2016 Patent Litigation Study

Are we at an inflection point?

May 2016

pwc

General trends

General Patent Litigation trends

- Patents granted decline for first time since 2008
- Median damages surged to $7.3M in last 5 years
- Patentee success rate stands at 33%
- Median jury award was over 16x greater than median bench award in last 5 years
- Time to trial edged up to 2.5 years
- Increased likelihood of fee shifting following two 2014 Supreme Court decisions

Patents granted ***decline*** for first time

since **2008**

Median damages award bounces back in '15

- 2015 annual damages award ($10.2M) at highest point in 10 years
- One mega verdict in 2015, for $533M

Median damages award at ***highest*** point in

10 ***years***

Industry and district view

- Consumer products still leads in number of cases; biotech/pharma has highest median damages awards
- Forum shopping matters: Top 5 most favorable districts with patent holders remain the same (DE; TX Eastern; VA Eastern; WI Western; FL Middle)

Biotech/ pharma highest ***median damages awards***

Nonpracticing Entities (NPEs) still carry a big stick

- Damages awards for NPEs almost 3x greater than practicing entities over the last 5 years
- NPE cases concentrated: 5 district courts (of 94) account for 45% of all identified NPE decisions

Damages awards are almost

3x greater for NPEs

It's not over 'til it's over: Appeals rule

- 80% of district court decisions are appealed
- 53% of appealed decisions are modified in some regard
- Three patent cases escalated to Supreme Court in 2015

53% of appealed cases are ***modified*** in some regard

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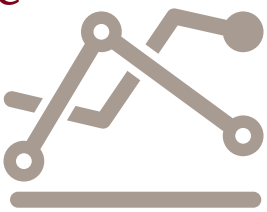
Overview

First ***decline*** in patents granted since



2008

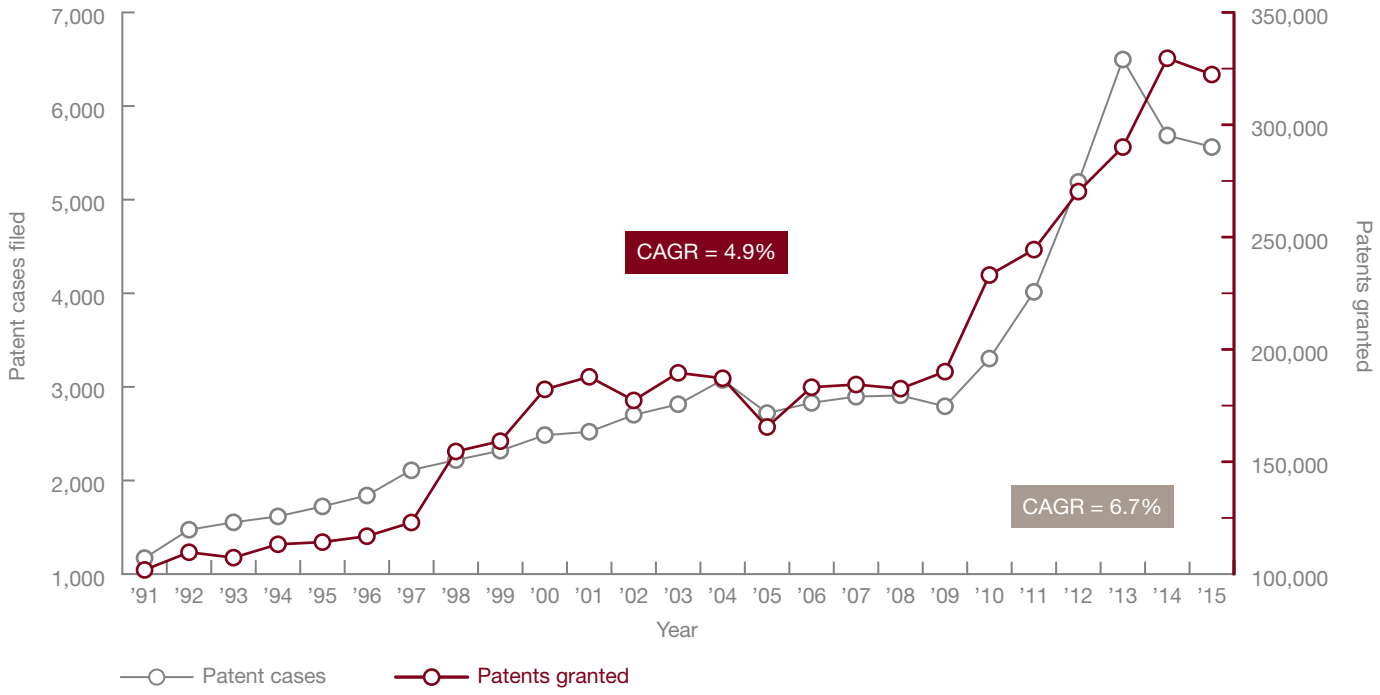
Patent litigation and grants decrease modestly

