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THE FUTURE OF LAW

Judge Analytics: Everything You Always Wanted to Know But Were Afraid to Ask

FUTURE OF LAW

Judge Analytics: Predicting the Behavior of the Courtroom's Boss

How do you gather intelligence about a judge, to pitch a new client or inform case strategy? A blast email to colleagues just won't suffice anymore.

Our panel: Mark Lemley, Neukom Professor at Stanford Law University, Joshua Curry, IP Litigation Partner at Dentons, and Josh Becker, the CEO at Lex Machina, discuss how Legal Analytics helps you predict your judge's behavior, based on data from all dockets from prior cases: time to termination/trial/other case milestones, transfer rates, case resolutions, damages, remedies, findings, and more. Your competition uses Legal Analytics to win the client and the case; can you afford NOT to?

Speakers:

Josh Becker
CEO
Lex Machina

Mark Lemley
Neukom Professor
Stanford Law University

Joshua Curry
IP Litigation Partner
Dentons

Josh Becker: Hi, I'm Josh Becker, the CO of Lex Machina. Welcome to today's webcast, the Future of Law: Predicting the Behavior of the Courtroom's Boss. This is the third of a series to thought leadership discussions that we are hosting at regular intervals.

Today's topic is designed to help you understand how legal analytics can help develop a sense of courtroom expectations for venue and for potential judges that you may be in front of, [00:00:30] including questions such as: What are the predilections of my judge? How long will it take me to get to termination or trial? Should we seek a change of venue? What are the chances of this motion to succeed?

Let me start by introducing our panel today. First, fresh off of his appearance on CMEC yesterday discussing recent supreme court ruling is Mark [Menley 00:00:54] the William H. [Nuekem 00:00:55] Professor of Law at Stanford Law School, and the director of the [Stanford 00:01:00] program [00:01:00] in Law, Science, and Technology. Mark is also a founding partner of [Dory Tangrey 00:01:05], where he litigates and counsels clients in all areas of intellectual property, antitrust, and internet law. Most importantly, more importantly, for us, he's one of the [inaudible 00:01:16] founders of Lex Machina, and he originally conceived the notion of legal analytics when he started the Stanford Intellectual Property of Litigation Clearing House, which was later spun out to become Lex Machina. Mark is the author [00:01:30] of seven books, hundreds of articles, and a 2012 [inaudible 00:01:34] Study named him the most cited, I believe, in relevant law [inaudible 00:01:37] in the country.

We also are joined by Josh [Curry 00:01:41], who's a partner at [inaudible 00:01:42] at Am Law 100 Firm, where he handles patent litigation and other technology disputes, including copyright, trade secret, unfair competition, trademark, and antitrust cases. He has litigated cases in district courts across the country, and before the [00:02:00] ITC, he was [customs 00:02:01] office and the federal circuit. He was a law clerk for magistrate judge Elizabeth Timothy of the US District Court for the North [inaudible 00:02:09] Florida, and he's the author of a number of articles and was selected as a Georgia rising star by Super Lawyers Magazine in the area of IP litigation for both 2016 and 2017.

I wanted to start out with just a couple of quick slides that we sometimes use to kind of illustrate this notion of, how is litigation been practiced in the [00:02:30] past? What could you know about judges, attorneys, and parties in your case? Well, oftentimes, about the opposing party, you knew nothing. About the judge, you know a little bit. For example, this judge, you could know where they went to law school, how many years on the bench, said to be plaintiff-friendly, which I believe Mark, I think, coined the term "anecdata" to describe this phenomenon. [00:03:00] 89 report cases. The opposing attorney, where she went to law school, she clerked for a year, has been at this law firm at [Orange 00:03:10] State for seven years. We'll learn to play hardball. Again, kind of anecdata.

And now we fast forward to today. What can you know about these parties, the attorney, and judge in your case as an example of legal analytics changing the game? And the point is [00:03:30] you can know a lot more, a lot more about the opposing party [inaudible 00:03:34] in similar cases a trial 1.7, 1.13 million in damages [inaudible 00:03:40] in those cases, etc.

