2013 Patent Litigation Study

Big cases make headlines, while patent cases proliferate

1995–2012

pwc

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Introduction

We view 2012 as a banner year in patent litigation. Massive damages awards made headlines. The 2011 America Invests Act (AIA) began making its impact. The influence of nonpracticing entities (NPEs) continued to grow. And the number of patents granted and litigations filed maintained their upward trajectory.

Prior to 2012, only three patent infringement damages awards eclipsed the $1 billion mark. But last year alone, three cases, tried before juries in separate districts, resulted in awards of $1 billion or greater: *Monsanto v. DuPont, Apple v. Samsung*, and *Carnegie Mellon University v. Marvell*. The outcomes of these matters have varied so far. *Monsanto v. DuPont* settled for a ten-year $1.75 billion license; the $1.05 billion award in *Apple v. Samsung* was reduced by $450 million and likely will be modified further; and *Carnegie Mellon v. Marvell* remains in the post-trial phase. Similarly, two 'stent wars' verdicts of more than $500 million were overturned or settled for short dollars in 2013.

NPEs continued to play a critical and growing role in patent litigation in 2012. One recent analysis reported that as of 2012 NPEs accounted for the majority of patent infringement litigation filed in the United States, compared to less than a quarter of patent infringement lawsuits filed in 2007.[1] Our statistics indicate that only 16% of identified decisions in 2012 involved NPE patent holders. The difference reveals a much higher tendency for NPE actions to be resolved without a formal court decision. Our analysis continues to show a significant disparity in median damages awarded to NPEs versus practicing entities. Over the last 12 years, NPEs have been awarded median damages that have averaged twice the median award for practicing entities.

The AIA also made an impact in 2012. While many elements of the AIA did not go into effect until late 2012 or early 2013, the 'anti-joinder' provision, which constrained the number of defendants that could be named in the same lawsuit, became effective on September 16, 2011. This provision of the AIA resulted in an increase in the absolute number of lawsuits, particularly those filed by NPEs. One study noted a large decline (over 40%) in the average number of defendants per case between 2011 and 2012, with the average dropping from 3.9 defendants in 2011 to 2.3 defendants in 2012.[2] In addition, the AIA largely ended the phenomenon of false marking 'qui tam' actions that had become so prevalent in 2010 and early 2011.

The number of patent lawsuits filed spiked by almost 30% in 2012 to over 5,000, with some of that increase attributed to the AIA's 'anti-joinder' provision. The number of patents granted by the United States Patent and Trademark Office (USPTO) also has continued the significant upward growth that has been seen since 2009. Patent infringement litigation shows no signs of cooling off, either as a means of generating revenue or of protecting competitive advantages.

1 See Sara Jeruss, Robin Feldman, and Tom Ewing, "The AIA 500 Expanded: The Effects of Patent Monetization Entities," (April 2013). Available at SSRN: http://ssrn.com/abstract=2247195

2 See James Pistorino, "2012 Trends in Patent Case Filings and Venue: Eastern District of Texas Most Popular for Plaintiffs (Again) But 11 Percent Fewer Defendants Named Nationwide," (February 2013).

Summary of key observations

Recognizing the significance of these developments and business leaders' continuing deep interest in intellectual property matters, PwC maintains a database of patent damages awards and other identified decisions. We collect information about patent holder success rates, time-to-trial statistics, and practicing versus nonpracticing entity (NPE) statistics from 1995 through 2012. This year's study also includes statistics by judge.

Our analysis yields a number of observations that can help executives, legislators, and litigators assess their patent enforcement or defense strategies, as well as the impact of NPEs.

- Annual median damages awards (in 2012 dollars) ranged from $1.9 million to $16.5 million between 1995 and 2012. The median damages award was approximately $4.9 million over 2007 to 2012.

- Damages awards for NPEs averaged more than double those for practicing entities over the last decade.

- The disparity between jury and bench awards is stark; the median jury award amounted to nearly 45 times the median bench award between 2007 and 2012.

- Reasonable royalties remain the predominant measure of patent damages awards, representing more than 80% of awards over the last six years.

- NPEs have been successful 24% of the time overall versus 34% for practicing entities, due to the relative lack of success for NPEs at summary judgment. However, both have about a two-thirds success rate at trial.

- The median damages award in the telecommunications industry was significantly higher than that of other industries. Biotechnology/pharma, medical devices, and computer hardware/electronics also had higher relative median damages awards than did other industries.

- While the median time-to-trial has remained fairly constant, averaging 2.3 years since 1995, we see significant variations among jurisdictions.

- Certain federal district courts (particularly Virginia Eastern, Delaware, and Texas Eastern) continue to be more favorable to patent holders, with shorter time-to-trial durations, higher success rates, and larger median damages awards.

- The top five federal district courts (out of a total of 94) accounted for 39% of all identified decisions involving an NPE as the patent holder. The Eastern District of Texas accounted for 12% of NPE decisions.

- Not all NPEs are created equal. University/non-profit NPEs have the highest success rate among NPE litigants. Individuals' median damages award is considerably lower than the median award of company or university NPEs.

- While Abbreviated New Drug Application (ANDA) litigation continues to grow rapidly, success rates since 2006 have varied significantly, given the small number of cases that reach a dispositive court conclusion before settling.

- Of currently-active judges, the ten most active on patent infringement cases generally have higher median damages and lower time to trial than the overall study medians.

Patent actions rise dramatically, set record high

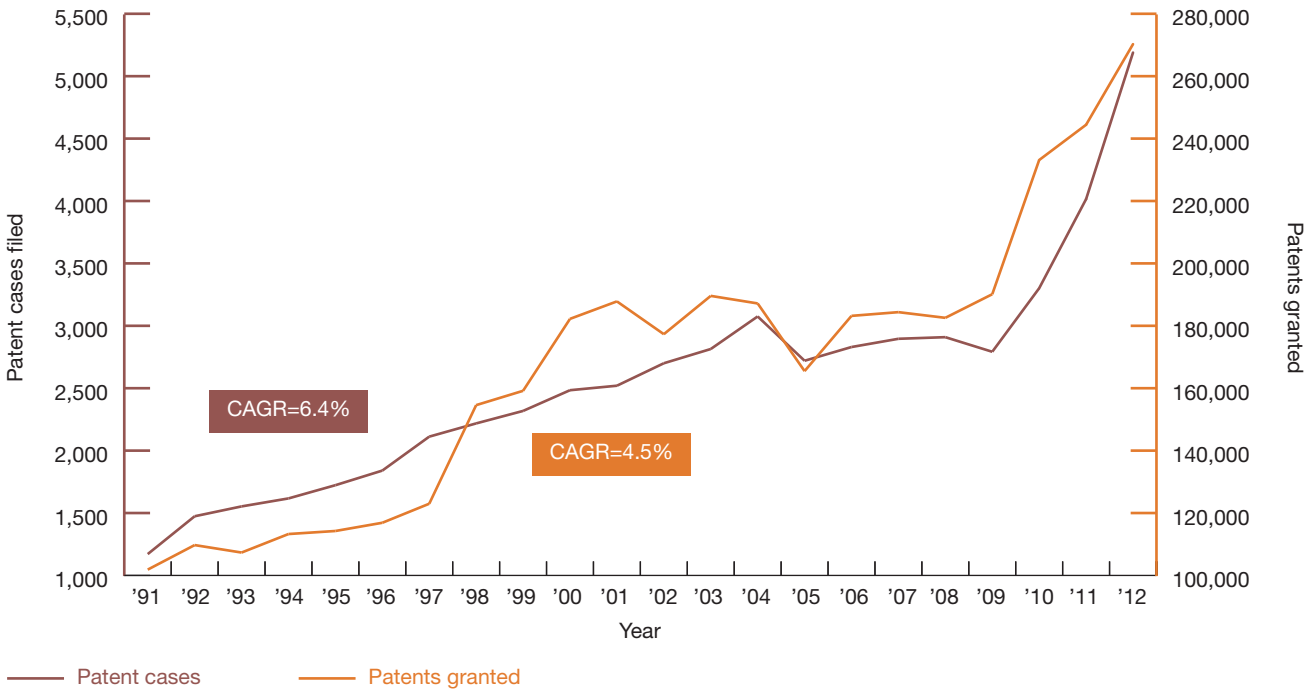
Chart 1

2012 saw continued growth in patent actions filed and patents granted

As Chart 1 illustrates, the annual number of patent actions filed has increased at an overall compound annual growth rate (CAGR) of 7% since 1991. Much of this growth can be attributed to the 29% increase in the number of filings in 2012 over 2011. The number of patent actions filed reached 5,189 in 2012, representing the highest number ever recorded. As noted earlier, the anti-joinder provision of the America Invents Acts (AIA) played a large role in the 2012 increase.[3] In addition, the temporary rash of false marking cases in 2010 and 2011 (reportedly over 1,000) contributed to the dramatic increase seen since 2009.

Meanwhile, the number of patents granted by the United States Patent and Trademark Office (USPTO) has also grown steadily, increasing at a CAGR of 5% since 1991. In 2012, the number of all types of patents granted by the USPTO increased by 11% to 270,258. As the chart further shows, 2012 continued the trend of high correlation (approximately 96% since 1991) between patent cases filed and patents granted by the USPTO.

Chart 1. Patent case filings and grants



Years are based on September year-end.
Sources: *US Patent and Trademark Office: Performance & Accountability Report and US Courts: Judicial Facts & Figures*

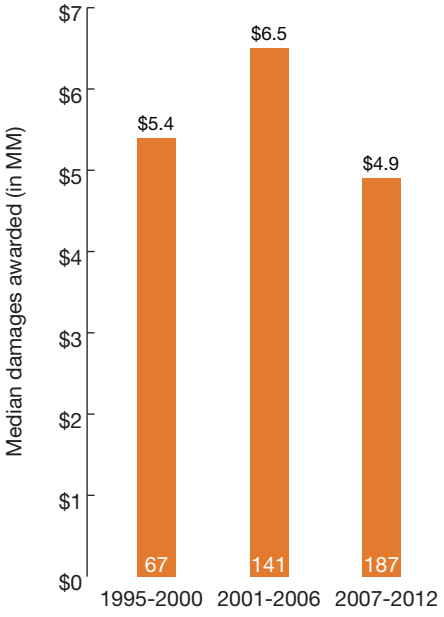
3 Some estimates have placed the increase caused by the AIA at perhaps 2,000 cases

Median damages award declines

Chart 2a

Adjusting for inflation using the consumer price index (CPI), the annual median damages award ranged from $1.9 million to $16.5 million between 1995 and 2012, with an overall median award of $5.5 million over the last 18 years. As Chart 2a illustrates, when we segment the time period from 1995 through 2012 into thirds, we see that the median damages award over the most recent period represents the lowest relative point. Notably, the median damages award from 2007 to 2012 was down more than 24% from the median award between 2001 and 2006. However, the median damages award in 2012 jumped to $9.5 million, with three of the largest damages awards of all time occurring in this year.

Chart 2a. Patent holder median damages awarded



Median damages are adjusted for inflation and represented in 2012 US dollars.

The number of identified decisions is indicated within the respective column.

