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Lex Machina Releases First Annual Patent Litigation Year in Review

From Silicon Valley to the Supreme Court, patents have become an inescapable part of the corporate and political landscapes in America. This year alone, the U.S. Supreme Court will hear the [highest proportion of IP cases in history](#). The patent case load of the district courts has more than doubled since 2008, and verdicts like Apple-Samsung have captured headlines with eye-popping damages.

It's critical for lawyers to make sense of the major trends in this space in order to be successful in their own suits. But despite the increasing number of arguments and lawsuits, there's a lack of reliable, unbiased data on the patterns and trends about patent litigation in America.

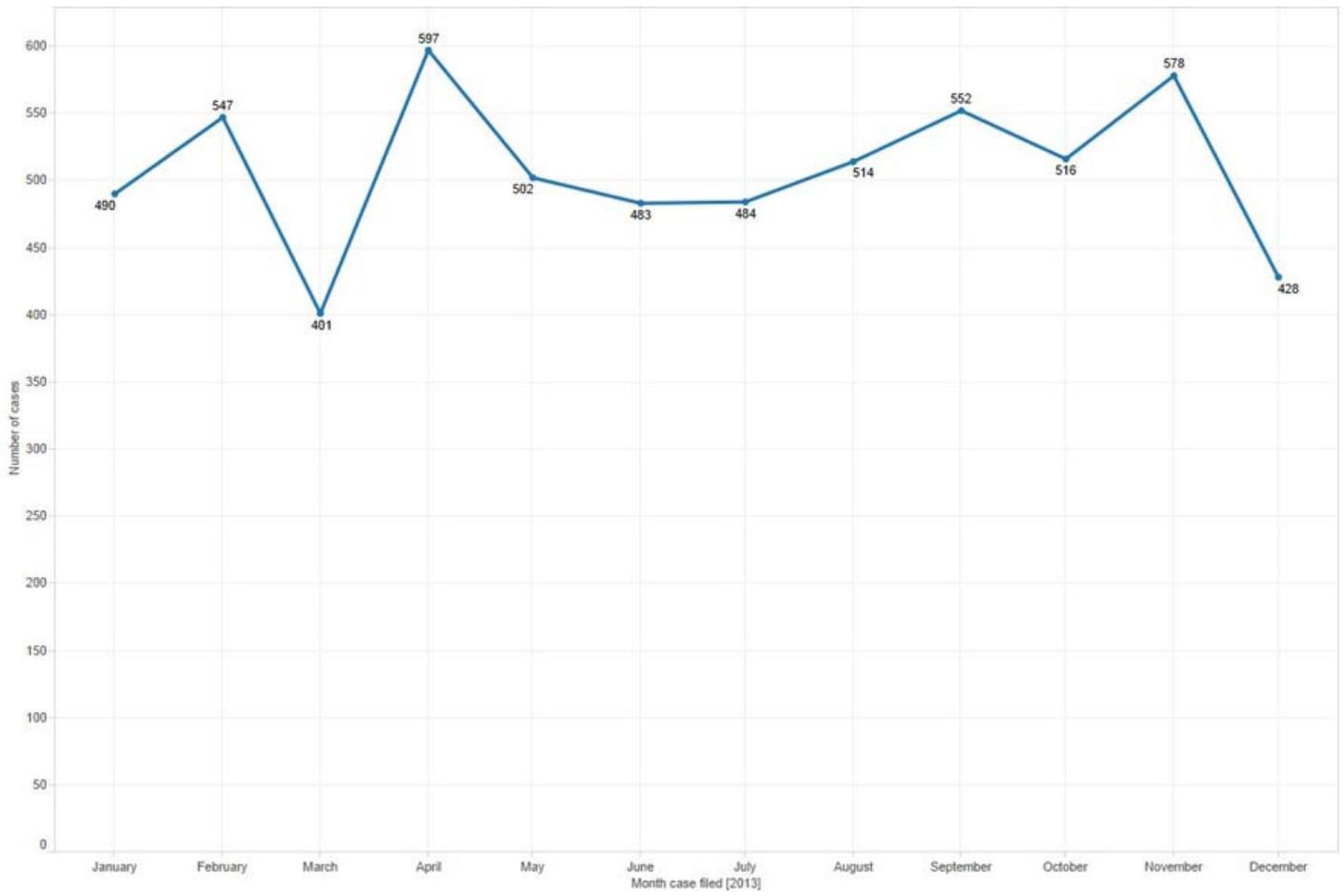
To fill this need, we are excited to offer our first ever Year in Review, offering insights about judges, districts, parties, law firms, patents, and more. The report focuses on the most important trends and developments in patent litigation during 2013, carefully researched and compiled using the same Legal Analytics platform that's allowing lawyers to predict the behaviors and outcomes that different legal strategies will produce.

