

*Lex Machina*  
*2014 Patent Litigation*  
*Year in Review*



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## Executive Summary

2014 was a turbulent year in patent litigation: the Supreme Court weighed in on attorneys' fees (in *Octane* and *Highmark*, decided April 29, 2014), and on patentable subject matter (in *Alice*, decided June 19, 2014); patent reform was much discussed in Washington, and the second half of the year saw lower levels of new district court case filings, but higher levels of Patent Trial and Appeal Board (PTAB) filings than recent years.

Against this backdrop, Lex Machina's second annual Patent Litigation Year in Review seeks to provide insight into the main trends of 2014 and the mechanisms driving them, and to showcase the value of Legal Analytics® in informing business and strategic decisions about litigation. 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.

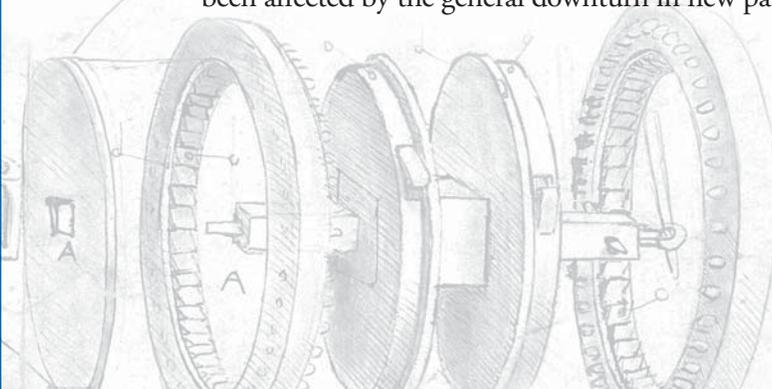
This report examines the key axes of legal data and their interactions, drawing upon Lex Machina's platform that combines data from PACER, PTAB, the U.S International Trade Commission (ITC), the U.S. Food and Drug Administration (FDA) Orange Book on abbreviated new drug applications (ANDAs), and more. Key trends and highlights from 2014 include:

### U.S. District Courts:

- **Filing Trends** - Although the Eastern District of Texas and the District of Delaware remain the most popular courts for new patent cases, both saw a net decrease from 2013 in new cases filed (-4.9% for Eastern Texas but -41.2% for Delaware).
- **Case Timing** - Both the 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** - Of transfer motions decided in 2014, the Eastern District of Texas and the Northern District of California both saw near parity in their grant /deny rates, while Delaware and the Central District of California both exhibited a higher motion grant rate.
- **ANDA Cases and Design Patent Cases** - Neither type of case has been affected by the general downturn in new patent case filings.

Lex Machina's 2014 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.



**Judges:**

- Judge Rodney Gilstrap (E.D.Tex.) had 982 new cases in 2014, the most of any district court judge.
- Judges Sue Robinson (D. Del.), Leonard Davis (E.D.Tex.), and Richard Andrews (D.Del.) lead in dispositive summary judgments.

**Law Firms:**

- Fish & Richardson led nationally by open cases, while Morris, Nichols, Arsht & Tunnell in Delaware and the Tadlock firm in Texas led in their respective districts.
- Whether for assessing competitors or finding new counsel, these law firm rankings provide a start for exploring how firm data can impact case strategy.

**Parties:**

- Large numbers of cases by eDekka and Olivistar placed them at the top of the plaintiffs list; Apple remains the top defendant.

**Patents:**

- The *Alice v. CLS Bank* decision coincided with a dramatic increase in § 101 invalidations for unpatentable subject matter.

**Damages:**

- Damages awarded in 2014 included approximately \$1.8b total in compensatory damages, with another \$313m total in enhanced damages.
- Eastern Texas tends to award more damages than other districts, regardless of whether measured by ratio of damages awarded to cases filed, or simply by median damages.

**PTAB and ITC:**

- PTAB filings are on the rise and ITC remains steady since its peak years in 2010-2011.

This report provides a starting point for understanding the impact of Legal Analytics on the business and practice of patent law. It sheds light on the big trends in patent litigation. But the full power of Legal Analytics is revealed when users engage with the platform to produce actionable and strategic insights tailored to their particular context and circumstance. When users have the ability to “twist the dials,” their results provide them a competitive advantage in landing clients, winning cases, and closing deals by making data-driven decisions.

***Acknowledgement***

Thank you to Owen Byrd, Lex Machina’s General Counsel and Chief Evangelist, for his editing, as well as his thoughts and suggestions throughout the process; to Jason Maples, Legal Data Analyst, for his tireless work in refining and cross-checking the figures and computations in this report; and Gavin Carothers, Lead Software Engineer, for his instruction on layout.

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## Lex Machina's Data and Methodology

### Lex Machina Enhancements in 2014

## Overview

Figure 1: New cases filed, 2014, by month

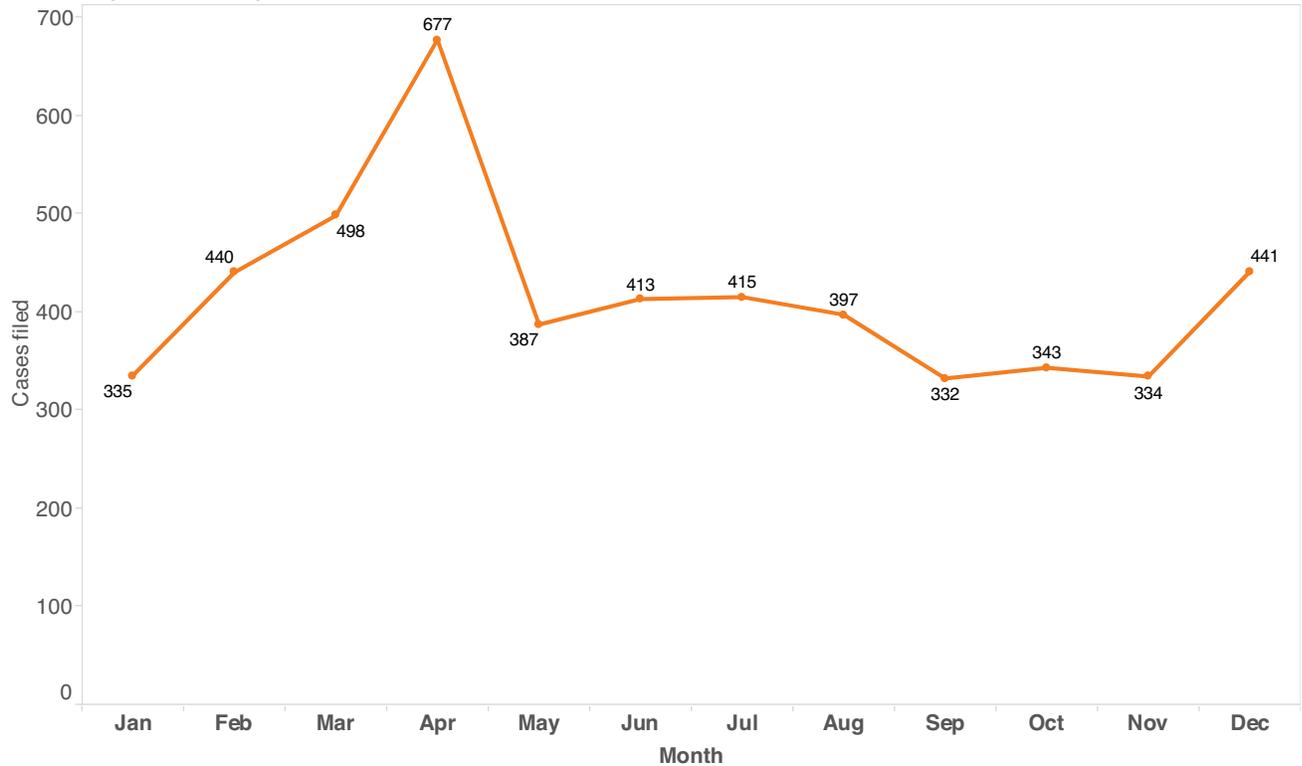
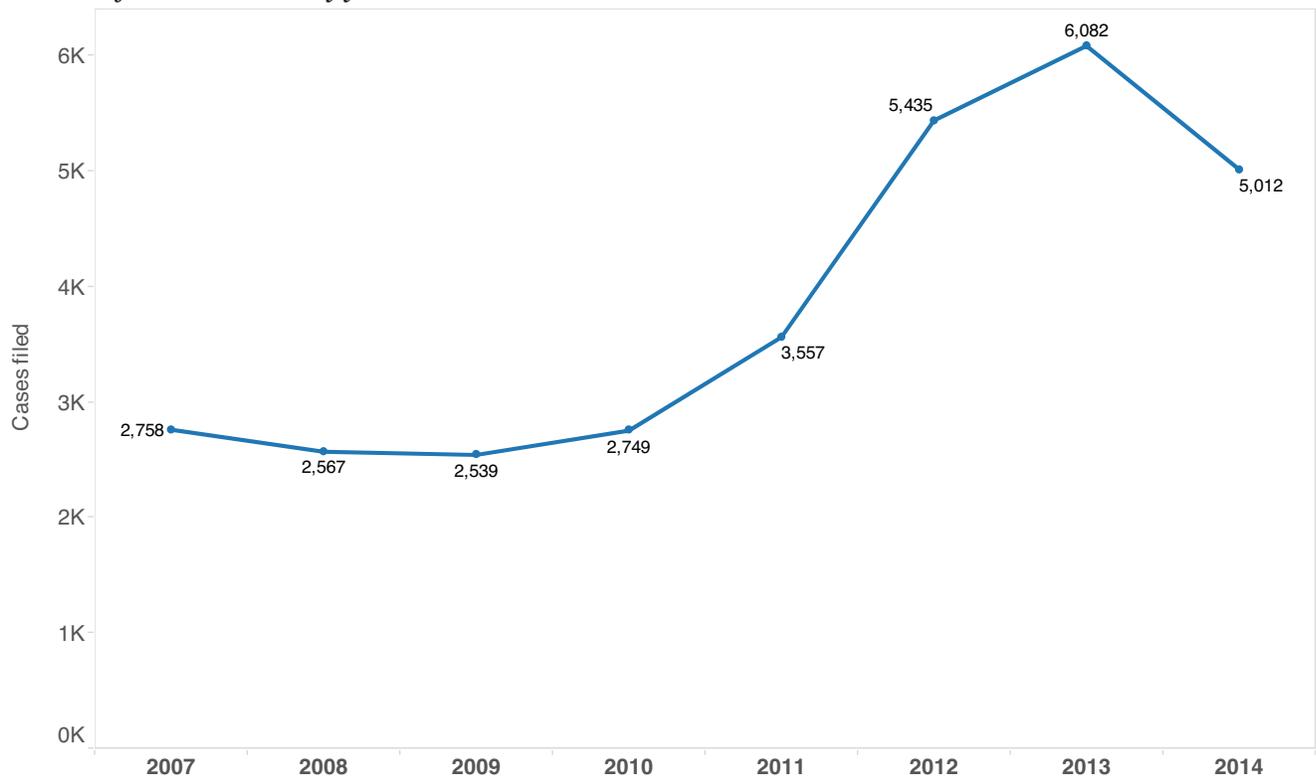


Figure 2: New cases filed, 2007-2014, by year



Note: All charts reflect patent litigation (cases including at least one claim of patent infringement) in the U.S. District Courts unless otherwise stated. Where dates are omitted from captions, charts refer to 2014 data.

2014 saw a steady increase in case filings through April, followed by sharp drop in May and a flat remainder of the year, leaving total filings down 21% from 2013.

The cumulative chart below shows how the flat second half of 2014 fell below 2013 levels.

Figure 3: New cases filed, 2014 vs 2013, by month, cumulative

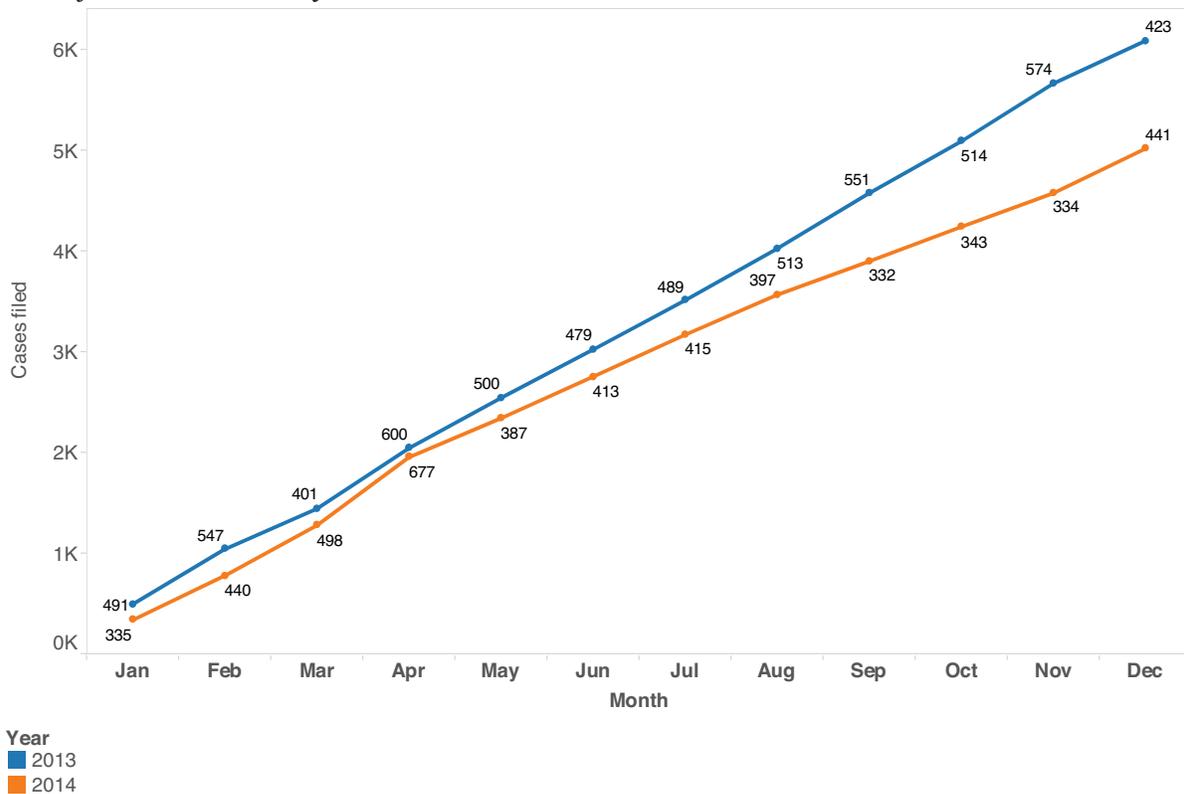
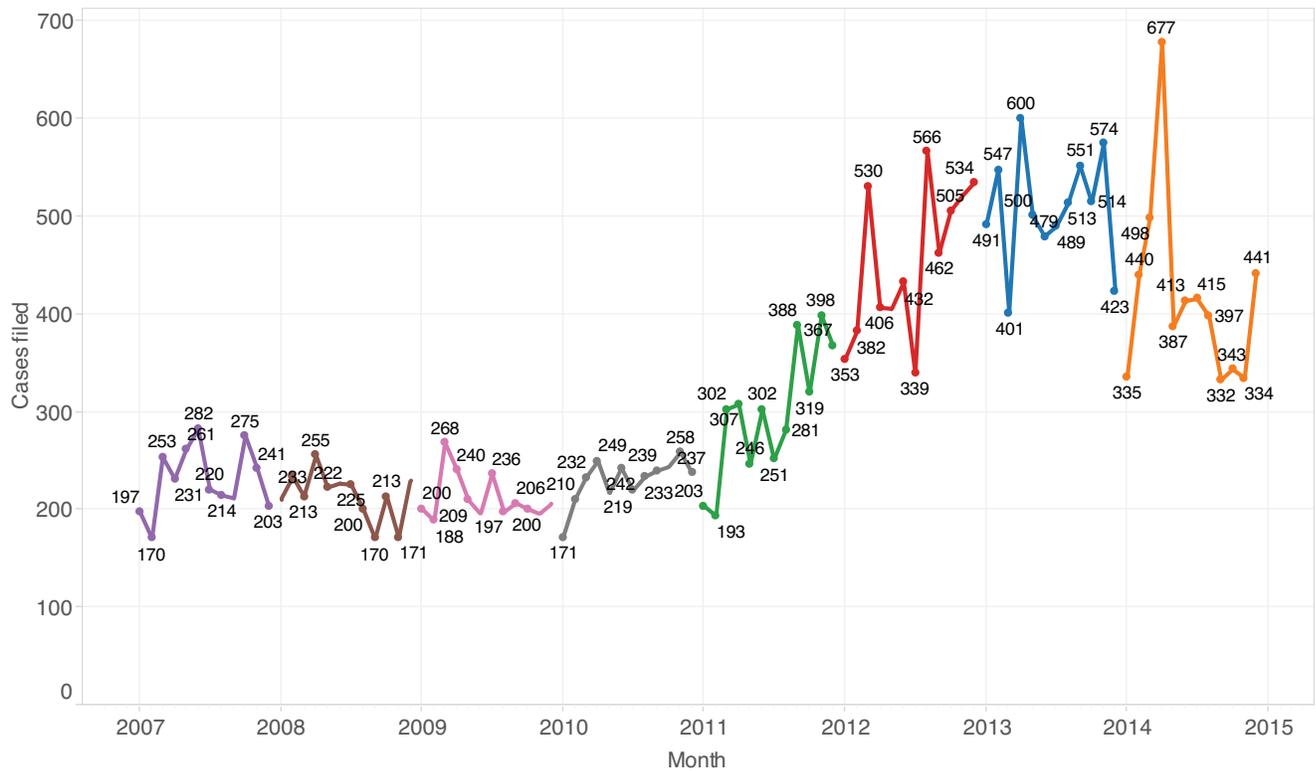