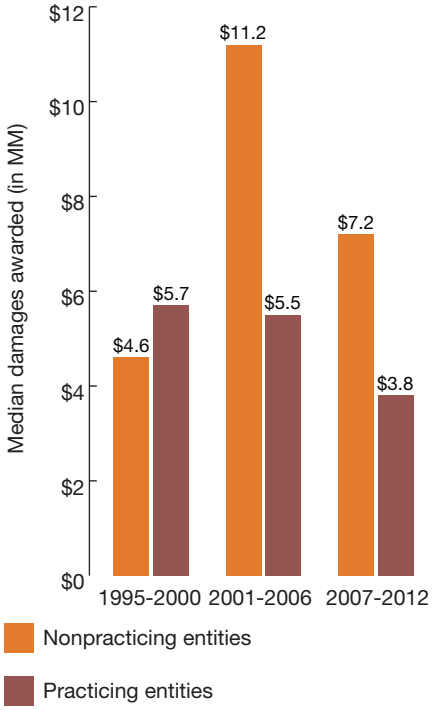
NPE awards outpace practicing entities

Chart 2b

Over the last 12 years, median damage awards for NPEs have significantly outpaced those of practicing entities.

Chart 2b shows the continuation of a trend that started in 2001: a wide premium (almost double in the last 12 years) in the damages awarded to NPEs compared to those awarded to practicing entities.

Chart 2b. Patent holder median damages awarded: nonpracticing entities vs. practicing entities



Median damages are adjusted for inflation and represented in 2012 US dollars.

Given recent case decisions at the Federal Circuit, what does that portend for patent litigation liability? For damages? Willfulness?

No matter what the Federal Circuit does to try to add predictability and limits on patent infringement remedies—whether it be new standards on willful infringement, lost profits, reasonably royalty, or whatever—the market place (and those who continue to invest in patent litigation) will respond with new strategies to take advantage of the system. And, so long as trial judges stand aside and let the parties present their cases to a jury, patent litigation is here to stay in a big way.

—Steven Bauer
(Proskauer Rose LLP)

The largest historical awards have rarely been upheld

Chart 2c

Substantial damages awards have continued to garner headlines, particularly in 2012. Chart 2c displays the top ten damages awards in federal district courts since 1995. Whereas in 2011 only one decision cracked the top ten list—a $593 million damages award to Dr. Bruce Saffran against Johnson & Johnson (which has since been overturned)—three cases broke into the top ten list in 2012: *Monsanto v. DuPont* for $1 billion, *Apple v. Samsung* for $1.05 billion, and *Carnegie Mellon v. Marvell* for $1.2 billion. It is important to note that the awards reflected in Chart 2c are those identified during initial adjudication; most of these awards have since been vacated, remanded, or reduced, while some remain in the appellate process. In fact, by mid-2013, two of the three blockbusters from 2012 were significantly reduced or settled, with the other still pending appeals.

Chart 2c. Top ten largest initial adjudicated damages awards: 1995–2012

Year	Plaintiff	Defendant	Technology	Award (in MM)
2009	Centocor Ortho Biotech Inc.	Abbott Laboratories	Arthritis drugs	$1,848
2007	Lucent Technologies Inc.	Microsoft Corp.	MP3 technology	$1,538
2012	Carnegie Mellon University	Marvell Technology Group	Noise reduction technology on integrated circuits for disk drives	$1,169
2012	Apple Inc.	Samsung Electronics Co.	Smartphone software	$1,049
2012	Monsanto Company	E.I. Dupont De Nemours and Company	Genetically modified soybean seeds	$1,000
2010	Mirror Worlds LLC	Apple Inc.	Operating system	$626
2011	Bruce N. Saffran M.D.	Jonhson & Johnson	Drug-eluting stents	$593
2003	Eolas Technologies Inc.	Microsoft Corp.	Internet browser	$521
2008	Bruce N. Saffran M.D.	Boston Scientific Corp.	Drug-eluting stents	$432
2009	Uniloc USA Inc.	Microsoft Corp.	Software activation technology	$388

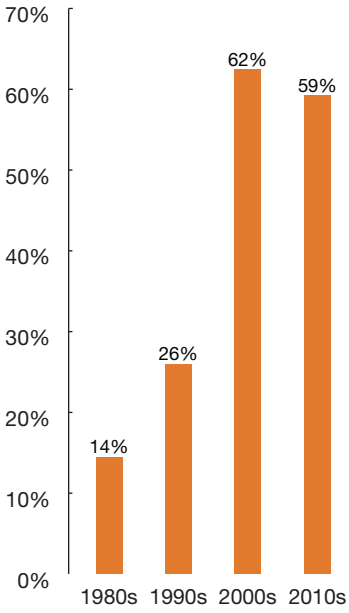
Jury trials are favored overall

Chart 3a

Cases almost evenly split between Bench and Juries as the preferred trier of fact.

Unlike the 1980s and 1990s, the last decade-plus has seen juries evolve as the preferred trier of fact in patent infringement litigation. This preference is probably linked to the higher median damages awarded by juries. The results in Chart 3a exclude ANDA-related litigation, as these cases are tried with rare exception by the bench, and their increased prevalence in recent years would otherwise skew this measure.

Chart 3a. Use of jury trials by decade

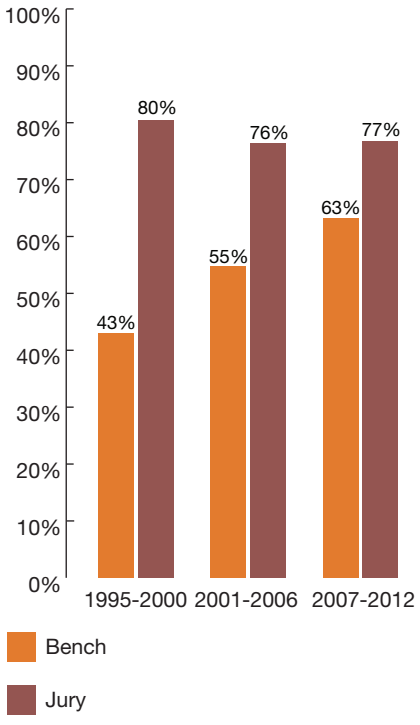


Patentees still winning with juries, and increasingly with bench

Chart 3b

Numerous factors contribute to the increased use of juries as the preferred fact finder for patent cases. In general, over the last 18 years, trial success rates for patent holders are higher when decided by juries as compared to the bench. However, Chart 3b illustrates a narrowing of the margin between bench and jury success rates, from 37% between 1995 and 2000 to 14% between 2007 and 2012.

Chart 3b. Bench vs. jury trials: success rates



With respect to damages, the Federal Circuit's recent decisions require district court judges to take an increasingly active decision-making role in determining whether a party's damages claim satisfies extensive requirements. These Federal Circuit decisions encourage parties to file increasing numbers of damages-related motions, hoping for an outcome determinative decision. A district court's reputation as to how it handles damages decisions will be a prime consideration in choosing a litigation forum and strategy.

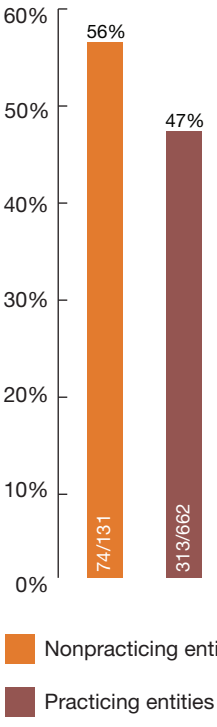
—Alison Richards
(Fitch, Even, Tabin & Flannery LLP)

NPEs look to juries more often

Chart 3c

The increase in litigation involving NPEs over the last 18 years is most likely contributing to the increased use of juries. Since 1995, about 56% of trials involving NPEs have been jury trials as compared to only 47% of trials involving practicing entities.

Chart 3c. Use of jury trials by type of entity: 1995–2012



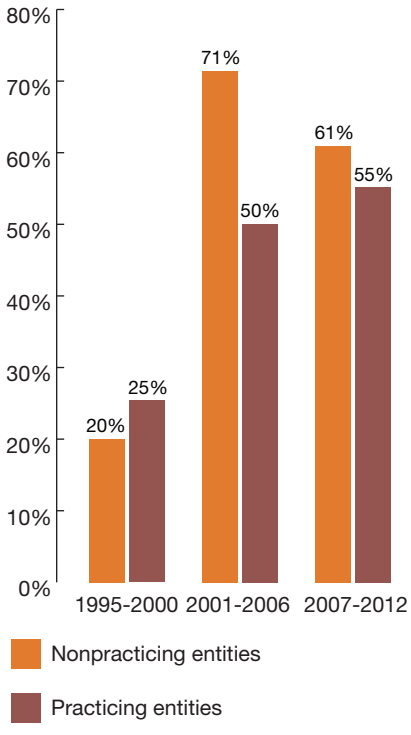
The number of cases is indicated within the respective column.

However, discrepancy in use of juries has shrunk

Chart 3d

An analysis of jury use over time shows that while NPEs use juries more frequently than practicing entities, the gap has diminished in recent years. As indicated in Chart 3d, the difference in jury use between NPEs and practicing entities shrank between 2007 and 2012 to only 6%. In contrast, that difference was 21% from 2001 to 2006.

Chart 3d. Use of jury trials by type of entity

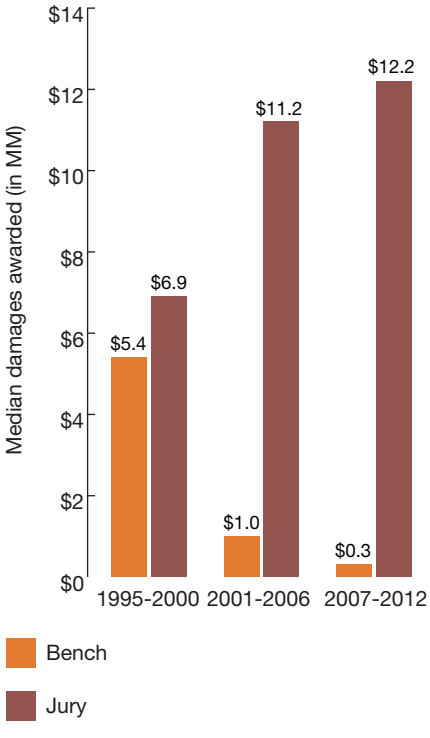


Median jury awards substantially outpace the bench

Chart 3e

Median jury awards have become significantly greater than those of the bench, running several multiples of the amounts awarded by judges over the last 12 years. The spread between bench and jury median awards has grown considerably, stemming from the combined effect of a sharp increase in the median jury award and a drop in the median bench award. This growing gap in damages awards reflects the decrease in big money cases that are heard by the bench. The proportions of all cases with damages that were decided by the bench were 55%, 29%, and 27% in the three periods analyzed. The large-dollar damages cases are almost always tried by juries.

Chart 3e. Bench vs. jury trials: median damages awarded by period



Median damages are adjusted for inflation and represented in 2012 US dollars.