You can know a lot more about the opposing attorney, has four [kirk 00:03:47] cases in trial with three other files, so very busy right now. [inaudible 00:03:50] had a similar case with this kind of subject matter. [inaudible 00:03:55] transferred to a certain district.

And, importantly, for this discussion, [00:04:00] what can you now know about the judge? You can now know how many similar cases that he or she has heard; how many times they've ruled for the plaintiff; [inaudible 00:04:08] trial; what is the percent [inaudible 00:04:12] on certain motions, like transfer motion; how much damages have been awarded, and what cases; and what series of damages have they been awarded.

So, that's kind of an example at a high-level. We say, [00:04:30] you know, how law has been practiced in the past, and how has that changed with the advance of legal analytics.

So, with that as a little bit of an introduction, I want to just turn it over to our panelists here, both Mark and Josh, and kind of ask both of you, first at a high-level, when you're going to appear in front of a judge, [inaudible 00:04:52] you kind of somewhat know, and [inaudible 00:04:55] check with data, and then there's judges you don't know at all, maybe some existing client [00:05:00] but in an unfamiliar venue. [inaudible 00:05:02] you could both talk about in those cases, both those cases of types of judges. What are some things you'd like to know? And, Josh, maybe we can start with you.

Joshua Curry: Sure. Thank you, Josh. The ultimate [inaudible 00:05:18] is you want to know how a judge is going to rule on issues that are going to be presented in your case. And any information that you can lean on how a judge is bound to decide things could be very helpful to you and to [00:05:30] your client as you proceed through the court.

You mentioned with judges that we're in front of a lot, and I'm a patent litigator, so I'm often in front of judges that [inaudible 00:05:40], so I know a decent amount about them, but I might not know, you know, how long is it taking them to [inaudible 00:05:46] trial right now, how long is taking them right now to rule on summary judgment, how long is it taking them to get to markman and to rule on markman once it's fully briefed, which is a specific type of motion in a patent case.

If it's a judge that we're not in front of very often [00:06:00] or we haven't been in front of in a while, then, that, obviously, gets broadened quite a bit, and you start to look at, how does the judge rule on specific issues that you are likely to present in a case. Just as one example, say, in a patent case, especially in software technology, hardware technology, which I deal with often, Alice is a common issue. So, a quick way of understanding, you know, how many Alice motions has this particular judge ruled on, and what have the results been?

Those would be some things that I would start to [00:06:30] look at in a new case, for a familiar judge and for an unfamiliar one.

Josh Becker: Great. Thank you. That's really helpful.

Mark, what about you? What are some things that you would like to check out and know?

Mark Lemley: Obviously, I agree with Josh. What we'd like to know is, am I going to win this case? Legal analytics can't get us all the way there yet. But as far as knowing how this judge has ruled in prior cases is going to matter a lot.

The other things I want to know ... I want to know how much [00:07:00] the case is going to cost, how long it's going to take. And there are a bunch of pieces of information that can help point me in that direction. Is this a judge who's likely to stay my case, pending a parallel case or a motion for an IPR proceeding at the patent trial and appeal board? Is this a judge who's going to go very early to either a markman hearing or has a propensity to decide things on pre-trial motions, patentable subject matter [00:07:30] dispute, and a motion to dismiss, and so forth?

But even things like, is this a judge who tends to refer a number of subsidiary issues out to magistrates? That can affect both how quickly things will happen, how much attention will get paid to my case, and, therefore, how much it's going to cost me.

Two other things I guess I would know: one is that ... One of the things I want to know is, not just what's [00:08:00] this judge's prior experience, but what's the judge's prior experience and relationship with the other side? Have they seen the other side, the other client, before, and what happened? Have they seen the other lawyer before, and how often, and what happened? Understanding sort of what relationship this judge has, if any, with opposing council may affect what I do in terms of hiring local council, how I go in and approach it, how aggressive I am in litigation and the like.

