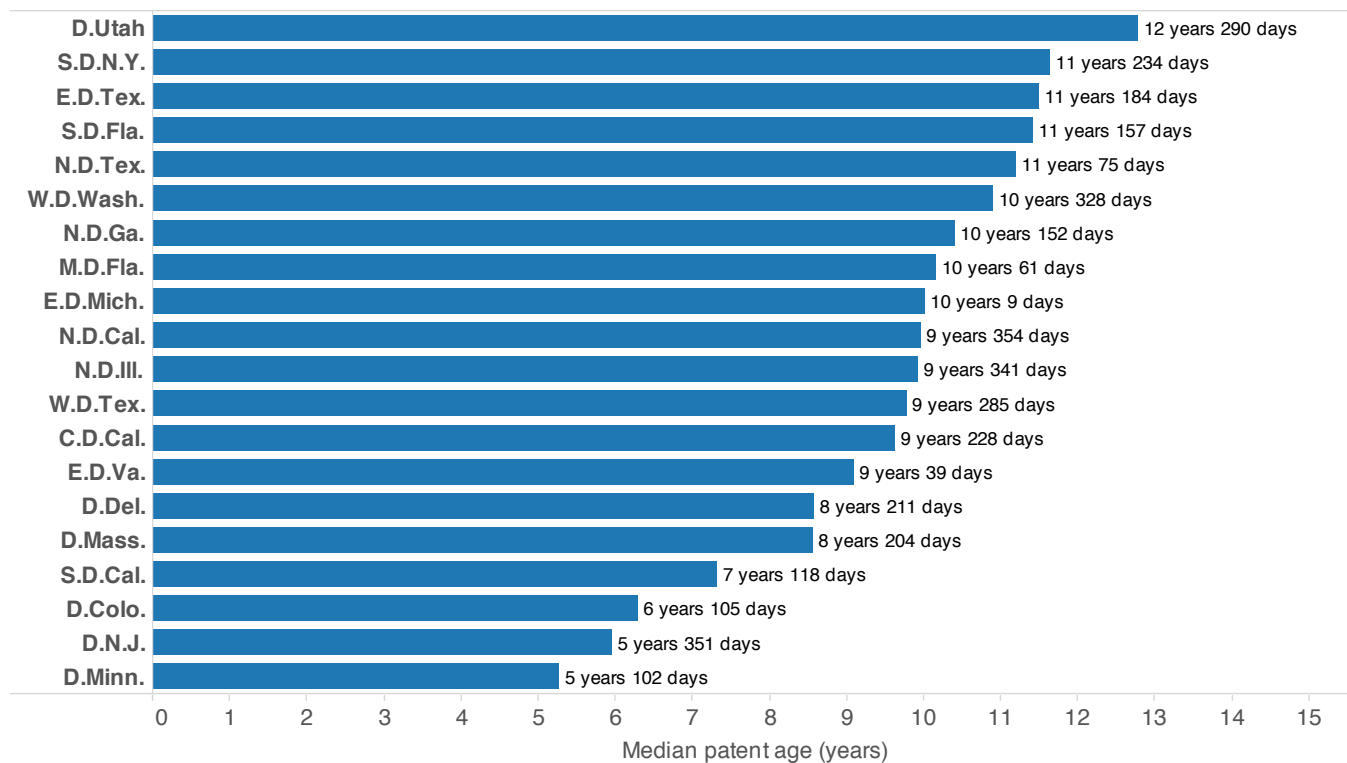


Figure 38: Patents invalidated, 2013-2015, by basis



Invalidity Basis

- 101 Subject Matter
- 102 Anticipation / Novelty
- 103 Obviousness
- 112 Definiteness
- 112 Enablement
- 112 Written Description
- Other basis

Figure 39: Median patent age, by district (top 20 districts by cases filed in 2015)

Remedy Timing and Case Resolutions

Understanding timing data is one of the best uses of Legal Analytics - knowing if and when an injunction will be decided makes for better decision-making: clients can know when their bills will change, lawyers can plan their schedules with greater confidence, and budgets can accurately account for the costs.

These charts show the median time to an event (the middle number between the shaded boxes). The median represents the middle value, where as many took longer as shorter, and serves as a simple and useful average. The median time for a preliminary injunction is 3.7 months, and for permanent injunction is 10.6 months.

Where the median lies in relation to the edges of the boxes also provides useful data. For example in looking at the preliminary injunction chart, the median of 3.7 months lies much closer to the top of the box (1.7 months) than the bottom (8.9) months. This means that the timing favors an earlier issuance: the fastest half of injunctions are issued in less than 4 while the next quarter of injunctions are spread out over 5 months, and the final quarter over even more time.