Reasonable royalties are the most prevalent damages

Chart 4

Reasonable royalties are the predominant measure of damages; price erosion is rare

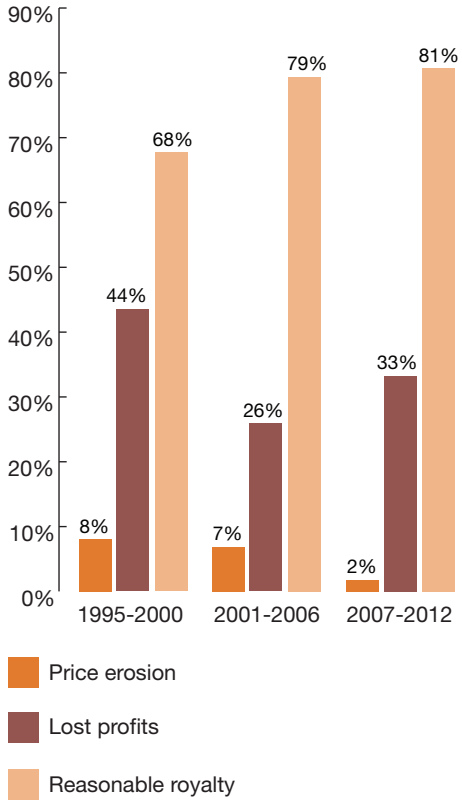
Reasonable royalties are the kind of damages most frequently awarded in patent cases, constituting a greater share with each passing year. However, in the last six-year period, lost profits have somewhat resurged, being awarded in about one-third of decided cases.[4] Section 284 of the Federal Code governing equitable compensation sets a reasonable royalty as the minimum level of compensation due to the patent holder from an infringer.

Lost profits damages are not as common as reasonable royalties for several reasons:

- NPEs, which bring an increased proportion of patent actions, are ineligible for lost profits damages because they do not sell products or services embodying their patents. If we omit NPE results from Chart 4, the proportion of damages awarded through reasonable royalties decreases by about 6%.
- Even in circumstances where the patentee may be eligible for lost profits awards, the patentee might seek recovery through the reasonable royalty approach. The complexity and cost of the analysis for determining lost profits is usually greater than it is for reasonable royalties.
- Patent holders can find the process of supporting lost profits analyses distracting to their core operations or they might not want to risk disclosing proprietary cost and profit information that is central to the calculation of lost profits.
- Lost profits entitlement can be more difficult to establish. The proliferation of competition provides greater access to substitute products. The presence of these alternatives means that even without an alleged infringer's products on the market, consumers may not have automatically bought the patent holder's products. Furthermore, the growing use of specialized distribution channels for reaching a specific consumer demographic may support an alleged infringer's contention that its customers are separate and distinct from those of the patent holder.

In addition, damages awards for price erosion claims have become almost non-existent over the last six years. Globalized competition, turbulent economic conditions, and the cost and complexity of price erosion analyses have reduced the recovery (and most likely pursuit) of price erosions claims.

Chart 4. Composition of damages awards to all entities



4 Because some litigants receive damages awards of both lost profits and reasonable royalties, the totals exceed 100%.

Assessing success rate factors

Chart 5a

Success rates vary considerably by year, type of entity (NPE versus practicing entity), and trier of fact

Chart 5a demonstrates that the overall success rate for practicing entities is 10% higher than that of NPEs over the last 18 years. As compared to practicing entities, NPEs are much less successful at the summary judgment stage: in only 2% of identified decisions, as opposed to almost 10% for practicing entities. Meanwhile, the trial success rate for practicing entities is nearly identical to that of NPEs, at roughly two-thirds.

Success rates: up for practicing entities, down for NPEs

Chart 5b

By segmenting overall success rate data for NPEs and practicing entities within the last 18 years, we see an interesting pattern. While the difference in overall success rates for NPEs versus practicing entities between 2001 and 2006 shrank to about 5%, the gap widened over the last six years. Between 2007 and 2012, the practicing entity overall success rate outpaced that for NPEs by approximately 12%. This difference is similar to the margin in overall success rates between 1995 and 2000.

Notably, an increase in practicing entity success, along with a decline in NPE success, has contributed to the growing gap in success rates between 2007 and 2012.

Trial success rates: divergent results

Chart 5c

Consistent with last year's study, Chart 5c illustrates that since 1995, practicing entities and NPEs have been significantly more successful with jury trials than they have been with bench trials. The chart also captures a divergence in success rates: while practicing entities enjoy a success rate 12% higher than NPEs with the bench, their success rates with juries are actually about 5% less than NPEs.

Chart 5a. Patent holder success rates: 1995–2012

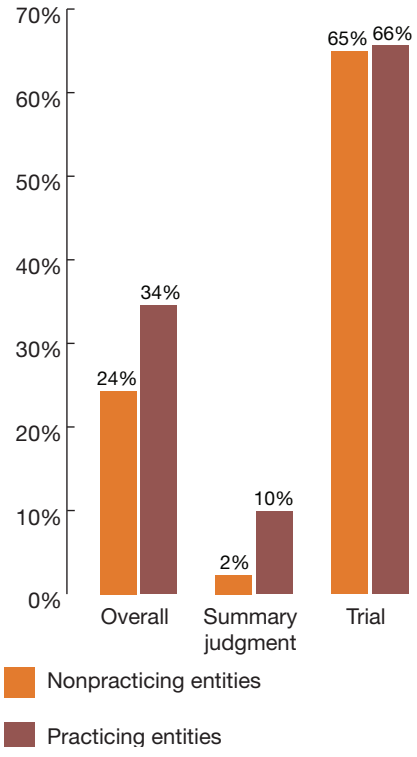


Chart 5b. Patent holder overall success rates

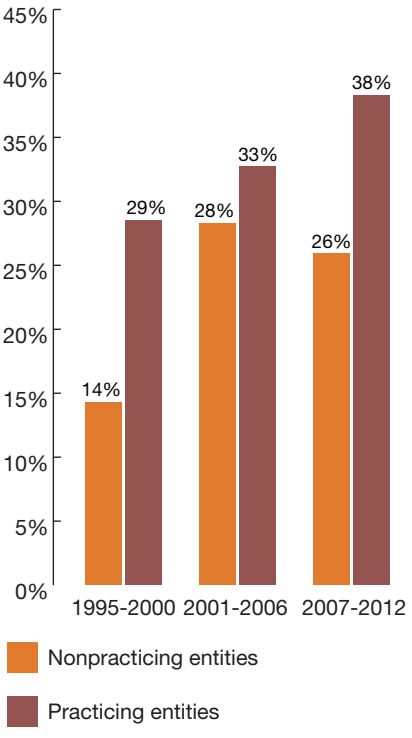
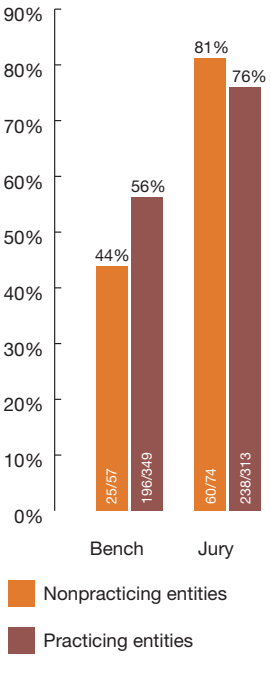


Chart 5c. Patent holder success rates at trial: 1995–2012



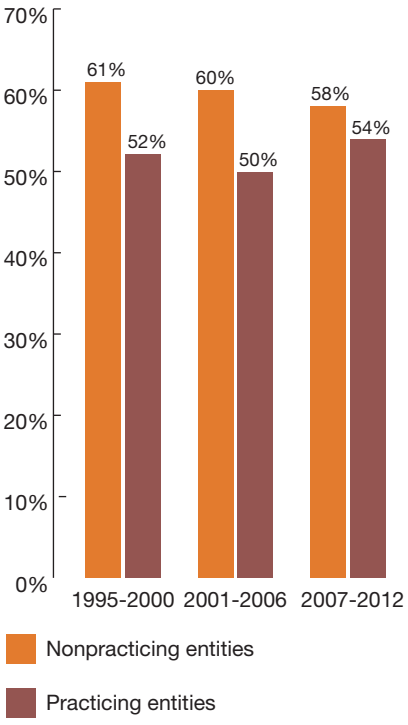
The number of cases is indicated within the respective column.

Summary judgment impact on NPEs

Chart 5d

We also see a greater percentage of NPE cases decided at summary judgment than cases involving practicing entities. Chart 5d shows that over the last 18 years, more NPE decisions consistently occur at summary judgment as compared to practicing entities, although the gap has narrowed since 2006. As previously noted, because their success rates at summary judgment are much lower than at trial, NPEs tend to experience a lower overall success rate than practicing entities when the total mix of summary judgment and trial decisions is considered.

Chart 5d. Percent of decisions at summary judgment



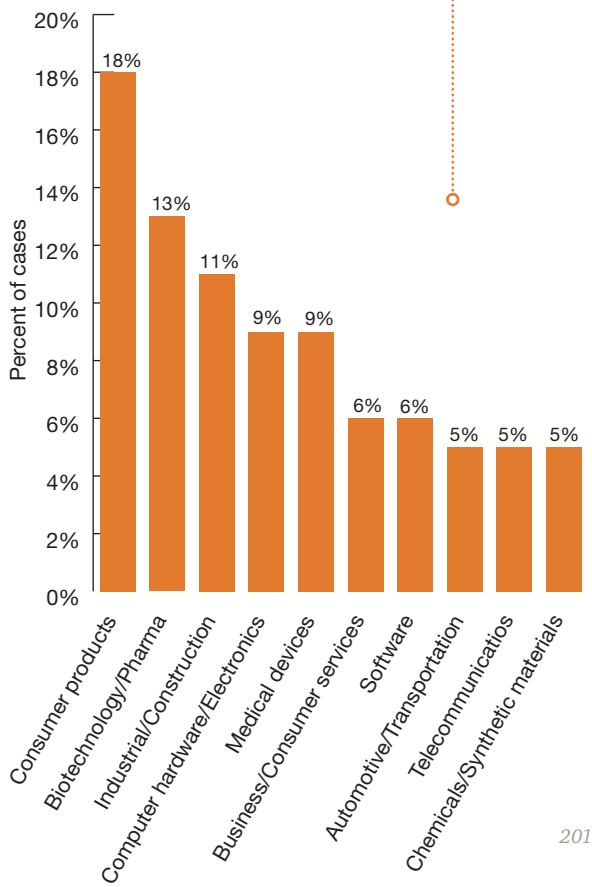
Consumer products technology leads in decisions

Chart 6a

Patent litigation trends diverge across industries

Chart 6a reflects the percentage of total identified decisions for the ten most active industry classifications, which collectively account for 85% of all patent case decisions. As the chart demonstrates, technology associated with the consumer products industry led in terms of the percentage of identified decisions from 1995 through 2012, representing 18% of the total decisions.

Chart 6a. Distribution of cases: top ten industries, 1995–2012



While there will always be large patent damages awards, the Federal Circuit's recent damages jurisprudence will act as a governor on damages awards, particularly in reasonable royalty cases, the majority of damage awards. Most notably, the court has mandated greater scrutiny of comparable license evidence, disavowed the 25% rule, and restricted the entire market value rule. Some recent large awards result from unique facts (e.g., Monsanto) or the failure to preserve arguments for appeal. Bottom line, it is more important than ever to have an experienced, qualified damages expert and counsel with experience tackling damages issues.

—John Harbin
(King & Spalding LLP)

Biotechnology and information technology (computer hardware, software, Internet) cases on the rise

Chart 6b

Chart 6b provides additional insight into the number of identified decisions by industry from 1995 through 2012. The consumer products industry ranks first in the percentage of decisions in each of the three time segments.