Figure 4: New cases filed, 2007-2014, by month



The Americans Invent 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 pre-AIA case filing rates incomparable to 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 2014 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: by counting each defendant in a case separately via defendant-case pairs, as shown in Figure 5.

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 second half of 2014 to a level more commensurate with 2009 and 2010 than the raw case filings alone would suggest.

In Figure 5, the dramatic spike in September 2011 corresponds to the large number of cases filed in a small number of days against numerous defendants; this influx occurred largely in the days before the anti-joinder provisions of the AIA became effective.

Although the U.S. District Courts have seen a decline in filings over the second half of 2014, the PTAB has risen over the same time period while the ITC has remained steady. Note: Figure 6 is intended to convey a relative sense of these trends, not their absolute sizes, which are reflected in the separate labels for the vertical axis.

Figure 5: Defendant-case pairs, 2008-2014, by month

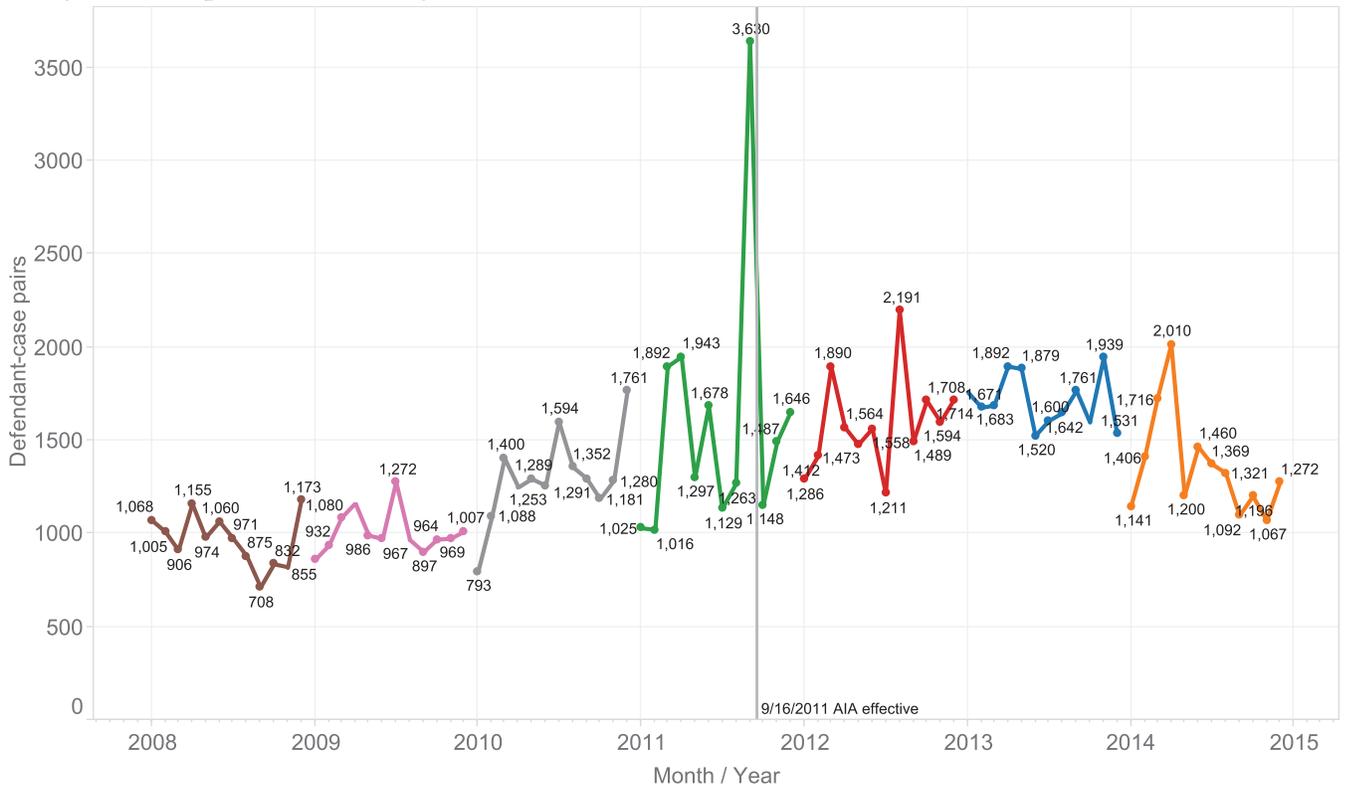
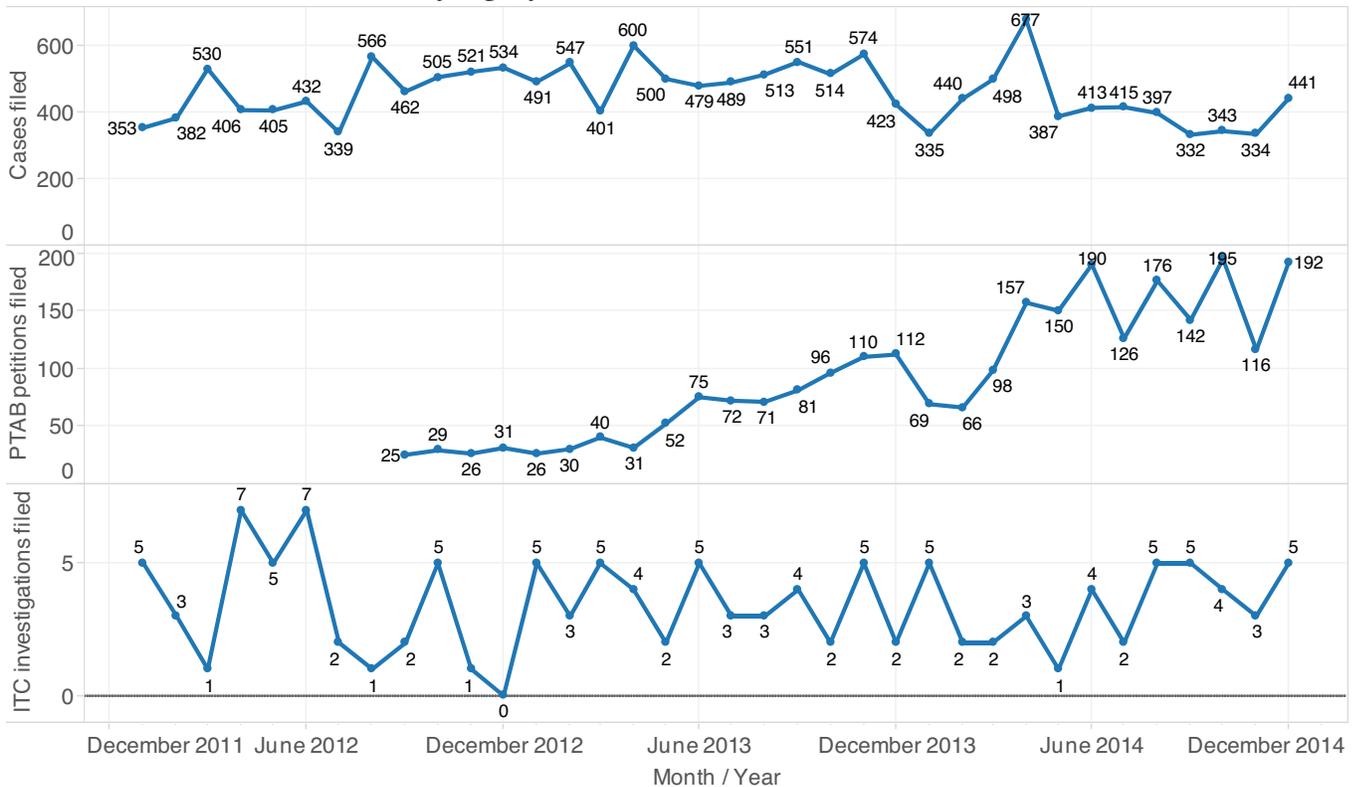


Figure 6: District Court, PTAB, and ITC new filings, by month



## U.S. District Courts

### New cases

The districts of Eastern Texas and Delaware continue to see the largest numbers of new patent lawsuits. However, both saw a decline relative to 2013. Indeed, among the top districts, only the Northern District of California and the District of New Jersey saw increases.

The District of New Jersey saw a particularly strong increase, fueled in part by an increase among ANDA and pharmaceutical cases. The District of Delaware, however, saw the strongest absolute decrease among districts from 2013 to 2014. In particular, several of the leading filers in Delaware during 2013 were less active there in 2014:

Entity	Cases filed in D. Del. in 2013	Cases filed in D. Del. in 2014
Wynncomm LLP	131	0
Princeton Digital Image Corp.	49	0
Data Carriers LLC	47	14
Ubicomm LLC	46	0
Delaware Radio Techs. LLC	32	0
Relay IP Inc.	31	0
CreateAds LLC	31	0