Figure 41: Time to granted injunction, in cases filed 2005-2015, reaching remedy in 2012-2015

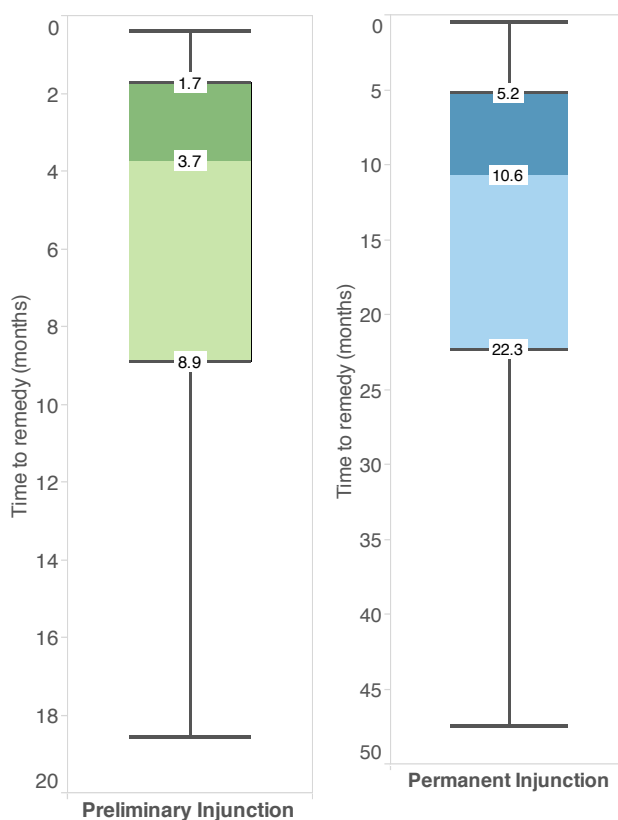
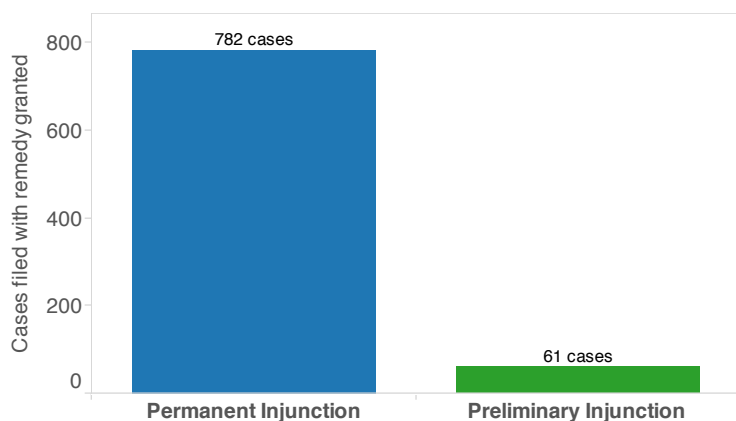


Figure 40: Total granted patent remedies, in cases filed 2005-2015, reaching remedy in 2012-2015



Lex Machina generates a resolution for each case, reflecting how the case terminated.

The majority - 73.2% - of patent cases terminating between 2009 and 2014 settled. Of those that did not, the largest block (15.7% of terminated cases) reach a procedural outcome, such as transfer or consolidation. Wins by the claimant (6.9%) are more common than wins for the claim defendant (4.3%).

Looking at cases terminating in 2015 alone, the settlement rate increased to 76.1%, mainly at the expense of claimant and claim defendant wins (4.2% and 3.7% respectively). Interestingly, claimants won more often between 2009 and 2014 (4.3% to 6.9%), while claim defendants won more often in 2015 (4.2% to 3.7%).