The number of decisions and relative ranking of the biotechnology/pharma industry have increased. In addition, the computer hardware/electronics, software, and Internet/online services industries experienced significant increases in identified decisions from 2007 through 2012. In fact, no identified decisions in Internet/online services occurred prior to 2007. This data reflects the increasing importance and size of biotechnology and information technology.

Chart 6b. Number of cases by industry: 1995–2012

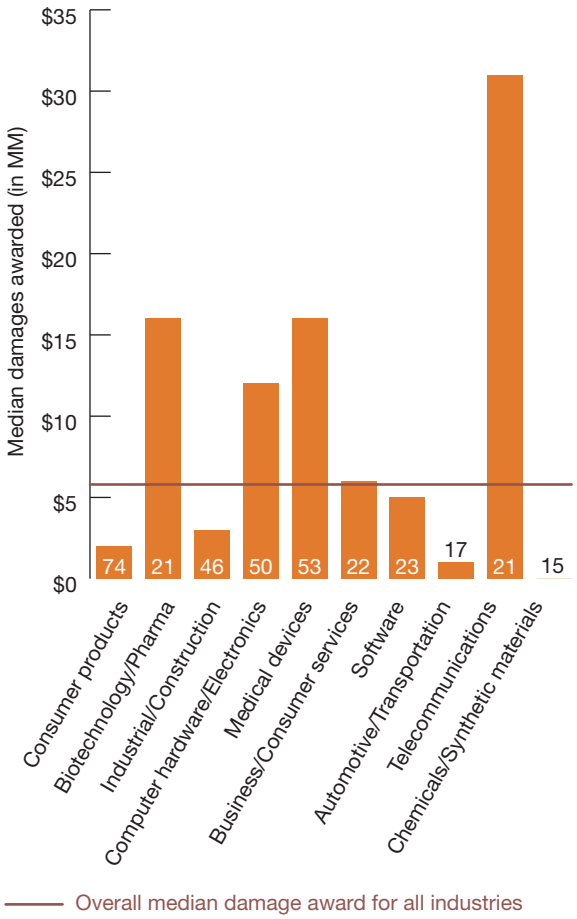
Overall rank	Industry	1995–2000		2001–2006		2007–2012		Total cases
		Cases	Rank	Cases	Rank	Cases	Rank	
1	Consumer products	81	1	98	1	148	1	327
2	Biotechnology/Pharma	39	4	80	2	127	2	246
3	Industrial/Construction	64	2	70	3	76	4	210
4	Computer hardware/Electronics	24	6	48	5	101	3	173
5	Medical devices	41	3	54	4	72	5	167
6	Business/Consumer services	17	8	47	6	48	8	112
7	Software	14	9	28	8	70	6	112
8	Automotive/Transportation	24	7	30	7	37	9	91
9	Telecommunications	13	11	27	9	50	7	90
10	Chemicals/Synthetic materials	31	5	22	10	32	10	85
11	Food/Beverages/Tobacco	14	10	10	13	13	13	37
12	Metals/Mining	12	12	14	11	8	17	34
13	Clothing/Textiles	9	13	10	14	10	16	29
14	Energy	6	14	11	12	12	14	29
15	Agriculture	5	15	10	15	12	15	27
16	Financial institutions/Investment management/Insurance	1	18	3	17	22	12	26
17	Internet/Online services	0	20	0	20	25	11	25
18	Aerospace/Defense	3	17	3	18	8	18	14
19	Media	4	16	4	16	4	20	12
20	Environment/Waste management	1	19	3	19	6	19	10
	Total	**403**		**572**		**881**		**1,856**

Median damages largest in tele-communications industry

Chart 6c

While technology associated with the consumer products industry represented the largest percentage of identified decisions, the median damages awarded were relatively low compared to the other top ten most active industries. Consistent with last year's 2012 Patent Litigation Study, technology associated with the telecommunications, biotechnology/pharma, medical devices, and computer hardware/electronics industries experienced significantly higher median damages awards than other industries.

Chart 6c. Patent holder median damages awarded: top ten industries, 1995–2012



Median damages are adjusted for inflation and represented in 2012 US dollars.

The number of identified decisions is indicated within the respective column.

With 3 of the largest damages cases of all time occurring in 2012 (Apple, Monsanto and CMU), do you foresee a surge in patent litigation damages? Or in number of cases pursued, more so than already observed?

While the year 2012 witnessed several of the largest verdicts in patent litigation history, these results were less about trends in the damages law and more about the enormous revenues in issue in, for example, the Apple-Samsung battles. In fact, the recent developments at the Federal Circuit on issues such as the entire market value rule, apportionment and comparability of licenses are bringing much needed clarity and discipline to damages proof. These developments have made the manner in which damages are proved and defended more critical than ever.

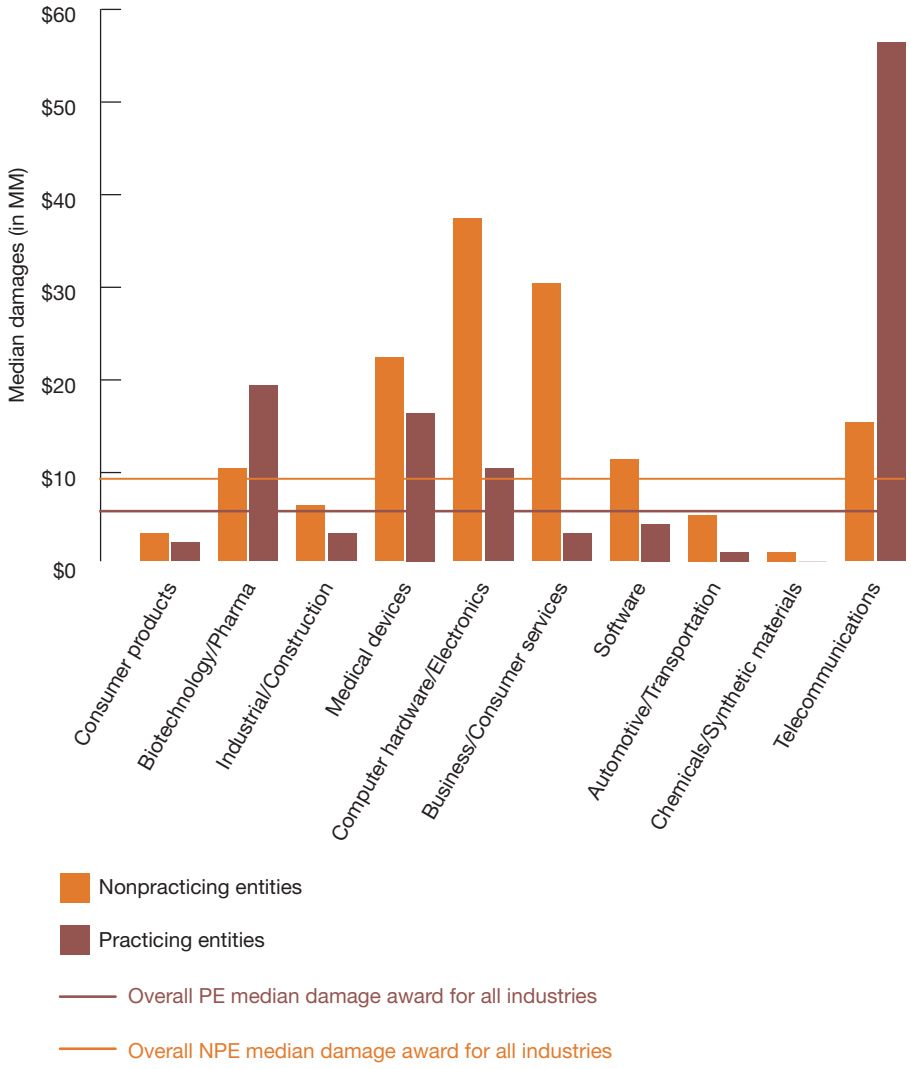
—William Lee
(Wilmer Cutler Pickering Hale and Dorr LLP)

NPE versus practicing entity damages vary widely by industry

Chart 6d

Chart 6d separates the median damages awards for each of the top ten industries into practicing entity and NPE median damages. This chart demonstrates that the relationship between NPE and practicing entity damages is volatile across industry classification. The telecommunications and biotechnology/pharma industries have experienced significantly greater awards for practicing entities, while the computer hardware/electronics and business/consumer services industries reflect substantially higher awards for NPEs. Consistent with the overall data, more of the top ten industries analyzed in the nearby chart show higher median damages awards for NPEs. (See, for example, Chart 2b, which illustrates that NPE median damages overall have been higher over the last 12 years.)

Chart 6d. Patent holder median damages awarded by type of entity: top ten industries, 1995–2012



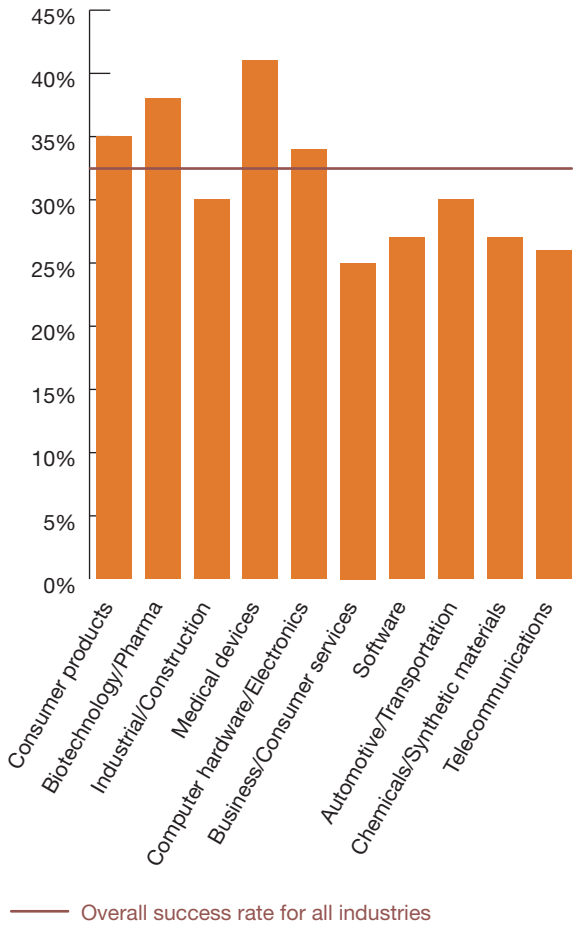
Median damages are adjusted for inflation and represented in 2012 US dollars.

Success rates by industry

Chart 6e

While the overall success rate (trial and summary judgment combined) for all industries during the period was approximately 32%, patent holders with technology that related to the consumer products, biotechnology/pharma, medical devices, and computer hardware/electronics industries achieved success rates higher than the overall median. Chart 6e also demonstrates that success rates across the top ten industries are relatively concentrated, falling within a band of +/- 15%.

Chart 6e. Patent holder success rates: top ten industries, 1995–2012



After several years of Federal Circuit "policy-making" limiting available damages and the passage of the AIA restricting plaintiffs' ability to bring patent infringement claims against multiple defendants, many predicted the demise of patent litigation. But rumors of the death of patent cases were greatly exaggerated—2012 brought three of the largest damages cases ever. There will be a rise in the use of our patent system and the courts to protect practicing entities against competitors who compete by infringing patents. The future of NPEs is still strong, but they will have to rely on volume, not mega-damages, to deliver to their investors.