Figure 7: New cases, by district

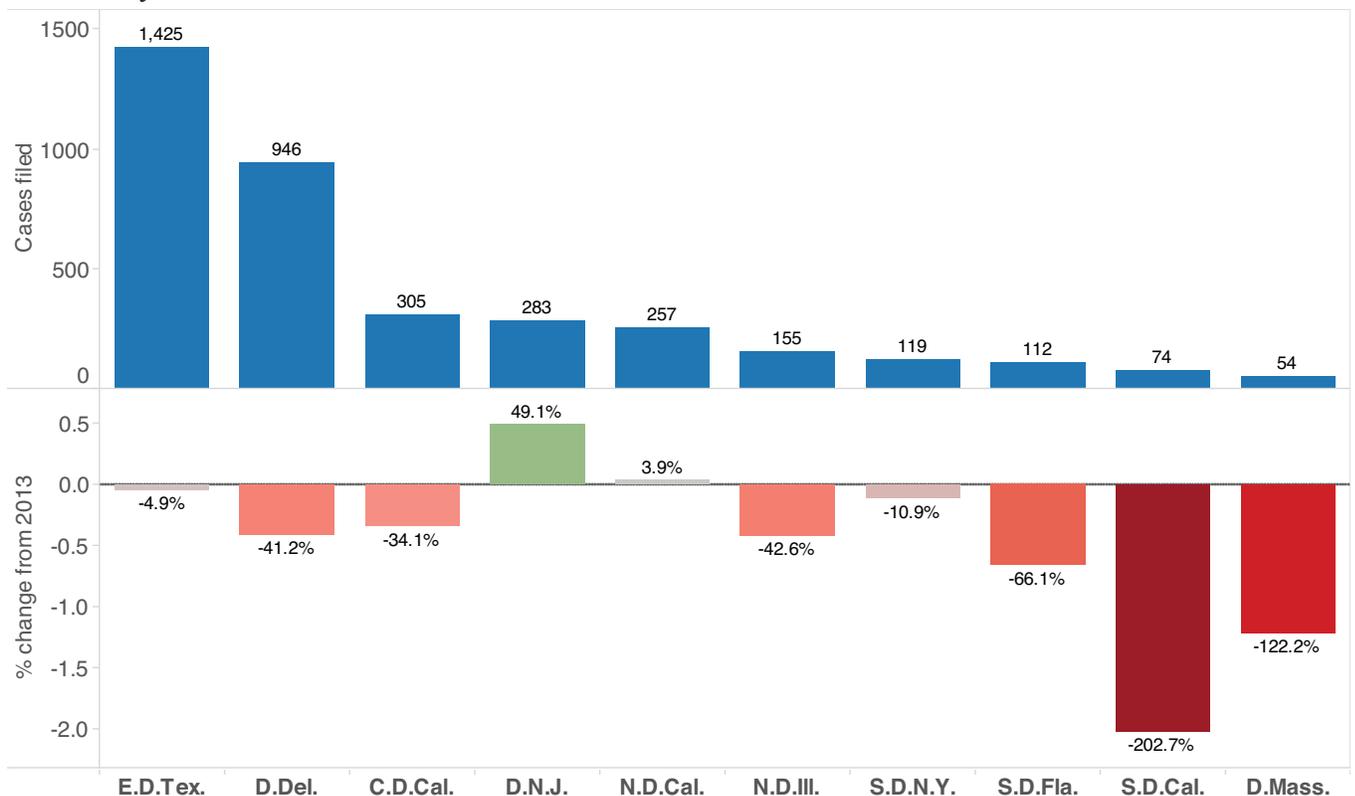


Figure 8: Net increase in new cases filed

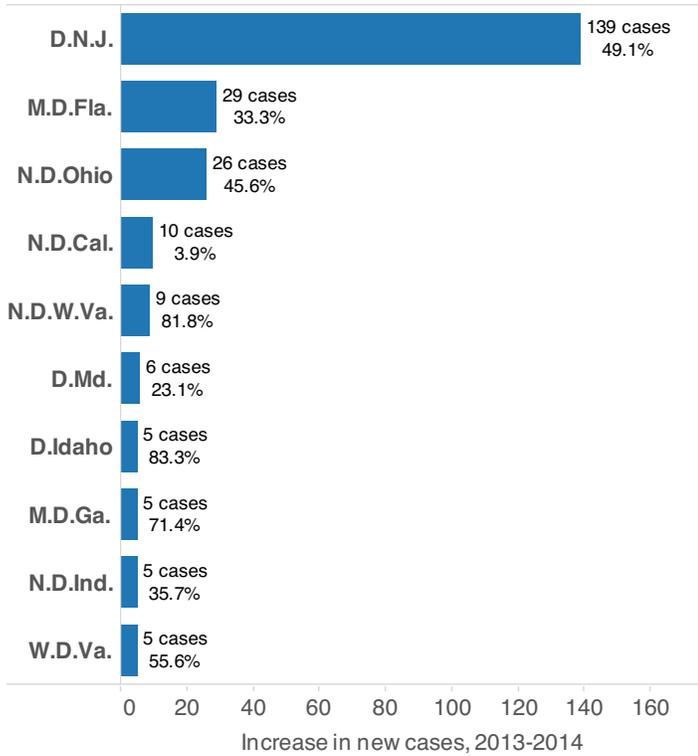


Figure 9: Net decrease in new cases filed

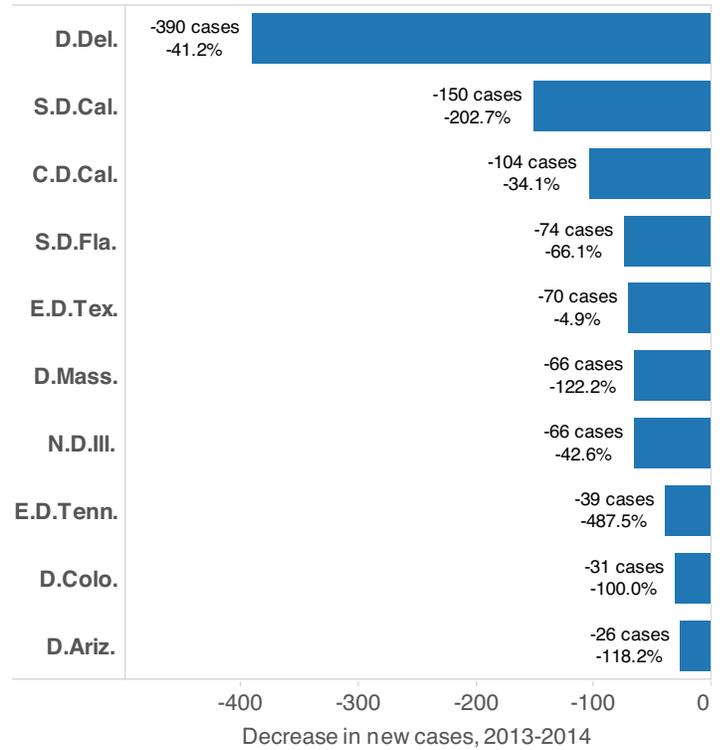
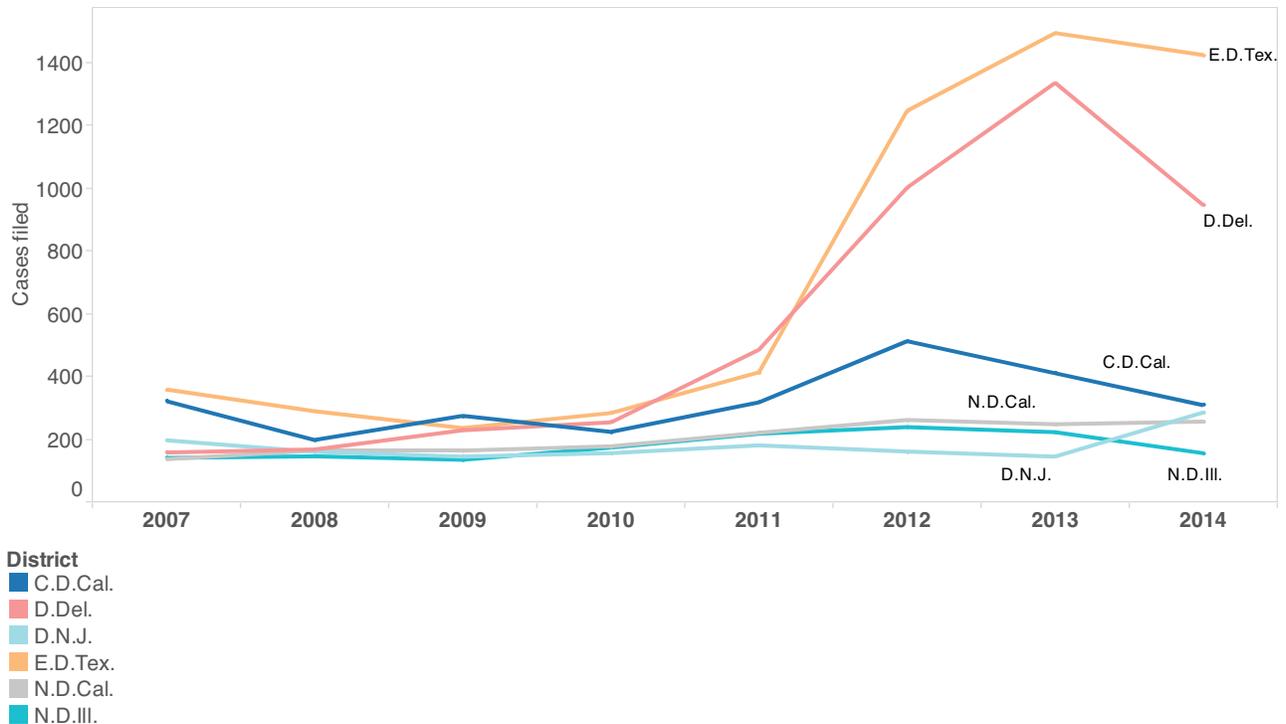


Figure 10: New cases, 2007-2014, by year



## Timing and motions in top districts and nationally

Lex Machina's timing analytics help companies and law firms by providing data on which to make key decisions about strategy and budget. Knowing the median time to claim construction or trial (and its variability) can help to set client expectations, estimate outside counsel spend, and aid in settlement negotiations.

Figure 11: Top districts, by cases filed 2005-2014 and reaching a claim construction hearing in 2012-2014

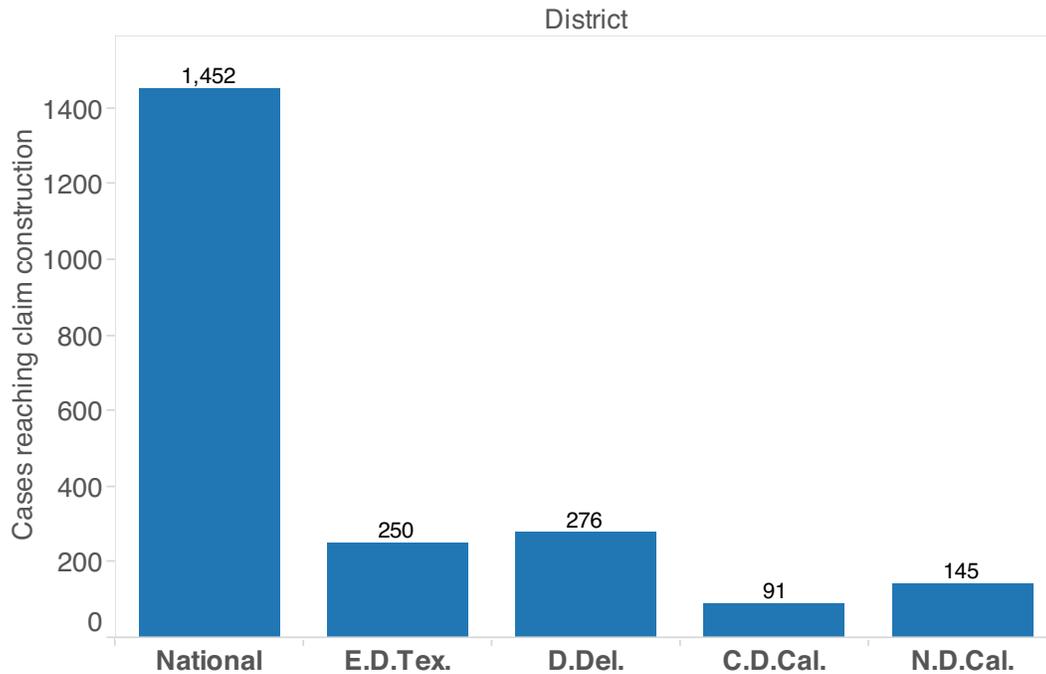


Figure 12: Timing for top districts, by cases filed 2005-2014 and reaching a claim construction hearing in 2012-2014

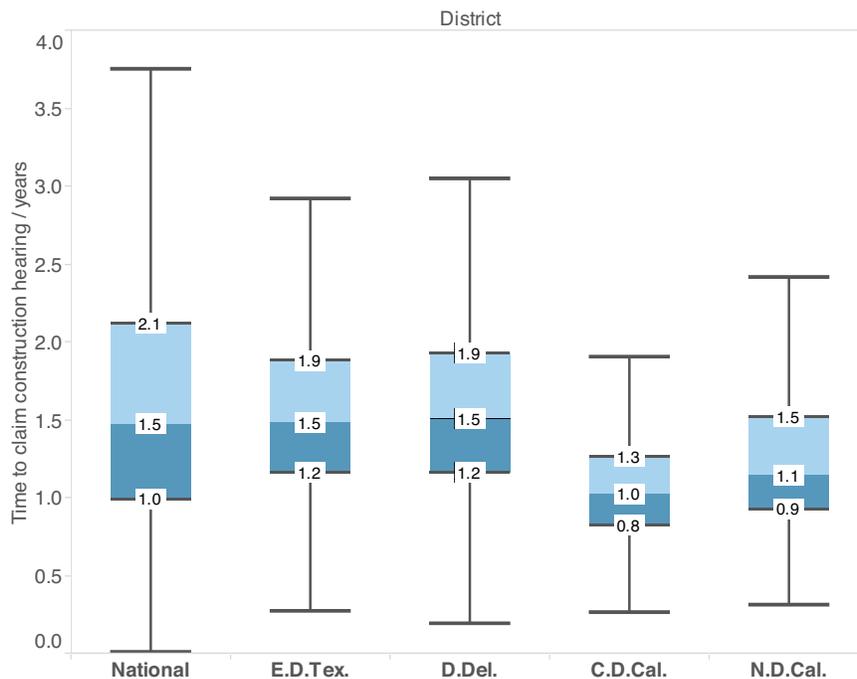


Figure 12 shows litigants in both Central and Northern Districts of California can budget less time and money on claim construction, as those districts saw faster median times to claim construction (about a year) than the Eastern District of Texas, the District of Delaware, or the national average (all a year and a half).

With respect to time-to-trial, Delaware and Eastern Texas offer less variability - 75% of trials in both districts occur several months before trials in either California district. Of all the districts, Central California shows the most variability, more so than the national average, making it more difficult to budget time and resources.

Figure 13: Top districts, by cases filed 2005-2014 and reaching trial in 2012-2014

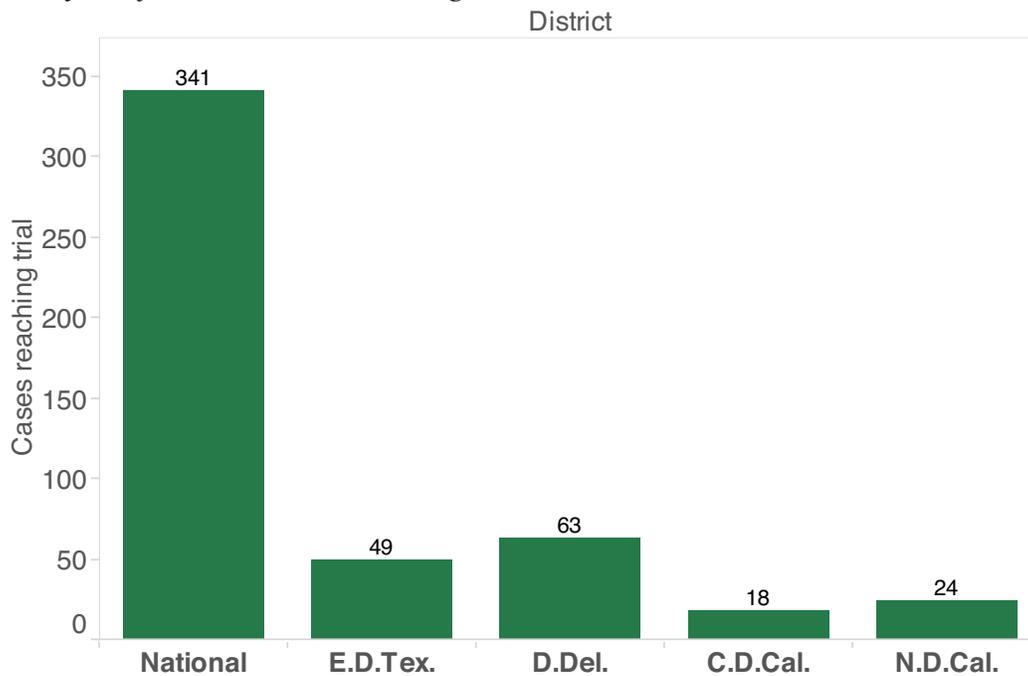
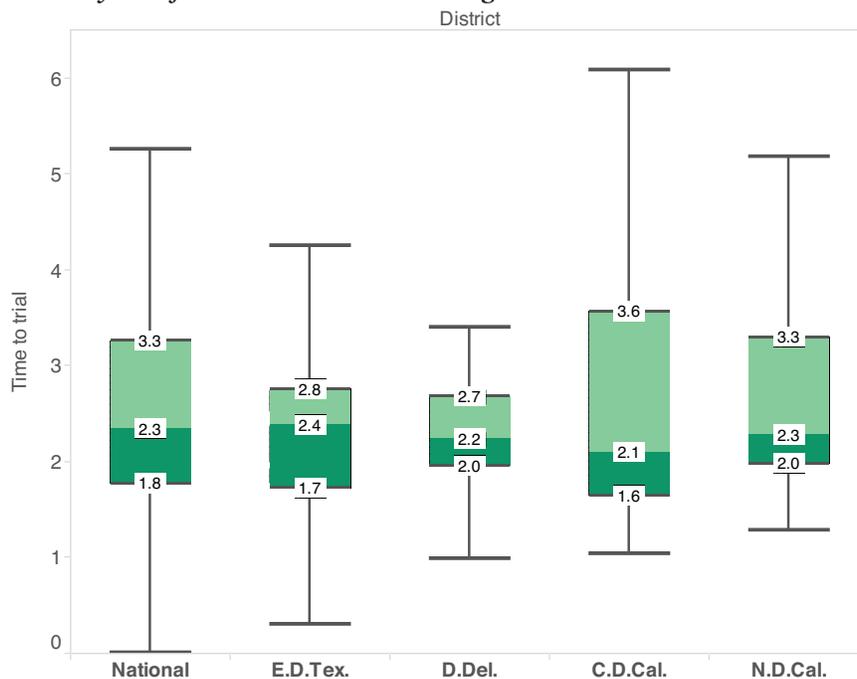