Figure 42: Case resolutions, in cases terminating 2009-2015

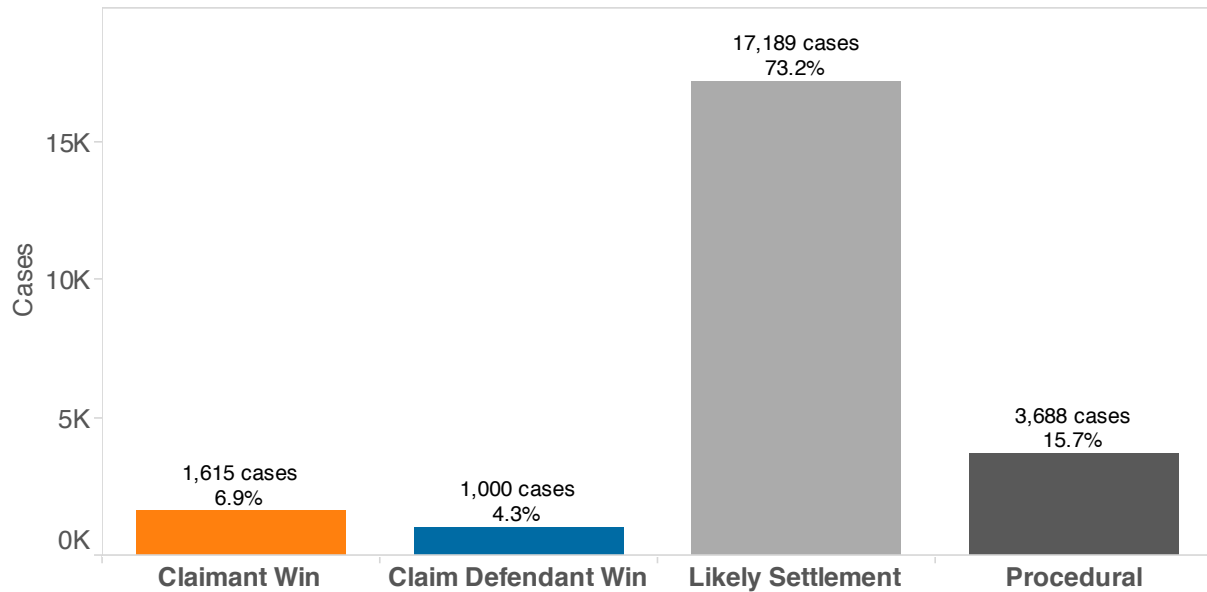
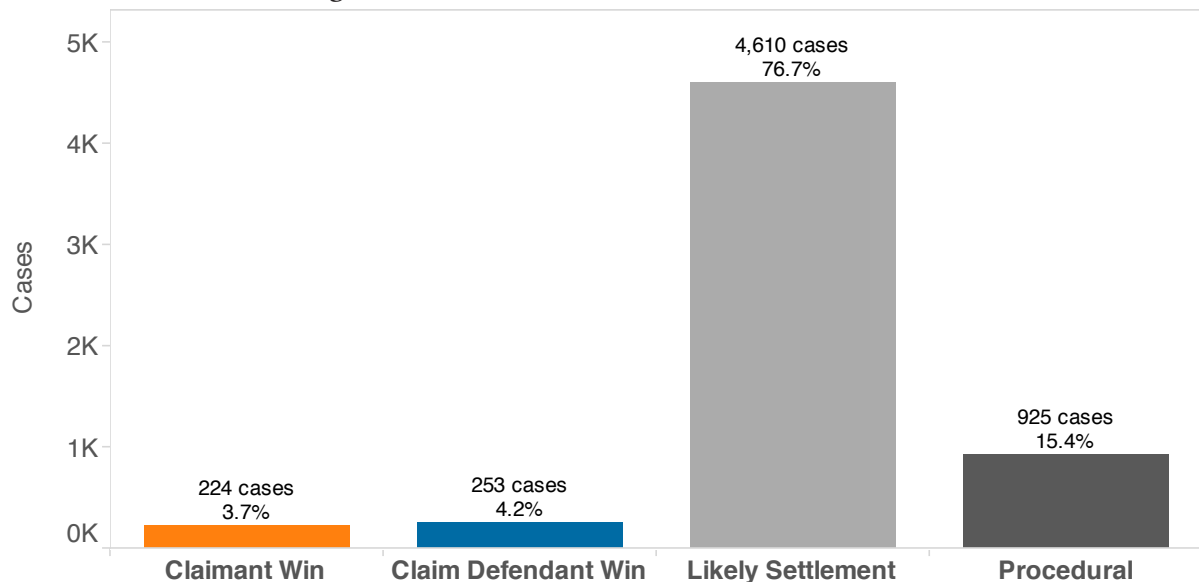


Figure 43: Case resolutions, in cases terminating in 2015



Damages

Compensatory damages continue to be awarded in few cases, around 1.8 % of the terminated cases filed since the year 2000. 2015 saw the award of approximately \$750m total in compensatory damages.

Players in the patent litigation space should be armed with knowledge of how asymmetric patent awards can be. Most individual awards are small, with a few outliers driving the high totals. Among all damages awarded in cases filed since the year 2000, 90% of the total compensatory awards in cases have been less than \$9.6m, 75% less than \$1.7m, and half less than approximately \$170,000. Of damages granted since 2000, juries have granted about seven times more than judges (\$15 billion versus \$1.9 billion).

Understanding the propensity of districts to dispense damages directly impacts litigation exposure, as the amount of damages awarded varies disproportionately across districts. Relative to the number of cases filed in each jurisdiction, the Eastern District of Texas and the Southern District of California were the most generous while the Middle District of Florida and the Eastern District of Michigan were least generous. Looking at median compensatory award per case by district, Delaware, Eastern Virginia, and Eastern Texas are the most generous, followed by a steep drop-off.

Figure 44: Cases, 2000-2015, with damages

Cases terminated since 2000	49,057	
Cases terminated since 2000 on the merits	5,688	11.7% of terminated cases
Cases terminated since 2000 on the merits with compensatory damages	876	1.8% of terminated cases

Figure 45: Damages awarded in cases filed 2000-2015, by type

Compensatory damages:		
Reasonable royalties	\$10,036,225,659.87	
Lost profits	\$3,840,976,080.88	
Other / Mixed damage types	\$3,615,170,594.72	
Total damages*		\$17,492,372,335.47

Figure 46: Total damages awarded during 2015 in cases filed 2000-2015, by type

Compensatory damages:		
Reasonable royalties	\$657,749,032.43	
Lost profits	\$10,920,209.65	
Other / Mixed damage types	\$85,311,596.74	
Total damages*		\$753,980,838.82