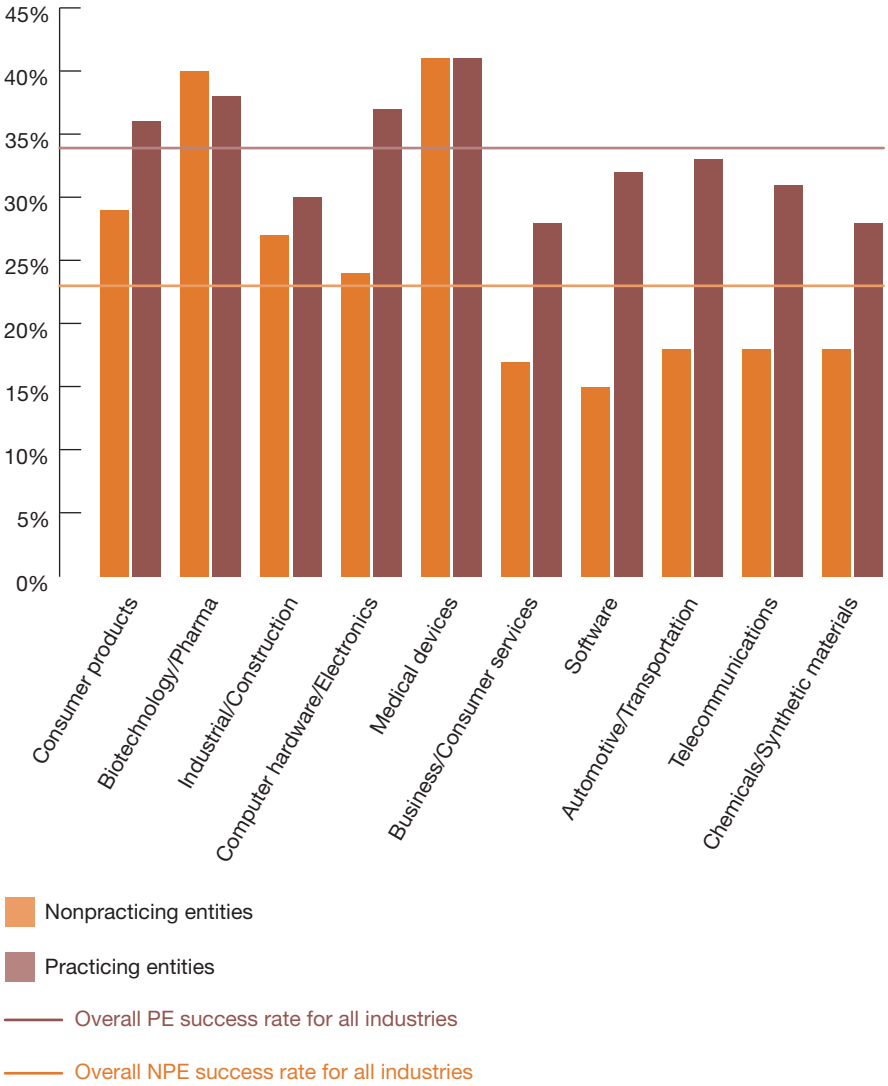
—Sarah Columbia
(McDermott Will & Emery LLP)

Practicing entity versus NPE success rates by industry

Chart 6f

Chart 6f demonstrates that while the overall success rate is higher for practicing entities than for NPEs, the volatility of success rates for NPEs is very high across industries. The contrast between the high NPE success rates of the biotechnology/pharma and medical device industries and the low NPE success rates of the software and business/consumer services industries is particularly striking.

Chart 6f. Patent holder success rates: top ten industries, 1995–2012



While notable, these cases do not portend a surge in the level of damages awards. Each has its own unique circumstances, and none has been affirmed. Without addressing the circumstances of any of these three cases, recent Federal Circuit precedent, e.g., WhitServe, Lasertrack, if anything, suggests an increased effort to introduce rigor into the proof required for patent damages and enforce the standards for reliable, admissible expert testimony that courts routinely apply in other areas of law.

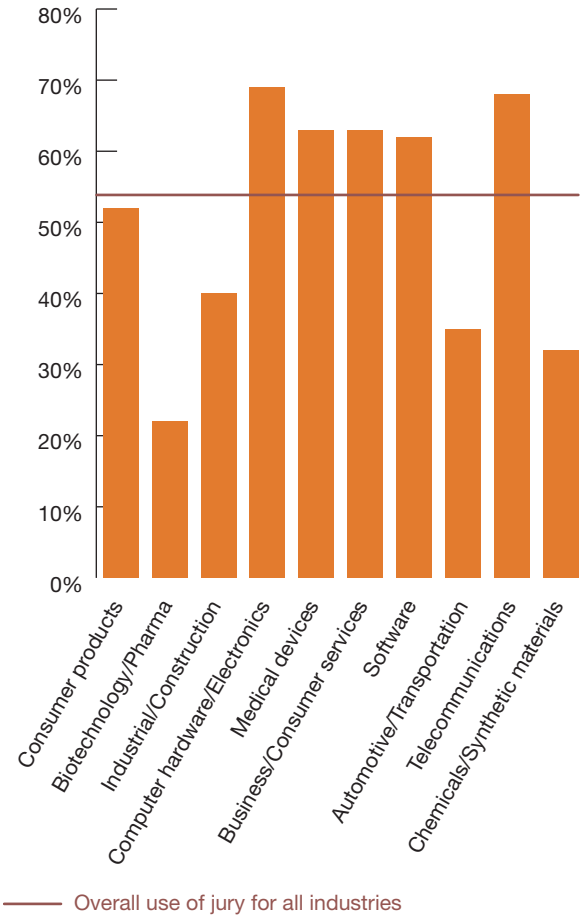
—Richard Cederoth
(Sidley Austin LLP)

Telecommunications and computer hardware/electronics industries lead in jury use

Chart 6g

Use of jury trials varies widely by industry, as illustrated in Chart 6g. Highlighting the wide disparity of jury trials by industry are the computer hardware/electronics and telecommunications industries compared to the biotechnology/pharma industry, both with a margin in jury use of more than 45%. As previously noted, the telecommunications industry also had the highest median damages award by a significant margin. The biotechnology/pharma industry had a considerably lower use of jury trials than the other top ten industries; this is partly due to the frequent incidence of ANDA-related litigations, which are tried primarily by the bench.

Chart 6g. Use of jury trials: top ten industries, 1995–2012



Although last year saw three of the largest damages awards ever, the trend in patent in litigation will be to rein in excessive awards. The Federal Circuit's requirement for rigorous economic proof instead of speculation and rules of thumb will keep damage awards in check. The fight will be at the pre-trial stage with the issues often decided on Daubert motions. A potentially larger impact could come from efforts to counter NPEs, such as the SHIELD Act, which will not only deter frivolous suits but also make it harder to monetize patent assets.

—Mike Jakes
(Finnegan, Henderson, Farabow, Garrett & Dunner LLP)

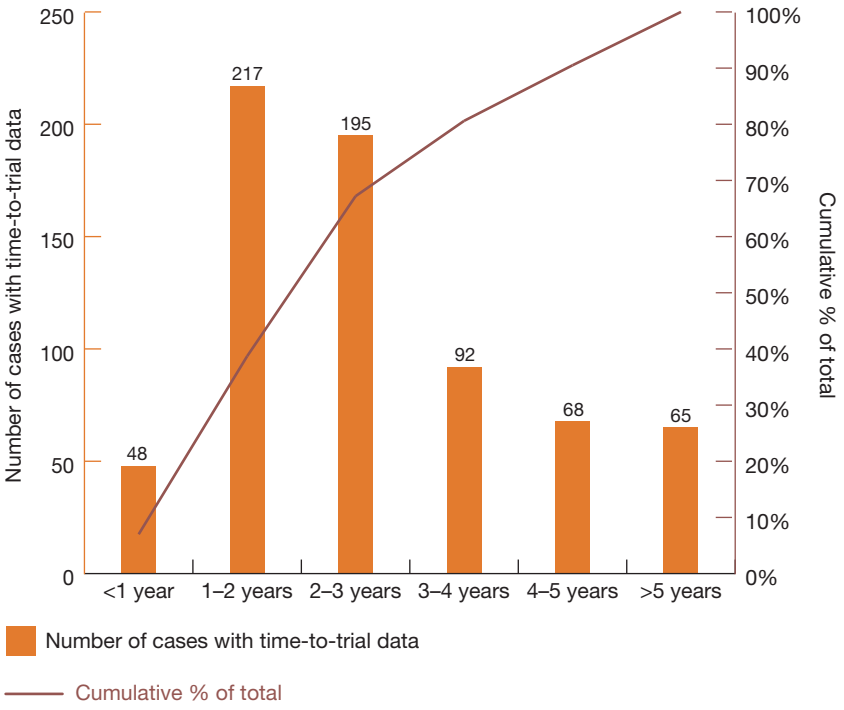
Majority of patent cases reach trial within three years

Chart 7a

While median time-to-trial has remained relatively consistent, significant variations exist across jurisdictions

We captured time-to-trial data for 685 cases in 68 districts, using the court dockets for each matter. We then calculated time-to-trial from the complaint date to the first day of trial for each case. The overall time-to-trial distribution indicates that about 70% of cases reached trial within three years from the filing of the initial complaint.

Chart 7a. Time-to-trial distribution of cases: 1995–2012



What are the one or two issues that concern you most regarding patent litigation in the short-term? Longer-term?

Our patent laws are a key part of the eco-system that has made the American innovation engine the best in the world. There have always been proposals for "reform" or change. The specific concerns vary, but broadly the proposals come from two camps—those who think patents need more protection to increase incentives for innovation, and those who think we need less protection to avoid stifling competition. The two camps have different, but fervently held, points of view. No matter what one's point of view, we need to be modest and remind ourselves on how little we know about striking the optimal balance to encourage both innovation and competition.