The other [00:08:30] thing I guess I want to note is that, you flagged in your example a judge you know well and a judge you don't really know at all, and, obviously, for a judge you don't really know at all, gathering any kind of information is going to be useful. It's going to give you more of an insight into what's going to happen in the courtroom. But I want to emphasize the importance of real data, even for judges that

you have prior experience with. You mentioned the concept of anecdata, [00:09:00] and I think there's a natural human tendency to say, "Okay. I have two personal data points with this judge and I can generalize that and I know what's going to happen in the future." And we all do that. It's human nature to do it. But it can really get us into trouble.

So, I think one of the real important things about legal analytics for a judge is not just, "Let me find out something about a judge I know nothing about," but, "Let [00:09:30] me make sure that my received wisdom based on my personal experience really is representative and not just, 'I happen to have two cases that are outliers in front of this judge.'"

Josh Becker: Well, thanks, Mark. I do think, you know, sort of the cracks ... We all have that tendency to do that, to generalize on a couple data points, a couple of experiments. [inaudible 00:09:53] it's the essence of anecdata.

I was asked recently [00:10:00] the mission of legal analytics. There certainly are [inaudible 00:10:03] to replace anecdata with actual data. But I think that's a great point.

And, Josh, you also mentioned to me earlier about understanding this judge's experience with your adversary, with the other side. Do you want to talk a little bit more about that, as well?

Joshua Curry: Sure. Well, I think Mark said that specifically, but, I mean, that's also something that you want to know, as well. There's useful data out there on lots of platforms [inaudible 00:10:29] to understand [inaudible 00:10:30] [00:10:30] truly about distilling that data quickly and getting access to what you need to know, because of ... The lawyer on the other side of the council has been in front of this judge dozens of times in a patent case, is someone that you approach, perhaps, differently than a lawyer that maybe is new and has never really been there in front of that particular judge before. The ultimate upshot here is, am I going to win this case or not? And anything that you can get to help guide your decision-making [00:11:00] as you go in that direction is very useful. And, to me, it's about trying to extract that quickly, because that's one of the major innovations that's happened with legal analytics is that this used to be out there, but it was

impossible and difficult to get to, and now we can actually look at it.

I wanted to also comment on something Mark said. I think you're calling it "anecdata." I think it is right that, you know, oftentimes, we think we know Judge Stark and how he's going to approach certain [00:11:30] issues, for example, in Delaware in a patent case, but then if you can go look at the actual data, whether it's motions or adversaries or results in cases or timing, and actually see the data to sort of confirm, or, perhaps, dispute, and oftentimes, frankly, I think sometimes what we think might be true turns out not to be after we've looked at some of the data. We're in a better position to make a better, more educated decision on what we're going to do on a case.

That's another thing I [inaudible 00:11:59] also [00:12:00] very up there on the list of what you are trying to glean and learn from the analytics.

Josh Becker: Cool. No, that's great. Thank you. That's really important. You also mentioned to me at one point, I think, that the importance of accuracy of that adversary ... [inaudible 00:12:16] adversary, understand that the [inaudible 00:12:18] data is often wrong, especially in Delaware, New York ... It's wrong almost 46 percent of the time because they put on ... [inaudible 00:12:28] [00:12:30] folks from large firms have hearing in those venues, where they don't get listed on the case and [inaudible 00:12:37], and it's important to be able to understand that, and that's one of the things that we've taken very seriously here with our attorney data engine to make sure we're providing the right information, and actually [inaudible 00:12:49] signature blocks of cases to see who actually signed it, who actually did the work, and what is the true experience field.

Joshua Curry: Right, and [00:13:00] I find that to be very useful. That's another ... It's very obvious, but sometimes you see analytics, and the numbers don't exactly square with your experience, and you dig a little bit deeper and you find out that it's not right for one reason or another. Having the correct attorney names, I know it sounds minor, but it helps a whole lot because the data's just not as useful if it's not accurate.

Josh Becker: Yeah. Good. Great.