Figure 14: Timing for top districts, by cases filed 2005-2014 and reaching trial in 2012-2014

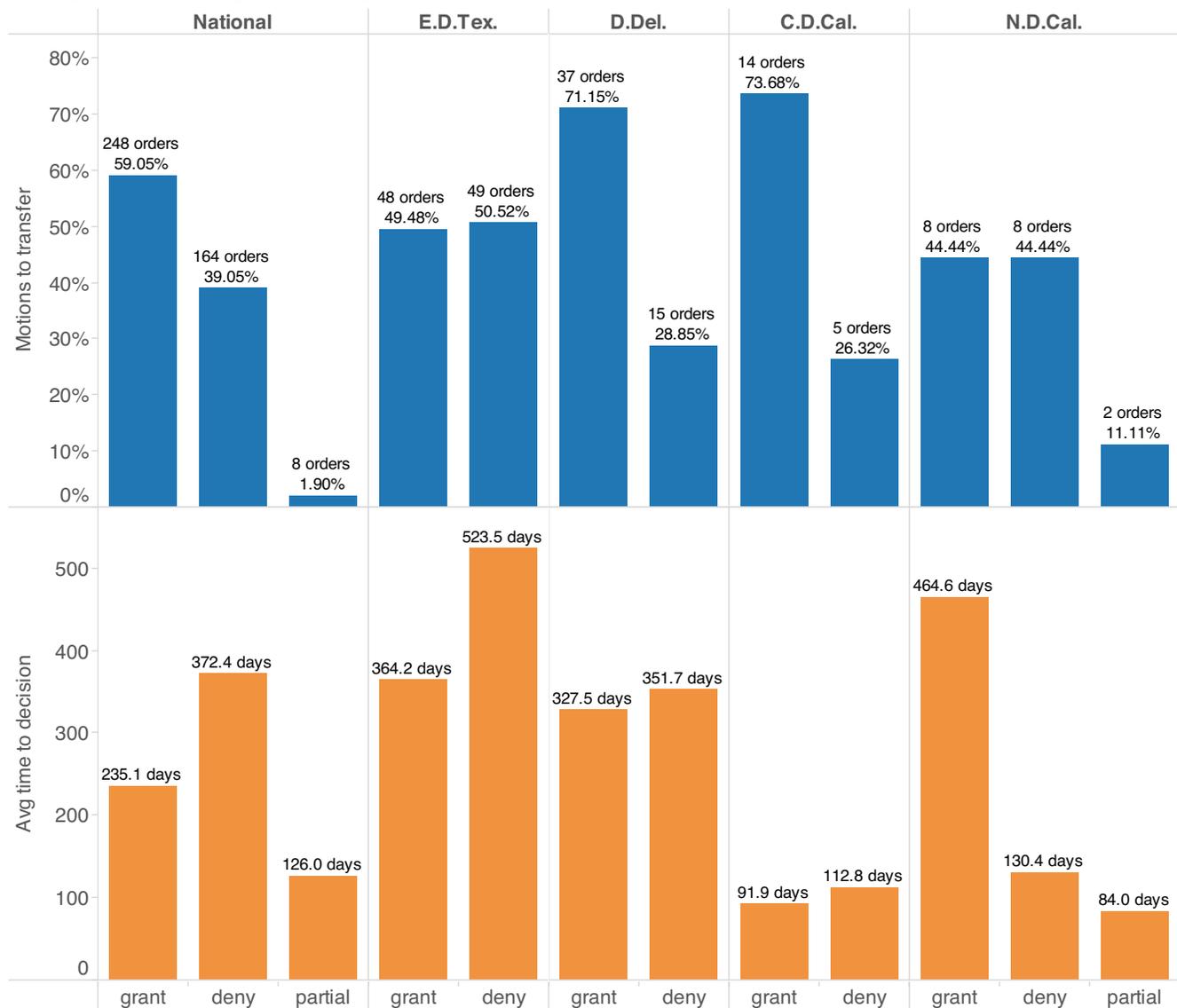


Motion Metrics, a Lex Machina feature which analyzes motion practice, provides key insights to litigants in the district courts. When considering the expense of filing a transfer motion, parties and counsel should know the likelihood of winning the motion - which turns out to vary greatly depending on the district.

Of transfer motions decided in 2014, the Eastern District of Texas and the Northern District of California both saw near parity in their grant rates, while Delaware and the Central District of California both exhibited a higher motion grant rate.

Budgeting can also be affected by timing - the Central District of California, for example, decides transfer motions in about 100 days, or roughly three times faster than either Eastern Texas or Delaware. The Northern District of California was far quicker to deny transfers than grant them in 2014 - contrary to the national trend.

Figure 15: Top districts, timing and success of motions to transfer decided in 2014



Note: Lex Machina's platform allows users to track and analyze other, additional types of motions, including motions to dismiss, motions to stay, and summary judgment motions.

The age of litigated patents - the difference between the time of filing at the PTO and the time of filing of a lawsuit alleging their infringement - provides insight into the changing caseload of the district courts and its effect on innovation.

For example, the Eastern District of Texas has seen the median age of its litigated patents rise dramatically by more than 4 years since 2009. Although the California districts saw a brief bump in the age of litigated patents in 2012, both have a median patent age in 2014 that remains about 3 years younger than Eastern Texas.

Figure 16: Top districts, age of litigated patents, 2009-2014, by year

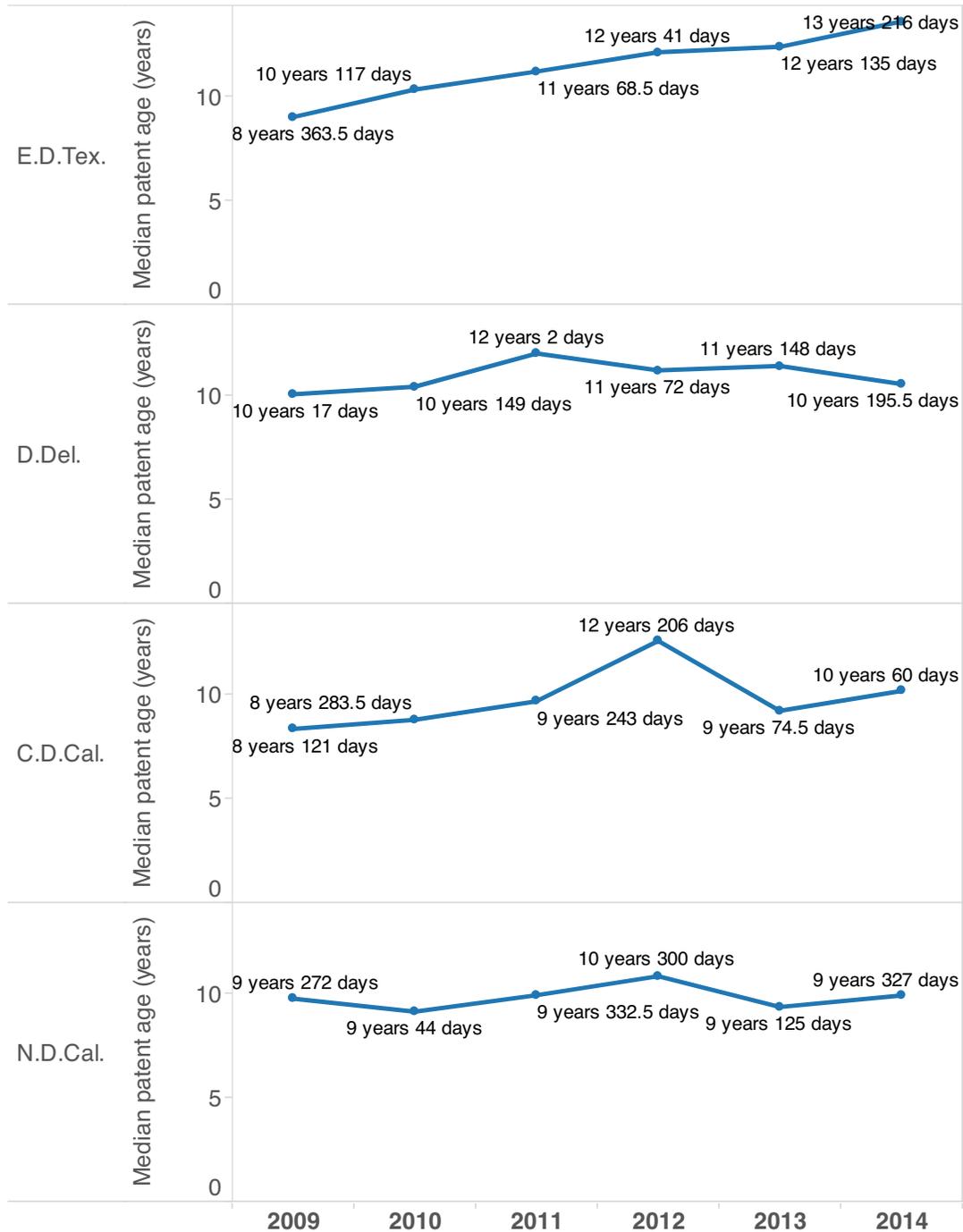
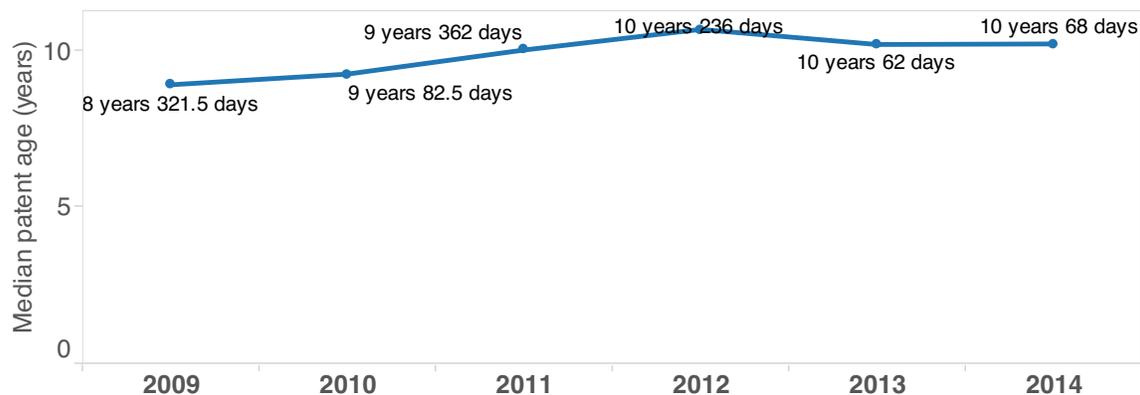


Figure 17: National, age of litigated patents, 2009-2014, by year



## Bench and jury trials

Figure 18: Cases with trials, all districts

Jury only	Bench only	Both	Total
75	41	6	122

Figure 19: Cases with trials, by district (districts with more than 2 trials)

District	Jury only	Bench only	Both	Total
District of Delaware	14	15	0	29
Eastern District of Texas	12	0	0	12
District of New Jersey	1	10	0	11
Central District of California	2	5	2	9
Northern District of California	0	9	0	9
Northern District of Illinois	3	2	0	5
Western District of Wisconsin	0	4	0	4
Southern District of California	0	4	0	4
District of Massachusetts	1	1	1	3
Middle District of Florida	0	3	0	3
District of Oregon	0	3	0	3

## Design patents

Although cases including design patents comprise a small fraction of litigated patents, the filing of these cases has not seen the general downturn that cases with utility patents have.

Design patent litigation is highly concentrated in the Central District of California.

Figure 20: Asserted patents, by design (orange) or utility (blue) and quarter, 2007-2014