—Morgan Chu
(Irell & Manella LLP)

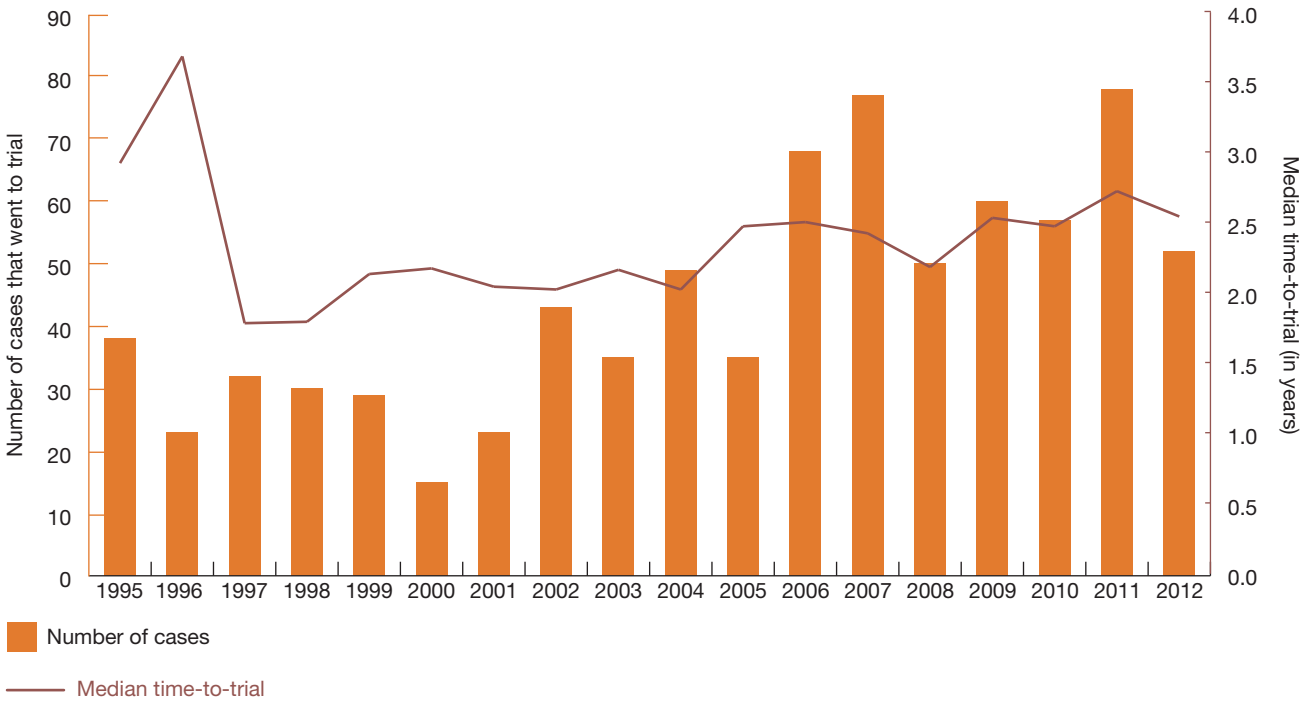
Median time-to-trial: approximately 2.5 years

Chart 7b

Overall, time-to-trial appears to have remained relatively steady at about 2.5 years since 2005, and no significant variations are noted since 1997.

However, since 2004, there is a slight upward trend in time-to-trial as the annual volume of cases going to trial has increased.

Chart 7b. Median time-to-trial



Median damages rise with time-to-trial

Chart 7c

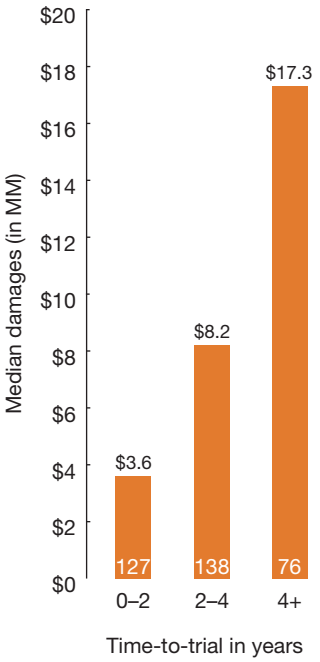
Chart 7c reflects the direct relationship between the median damages award and the number of years to trial. Several factors might influence this relationship. Cases involving higher potential damages awards are more complex and, thus, take longer to reach trial. Also, increased time-to-trial provides a longer period over which sales can occur, thereby increasing the potential damages base.

Virginia Eastern, Wisconsin Western speediest in time-to-trial

Chart 7d

Since 1995, significant variations have occurred in the median time-to-trial across jurisdictions. To assess the lead time, we focused on the most active districts. Chart 7d summarizes the median time-to-trial among these courts from 1995 to 2012. As indicated, the Virginia Eastern and Wisconsin Western districts boast the shortest time-to-trial, which has been significantly lower than the next district or the median. The fastest five districts and overall median time-to-trial have remained consistent from our last study.

Chart 7c. Median damages based on time-to-trial: 1995–2012



Median damages are adjusted for inflation and represented in 2012 US dollars.

The number of identified decisions is indicated within the respective column.

Chart 7d. Median time-to-trial by district from 1995–2012

Rank	District	Total # of identified decisions with time-to-trial data	In years
1	Virginia Eastern	22	0.97
2	Wisconsin Western	10	1.07
3	Florida Middle	15	1.74
4	Delaware	113	1.94
5	Texas Southern	11	2.00
6	Texas Eastern	85	2.19
7	California Central	29	2.34
8	Texas Northern	18	2.42
9	Florida Southern	15	2.50
10	Minnesota	12	2.66
11	New Jersey	27	2.70
12	California Northern	39	2.72
13	New York Southern	36	2.95
14	Massachusetts	25	3.63
15	Illinois Northern	35	3.67
	Overall (all decisions identified)	**685**	**2.35**

Includes only the 15 most active districts for which time-to-trial data was available.

Certain districts are more favorable to patent holders

Chart 8

Certain federal district courts are more favorable to patent holders

Certain jurisdictions (particularly Virginia Eastern, Delaware, and Texas Eastern) continue to be more favorable venues for patent holders, with shorter time-to-trial, higher success rates, and greater median damages awards. Chart 8 presents the top 15 districts based on an average of their categorical rankings for each of the three statistical measures. The overall ranking for district courts varies slightly from last year's 2012 Patent Litigation Study, with New Jersey and Massachusetts moving up several positions.

Chart 8. District Court rankings: 1995–2012

Overall rank	District	Median time-to-trial (in years)	Rank	Overall success rate	Rank	Median damages awarded	Rank
1	Virginia Eastern	0.97	1	34.8%	6	$36,782,534	1
2	Delaware	1.94	4	42.2%	3	$20,754,192	2
3	Texas Eastern	2.19	6	57.5%	1	$10,000,000	5
4	Wisconsin Western	1.07	2	32.4%	8	$4,829,358	9
5	New Jersey	2.70	11	34.9%	5	$16,836,493	3
6	Florida Middle	1.74	3	51.4%	2	$154,571	15
7	California Central	2.34	7	30.4%	9	$6,869,675	7
8	Texas Southern	2.00	5	19.6%	15	$11,274,784	4
9	Texas Northern	2.42	8	40.6%	4	$2,167,307	12
10	Massachusetts	3.63	14	32.4%	7	$4,174,815	10
11	California Northern	2.72	12	23.9%	14	$8,300,746	6
12	Minnesota	2.66	10	29.8%	11	$1,623,834	13
13	New York Southern	2.95	13	30.0%	10	$3,337,908	11
14	Florida Southern	2.50	9	26.3%	12	$374,435	14
15	Illinois Northern	3.67	15	24.8%	13	$5,890,039	8
	Overall (all decisions identified)	**2.35**		**32.4%**		**$5,463,992**	

Median damages are adjusted for inflation and represented in 2012 US dollars. The rankings for these courts are based on their relative ranking for each of the three statistical measures.

Federal district courts with most NPE cases

Chart 9a

Of NPE decisions, 39% were concentrated in five federal district courts

Cases with NPEs as patent holders were concentrated in a relatively smaller number of key districts: the top five districts (out of the total 94) with the most identified decisions accounted for 39% of all identified NPE cases and the top ten districts accounted for 55%. Of particular interest is that the two districts with the most identified NPE decisions, Illinois Northern and Texas Eastern, continue to present a dichotomy in relative NPE success rates. Texas Eastern ranks third highest (46.7%), whereas Illinois Northern ranks sixteenth (12.5%) in terms of overall NPE success rates. Meanwhile, Delaware, which has the lowest percentage of identified decisions where the patent holder is an NPE, has an overall NPE success rate of 38.9%, which is among the highest and well above the overall average.

Chart 9a. District courts with most identifed decisions with NPE as patent holder: 1995–2012

District	Decisions involving NPEs	Total identified decisions	NPE % of total decisions	NPE success rate
Texas Eastern	45	120	37.5%	46.7%
Illinois Northern	32	133	24.1%	12.5%
New York Southern	28	120	23.3%	14.3%
California Northern	21	134	15.7%	19.0%
Delaware	17	179	9.5%	41.2%
California Central	15	79	19.0%	33.3%
Florida Southern	13	38	34.2%	15.4%
Massachusetts	13	71	18.3%	38.5%
Minnesota	10	47	21.3%	40.0%
Pennsylvania Eastern	10	35	28.6%	20.0%
Texas Southern	10	46	21.7%	10.0%
DC	9	22	40.9%	0.0%
US Court of Federal Claims	8	20	40.0%	12.5%
Virginia Eastern	8	46	17.4%	25.0%
Florida Middle	7	35	20.0%	57.1%
Pennsylvania Western	7	18	38.9%	57.1%
Texas Northern	7	32	21.9%	42.9%
Colorado	6	22	27.3%	33.3%
Maryland	6	17	35.3%	0.0%
Michigan Eastern	6	37	16.2%	0.0%
New Jersey	6	83	7.2%	16.7%
All Identified Decisions	**370**	**1,856**	**19.9%**	**24.3%**

Includes districts with more than 5 identified decisions involving an NPE as the patent holder.

Practicing entities and NPEs by the numbers

Chart 9b

Chart 9b reflects a summary of critical patent litigation statistics for practicing entities and NPEs. In the current and prior year, the median damage award for NPEs was significantly higher than that for practicing entities, while practicing entities enjoyed higher success rates and slightly shorter median time-to-trial.

Chart 9b. Key statistics for practicing and nonpracticing entities: 1995–2012

	Median time-to-trial (in years)	Overall success rate	Median damages awarded
Nonpracticing Entity	2.55	24.3%	$8,885,947
Practicing Entity	2.30	34.5%	$5,354,968

Median damages are adjusted for inflation and represented in 2012 US dollars.

With the escalating costs of U.S. patent litigation, the need to employ alternative dispute resolution is ever more pressing, especially in the case of foreign litigants who are likely to be less accustomed to the fees and costs of full blown U.S. litigation. The ADR opportunities provided under local rules, such as those of the Northern District of California, should be taken seriously. Courts lacking such rules may even be persuaded to "borrow" them in the sound exercise of their docket management discretion. Effective use of such ADR procedures requires thorough early case preparation, potentially including the use of experts.

—Richard Gray
(Jenner & Block LLP)

NPEs see variety in median damages and success rates

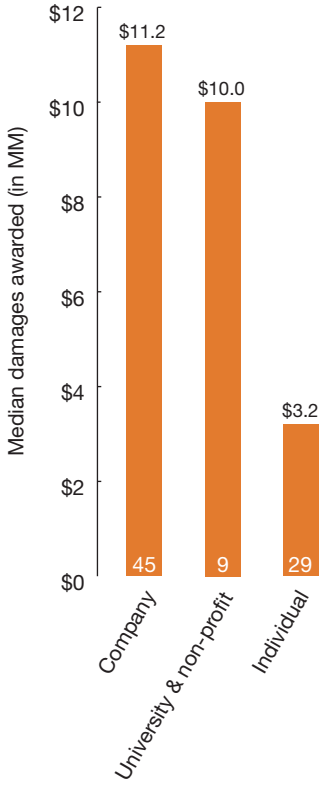
Chart 10a

Median damages awards and success rates vary significantly among NPEs

Charts 10a through 10c represent an analysis of NPE litigation by NPE type: (1) companies/for-profit organizations, (2) universities/ non-profit organizations, and (3) individuals/inventors.

Chart 10a illustrates that the median damages award for NPEs that are companies/for-profit organizations is only slightly higher than that for university/non-profit, but significantly higher than that for individual NPEs. Notably, while damages for companies/for-profit organizations and individual/inventors remained relatively consistent with last year's findings, the median damages award for NPEs that are universities/ non-profit organizations increased significantly to $10.0 million from $1.5 million in last year's study. This is a result of two major damages awards won by universities in 2012, relative to a smaller overall sample size of university/non-profit NPE cases.