                      Let's talk about a case, maybe, where you guys have [00:13:30] used this. Mark, you had a story you were telling earlier.

Mark Lemley: Yeah, so, I think one of the ways in which this information is useful is at the very outside of the case. Where do I want to bring the case? And we're going to talk obviously about some recent changes in patent law in a minute. But also, do I want to bring a case?

                      I'll give one specific example of how we use this information in a way that's fundamentally changed our strategy. We're [00:14:00] talking to a client who is expecting that they might be sued having gotten a threat letter in a copyright case. This is an issue in which it matters what circuit you're in, ultimately, because it was a somewhat unsettled legal question. So, we had a sort of long conversation about, well, you know what? Copyright cases are pretty much all filed either in the second circuit or the ninth circuit. They come in California or New York. And [00:14:30] the second circuit and the ninth circuit law are both pretty favorable to us, so we think we'll be okay.

                      While we're having this conversation, one of my partners went on [inaudible 00:14:39], looked up the lawyer, and realized that of the last 15 copyright cases, this lawyer had filed ... He'd filed 14 of them in Tennessee. And Tennessee, of course, is neither in the second nor the ninth circuit; it's in the sixth circuit. And sixth circuit law turned out to be a lot less favorable to us. And that totally changed the business strategy, because [00:15:00] now the question is not, "Let's sit back and wait and maybe they'll go away, and if they sue us, we think we're going to be fine." It suddenly became, "Boy, it's really important to us that we actually file a declaratory judgment case in a jurisdiction where the law is favorable rather than wait and get sued in a place where it isn't favorable."

                      Understanding not just generally speaking copyright cases are filed on the coast, but what does this lawyer do, and what happens in this particular courtroom, turned out to be critical to [00:15:30] deciding what we want to do about that case.

Josh Becker:		Yep. Good. That's a good example.

			What I wanted to do now is actually run through a couple of examples that Josh talked to me about and show you some sort of live [inaudible 00:15:48]. So, I'll do that now and ask Mark and Josh to provide any [00:16:00] commentary. [inaudible 00:16:03] those two, hopefully, will have a chance in this discussion to talk about [inaudible 00:16:07] court decisions that are going to certainly impact patent cases and other cases, as well.

			Traditionally, a lot of patent cases, for example, have been in the eastern district of Texas, but because of these changes, we now may end up in the district of Delaware, a lot more cases. So, this might be an example where you want to look and see ... And I'm showing the [00:16:30] product right here, that you can see there's data on courts and judges, on council, on parties, on cases, documents, patents, and then [inaudible 00:16:42]. And we'll talk about that in a moment.

			In this case, I'm looking at US District Court Delaware cases, and I'm on the "Judges" tab because I want to look at which judges see the most cases in the district of Delaware, and I can clearly see Judge Stark, [Lee 00:17:00], [00:17:00] and Andrews on the top of the list here.

			Now what I can do is run our courts and judges [comparitor 00:17:08]. So, Judge [Gilstrap 00:17:10] is the judge who had 1,600 new patent cases last year, who we often find ourselves in front of in the east district of Texas, but now comparing that judge to these three judges who were the most active, I just saw, in Delaware. And, usually, you'll do this manually; now we have this comparitor, so [00:17:30] you can just do that and look right away.

			What I might do is ... Sorry, I'm just going to scroll up to the top here. A little biographical information. And I'll just kind of scroll down. If there's anything that you guys see interesting and you want me to stop on, let me know. You see a little bit about the volume of cases that they've had and the trends over time. You can see the blue line there. Judge Gilstrap.

Mark Lemley:		And also Delaware, which sort [00:18:00] of went up in prominence right around after the AIA and then started to

decline again as people made the decision that they were all going to the eastern district of Texas. That was a decision that stuck until yesterday, when the supreme court changed the rules on the patent venue. ED Texas is not going to go away. But a lot of cases that were filed there are now going to have to be filed somewhere else.

