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Global Enforcement Trends

Moderators:

Hon. Paul R. Michel, Chief Judge, Retired
United States Court of Appeals for the Federal Circuit

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Patent Litigation Procedures – United States

- **Subject matter jurisdiction:** Federal District Court, appeal to the Federal Circuit, limited certiorari to the U.S. Supreme Court.
- **Litigation costs:** Depends on the number of patents and claims asserted. On average, anywhere between \$3 to \$7M at the Federal District Court and between \$250K to \$600K for a Federal Circuit appeal.
- **Number of cases filed in the jurisdiction:** Approximately 3,600 patent cases filed in US district courts in each of the last two years.
- **Discovery:** Extensive discovery including requests for documents, interrogatories, admissions, and depositions.
- **Probability of a stay when IPRs are filed:** Courts have granted around 60% of contested motions to stay, with around 30% of motions denied and 10% granted-in-part. Including stipulated and *sua sponte* stays, more than 75% of stay requests have been granted.
- **The time to judgment in the court of first instance:** From filing the complaint to judgment in the district court may take on average 3.5 years. Average time for a Federal Circuit appeal is 18 to 24 months.
- **Probability of success in the court of first instance:** The overwhelming majority of US district court patent litigation is settled. For actions that are decided by the judge or jury, reports show that outcomes favored the accused infringer over the patent owner by a ratio of approximately 2:1 in 2019.
- **Probability of success on appeal:** The Federal Circuit reports a reversal rate of 24% for appeals originating in U.S. District Courts. This is the highest reversal rate for appeals from any origin in the Court's jurisdiction.
- **Who pays the litigation cost?:** Attorneys' fees and litigation costs paid for by each of the parties.
- **Average damages awarded:**
 - Average damages per case in 2019 were around \$24M, but damages are rare and vary widely. Damages were awarded in 67 cases, and had a median of around \$3M and a standard deviation of more than \$74M, according to a Docket Navigator search.

- The court will award treble damages if the jury finds willful infringement.
- **Validity options:** District Court and/or USPTO PTAB.
- **Border seizure/customs procedures:** United States International Trade Commission Section 337 investigation also available for infringing goods imported into the United States.
- **Availability of injunctive relief:** Due to *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), obtaining injunctive relief is difficult.
- **Estoppel:** In IPRs, PGRs, and CBMs, estoppel for grounds that the petitioner raised or reasonably could have raised. Petitioners may not later raise the same defense in district court after an adverse PTAB final written decision.

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