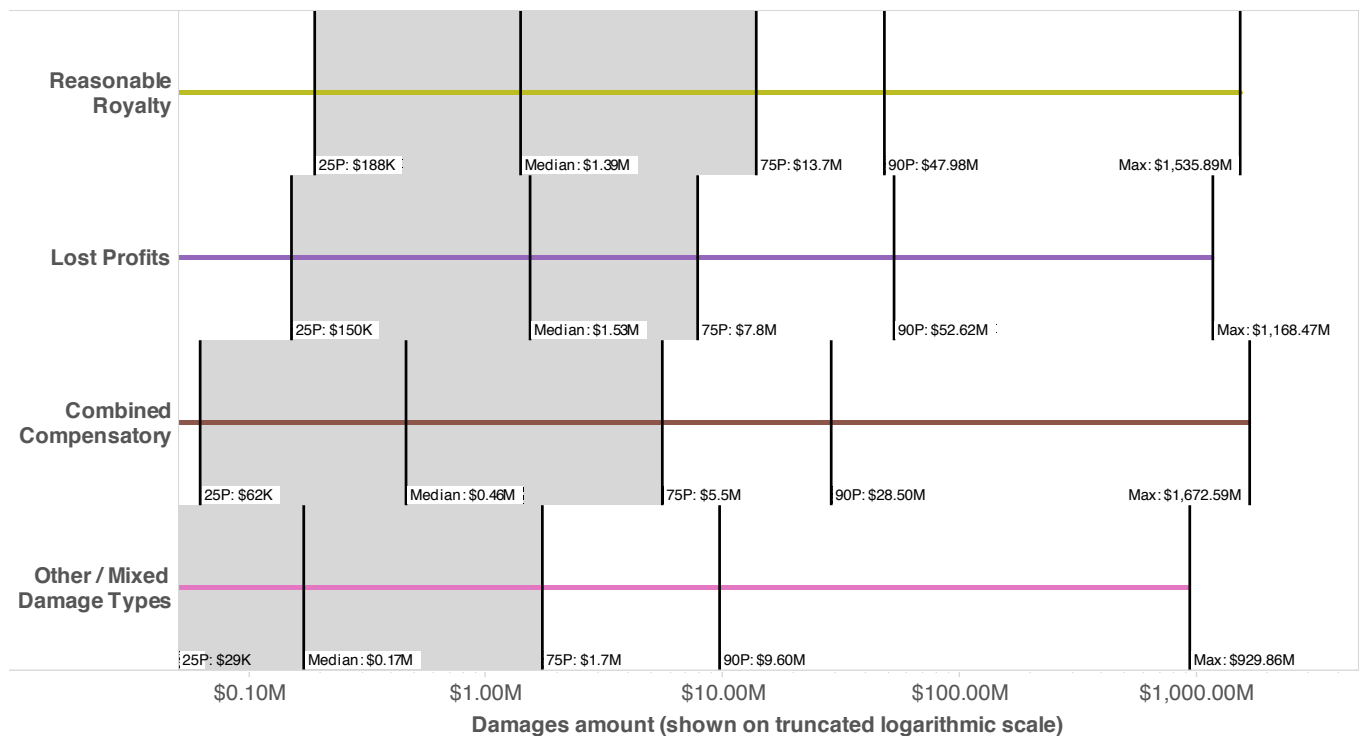
* Total does not include costs, attorneys fees, or pre/post-judgment interest.

Note: Some cases may include multiple causes of action, for example, both patent and trademark claims. When damages in these cases are awarded and the apportionment between claim types cannot be determined, Lex Machina classifies them as “Other / Mixed Damage Types.” These charts exclude damages explicitly based on non-patent claims and theories (e.g. trademark damages based on infringers profits), even awarded in a case with patent claims.

Figure 47: Median damages, 2000-2015, by year and type

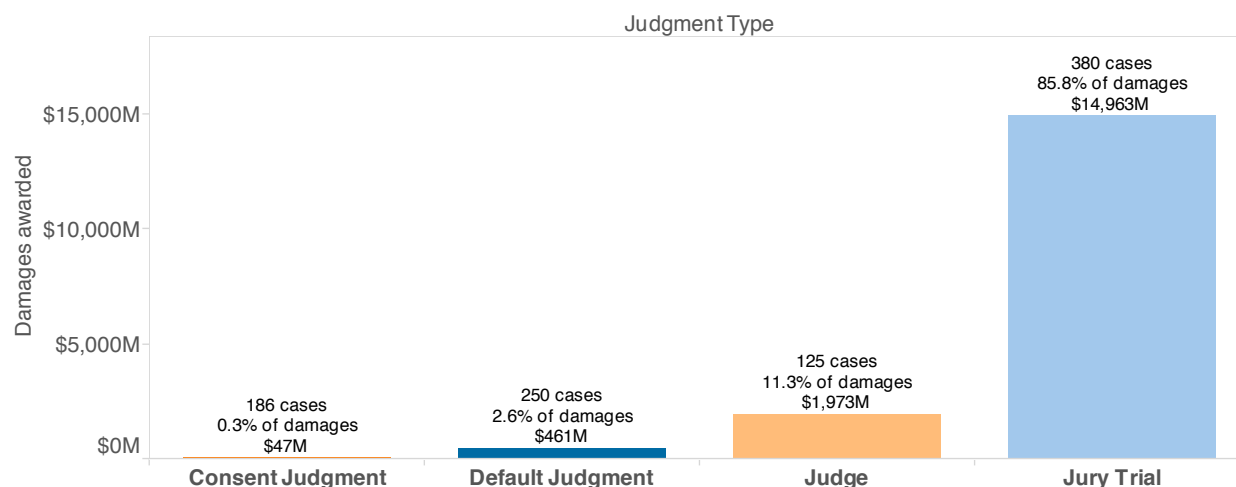
Year	Reasonable Royalty	Lost Profits	Other / Mixed Damage Types	Attorneys' Fees	Costs
2000	\$129,840 3 cases	\$2,100,000 1 cases	\$5,000 20 cases	\$9,765 5 cases	\$373 4 cases
2001	\$148,547 5 cases	\$14,328 3 cases	\$26,043 16 cases	\$39,588 14 cases	\$9,486 9 cases
2002	\$318,398 9 cases	\$63,634 6 cases	\$61,150 37 cases	\$9,271 27 cases	\$10,531 41 cases
2003	\$683,885 18 cases	\$150,019 5 cases	\$104,753 31 cases	\$140,631 28 cases	\$17,632 33 cases
2004	\$307,923 19 cases	\$3,602,212 14 cases	\$168,918 44 cases	\$190,000 29 cases	\$15,310 47 cases
2005	\$1,344,000 15 cases	\$472,500 10 cases	\$224,117 32 cases	\$44,668 30 cases	\$19,211 57 cases
2006	\$1,201,791 19 cases	\$2,344,512 10 cases	\$229,054 37 cases	\$41,138 29 cases	\$7,683 65 cases
2007	\$596,639 32 cases	\$150,000 9 cases	\$300,000 35 cases	\$228,484 30 cases	\$29,024 88 cases
2008	\$2,883,148 40 cases	\$1,817,603 15 cases	\$169,675 35 cases	\$41,264 33 cases	\$20,679 78 cases
2009	\$5,647,278 38 cases	\$1,712,625 10 cases	\$164,985 31 cases	\$66,532 35 cases	\$21,003 60 cases
2010	\$1,284,861 25 cases	\$3,219,863 12 cases	\$205,000 34 cases	\$54,865 31 cases	\$11,783 76 cases
2011	\$1,927,551 32 cases	\$5,909,974 13 cases	\$250,000 33 cases	\$88,629 34 cases	\$19,521 80 cases
2012	\$1,975,916 41 cases	\$1,600,000 17 cases	\$238,000 19 cases	\$43,838 25 cases	\$32,028 81 cases
2013	\$311,379 27 cases	\$5,500,000 5 cases	\$418,720 27 cases	\$130,433 21 cases	\$33,685 93 cases
2014	\$3,000,000 27 cases	\$1,191,159 12 cases	\$1,834,500 20 cases	\$77,563 33 cases	\$16,075 100 cases
2015	\$5,443,485 29 cases	\$423,079 5 cases	\$511,892 16 cases	\$176,231 30 cases	\$40,754 75 cases