Josh Becker: Yeah. And a lot of those will, I think, be in Delaware. [00:18:30] I think the assumption is that Delaware is more defense-friendly. Well, that's, again, where data can come into play, and say, "Is it?"

One of the things you see here is timing analytics. So, this is ... If you were searching ... If you were hoping to get a permanent injunction, the fact that you can't get it from Judge Gilstrap with the ... A bit of a bummer now [as a 00:18:51] plaintiff. Would you look at these stats? He's granted ... He's had more cases reach permanent [00:19:00] injunction of anyone other than Judge Stark, but in a much faster [crosstalk 00:19:03].

Mark Lemley: Do we know if that includes consent decrease? Because, boy, those are fast.

Josh Becker: Yeah. Very fast. Yeah.

Joshua Curry: I was going to ask the same question. When you have the time to dismiss statistics up there, I don't know if this is taking out all the ED Texas cases that are essentially MPE cases that settled in the first, say, three, six months.

Josh Becker: This includes those cases. We will show an example. I can show an example where [00:19:30] you can exclude those kind of high-volume plaintiffs, we call them, which [inaudible 00:19:36] solved more than 10 cases. But this data actually does include them.

Joshua Curry: One of the other interesting on the claim construction part of it kind of challenges at least what I would think of as conventional wisdom, and maybe it's because you're comparing Judge Gilstrap to other districts. There you have one with Stark. I mean, I would have thought that Stark would be normally [00:20:00] faster than Gilstrap on claim construction. So, that's something that, I guess, is anecdata

that you all are talking about, and some of that may be ... Perhaps, that's true. Maybe there's some artifact that would explain why Gilstrap looks to be, on average, faster than overall faster than Stark. Maybe it's just the increase in case volume.

Things like this also say something, to me at least, about the impact that TC Heartland could have in patent cases because there may be many, many more cases filed in Delaware [00:20:30] where there are fewer judges and a much higher case load could back these dates up some, which presents some challenges for plaintiffs.

Josh Becker: Yeah, and to look at Judge Stark. So, we dive in. I have Judge Stark here. So, here are hundred ... Sorry, 1,332 terminated patent cases before Judge Stark. I think it's interesting here ... And, Josh, you, I think, pointed it [00:21:00] out to me when we were talking earlier, is you look at it, and, at first blush, you might say, "Oh, hey, we're a plaintiff; we're in pretty good shape here." 64 plaintiff wins, only 39 claimed defendant wins. "Hey, this is a judge who I'd be in front of as a plaintiff. We don't want to be in front of as a defendant." But-

Mark Lemley: Yeah. Just for context overall, [inaudible 00:21:23] the overall win rate in the country for patentees across everything is about 25 percent, right? So, two-thirds' win [00:21:30] rate for patentees is pretty darn favorable.

Josh Becker: Yeah. But you might want to say, "Hey, let's exclude those high-volume plaintiffs and see if that changes anything." Again, high-volume plaintiffs being folks who have filed more than 10 cases, and actually doesn't change much, surprisingly. Again, looking at about a two-thirds' win rate. So, you're thinking, again, as a plaintiff, "Hey, pretty good shape," right? This is about as ... As we thought. "Hey, we want to go to trial." [00:22:00] But-

Mark Lemley: Let me just say something before we [inaudible 00:22:02] about that high-volume plaintiffs, too. I mean, I do think that this is actually ... This is important for a variety of reasons. It's important [inaudible 00:22:09] understanding the policy dynamics of the system. One of the things that we've found once Lex Machina implemented this tool is, a lot of the flux in the patent system in the last 10 years has turned out to be

really about high-volume plaintiffs, and things look a lot more even [inaudible 00:22:29] if you take [00:22:30] those out. And I do think there is reason to think that a lot of judges and a lot of litigants treat them differently, but also that they're just interested in different things. So, the ability to say, not just what does this judge do in a patent case, but what does this judge do in a patent case that kind of looks like mine, turns out to be really important.

Joshua Curry: Yeah. Yeah.

