

WILLIAMS MULLEN

03.11.2024 LEGAL NEWS

Patent Litigation Update 2024

By: Robert Van Arnam & Rick Matthews

While the number of filed patent cases is down, it is still the most prevalent type of IP claim. In 2023, there were 3,111 patent cases filed, following a downward trend since 2021, with the Western District of Texas still the most active district, although the number of cases in that court have dropped significantly.¹ At the PTAB, the number of petitions filed in 2023 decreased, but with a slight increase (from 51% to 54%) in instituted trials.²

Of course, the vast majority of patent infringement actions (~97%) are settled. But when cases are tried, plaintiffs tend to win. Likely due to the high clear and convincing standard to invalidate a patent and the presumption of validity that is attached to patents, patent holders prevail more often than not in infringement actions. For example, over the last several years it has been reported that the trial success rates of patent holders are 52% with bench trials and 74% with juries.³

The patent trends in 2024 are likely to be focused on several evolving issues. First, patentability for biotech patents is an unresolved issue after the Supreme Court's Amgen decision, in which the Court invalidated Amgen's patent for failing to provide enough information to enable others to make and use the entire class of antibodies covered by the patent. Similarly, defining patentable software matter remains as the Supreme Court and Federal Circuit wrestle with post Alice eligibility, but they remain the top percentage of cases litigated.⁴ Finally, there will continue to be a growing number of patents covering technology and inventions related to AI and cybersecurity tools.

This website uses cookies to provide you with an improved user experience. By continuing to browse this site you consent to the use of cookies. Please visit our cookie policy for further details.

[Cookie Policy](#).

ACCEPT

modify that one to create the patented design. LKQ argues that the test is at odds with the Supreme Court's opinion in *KSR v. Teleflex*, which rejected more rigid obviousness tests for utility patents.

We will continue to monitor patent litigation trends and report back with any relevant updates.

¹<https://www.aon.com/en/insights/articles/how-current-ip-patent-litigation-trends-are-changing-risk-exposures>

²Lex Machina 2024 Litigation Report

³PWC Patent Litigation Study. These numbers are of course based on the patents asserted and the party asserting them with Non-Practicing Entities not succeeding as often. See John R. Allison et al., *How Often Do Non-Practicing Entities Win Patent Suits?* 32 Berkeley Tech. L.J. 237, 255–60 (2017)

⁴<https://www.aon.com/en/insights/articles/how-current-ip-patent-litigation-trends-are-changing-risk-exposures>

Related People



Robert Van Arnam

Partner

T. 919.981.4055



Rick Matthews

Partner

T. 919.981.4070

This website uses cookies to provide you with an improved user experience. By continuing to browse this site you consent to the use of cookies. Please visit our [cookie policy](#) for further details.

[Cookie Policy](#).