Figure 48: Damages percentiles, 2000-2015, by type



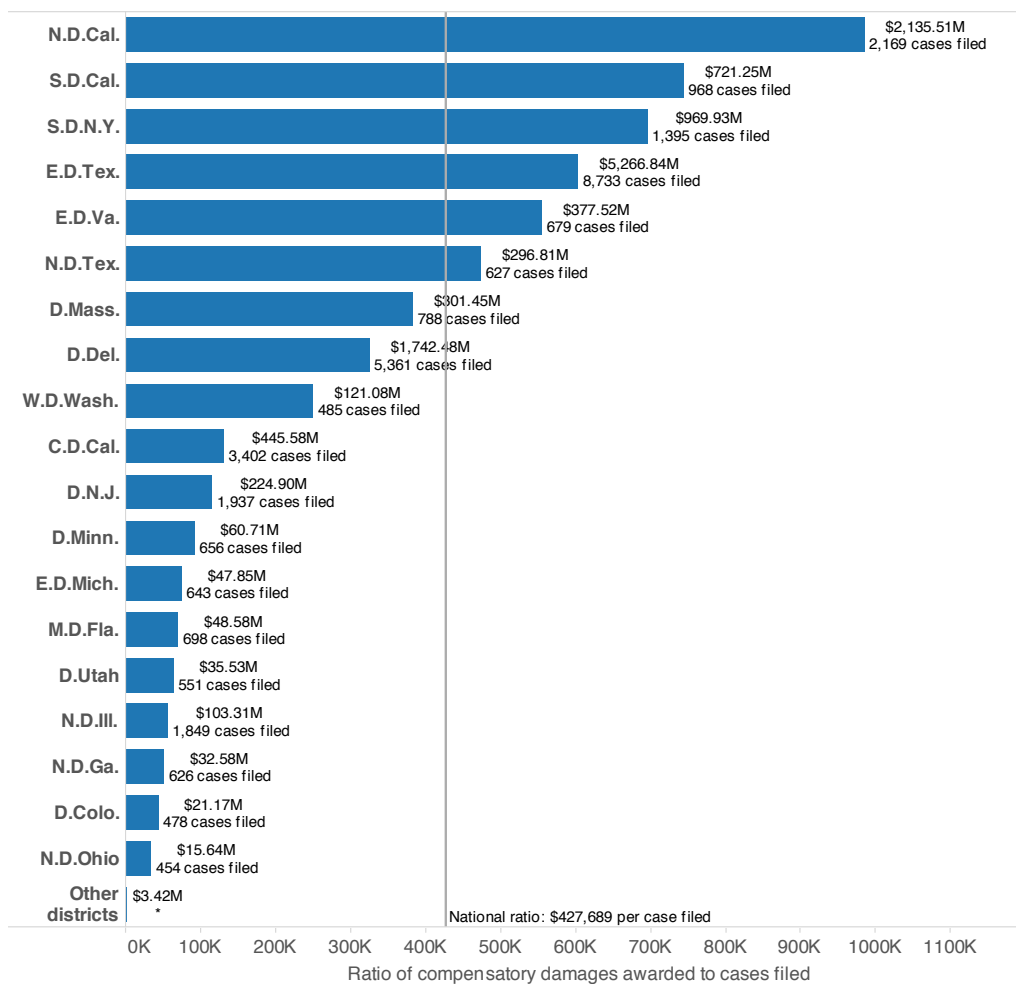
Note: In cases where multiple damages awards were made in separate years, the total sum is reflected under the most recent year.