Josh Becker: And along those lines, you might say, "Okay, well, I don't have a Pharma case," and that's why it's important to really understand [00:23:00] data. It's one thing to have data at the high-level, but starting to really understand it, to be able to dive down, because you ... And with a tool like Lex Machina, you can say, you know, "Hey, mine is not a Pharma case, so I'm going to exclude [inaudible 00:23:13] cases," and then you run the analytics, and now it's very different. Now, actually, claim defendants have an advantage when you're looking at Judge Stark.

I think this is an example of really [00:23:30] understanding the data, being fluent with the data, and not just saying, "Oh, hey, great, at a high-level, it looks like this." It's really being able to slice and dice and find a case that's really ... Or find the data that reflects the case that's most similar to yours. Look at the timeframe, look at the kind of case, as I think both Mark and Josh said earlier, trying to get as specific as possible to your kind of case. And here's an example where we exclude [inaudible 00:23:58] cases [00:24:00] and we find out that the story is very different than we might have thought at first blush.

Joshua Curry: So, Josh, one of the things I see, at least in this, comparing claims, the plaintiff and defendant, looking at the number of defendant cases where there's the summary judgment grant here, which, to me, in a patent case, where I think I have solid defenses for some reason, this is a good metric to tell me to look a little bit more at how those summary judgments are coming about, when they're coming about [00:24:30] on the plaintiff side. [crosstalk 00:24:33] trials. You know? It's telling an interesting story that, at least before I saw something like this, was very hard to get at unless you were local council in front

of Stark all the time and someone was compiling this stuff for you so that you could actually keep up with it.

Josh Becker: Good. And by the way, we'll be taking questions in a moment so that you, for all viewers, you can type in questions [00:25:00] and ... And hopefully you can see how to do that, and then we can answer them. So, we'll go to questions in a moment.

What I want to do now is just run [inaudible 00:25:11] motion metrics report, and this is a report we developed to look at a very ... And look at a high-level of some of those steps. For example, if I was trying to transfer out of this courtroom and see what percent of those motions have been granted, I [00:25:30] can quickly see 55 percent of the time, those motions are granted. That's very valuable information. So, if I want to now craft one of those motions, I can go into one of the apps, this is in this app section here, and do what's called a motion kickstarter so I can look at transferred motions in front of Judge Stark, and run "Kickstart [00:26:00] My Motion," and now I can see the last 10 examples of this type that succeeded and the last 10 motions of this type that failed. So, I can go in and look at, and then you can dive in down to the document itself. [inaudible 00:26:18] and look and see, "Hey, what was in this case? Maybe it's some stuff I can reuse or ... "

Mark Lemley: Right. And [inaudible 00:26:25] fact. If it's all the ones that succeeded had [00:26:30] this characteristic. The plaintiff was out of jurisdiction, and all the ones that failed had a different characteristic, then I've got a pretty good idea of what facts will make me more likely to succeed or not.

Joshua Curry: Well, that's an artifact of the motion being venue transferred, right? Heavily fact dependent a lot of times. I mean, some judges, to some degree, depending on which party you represent, you may think it kind [00:27:00] of skews a little bit even if the facts should line up in your favor. This I like a lot because you can quickly get to the briefing on it. You can get this on Pacer, but you can't get the briefing in a very tight segment of the screen very easily and flip through a bunch of them relatively quickly.

Mark Lemley: And it's not going to be sorted out for you. You could [inaudible 00:27:21] through enough Pacer documents to find

all of the times that Judge Stark had a transfer motion brief in [00:27:30] front of him, but you're counting on yourself to make sure you've got it all.

Josh Becker: Yeah.

Joshua Curry: Right. Right. And I usually start in a slightly different way. For example, with Alice in Section 101 motions, you know, some judges are viewed as being much less likely to grant those. You can look at those statistics, as well, and pull some more data. That's one that's not quite as fact dependent, tells you a lot about who you're probably dealing with.

Josh Becker: Yeah. Great point. Yeah, [00:28:00] here in a couple flips, I can get into these motions.