We'll take a look at some of the high-level findings here — be sure to [check out the full report](#) for a deeper look.

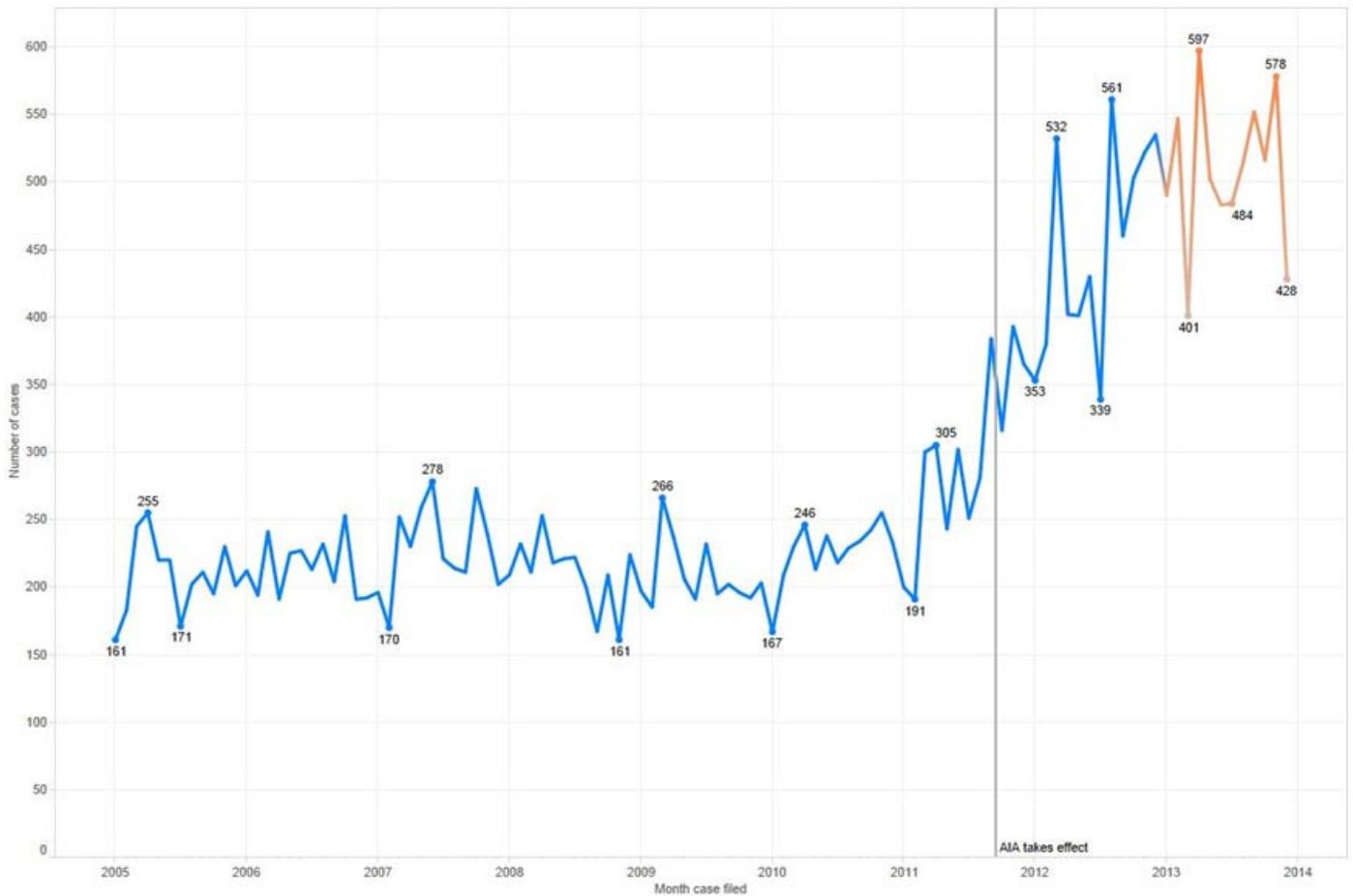
Cases filed

Plaintiffs filed 6,092 new patent cases in U.S. District Courts in 2013, compared to 5,418 new cases filed in 2012, a 12.4% increase. We have been tracking new cases filed on a monthly basis, to study the effects of the America Invents Act and other developments. Although [the data so far from 2014 has been less consistent](#), 2013 saw a clear continuation of the trend towards increasing patent litigation. As you can see below, the patent caseload in U.S. courts has spiked significantly since 2011.

New Cases Filed in 2013, by month



New Cases Filed 2005-2013, by month (2013 in orange)



Parties

Large technology companies bore the brunt of patent litigation in 2014, highlighting the complex web of lawsuits that has embroiled the technology industry in recent years. Apple and Amazon were named as defendants more than any other party – 59 and 50 cases respectively. After AT&T in the third spot (45 cases), the remaining list of top defendants reads like a who’s who of major technology companies: Google, Dell, HTC, Samsung, Microsoft, LG, and HP.

Defendants in Most New Cases

Rank	Defendant	Cases
1	Apple	59
2	Amazon	50
3	AT&T	45

Every single one of the top ten most prolific filers of patent lawsuits in 2013 was a patent monetization entity. Their filed cases ranged from 137 at the top (jointly filed by ArrivalStar and Melvino Technologies) to 47 new cases filed in the #10 spot. Three companies filed more than 100 new patent infringement lawsuits: ArrivalStar, Wyncomm and ThermoLife.

Plaintiffs Filing Most New Cases

Rank	Plaintiff	Cases
1	Melvino Technologies	137
2	ArrivalStar	137
3	Wyncomm	131