Figure 49: Damages by judgment type, awarded 2000-2015



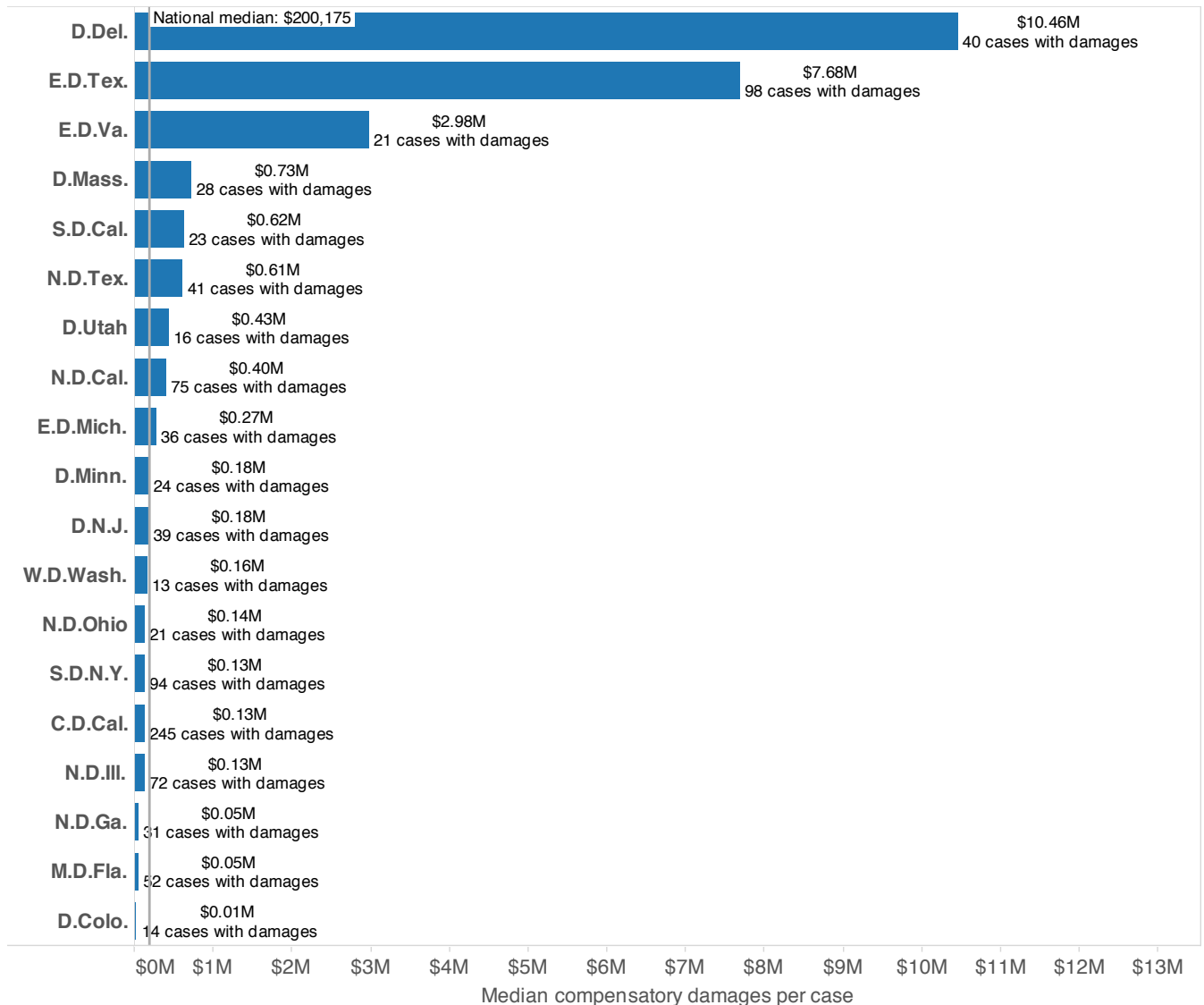
Note: Includes costs, and attorneys' fees.

Figure 50: Districts by ratio of compensatory damages awarded (in 2005-2015) to cases filed (in 2005-2015)



Because cases often take 2-3 years to reach the damages stage, there is an aggregate time gap between when a district sees an increase in case filings and the corresponding increase in total damages. Delaware, in particular, saw an increase in the number of cases filed there in 2012-2015. These cases, counted towards the district's case count but largely too young to have reached damages by the end of 2015, may partly account for Delaware's low ratio, especially in light of the higher median awards shown below.

Figure 51: Median damages, 2000-2015, by year and type



Note: In cases where multiple damages awards were made in separate years, the total sum is reflected under the most recent year.

PTAB

The PTAB (Patent Trial and Appeal Board), was created by the America Invents Act and began hearing petitions for Covered Business Method reviews (CBMs) and Inter Partes Reviews (IPRs) on September 16, 2012, the first day the procedure was available.