                    The question that came in: Have you any plans or do you already offer this analysis for overseas jurisdiction? And the answer is: Ultimately, yes. We don't have a timeframe on that. I can say, with the risk of sort of scooping ourselves, we'll have a bunch of big announcements next month. Some stuff we've been working on very hard now for the last few years to get into commercial law and employment law, obviously, two massive areas of law, [00:28:30] that are [inaudible 00:28:30] and to many of the folks here viewing today, you can expect some big announcements next month. In terms of overseas jurisdiction, that will be down the road.

                    The next question ... Again, feel free to ask your questions here. Question for Mark: We mentioned TC Heartland. Maybe you could just tell us for a minute about ... Give people a perspective and maybe [inaudible 00:28:57] don't know about why this is such a significant [00:29:00] ruling and what effect it may have.

Mark Lemley: Sure. As we learned from Lex Machina data, people have gravitated towards the eastern district of Texas ... Nearly half [inaudible 00:29:12] law suits in the last two years were filed in the eastern district of Texas, and, therefore, really before just two judges, Judge Gilstrap and Judge Schrader. What the supreme court said yesterday in TC Heartland was that the patent venue statute [00:29:30] allowed a defendant to be sued in one of two places, where they were incorporated or

where they have a regular and established place of business and have committed acts of infringement.

So, one of the reasons we've started to focus this conversation on Delaware is that so many corporations are incorporated in Delaware that we expect a lot of defendants to be sued there. The judges have experience with patent cases [00:30:00] there, and it's easy to find them.

But I think the other thing we're likely to see is a scattering of cases from the eastern district of Texas towards tech centers throughout the country. So northern California, central and southern California, Virginia, Massachusetts, anywhere where tech companies are located are probably going to be growing areas for patent litigation. I don't think that [00:30:30] means every case is going to go away from the eastern district of Texas. There will be some litigation over what it means to have a regular and established place of business, but I think there's a plausible argument that if you're Apple and you have an Apple store in the eastern district of Texas and there's currently one in [inaudible 00:30:47], you are selling infringing products from your regular and established place of business, and so you can be sued there for infringement based on those products.

So, I think some defendants [00:31:00] are going to be sued only where their headquarters are or where they have a manufacturing facility, but defendants that have a large retail presence around the country may still be subject to sued in a lot of jurisdiction.

Josh Becker: Yeah. So, we shouldn't be surprised that that Apple store in [inaudible 00:31:17] disappears in the [inaudible 00:31:19].

Mark Lemley: Right.

Josh Becker: Are you going to add trade secret cases under the new Federal Trade Secrets Act? The answer [00:31:30] is: Looking into that. There is still not a separate [inaudible 00:31:33] right now that I know of, which I think makes it a little more difficult, but thanks for the question. Feel free ... By the way, anyone can email me after this, jbecker@lexmachina.com. I'd be happy to get the details of some of those things. Jbecker@lexmachina.com.

What about ... Another question just came in. What about from a policy perspective ... [00:32:00] And I guess we'll give this one to Mark as the academic, if we can start knowing these things about judges, should we measure judges by how they decide things? How do you see this evolving from a policy perspective?

Mark Lemley: Well, I mean, I think there are a bunch of interesting facts about this. One of the things that this tool allows us to do with the policy matter is identify outliers. [00:32:30] If there are judges who are ruling for a patentee far more than anyone else in similar situations or far less, that's something that's worth knowing, not just as a litigator; it might be worth knowing as a check on the policy system. I think seeing this, like, how much deference is actually given to magistrate judge decisions ... I mean, the district judges dominantly reviewing those [inaudible 00:32:56], but I think most people [00:33:00] would say if a magistrate's written a decision, it's extremely unlikely to be overturned.

And then things like what we mentioned earlier that the high-volume plaintiffs tool allows you to do. It allows us to understand that what looks like a series of changes to the patent system as a whole is actually two very different patent systems layered on top of each other, one of which is going through a series of changes, and the other of which is actually looking pretty steady. [00:33:30] So, I think as we think about, do we need or want patent reform in congress, what kinds of things might we change, understanding those facts, I think, turns out to be really important.