If one look’s at the top plaintiffs by number of *distinct* patents at issue in open litigation, however, the numbers tell a strikingly different story. Telefonaktiebolaget LM Ericsson is the leader with 103 distinct patents under trial in 2013. Of the top ten companies on this list, only three are patent monetization entities (PME) – Intellectual Ventures I and II, and Ronald Katz Licensing. The rest are all operating companies, with Apple Inc. taking the #8 spot with 52 distinct patents under litigation in 2013.

Plaintiffs With Most Patents Asserted in Cases Open During 2013

Rank	Plaintiff	Patents
1	Telefonaktiebolaget LM Ericsson	103
2	Intellectual Ventures I	100
3	Intellectual Ventures II	81

Federal Districts

Our research shows that, in terms of federal districts, the scene in 2013 was mostly unchanged from 2012. The Eastern District of Texas (E.D. Tex.) narrowly edged the District of Delaware (D. Del.) for most new cases filed. As in previous years, these two districts handled a lion's share of patent cases in 2013 – each seeing more than three times the new cases of any other federal district. Many businesses are registered in Delaware, making it a common venue for litigation, but the dramatic increase in filings may suggest that plaintiffs are seeing it as an increasingly friendly venue. E.D. Tex., on the other hand, has an established reputation for being friendly to IP holding plaintiffs; E.D. Tex. saw 1,495 cases filed in 2013 (up 20% from 2012) while D. Del. saw 1,336 cases filed (up 33%).

The 3rd and 4th most active districts were also unchanged from 2012; however, both of these – the Central and Northern Districts of California (C.D. Cal., N.D. Cal.) saw a relative decline in new filings. In the case of C.D. Cal., the decline was quite pronounced: 399 new cases in 2013, down from 499 in 2012. S.D. Cal. overtook N.D. Ill. as the fifth most popular district to file new cases in 2013.