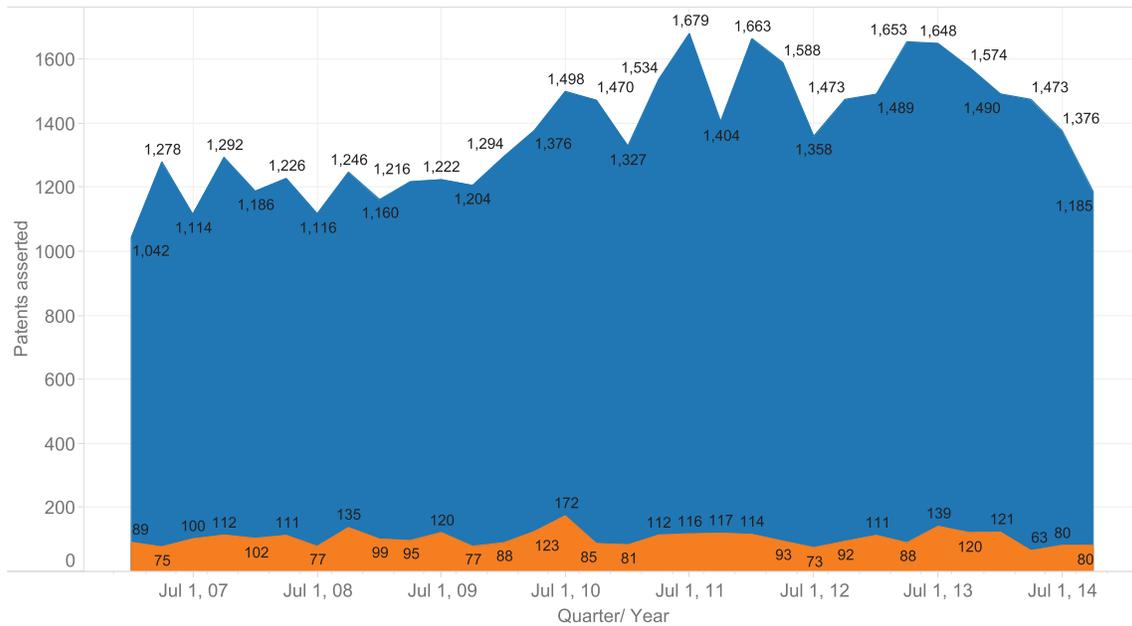
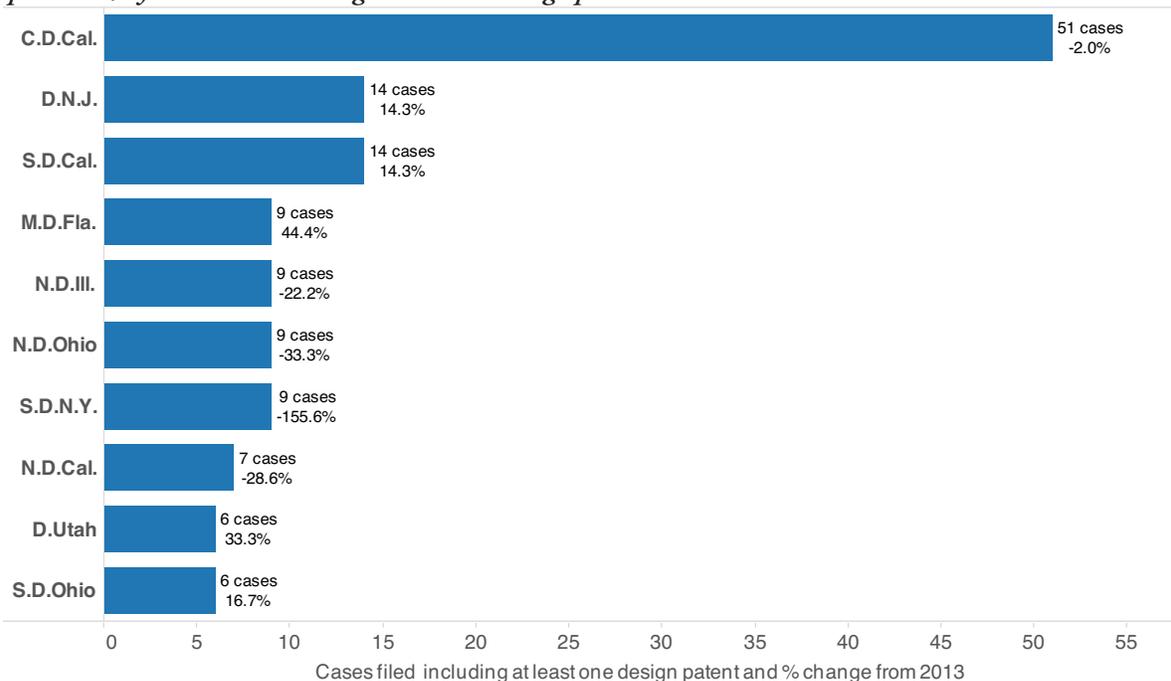


Figure 21: Top districts, by new cases including one or more design patents



## ANDA cases

Lex Machina 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 case filings have risen slightly in 2014, peaking in July. ANDA litigation is heavily concentrated in the Districts of New Jersey and Delaware.

Figure 22: New ANDA cases, by year, 2007-2014

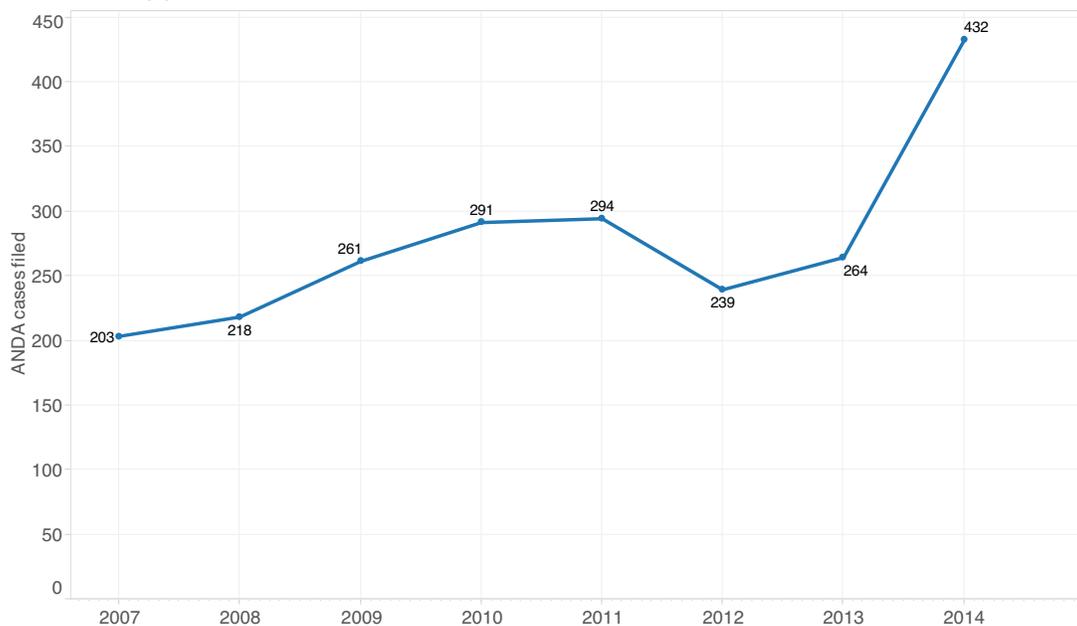


Figure 23: New ANDA cases, by month, 2013-2014

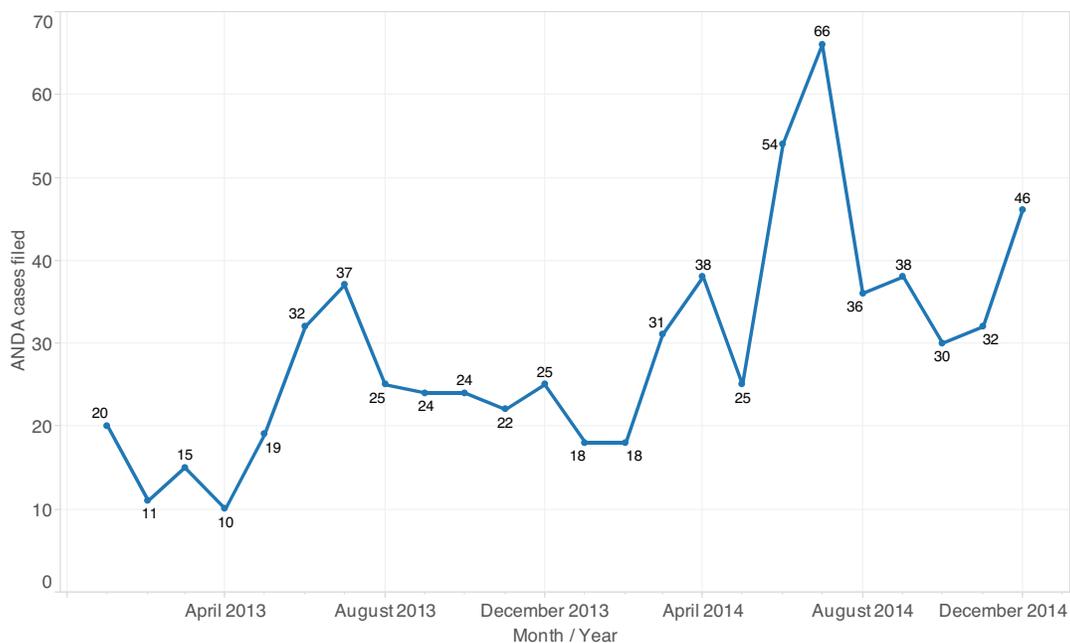


Figure 24: Top districts, by new ANDA cases filed (showing districts with more than 1 case)

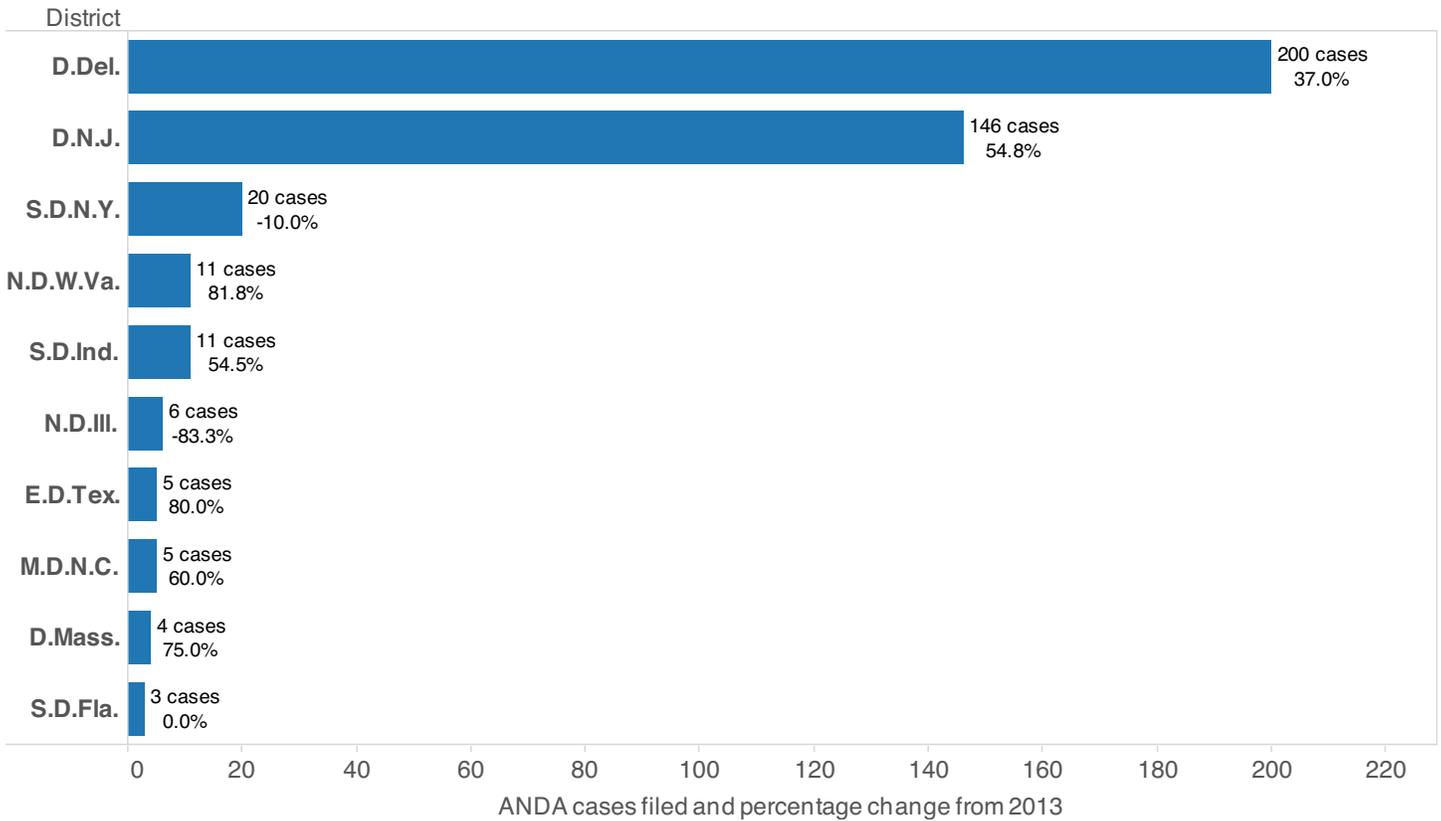


Figure 25: Orange Book ingredients, sized by cases filed and colored by patents asserted, 2013-2014



## Judges

The Districts of Delaware and Eastern Texas dominate the list of top judges by cases filed. Judge Gilstrap, responsible for all patent cases filed in Marshall, Texas during much of 2014, was assigned an incredible 982 new cases.

Judge Andrews (D. Del.) led for the most merits decisions, after Judge Lefkow (N.D.Ill.) whose many decisions were in related cases. Judges Robinson (D. Del.) and Davis (E.D.Tex.) each saw 14 cases reach dispositive summary judgment, followed by Judge Andrews (D.Del.) with 12.

Figure 26: Top judges, by new cases filed

Rank	Judge	District	Cases
1	Rodney Gilstrap	E.D.Tex.	982
2	Leonard Stark	D.Del.	274
3	Gregory Sleet	D.Del.	246
4	Richard Andrews	D.Del.	237
5	Sue Robinson	D.Del.	224
6	Robert Schroeder	E.D.Tex.	204
7	Michael Schneider	E.D.Tex.	99
8	Leonard Davis	E.D.Tex.	96
9	Mary Cooper	D.N.J.	86
10	Ron Clark	E.D.Tex.	78

Figure 27: Top judges, by cases reaching merits decisions

Rank	Judge	District	Cases
1	Joan Lefkow	N.D.Ill.	44
2	Richard Andrews	D.Del.	35
3	Leonard Davis	E.D.Tex.	28
4	Sue Robinson	D.Del.	22
5	Michael Schneider	E.D.Tex.	17
6	James Gilstrap	E.D.Tex.	16
7	Leonard Stark	D.Del.	15
8	Gregory Sleet	D.Del.	11
9	Sidney Stein	S.D.N.Y.	9
9	Denise Cote	S.D.N.Y.	9
9	Otis Wright	C.D.Cal.	9

Note: Judge Gilstrap's large caseload comes, in part, from his being assigned all of the patent cases filed during 2014 in the Marshall Division. See, e.g., <http://goo.gl/4GZg8L>, <http://goo.gl/GlnDTE>, and <http://goo.gl/MR6C0i>.

*Figure 28: Top judges, by cases having summary judgment on patent infringement, validity or enforceability (showing judges having 4 or more)*

Rank	Judge	District	Cases
1	Sue Robinson	D.Del.	14
1	Leonard Davis	E.D.Tex.	14
3	Richard Andrews	D.Del.	12
4	Michael Schneider	E.D.Tex.	10
5	Leonard Stark	D.Del.	7
6	Otis Wright	C.D.Cal.	6
7	Robert Klausner	C.D.Cal.	4
7	Robert Schroeder	E.D.Tex.	4
7	James Gilstrap	E.D.Tex.	4
7	Andrew Guilford	C.D.Cal.	4
7	Patricia Seitz	S.D.Fla.	4

Note: This section includes only Article III judges.

## Law Firms

Among national law firms involved in patent litigation, Fish & Richardson remains the most active firm, as it was in 2013, with over 600 cases open at any time during the 2014 year.

Morris, Nichols, Arsht & Tunnell continues to lead among Delaware firms, while the Eastern District of Texas saw both the Tadlock law firm and Farnan overtake 2013's most active firm, Ward & Smith.