And then you might also sort of figure out if you looked at this, that, boy, the district of Delaware probably needs more judges. And if we were to allocate new federal judge ships in a congressional budget process, one of the things you might look to is how long [00:34:00] does it take judges to decide cases? How big is their case load? Are they, in fact, overwhelmed in some districts compared to others?

Josh Becker: Yeah. I was just kind of clicking here around securities cases, which is another areas that we've had a recently ... There, your concentration is more in the southern district of New York, understanding the judges there. It becomes very

[00:34:30] critical. You mentioned stays in transfers, as well, right? [inaudible 00:34:38]

Joshua Curry: Yeah, absolutely. So, with patent cases in particular, one of the major disputes and differences between individual courts is whether they are likely to stay a case, pending an administrative revocation challenge in an IPR proceeding in the patent office on the theory [00:35:00] that, "Hey, maybe the patent will be invalidated, and it doesn't make any sense to go on litigating it." Most judges, if you bring that stay motion early enough and the IPR proceeding early enough will stay the case, the eastern district of Texas has suggests been an outlier on that question. They've been less likely to stay cases. So, that means that you're going to spend a lot more money, even if you're ultimately successful in the IPR proceeding, litigating and doing discovery in the ED Tex than [00:35:30] you would in other districts.

Josh Becker: Cool.

Joshua Curry: Congress has added also [inaudible 00:35:37] some districts that just grant IPR all the time or grant stays in IPR all the time, and including sometimes before an institution decision. So, being able to get that data and to see that your judge is following that trend in that particular district is very, very useful [inaudible 00:35:57] for defendants in a case.

Josh Becker: [00:36:00] Excellent. Well, good. We've [inaudible 00:36:03] for 30 minutes, but I appreciate people staying a little longer to, and Josh and Mark staying a little longer to answer a few questions. I want to just wrap up and talk about our next webcast. But before, I'll turn any closing thoughts for Josh or Mark.

Joshua Curry: No, look, I'm obviously biased, but I think this is a spectacular tool that really [00:36:30] does have the promise to change the way litigation gets practiced.

Josh Becker: Well, thanks. I know there's ... Looking through the list, we have a lot of folks who are not [patentists 00:36:42] who we see on here who are commercial, employment, or other folks who are looking forward to seeing those modules when we release them, and I can say they'll be happening very soon. Again, feel free to contact me. We're excited to be showing

you guys legal [00:37:00] analytics, as well, and we'll be looking forward to showing those trends and seeing what's happening in those areas of launch and shedding some light. The original purpose of this as public interest project where Mark started is about openness and transparency for the law, and we very much hold that dear, and it's very much a mission-driven business.

Along those lines, you can see Brian Howard, who's one of our legal data scientists in house, [00:37:30] has a blog post about TC Heartland using some of our data, and that's going to go up today, as well. And you can see that on the lexmachina.com website. So, looking forward to see Brian's analysis. Believe me, we will be paying very close attention now the next few months to what's happened, and we'll be rolling out reports about which venues at the eastern district we expect certainly goes down, which venues are seeing up-kicks, and showing the analysis of those judges, [00:38:00] as well.

Thank you all.

The next webcast will be on June 27th. We have [Yard Trikowski 00:38:09] who will be joining us who's a global vice chair of IP at Paul Hastings. And this one is about [inaudible 00:38:16] intelligence. So, how do you use legal intelligence? We talked focused on judges for this one, understanding the behavior of your clients, of prospects, of competitive council, on both the firm and individual [00:38:30] attorney levels.

So, we look forward to you joining on June 27th, and as always, feel free to reach out to me with any questions, jbecker@lexmachina.com, or comments. I want to thank Josh, I want to thank Mark, for joining us and for all that you do, and we look forward to seeing you all next time.

Mark Lemley: Thank you.

Joshua Curry: Thank you very much.