The number of patent cases filed declined again in 2015, continuing a downward trend from the high point reached in 2013. Approximately 5,600 cases were filed in 2015—representing a modest year-over-year drop of 2%. The decline in the number of cases over the last two years stands in contrast to the compound annual growth rate (CAGR) since 1991 of 6.7%.

2015 also showed a 2% decrease in patents granted by the United States Patent and Trademark Office, the first decline in grants since 2008.

The decline in the number of patent cases filed and patents granted is likely driven by various factors—one being the Supreme Court's 2014 decision in *Alice Corp. v. CLS Bank*, which significantly impacted the ability to obtain and assert software patents.

Fig 1: Patent case filings and grants



Years are based on September year-end.
Sources: *Performance & Accountability Report* (USPTO) and *Judicial Facts and Figures* (US Courts)

Top damages awarded

Large damages awards grab headlines. Since 2012—when three awards of $1 billion or more broke into the top ten list—no award has even come close. 2015 did see one case, *Smartflash LLC v. Apple Inc.*, land in the top 10 list with a $533 million award related to media storage technology.

In another notable case, *Apple v. Samsung*, the parties agreed to settle for $548 million, despite ongoing appeals and patent office actions on certain Apple patents. In early 2016, the Supreme Court granted certiorari on the issue of whether design patents should be entitled to disgorgement of a defendant's profits without apportionment.

The table below displays the top ten initial damages awards since 1996. It is important to note that the awards reflected in this table are those identified during initial trial—all have since been vacated, remanded or reduced, were settled while pending appeal, or are still under appeal. In some cases, the settlement value exceeded the original trial verdict.

Trier of fact

The turn of the century brought a sea change in the trier of fact in patent cases. Previously, jury trials were the exception. However, since 2000, jury trials have predominated. In the last five years, the percentage of cases decided by a jury reached 75%, excluding Abbreviated New Drug Application (ANDA)-related litigation.[1]

Fig 3: Percent of cases decided by juries (excluding ANDA cases)