IPR activity declined slightly in 2015 but remains much more similar to 2014 than previous years. Lex Machina's trial flow diagram provides insight into how the PTAB is disposing of petitions. Showing the flow of cases from the filing of a petition all the way through final written decision (but also including settlement and procedural outcomes) allows practitioners to easily understand the likelihood of each result.

See Lex Machina's recent PTAB report for a deeper analysis of PTAB in 2015.

Figure 52: Petitions filed, 2012-2015, by month

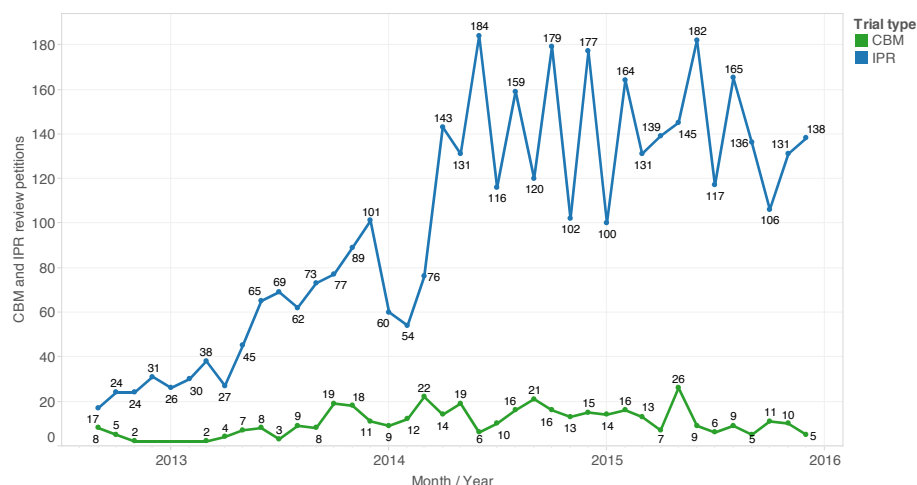
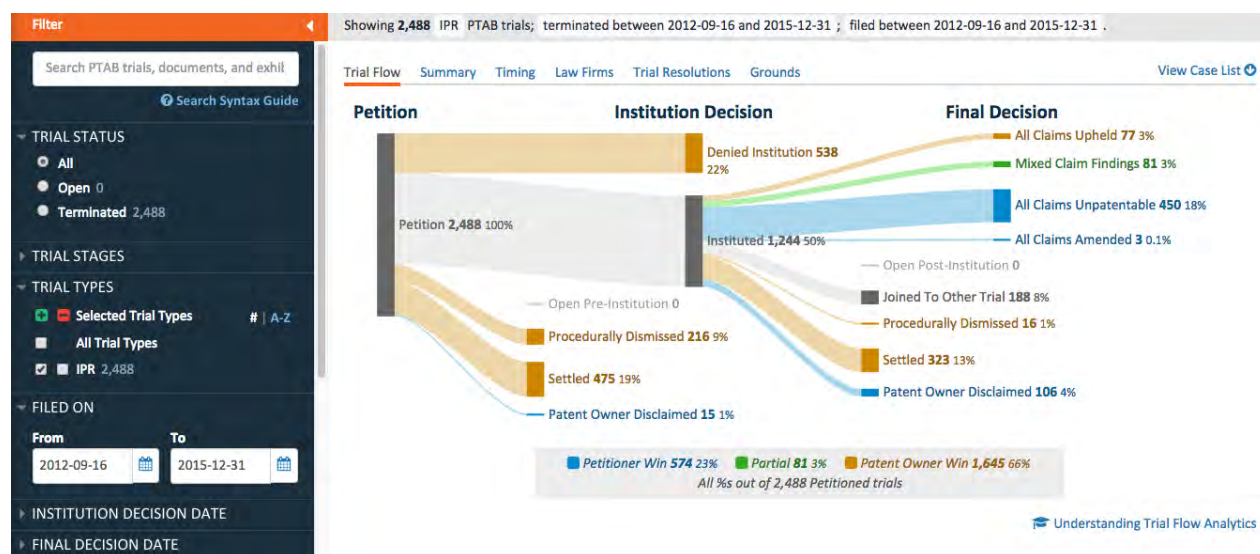