Chart 10a. Patent holder median damages awarded by NPE type: 1995–2012



Median damages are adjusted for inflation and represented in 2012 US dollars.

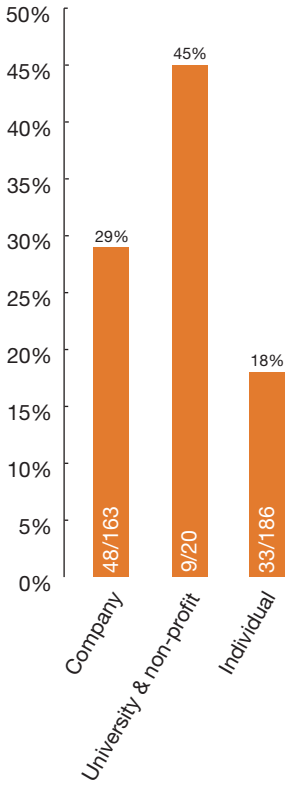
The number of cases is indicated within the respective column.

Individual NPEs experience lower success rates

Chart 10b

While company NPEs are awarded higher damages, university/non-profit NPEs have by far the highest success rate among NPEs. Individual NPEs lag far behind, as shown in Chart 10b. Each reading was consistent with the calculations in last year's study, with company and individual NPEs remaining relatively constant and university/ non-profit NPEs increasing to a 45% success rate.

Chart 10b. Patent holder success rates by NPE type: 1995–2012



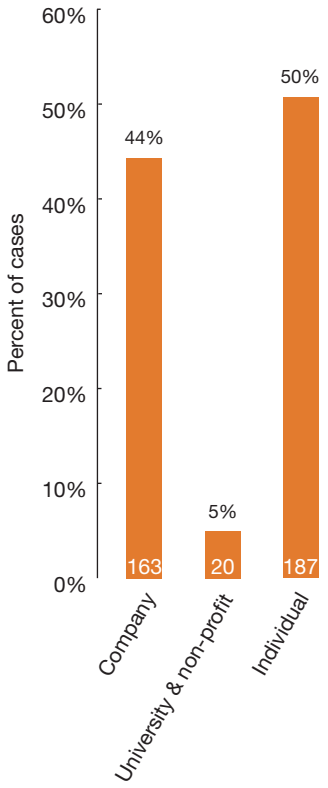
The number of cases is indicated within the respective column.

Vast majority of NPE litigation involves company and individual NPEs

Chart 10c

Chart 10c shows the distribution of NPE litigation over the last 18 years between the three NPE types. About 95% of NPE litigation involves company and individual NPEs. While individual NPEs have the lowest median damages award and success rate, they represent the most frequent kind of NPE litigant, accounting for half of identified NPE decisions.

Chart 10c. Distribution of cases by NPE type: 1995–2012



The number of cases is indicated within the respective column.

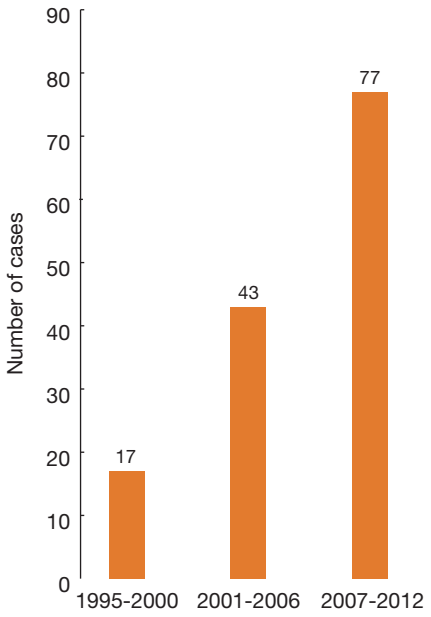
ANDA litigation trends upward

Chart 11a

ANDA litigation transpires when a generic drug manufacturer files with the Food and Drug Administration (FDA) an ANDA paragraph IV certification challenging a brand drug manufacturer's patent(s). Damages are rarely, if ever, awarded because the alleged infringer does not generally make any infringing sales prior to the filing of the litigation. However, the economic ramifications of ANDA litigation are significant because of the potential for lost patent protection of highly profitable brand name drugs. In addition, the first generic filer of a successful patent challenge is awarded a period of exclusivity in the generic drug market.

Chart 11a illustrates that the number of court decisions from ANDA litigation has grown substantially, consistent with the upward trend of overall patent litigation identified in Chart 1.

Chart 11a. ANDA cases



In the short term, the biggest issue facing patent litigation is the failure of the Courts and the ITC to enforce their own rules. The ITC says you must show domestic industry in order to maintain an action; but continually waters that requirement down. Many Courts require detailed infringement and invalidity contentions, but then allow parties to slide by these requirements with what amount to unintelligible formalities. These are but examples; the system only works when the rules are enforced but many now question whether any rules are sacrosanct. In the longer term, the biggest problem facing patent litigation is the slowing pace of innovation. The inventions claimed in asserted patents become ever narrower, trivializing the notion of innovation while simultaneously increasing the burden on business."

—Paul Steadman
(DLA Piper LLP)

New Jersey and Delaware are favored ANDA districts

Chart 11b

Chart 11b reflects the top five most active judicial districts for ANDA litigation. Given the concentration of pharmaceutical companies in the New York/New Jersey area, it is not surprising that a large number of ANDA cases are brought in those districts and in Delaware, where many companies are incorporated. These five districts comprise almost 70% of the ANDA cases during our study period.

Chart 11b. Top five districts with ANDA cases: 1995–2012

Rank	Top five districts	Number of cases
1	Delaware	31
2	New Jersey	31
3	New York Southern	15
4	Illinois Northern	12
5	Florida Southern	6

Historical ANDA success rates have varied significantly

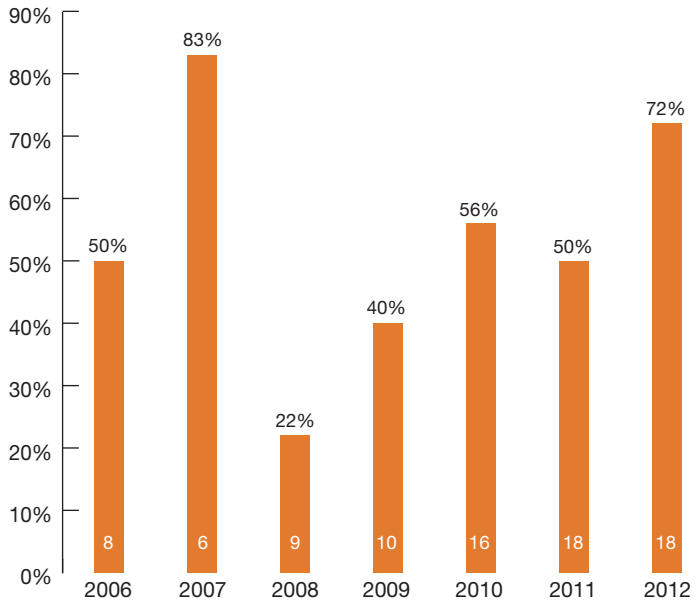
Chart 11c

Chart 11c reflects ANDA success rates, which we have defined here as the patent holder's (the brand name drug manufacturer's) success. Since 2006, ANDA litigation success rates have ranged from a low of 22% to a high of 83%. However, the sample size (the number of ANDA cases reaching a dispositive conclusion) in the earlier years was low, possibly explaining the wide swings in success rates. Because the majority of ANDA litigations continue to end in settlement, the adjudicated case sample size remains modest.

We are encouraged to see quality improvements happening within the U.S. patent community. A big reason for this is that the courts are more regularly sanctioning plaintiffs for filing suits based on dubious patents that come about due to limited pre-filing due diligence or a motivation to land nuisance value settlements. Further, NetApp became an inaugural member of Unified Patents because of its out-of-the-box thinking on collaborative deterrence of these very same dubious patents. We remain optimistic that these trends will continue to help our resource-constrained judicial system and further improve the quality of our country's patent system.

—Douglas Luftman
(Chief Intellectual Property Counsel, NetApp, Inc.)

Chart 11c. ANDA success rates



The total number of cases are indicated within the respective column.

Top ANDA litigants

Chart 11d and 11e

Charts 11d and 11e represent the most active ANDA litigants, where plaintiffs are the proprietary drug makers and defendants are the generic drug manufacturers. More than half of identified ANDA decisions involve the five most active ANDA defendants.

On the other hand, approximately one-third of identified ANDA decisions involve the top five plaintiffs, or the branded drug manufacturers.

Chart 11d. Top five ANDA defendants: 1995–2012

Defendant	Number of cases
Teva (including, Barr Laboratories, Cephalon & Novopharm)	32
Apotex	16
Mylan	14
Watson (including, Andrx Pharmaceutical)	8
Sandoz	7

Chart 11e. Top five ANDA plaintiffs: 1995–2012

Plaintiff	Number of cases
Glaxo (including, SmithKline Beecham)	11
Pfizer (including, Pharmacia & Upjohn, King, Warner-Lambert & Wyeth)	10
Johnson & Johnson (including, Alza, Janssen, McNeil-PPC, & Ortho-McNeil)	10
Abbott Laboratories	7
AstraZeneca	7

In the next several years, some of the most hotly-contested patent disputes will be litigated not in federal courts but in the U.S. PTO. The America Invents Act created two new categories of streamlined "post-issuance proceedings" that enable competitors and other interested parties to challenge issued patents before the PTO. In these proceedings, a challenger can obtain limited discovery and present expert testimony in an effort to invalidate patents. In highly competitive industries that depend on IP, the creation of these proceedings as strategic options means that companies must consider litigation strategy before their patents are even issued.

—James Ferguson
(Mayer Brown LLP)

Statistics by judge

Chart 12a

We also captured information on the presiding judge in identified patent litigation disputes. This table represents statistics for the top 50 currently-active judges from 1995–2012. Overwhelmingly, the median damages awarded in cases presided over by the top ten judges exceeds the overall median damages awarded from 1995–2012, possibly indicating that larger disputes tend to be handled by more experienced judges. However, the three $1 billion cases from 2012 were handled by judges with four or fewer identified patent trial cases. Similarly, the time-to-trial for the top ten judges is also generally shorter than the overall median, which is also likely a result of increased experience in patent litigation matters.