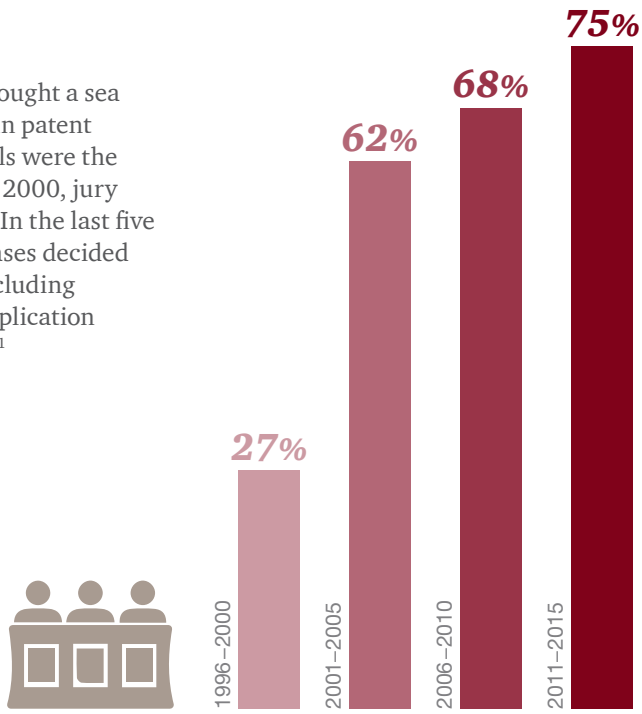


Fig 2: Top ten largest initial adjudicated damages awards: 1996–2015

Year	Plaintiff	Defendant	Technology	Award (in $M)
2009	Centocor Ortho Biotech Inc.	Abbott Laboratories	Arthritis drugs	$1,673
2007	Lucent Technologies Inc.	Microsoft Corp.	MP3 technology	$1,538
2012	Carnegie Mellon University	Marvell Technology Group	Noise reduction on circuits for disk drives	$1,169
2012	Apple Inc.	Samsung Electronics Co.	Smartphone software	$1,049
2012	Monsanto Company	E. I. du Pont de Nemours and Co.	Genetically modified soybean seeds	$1,000
2005	Cordis Corp.	Medtronic Vascular, Inc.	Vascular stents	$595
2015	Smartflash LLC	Apple Inc.	Media storage	$533
2004	Eolas Technologies Inc.	Microsoft Corp.	Internet browser	$521
2011	Bruce N. Saffran, M.D.	Johnson & Johnson	Drug-eluting stents	$482
2014	Masimo Corporation	Philips Electronics N. America Corp.	Device measuring blood oxygen levels	$467

[1] These cases are, with rare exceptions, tried by the bench, and their increasing prevalence in recent years would otherwise skew this measure.

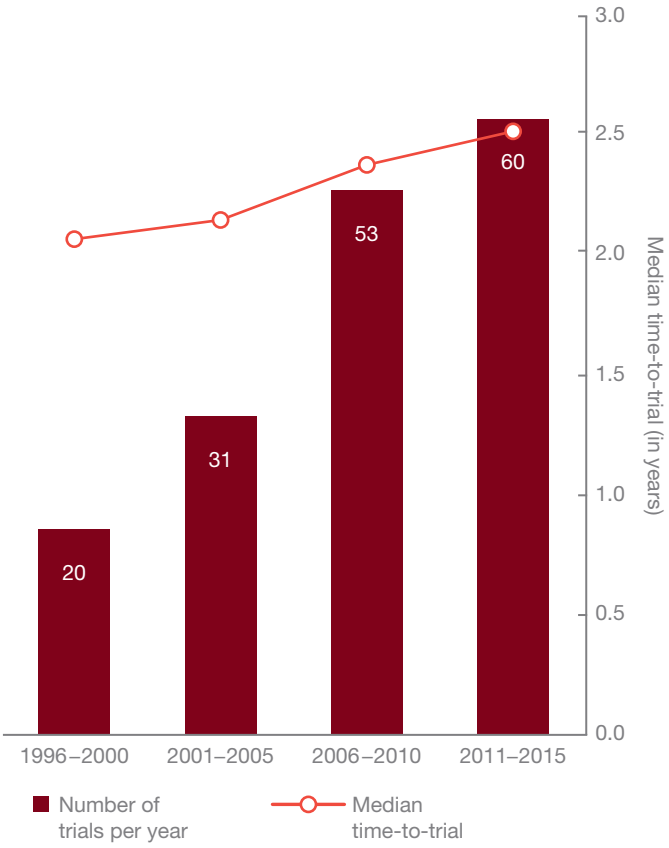
Unless otherwise noted all charts and data come from PwC's analysis of identified summary judgement and trial decisions. See methodology section (pg 21) for more information.

General slowdown in time-to-trial

As the number of patent cases filed has risen dramatically over the last 20 years, the amount of time parties must wait for trial has extended to about 2.5 years.

Not surprisingly, the ***increase*** in case volume drove time-to-trial ***up***. It remains to be seen whether the recent ***decline*** in litigation activity will ***reverse*** the trend.

Fig 4: Median time-to-trial



Find an expert witness

No one wants to be involved in a dispute. But for most businesses, it is likely to happen at some stage, putting real value at risk.

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- Quantification of damages
- Business valuation
- Expert witness testimony
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Damages trends

Median damages award bounces back

Adjusting for inflation using the consumer price index (CPI), the annual median damages award over the years 1996 through 2015 ranged from $2.0 million to $17.0 million, with an overall median award of $5.8 million over the last 20 years. In 2015, the median damages award was $10.2 million—its highest point in 10 years.