Figure 53: Trial Flow, PTAB IPR petitions, filed and terminated 2012 - 2015



ITC

Figure 54: ITC investigations filed, 2007-2015

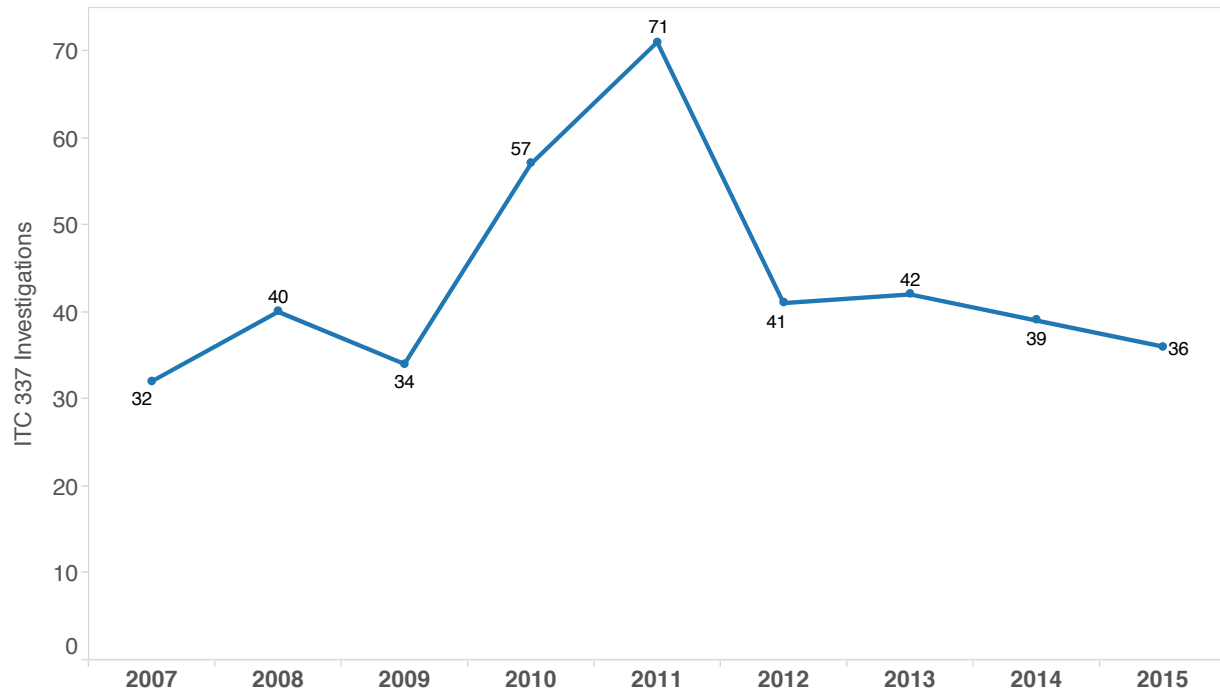


Figure 55: ITC dispositive outcomes, by current ALJ, investigations noticed and terminating 2007-2015

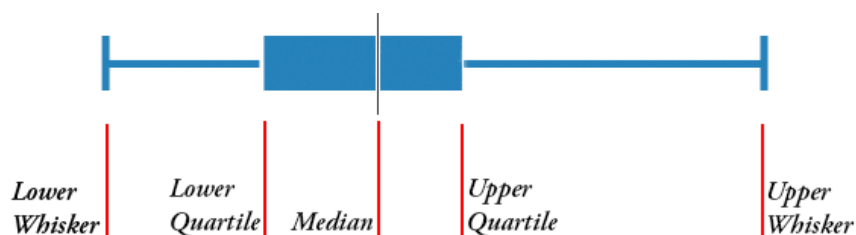
Disposition	Barton	Bullock	Charneski	Essex	Gildea	Harris	Lord	Luckern	Pender	Rogers	Shaw
Cease & Desist Order	3	7	7	10	2			4	2	4	2
Complaint Withdrawn	1	7	5	10	6		1	5	8	9	4
Consent Order		7	2	6	6		1	5	1	4	1
General Exclusion Order		5	2	5	3			4	2	1	2
Limited Exclusion Order	3	11	11	10	4	1	1	5	2	6	4
No Violation Found	1	14	5	14	8		1	12	2	15	5
Other		4	1	2				3			3
Settlement	2	31	16	29	25		2	18	11	23	10
Violation Found	2	6	9	11	5	1		8	1	4	2

Using Boxplots to Understand Timing

Lex Machina's analytics use a data visualization known as the boxplot to convey information about the timing of significant events in a case. Knowing how to interpret this data gives you an advantage when it comes to strategy, budgeting, and setting expectations, as well as in other decisions that involve case timing.

Consider a newly filed case: Regardless of whether you're an outside counsel, say, trying to determine how large of a flat fee to charge or trying to make sure two trials don't overlap, or an inside counsel estimating legal spend and evaluating a firm's proposed budget, case timing matters. Knowing the lower and upper bounds of how long it may reasonably take the case to reach injunction can give both kinds of counsel a strategic advantage over opponents lacking such nuanced information. Moreover, knowing the best and worst case scenarios for timing, or exactly how likely it is that a case will be active in 6 months enables more far-sighted contingency planning.

A boxplot summarizes a series of data points to help you understand the shape, or distribution of the values in those points. The boxplot is drawn based on five numbers: the median, the upper and lower quartiles, and the whiskers for a distribution.



Paying attention to these key parts of the plot will help you quickly understand what you need to know. Although boxplots provide a wealth of information, the four observations below, in order from simplest onwards, are all one needs to easily grasp the significance of a boxplot.

Median: the middle dividing line of the box splits the data points evenly so that 50% fall to either side. It's a form of average that gives a single number representation of what to reasonably expect.

Box bounds: the box encloses the middle-most 50% of the datapoints (from the 25th percentile to the 75th), with 25% of the datapoints falling outside to either side. This makes the box a good representation of the range one can reasonably expect.

Box compressed or elongated: a more compressed box means that more datapoints fall into a smaller range of time and therefore are more consistent; in contrast a longer box means that the datapoints are spread out over a wider time period and are therefore less predictable.

Whiskers: Whiskers are drawn to show the outside bounds of reasonable expectation, beyond which datapoints are considered outliers.¹

¹ By statistical convention, boxplots define outliers as points beyond more than 1.5 times the width of the box (sometimes called the "interquartile range").



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