Rank	Judge last name	Judge first name	District court	Identified decision	Median damages	Success rate	Time-to-trial	% of decisions that are SJs
1	Robinson	Sue	Delaware	58	$21,237,057	37.9%	1.84	32.8%
2	Sleet	Gregory	Delaware	27	$31,651,000	55.6%	1.88	11.1%
3	Crabb	Barbara	Wisconsin Western	27	$2,521,951	33.3%	1.07	70.4%
4	Davis	Leonard	Texas Eastern	24	$17,811,922	58.3%	2.35	33.3%
5	Wilken	Claudia	California Northern	16	$9,532,839	37.5%	2.19	56.3%
6	Clark	Ron	Texas Eastern	13	$6,740,099	84.6%	1.74	7.7%
7	Illston	Susan	California Northern	13	$ –	0.0%	2.59	69.2%
8	Stark	Leonard	Delaware	11	$12,890,034	45.5%	2.12	63.6%
9	Huff	Marilyn	California Southern	10	$25,108,181	40.0%	2.39	60.0%
10	Alsup	William	California Northern	10	$18,807,241	10.0%	1.61	60.0%
11	Darrah	John	Illinois Northern	10	$9,989,639	10.0%	3.50	70.0%
12	Young	William	Massachusetts	10	$229,714	20.0%	1.72	60.0%
13	Cooper	Mary	New Jersey	10	$ –	30.0%	2.61	60.0%
14	Rakoff	Jed	New York Southern	9	$974,699	11.1%	1.05	77.8%
15	Cohn	Avern	Michigan Eastern	9	$821,426	44.4%	4.38	44.4%
16	Lungstrum	John	Kansas	9	$229,171	22.2%	2.51	44.4%
17	Thynge	Mary	Delaware	9	$34,327	11.1%	2.49	77.8%
18	Kendall	Virginia	Illinois Northern	9	$ –	11.1%	–	88.9%
19	Whyte	Ronald	California Northern	9	$ –	0.0%	2.45	77.8%
20	Pfaelzer	Mariana	California Central	8	$163,329,629	12.5%	3.90	75.0%
21	Bucklo	Elaine	Illinois Northern	8	$114,002,318	50.0%	2.84	62.5%
22	Ellis, III	Thomas	Virginia Eastern	8	$52,938,680	37.5%	0.65	25.0%
23	Doty	David	Minnesota	8	$2,343,412	25.0%	2.35	75.0%
24	Montgomery	Ann	Minnesota	8	$163,607	37.5%	–	75.0%
25	Chesler	Stanley	New Jersey	8	$ –	50.0%	3.62	62.5%

Rank	Judge last name	Judge first name	District court	Identified decision	Median damages	Success rate	Time-to-trial	% of decisions that are SJs
Continued								
26	Smith	Rebecca	Virginia Eastern	8	$ –	25.0%	1.23	75.0%
27	McKinney	Larry	Indiana Southern	8	$10,520,507	0.0%	–	87.5%
28	Carter	David	California Central	7	$9,602,263	14.3%	1.77	57.1%
29	Gorton	Nathaniel	Massachusetts	7	$7,562,745	71.4%	3.60	42.9%
30	Saris	Patti	Massachusetts	7	$58,437	14.3%	3.08	57.1%
31	Woodlock	Douglas	Massachusetts	7	$27,806	14.3%	3.52	85.7%
32	Ellison	Keith	Texas Southern	7	$ –	14.3%	2.86	85.7%
33	Cote	Denise	New York Southern	7	$ –	42.9%	1.50	71.4%
34	Guzman	Ronald	Illinois Northern	7	$354,375,187	14.3%	3.67	71.4%
35	Zagel	James	Illinois Northern	6	$34,980,345	66.7%	7.54	66.7%
36	Stein	Sidney	New York Southern	6	$27,934,776	50.0%	1.92	33.3%
37	Laporte	Elizabeth	California Northern	6	$24,789,872	16.7%	4.65	83.3%
38	Frank	Donovan	Minnesota	6	$15,643,206	33.3%	2.58	50.0%
39	Pisano	Joel	New Jersey	6	$3,878,407	83.3%	2.35	50.0%
40	Armstrong	Saundra	California Northern	6	$3,137,301	16.7%	2.53	66.7%
41	St. Eve	Amy	Illinois Northern	6	$2,905,098	16.7%	1.76	83.3%
42	Babcock	Lewis	Colorado	6	$2,546,190	50.0%	3.12	50.0%
43	Breyer	Charles	California Northern	6	$2,181,101	16.7%	1.47	50.0%
44	Stewart	Ted	Utah	6	$1,278,640	33.3%	5.35	83.3%
45	Gadola	Paul	Michigan Eastern	6	$963,258	33.3%	2.60	50.0%
46	Damich	Edward	US Court of Federal Claims	6	$942,550	16.7%	–	66.7%
47	Atlas	Nancy	Texas Southern	6	$352,673	16.7%	1.91	66.7%
48	Barker	Sarah	Indiana Southern	6	$154,571	66.7%	3.34	16.7%
49	Antoon, II	John	Florida Middle	6	$ –	50.0%	4.12	50.0%
50	McMahon	Colleen	New York Southern	6	$ –	16.7%	5.02	83.3%

Summary judgment statistics by judge

Chart 12b

The following chart further dissects summary judgment statistics by judge, illustrating the number of identified summary judgment decisions along with patent holder success rates at summary judgment.

Rank	Judge last name	Judge first name	District court	Identified SJ decisions	Success rate at SJ
1	Crabb	Barbara	Wisconsin Western	19	10.5%
2	Robinson	Sue	Delaware	19	5.3%
3	Wilken	Claudia	California Northern	9	11.1%
4	Illston	Susan	California Northern	9	0.0%
5	Davis	Leonard	Texas Eastern	8	12.5%
6	Kendall	Virginia	Illinois Northern	8	12.5%
7	Stark	Leonard	Delaware	7	14.3%
8	Darrah	John	Illinois Northern	7	0.0%
9	McKinney	Larry	Indiana Southern	7	0.0%
10	Rakoff	Jed	New York Southern	7	0.0%
11	Thynge	Mary	Delaware	7	0.0%
12	Whyte	Ronald	California Northern	7	0.0%
13	Cooper	Mary	New Jersey	6	33.3%
14	Huff	Marilyn	California Southern	6	33.3%
15	Montgomery	Ann	Minnesota	6	16.7%
16	Young	William	Massachusetts	6	16.7%
17	Alsup	William	California Northern	6	0.0%
18	Doty	David	Minnesota	6	0.0%
19	Ellison	Keith	Texas Southern	6	0.0%
20	Pfaelzer	Mariana	California Central	6	0.0%
21	Smith	Rebecca	Virginia Eastern	6	0.0%
22	Woodlock	Douglas	Massachusetts	6	0.0%
23	Chesler	Stanley	New Jersey	5	40.0%
24	Bucklo	Elaine	Illinois Northern	5	20.0%
25	Cote	Denise	New York Southern	5	20.0%

Rank	Judge last name	Judge first name	District court	Identified SJ decisions	Success rate at SJ
26	Guzman	Ronald	Illinois Northern	5	20.0%
27	Perry	Catherine	Missouri Eastern	5	20.0%
28	Stewart	Ted	Utah	5	20.0%
29	Collyer	Rosemary	DC	5	0.0%
30	Ericksen	Joan	Minnesota	5	0.0%
31	Kennelly	Matthew	Illinois Northern	5	0.0%
32	Laporte	Elizabeth	California Northern	5	0.0%
33	Lasker	Morris	Massachusetts	5	0.0%
34	McMahon	Colleen	New York Southern	5	0.0%
35	St. Eve	Amy	Illinois Northern	5	0.0%
36	Zagel	James	Illinois Northern	4	50.0%
37	Greenaway, Jr.	Joseph	New Jersey	4	25.0%
38	Lungstrum	John	Kansas	4	25.0%
39	Armstrong	Saundra	California Northern	4	0.0%
40	Arterton	Janet	Connecticut	4	0.0%
41	Atlas	Nancy	Texas Southern	4	0.0%
42	Carter	David	California Central	4	0.0%
43	Chatigny	Robert	Connecticut	4	0.0%
44	Cohn	Avern	Michigan Eastern	4	0.0%
45	Crocker	Stephen	Wisconsin Western	4	0.0%
46	Currie	Cameron	South Carolina	4	0.0%
47	Damich	Edward	US Court of Federal Claims	4	0.0%
48	Gonzalez	Irma	California Southern	4	0.0%
49	Hart	William	Illinois Northern	4	0.0%
50	McAuliffe	Steven	New Hampshire	4	0.0%

Our methodology

To study the trends related to patent decisions, PwC identified final decisions at summary judgment and trial recorded in two WestLaw databases, U.S. District Court Cases (DCT) and Combined Jury Verdicts and Settlements (JV-ALL), as well as in corresponding Public Access to Court Electronic Records (PACER) system records. The study focuses on 1,856 district court patent decisions issued since 1995. Definitions for important terms used throughout the study are listed here:

- ***Cases decided at summary judgment*** include those district court patent infringement cases where a judge has issued a dispositive opinion regarding invalidity and/or infringement.
- ***Cases decided at trial*** include those district court patent infringement cases where an opinion was rendered by a judge or jury at trial.
- A ***success*** includes instances where a liability and damages/permanent injunction (if included) decision was made in favor of the patent holder.
- ***Time-to-trial*** is calculated from the complaint date to the first day of either the bench or jury trial for each case.
- ***A nonpracticing entity (NPE)*** is defined as an entity that does not have the capability to design, manufacture, or distribute products with features protected by the patent

Our authors

Chris Barry has 29 years of experience in PwC's Forensic Services practice. Mr. Barry has worked extensively in the intellectual property field, including damage quantification and testimony in infringement actions, determining reasonable royalty rates, valuing IP for transaction and financial reporting purposes, and performing royalty inspections for licensors with running rate agreements. Mr. Barry has testified at trial roughly 60 times as an expert witness. Mr. Barry is a CPA holding the AICPA credential of Certified in Financial Forensics. He earned a BA in accounting from Franklin & Marshall College and an MBA from the University of California at Berkeley.

Ronen Arad is a Director in PwC's Forensic Services practice. Mr. Arad has been involved in many aspects of complex financial analyses and forensic assessments, both in the normal course of business and in the context of litigation. He has worked extensively in the intellectual property field, including quantifying damages in infringement and misappropriation actions, performing licensing inspections for licensors in a range of industries, and valuing intellectual property. Mr. Arad is a Chartered Financial Analyst (CFA) charter-holder and holds a BS degree in Commerce with concentrations in Finance and Accounting from the University of Virginia.

Landan Ansell is a Manager in PwC's Forensic Services practice in Atlanta. He specializes in financial analysis and modeling for the valuation of economic damages for commercial disputes, as well as forensic accounting matters. Mr. Ansell has over six years of experience assisting clients in solving complex, crisis-related issues by providing litigation and investigation services, as well as financial and economic analysis, including the analysis of significant volumes of data and the development of comprehensive and user-friendly financial models. Mr. Ansell earned a BBA with a concentration in Accounting from Emory University and is a CPA.

Evan Clark is a Senior Associate in the Forensic Services practice in Atlanta. He specializes in financial modeling and analysis and focuses on the quantification of damages for business interruption claims. Mr. Clark earned a BBA with a concentration in Finance from Emory University.

Additionally, the following individuals contributed significantly to this study: Addis Workalemahu, Alexander E. Wagner, Amber Yang, Amy Lea, Chad Halbur, Heather Fugate, Holly Mills, HyeYun Lee, Jennifer Beaudoin, Katherine Hou, Matthew Hynes, Meena Chockalingam, Meredith Cartier, Nicholas Baccash, Paul Conboy, Paulina Boonman, Pichon Duplan, Sarah Stanley, Severin Ritchie, Sonia Mehta and Zhihua Wu.

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To have a deeper conversation about how this subject may affect your business, please contact:

Chris Barry
(617) 530-6304
christopher.c.barry@ us.pwc.com

Ronen Arad
(678) 419-7309
ronen.arad@us.pwc.com

Kristofer Swanson
(312) 298-6195
kris.swanson@us.pwc.com

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