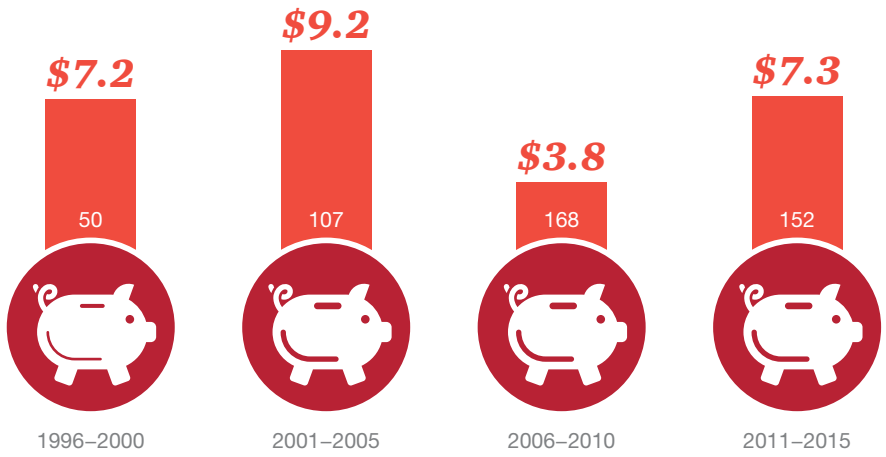
Excluding damages awarded before trial (i.e., summary judgments and default judgments), the overall median award jumps to $8.0 million over the last 20 years.

Median damages award at ***highest*** point

in ***10*** years

Fig 5a: Median damages award

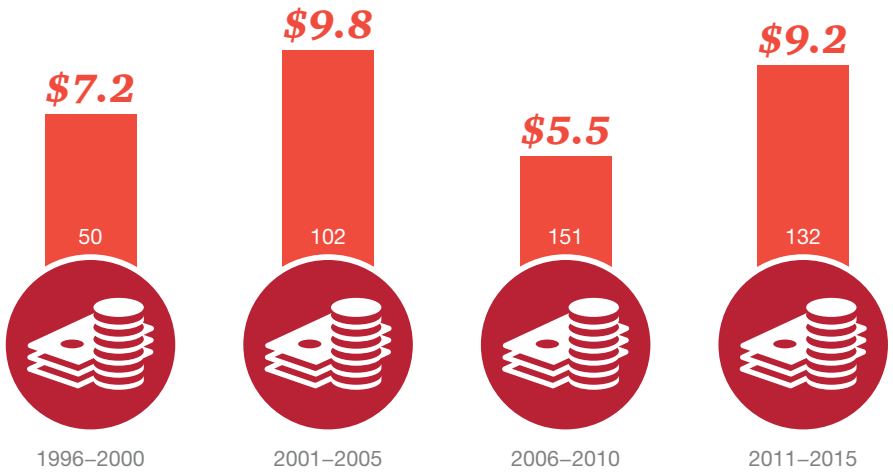
Median damages awarded (in $M)



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

Fig 5b: Median damages award (excluding summary and default judgments)

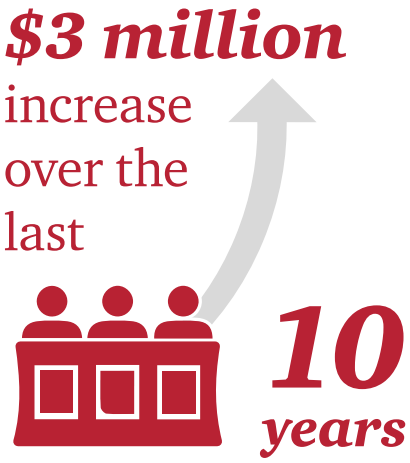
Median damages awarded (in $M)