Figure 29: National law firms, by open cases in 2014 (filed 2007-2014)

Rank	Firm	Total cases	Open cases
1	Fish & Richardson	1465	618
2	Russ August & Kabat	1017	520
3	DLA Piper	796	360
4	Finnegan, Henderson, Farabow, Garrett & Dunner	668	323
5	Perkins Coie	710	320
6	Farney Daniels	624	315
7	Winston & Strawn	656	285
8	McCarter & English	581	269
9	Alston & Bird	649	258
10	Kilpatrick Townsend & Stockton	706	244

Figure 30: Delaware law firms, by open cases in 2014 (filed 2007-2014)

Rank	Firm	Total cases	Open cases
1	Morris, Nichols, Arsht & Tunnell	1828	1051
2	Stamoulis & Weinblatt	1113	653
3	Bayard	951	587
4	Farnan	695	477
5	Potter Anderson & Corroon	902	465

Figure 31: Texas law firms, by open cases in 2014 (filed 2007-2014)

Rank	Firm	Total cases	Open cases
1	Tadlock Law Firm	805	586
2	Potter Minton	1048	411
2	Ward & Smith Law Firm	921	411
4	Spangler Law	893	392
5	Gillam & Smith	873	373

## Parties

The parties filing the most patent lawsuits in 2014 are all patent monetization entities (PMEs). eDekka and Olivistar both filed a large number of suits in April 2014, just before the cut-off in a circulated draft of a patent reform law that would have applied a new fee-shifting regime to cases filed after the cut-off.

Apple led again as the most-sued patent defendant. Three pharmaceutical companies (Actavis, Watson Laboratories, and Mylan Pharmaceuticals) were among the top defendants in 2014; the top defendants in 2013 were all technology companies.

Figure 32: Top plaintiffs, by new cases

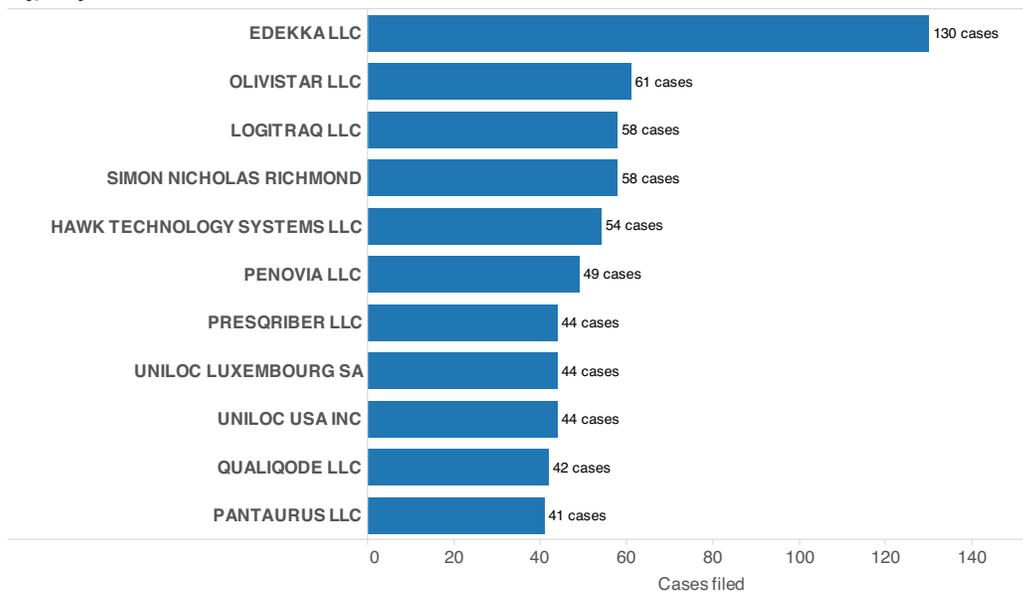
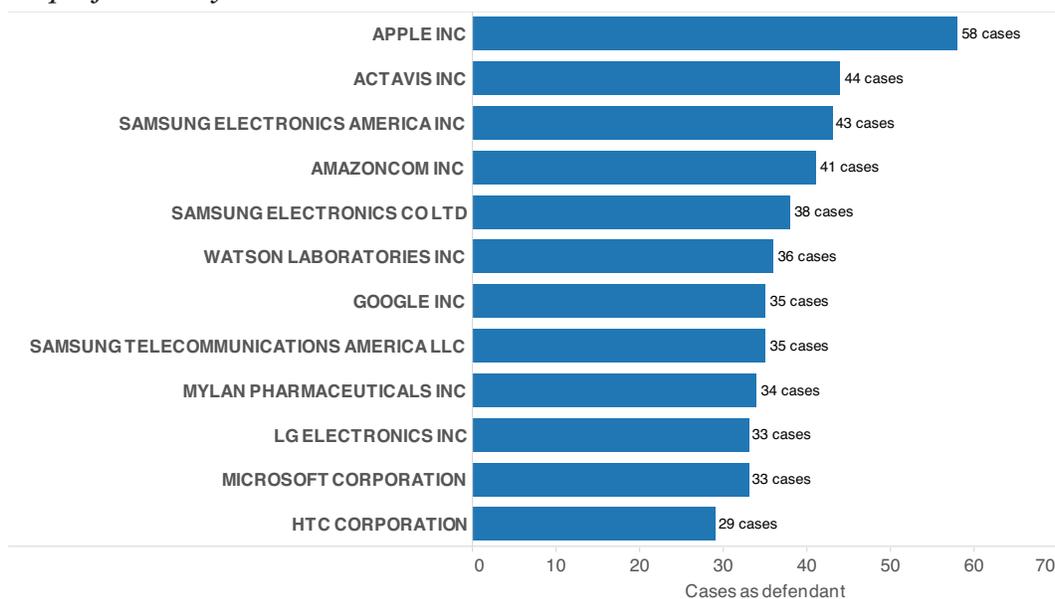


Figure 33: Top defendants, by new cases



Note: Parties as listed do not include subsidiaries or serious misspellings. Figures 32 and 33 exclude declaratory judgment cases.

## Patents

Figure 34: Most frequently asserted patents

Rank	Patent	Cases	Original assignee or inventors(s)	Plaintiff
1	6,266,674	130	Donald J Henja	eDekka
2	6,975,222	58	Baldev Krishan	Logitraq
2	6,556,905	58	Lisa M. Mittelsteadt, John Mittelsteadt, Robert J. Crawford	Logitraq
3	8,239,481	50	Vigilos	Olivistar
3	6,839,731	50	Vigilos	Olivistar
6	5,822,221	49	Frank S. Groenteman	Penovia
7	7,196,477	48	Simon Richmond	Richmond
7	7,429,827	48	Simon Richmond	Richmond
7	8,362,700	48	Simon Richmond	Richmond
10	5,630,069	42	Action Tech	QualiQode

Figure 35: Titles of most frequently asserted patents

Rank	Patent	Title
1	6,266,674	Random access information retrieval utilizing user-defined labels
2	6,975,222	Asset tracking apparatus and method
2	6,556,905	Vehicle supervision and monitoring
3	8,239,481	System and method for implementing open-control remote device control
3	6,839,731	System and method for providing data communication in a device network
6	5,822,221	Office machine monitoring device
7	7,196,477	Solar powered light assembly to produce light of varying colors
7	7,429,827	Solar powered light assembly to produce light of varying colours
7	8,362,700	Solar powered light assembly to produce light of varying colors
10	5,630,069	Method and apparatus for creating workflow maps of business processes

Note: Figures 34 and 35 exclude declaratory judgment cases.

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, patent invalidations under § 101 have risen to record levels.

The age (from the patent filing date) of patents at the time of case filing varies significantly across the top 20 busiest districts of 2014: ANDA-heavy jurisdictions like the Districts of New Jersey (5 years, 313 days) and Southern New York (4 years, 227 days) have a median patent age several years younger than that in Eastern Texas. The Middle District of Florida and the Western District of Washington, along with the Eastern District of Texas, all have a median patent age over 13 years.

Figure 36: Patents invalidated, 2007-2014, under 35 U.S.C. § 101 for lack of patentable subject matter, by quarter

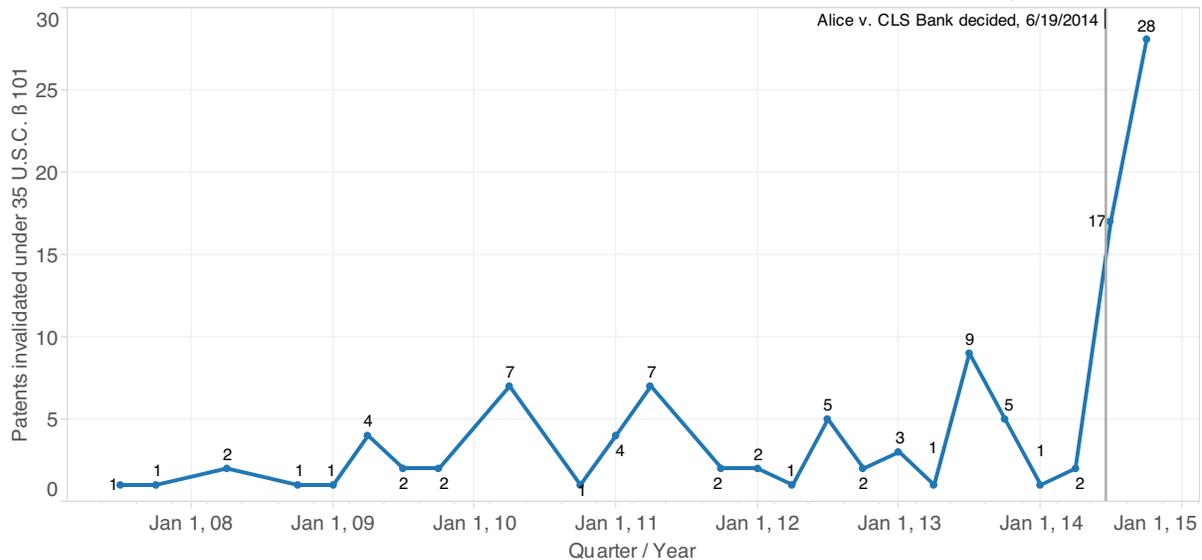
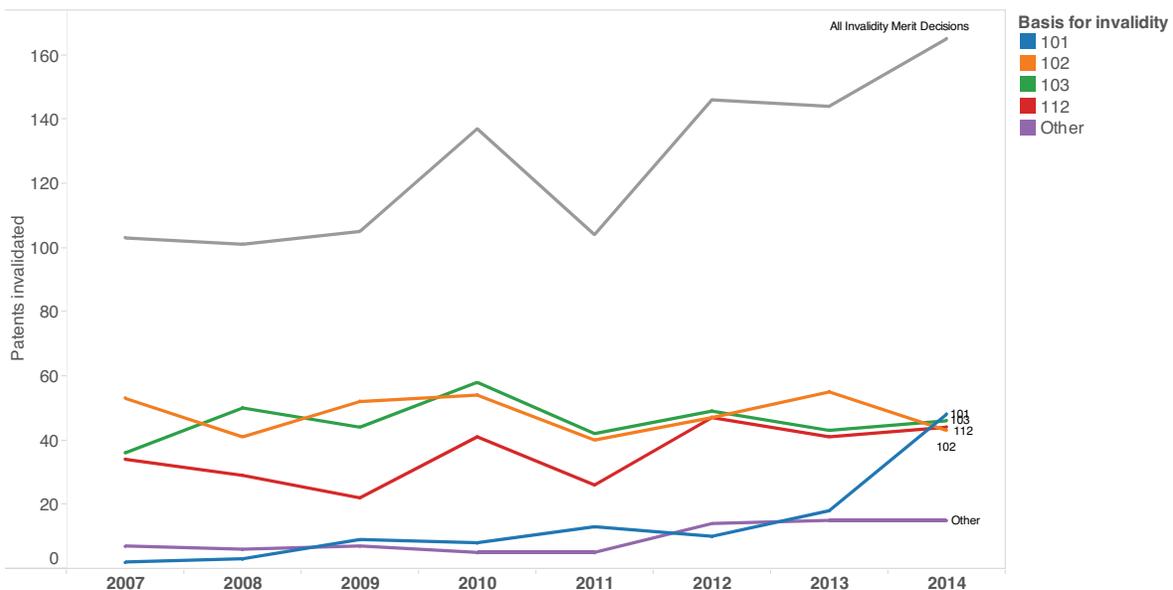
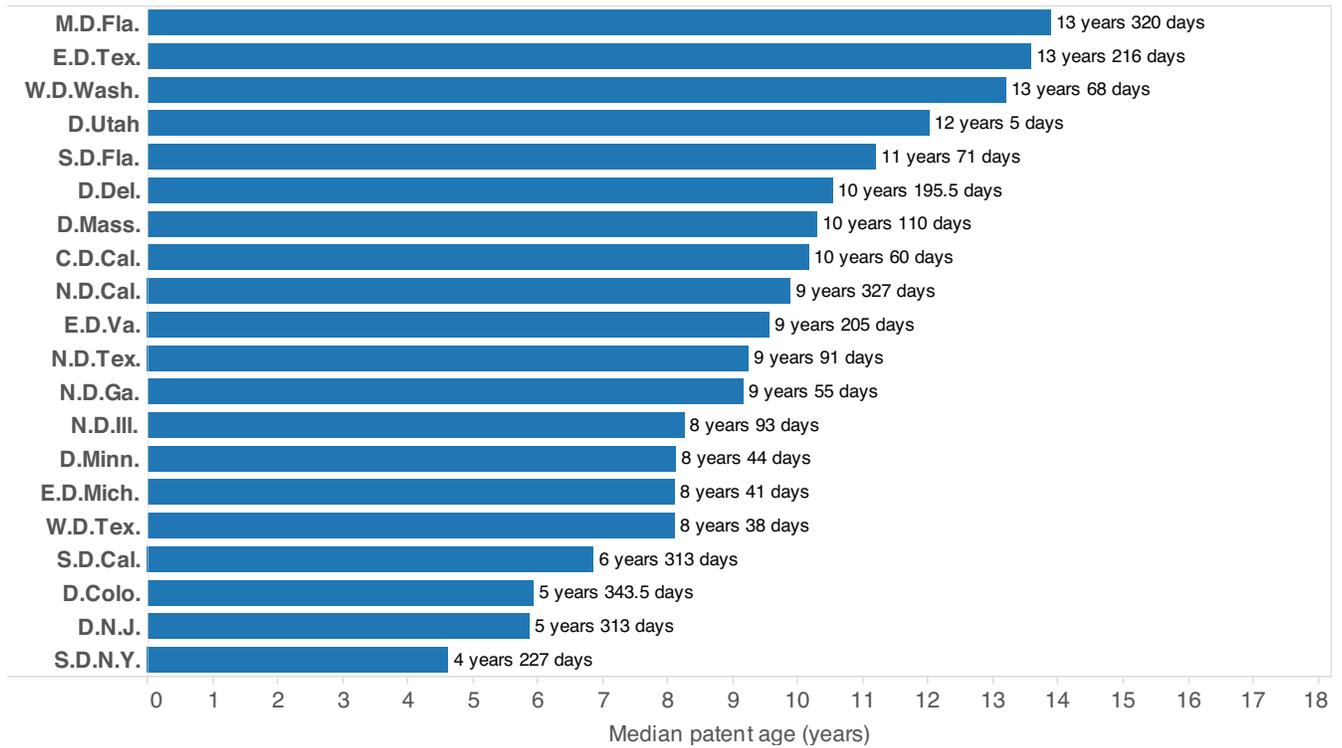


Figure 37: Patent invalidated, 2007-2014, by basis



Note: Patents may be invalidated on more than one basis.