Districts With Most New Cases Filed

Rank	District	2013	2012	Net Change
1	Eastern District of Texas	1,495	1,247	+248
2	District of Delaware	1,336	1,002	+334
3	Central District of California	399	499	-100

Despite the large numbers of cases filed, only a small handful actually made it to trial. E.D. Tex. and D. Del. each saw just 25 patent trials in 2013. The next district, the Southern District of New York (S.D.N.Y.) saw 17 cases. No other federal district saw more than ten patent trials in 2013. Given the thousands of new cases filed, these numbers confirm the overwhelming importance of settlement negotiations in patent cases, and would even suggest that trial decisions might almost be an afterthought for those seeking infringement damages. For parties like Apple and Samsung, locked in trials where damages could approach billions of dollars, the lack of actual rulings in patent cases must certainly add an additional level of uncertainty when assessing their chances of victory.

Trials by District

District	Bench	Jury	Bench & Jury	Total
District of Delaware	17	8	0	25
Eastern District of Texas	11	22	8	25
Southern District of New York	11	7	1	17

Law Firms

The data on top patent law firms highlights the boon that regional patent litigation has provided to smaller firms operating in top districts. For example, the top five Delaware firms have all handled more patent cases than any national firm since 2009, with the exception of Fish & Richardson. In fact, the Delaware firm of Morris, Nichols, Arsht & Tunnell has handled more patent cases since 2009 than any other firm (604 open cases / 1,369 total)^[1], including some highly prominent national firms specializing in IP. In the D. Del., Bayard (390 open cases / 794 total) and Stamoulis & Weinblatt (277 open cases / 828 total) were also heavyweights, while Ward & Smith led the E.D. Tex. (245 open cases / 629 total).

Delaware Law Firms, Ranked by Open Cases in 2013 (Filed 2009-2013)

Rank	Firm	Open Cases	Total Cases
1	Morris, Nichols, Arsht & Tunnell	604	1,369
2	Bayard	390	794
3	Stamoulis & Weinblatt	277	828

The top national firms after Fish & Richardson (308 open cases, 1027 total) were Farney Daniels (216 open cases, 590 total), DLA Piper (188 open cases / 599 total), and Winston & Strawn (165 open cases / 477 total). Interestingly, Farney Daniels is the only firm on the list that specializes in representing patent plaintiffs.

National Law Firms, Ranked by Open Cases in 2013 (Filed 2009-2013)

Rank	Firm	Open Cases	Total Cases
1	Fish & Richardson	308	1,027
2	Farney Daniels	216	590
3	DLA Piper	188	599

Federal Judges

Our data on judges shows that James Gilstrap of the Eastern District of Texas is by far the most active in terms of new cases filed. He was assigned 941 new patent cases in 2013 – no other judge had more than 400. All of the top ten judges by most cases filed were from one of four districts: D. Del., E.D. Tex., S.D. Cal., and S.D. Fla. As with jury verdicts, the number of actual decisions by federal judges make up a tiny percentage of total cases. Judge Gilstrap issued 15 decisions, as did Richard Andrews and Sue Robinson from D. Del. A handful of other judges issued more than 10 decisions in 2013.

U.S. District Court Judges: Most New Cases

Rank	Judge	District	Cases
1	Rodney Gilstrap	Eastern District of Texas	941
2	Leonard Stark	District of Delaware	399
3	Gregory Sleet	District of Delaware	395

^[1] Figures include patent cases filed in federal court from 2009-2013

A Commitment to Transparency and Openness

Lex Machina started in 2009 as a public interest project — a unique collaboration between Stanford’s Law School and Computer Science Department, designed to bring openness and transparency to patent law. Today, Lex Machina is focused on providing our customers with the winning edge in the business and practice of law, but we remain committed to being a source of publicly available, highly reliable data — helping lawmakers and analysts better understand the major trends and issues in the patent litigation landscape.

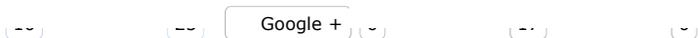
We think these numbers can provide context on the larger news stories and national debates around patent litigation and licensing. We hope that you’ll take the time to check out the full report, and we’ll continue to analyze litigation numbers to publish important statistics and draw data-driven conclusions.

Posted by [Laurie](#)

May 13, 2014

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