Figure 38: Median patent age, by district (top 20 districts by cases filed in 2014)



## Damages

Compensatory damages continue to be awarded in few cases, around 1.8% of all terminated cases filed since the year 2000. 2014 saw the award of approximately \$1.8B total in compensatory damages across 68 cases, with another \$313M total in enhanced damages across 8 cases.

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 have been less than \$27.1M, 75% less than \$5.3M, and half less than approximately \$420,000.

Understanding the propensity of districts to award damages 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 39: Cases, 2000-2014, with damages

Cases terminated since 2000	42,805	
Cases terminated since 2000 on the merits	5,720	13.4% of terminated cases
Cases terminated since 2000 on the merits with compensatory damages	772	1.8% of terminated cases

Figure 40: Damages awarded in cases filed 2000-2014, by type

Compensatory damages:		
Reasonable royalties	\$8,752,641,904	
Lost profits	\$3,235,401,120	
Compensatory lump	\$2,729,873,149	
Total compensatory damages		\$14,717,916,174
Enhanced damages		\$1,301,468,830
<b>Total damages*</b>		<b>\$16,019,385,005</b>

Figure 41: Total damages awarded during 2014 in cases filed 2000-2014, by type

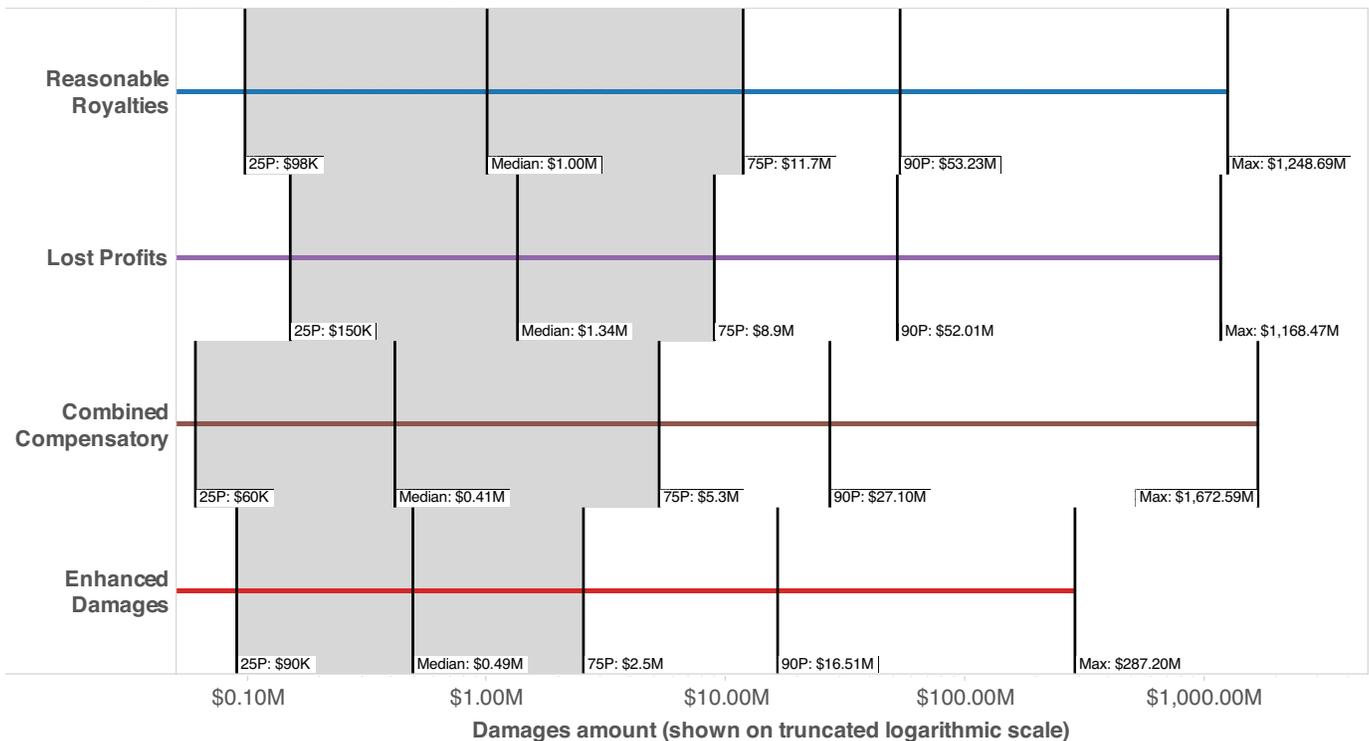
Compensatory damages:		
Reasonable royalties	\$699,219,349	
Lost profits	\$498,901,478	
Compensatory lump	\$644,541,555	
Total compensatory damages		\$1,842,662,383
Enhanced damages		\$312,316,022
<b>Total damages*</b>		<b>\$2,154,978,405</b>

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

Figure 42: Median damages, 2000-2014, by type

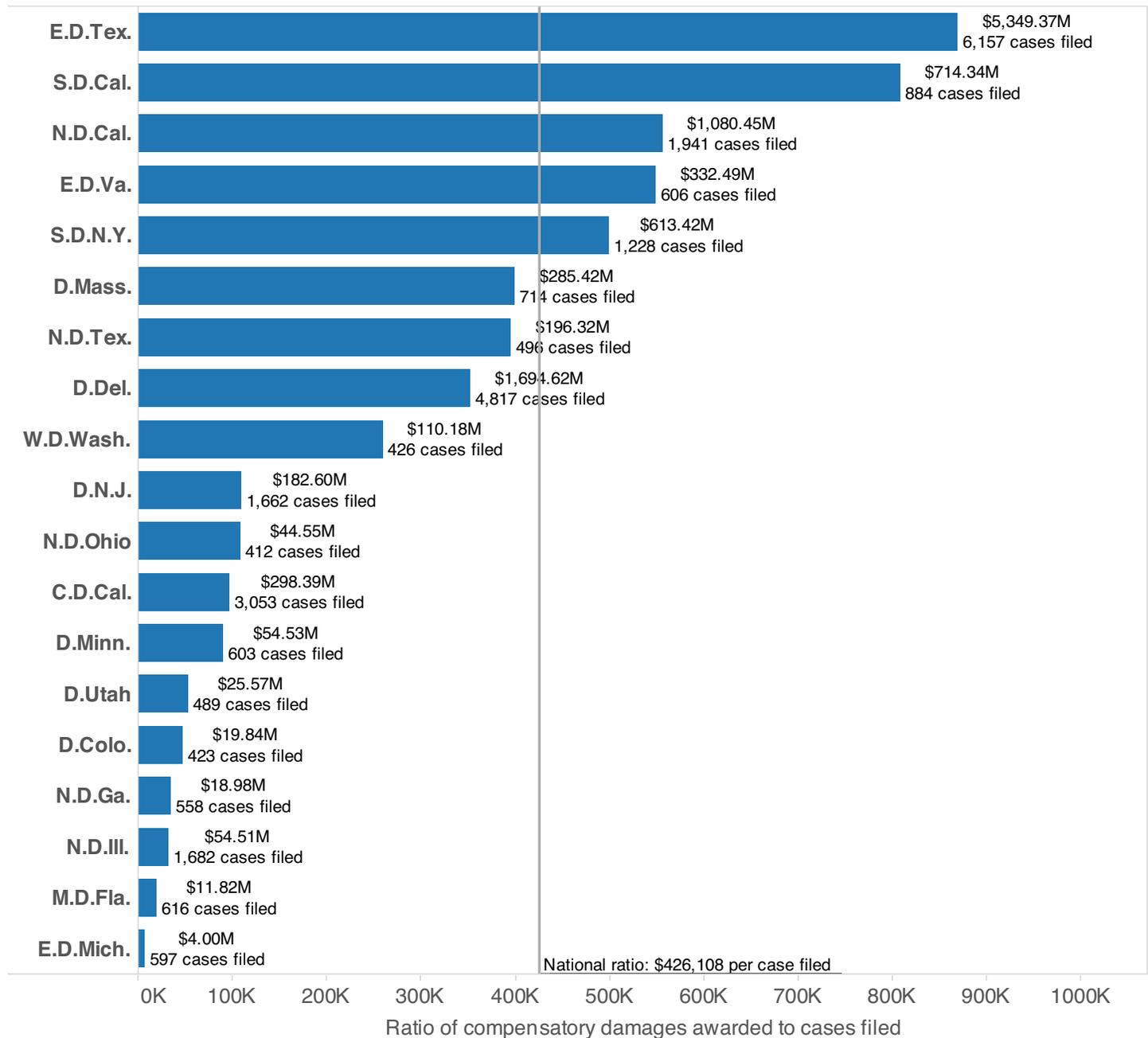
Year	Reasonable Royalties	Lost Profits	Compensatory Lump	Enhanced Damages
2000	\$36,640 4 cases	\$2,100,000 1 cases	\$5,000 13 cases	\$86,560 3 cases
2001	\$287,691 4 cases	\$14,328 3 cases	\$20,000 11 cases	\$40,000 5 cases
2002	\$106,133 9 cases	\$69,798 5 cases	\$51,937 34 cases	\$203,707 6 cases
2003	\$354,508 18 cases	\$866,000 3 cases	\$107,068 28 cases	\$604,568 8 cases
2004	\$245,000 17 cases	\$1,119,582 10 cases	\$147,500 44 cases	\$513,000 20 cases
2005	\$850,000 15 cases	\$157,500 10 cases	\$232,500 28 cases	\$372,443 12 cases
2006	\$400,597 13 cases	\$1,907,012 8 cases	\$139,530 39 cases	\$729,174 22 cases
2007	\$454,617 31 cases	\$150,000 5 cases	\$300,000 37 cases	\$504,717 16 cases
2008	\$2,539,468 35 cases	\$1,085,596 14 cases	\$125,000 35 cases	\$306,669 9 cases
2009	\$5,459,000 37 cases	\$3,721,248 10 cases	\$216,578 30 cases	\$1,200,000 13 cases
2010	\$457,987 23 cases	\$3,219,863 12 cases	\$129,960 30 cases	\$265,840 11 cases
2011	\$860,000 30 cases	\$2,358,613 13 cases	\$337,500 28 cases	\$540,500 16 cases
2012	\$1,980,574 36 cases	\$1,600,000 17 cases	\$851,747 20 cases	\$137,500 13 cases
2013	\$403,000 25 cases	\$4,500,000 5 cases	\$550,000 25 cases	\$698,965 6 cases
2014	\$3,000,000 25 cases	\$1,055,500 12 cases	\$2,049,972 24 cases	\$600,000 7 cases

Figure 43: Damages percentiles, 2000-2014, by type



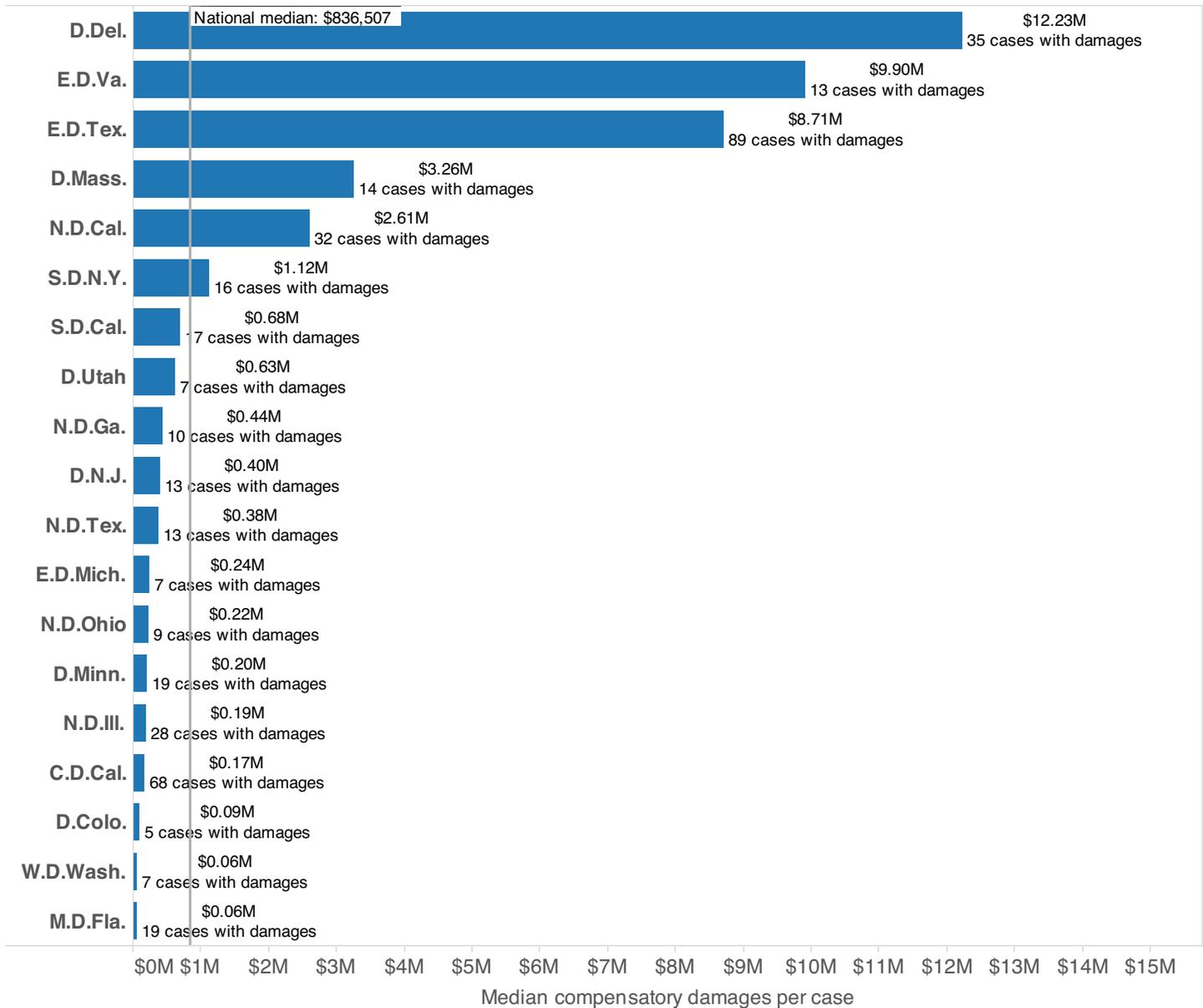
Note: In cases where multiple damages awards were made in separate years, the total sum is reflected under the most recent year. In Figure 43, combined compensatory damages include compensatory lump awards.

Figure 44: Districts by ratio of compensatory + enhanced damages awarded (in 2005-2014) to cases filed (in 2005-2014)



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 in 2012-2014. These cases, counted towards the district's case count but largely too young to have reached damages by the end of 2014, may partly account for Delaware's low ratio, especially in light of the higher median awards shown in Figure 45.

Figure 45: Districts by median compensatory + enhanced damages awarded (in 2005-2014) in cases filed (in 2005-2014)



## Patent Trial and Appeal Board (PTAB)

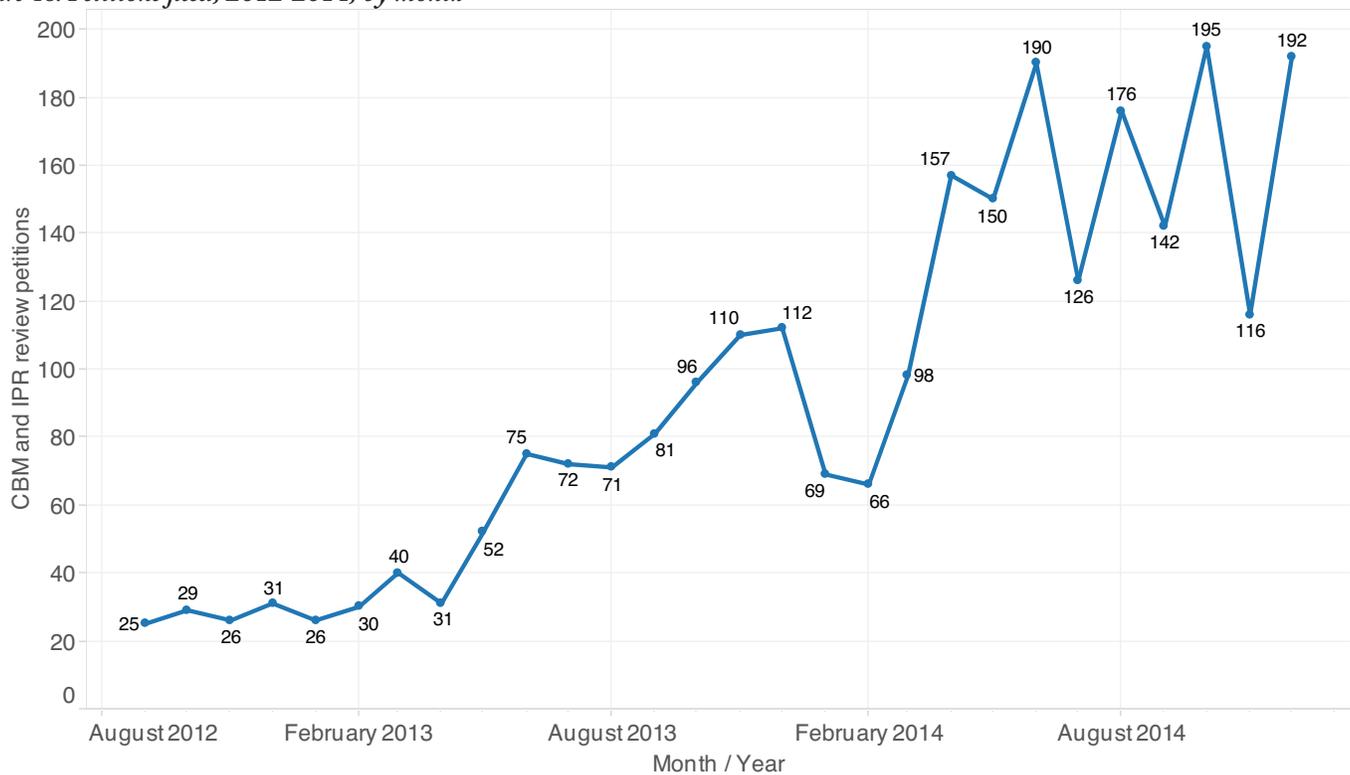
The PTAB was created by the America Invents Act and began hearing petitions for Covered Business Method reviews (CBMs) and Inter Partes Reviews (IPRs) on September 16, 2012, the first day the procedure was available.

The total number of new review petitions filed at PTAB increased in 2014.

Data directly available in the Lex Machina platform shows that these review petitions reach an institution decision in a median of 176 days, or just shy of 6 months. Those reaching final decision have a median duration of 519 days, with just over half of those cases terminating within a tight 2 month timeframe. Cases settling had a much wider distribution of time-to-termination.

Over 60% of review petitions filed at PTAB are still open: 27% pending an institution decision and 28% open and instituted.

Figure 46: Petitions filed, 2012-2014, by month



Note: PTAB statistics include IPR and CBM reviews, but not post grant reviews (PGRs) or derivation proceedings.

Figure 47: Timing to institution, settlement, termination, 2012-2014

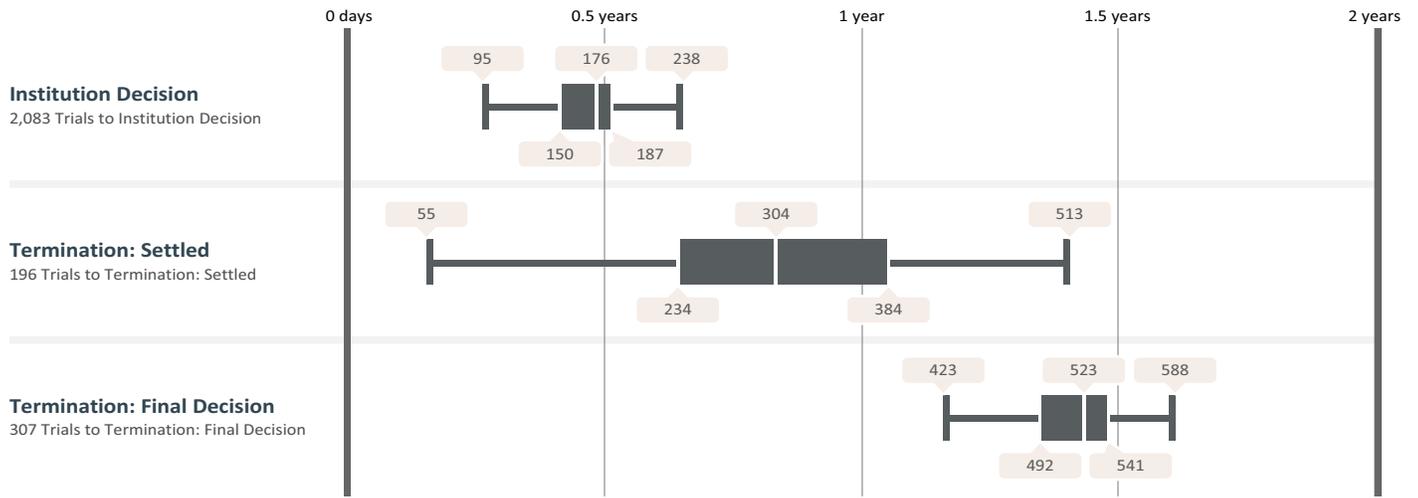
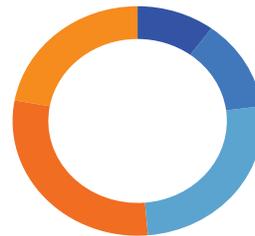


Figure 48: Status breakdown, reviews filed 2012-2014

**Trial Status**

Open: Pending Institution Decision	570	22%
Open: Instituted	752	29%
Terminated: Not Instituted	663	26%
Terminated: Final Decision	332	13%
Terminated: Settled	259	10%



**Timing and trial status analytics above are captured from our platform.**

The screenshot displays the Lex Machina interface for 'Cases and PTAB Trials'. It includes a search bar, filters for 'FILED ON' (2012-01-01 to 2015-03-24) and 'INSTITUTION DECISION DATE', and a 'TRIAL TYPES' section with checkboxes for IPR (2,651), CBM (316), PGR (6), and DER (4). The 'TRIAL STATUS' section is also visible. The main content area shows a 'Summary' tab with a 'Timing' line chart and a 'Trial Status' donut chart. The 'Timing' chart shows filings from 2012 to 2014 for IPR (96, 702, 1501), CBM (15, 89, 173), and PGR (0, 1, 3). The 'Trial Status' donut chart shows: Open: Pending Institution Decision (954, 32%), Open: Instituted (742, 25%), Terminated: Not Instituted (674, 23%), Terminated: Final Decision (341, 11%), and Terminated: Settled (266, 9%). Below the charts is a 'Case List' table with columns for Trial, Filed, Instituted, Patent, Application, Lead Petitioner, and Patent Owner.

## U.S. International Trade Commission (ITC)

After reaching a zenith in 2010-11, ITC litigation has remained steady in the years of 2012-2014.

Figure 49: ITC investigations filed, 2007-2014

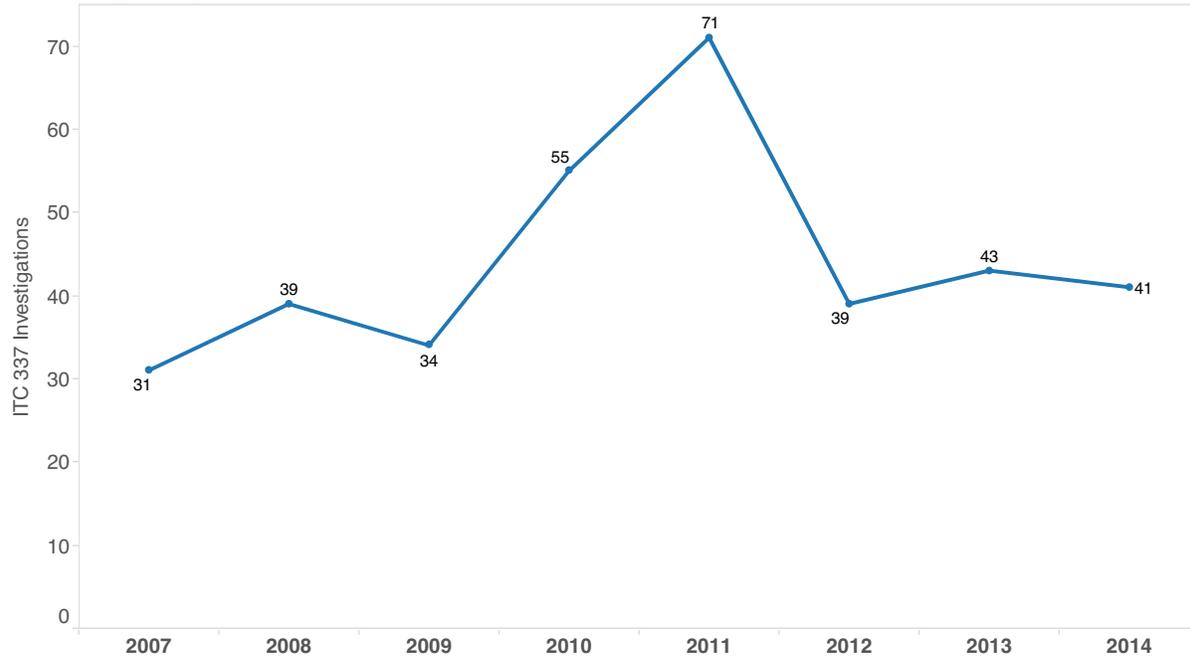


Figure 50: ITC dispositive outcomes, all, by current Administrative Law Judge

	Bullock	Essex	Gildea	Lord	Pender	Shaw
Cease & Desist Order	12	11	2	1	2	2
Complaint Withdrawn	12	11	6	0	8	4
Consent Order	10	6	6	1	1	1
General Exclusion Order	11	6	3	0	2	2
Limited Exclusion Order	20	10	4	1	2	4
No Violation Found	23	14	8	1	2	5
Other	5	2	0	0	0	3
Settlement	43	29	25	2	11	11
Violation Found	17	12	5	0	1	2

Figure 51: Pending investigations, by current Administrative Law Judge

Administrative Law Judge	Pending investigations
Essex	23
Bullock	22
Pender	20
Shaw	20
Lord	16
Gildea	10

Note: Investigations may result in multiple outcomes.

## Lex Machina's Data and Methodology

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 judgements on appeal.

### *What is an ANDA case?*

The sale of new drugs in the United States is controlled 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.

## Lex Machina Enhancements in 2014

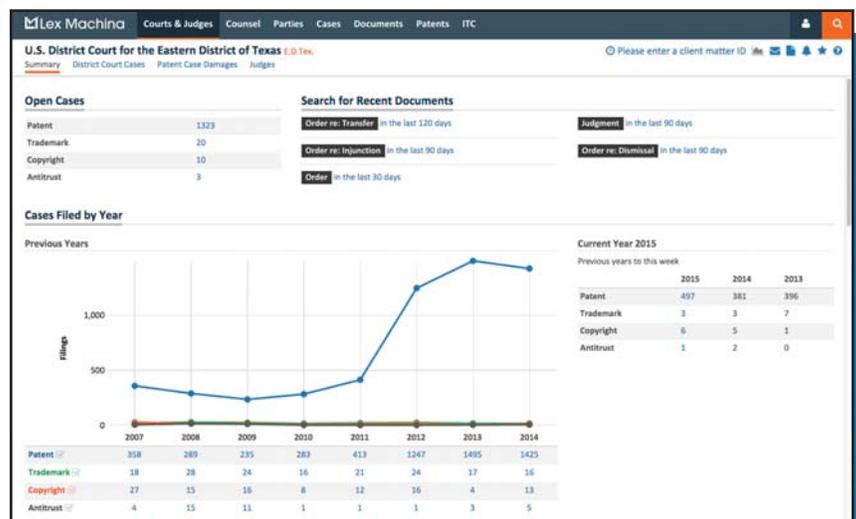
In 2014, Lex Machina rolled out new key features that give our subscribers unprecedented power to analyze and easily discern trends in the cases that matter to them. We have introduced new data sources, enabling users to synthesize data across U.S. District Court litigation, the ITC, and PTAB.

Although we make software updates to the platform every week, below are some of the major enhancements which we introduced in 2014:

- **Personalized Landing Page** (Feb): See the cases and activities that matter most to you instantly on login.
- **Page Sharing** (Mar): Share the searches you run with colleagues or clients using an easy link.
- **Search History** (May): See recently visited cases, patents, and parties; never worry about losing your search again.
- **ANDA Case Filter** (July): Limit case lists to cases filed pursuant to ANDA provisions of the Hatch-Waxman Act.
- **Export to PDF** (July): Easily PDF your search results for archival or sharing.
- **Favorite Cases** (Aug): Favorites make it easier to find the cases you check the most.
- **Multiple Document Support** (Sept): Easily find attachments and exhibits without having to resort to PACER.
- **Time to Claim Construction Hearing, and Case Timing Analytics** (Oct.): Get a sense of how long a particular district or judge takes to reach a claim construction hearing or trial.
- **Patent Damages Analytics** (Nov): Zoom in on cases in any case list where damages have been awarded and see the breakdown by type.
- **Motion Metrics** (Nov): Find grant/deny rates by judge for dismissals, transfers, summary judgments, and more.
- **Law Firm Report** (Dec): Extract the firms representing (and opposing) parties in your case list.

Many of these new features were the result of customer feedback and collaboration. And Lex Machina has been busy so far in 2015 as well:

- **PTAB trials** (Feb): Find any PTAB trials for patents litigated in district court; breakdown PTAB trials by type, filing date, and status.
- **Enhanced Page Layout for Wide Screens** (March)
- **Legal Analytics for Trademark and Copyright cases**



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