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

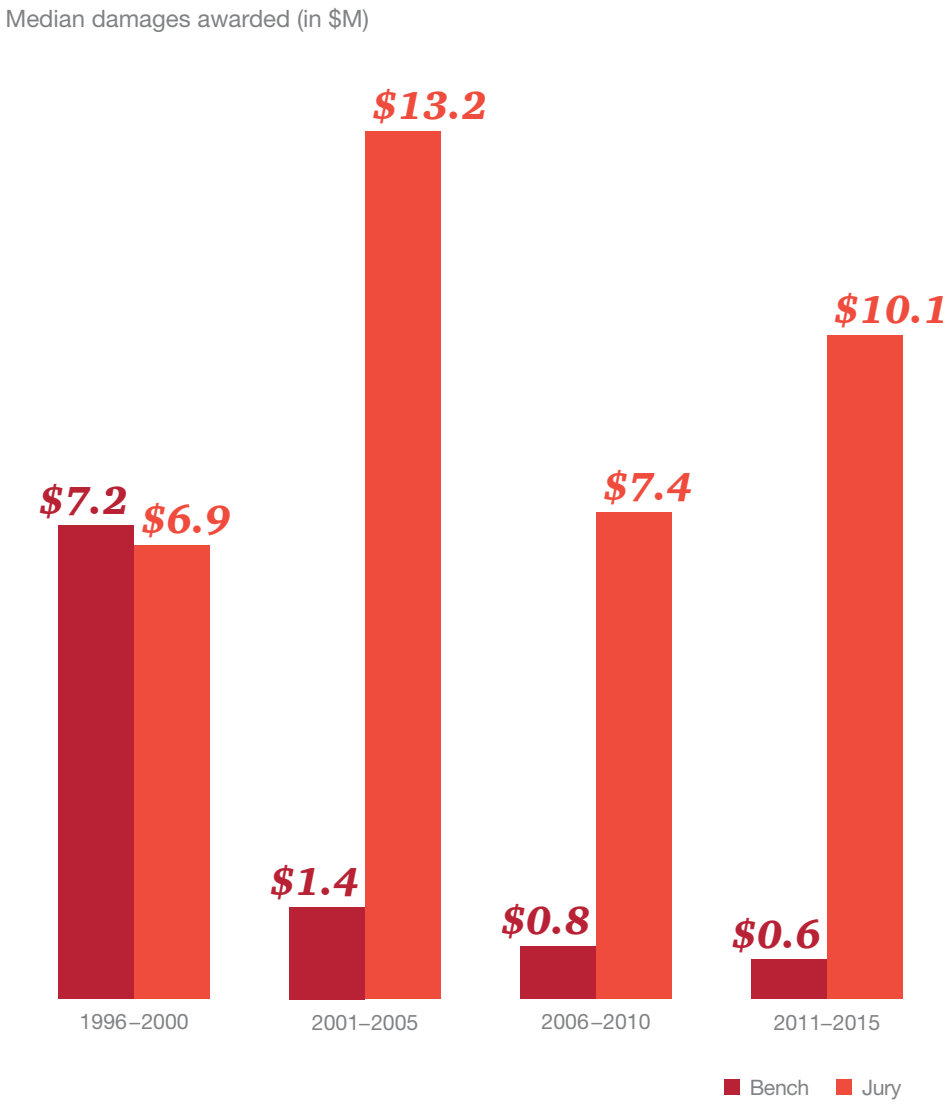
Median jury awards substantially outpace bench awards

Since 2000, median jury awards have been significantly greater than median bench awards. This growing gap reflects the fact that large-value cases are almost always tried by juries.



Patent litigation activity may have slowed, but median damages are going up, which means companies are feeling more pressure than ever to get their litigation strategy right.

Fig 6: Median damages award: bench vs. jury decisions



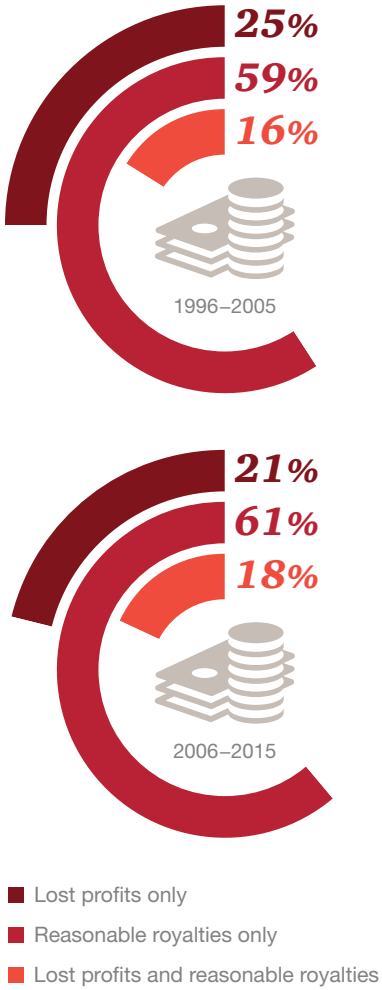
Reasonable royalties

How are patent holders most often compensated for infringement?

Among practicing entities, reasonable-royalty-only awards continue to be the type of damages most frequently awarded in patent cases—at almost triple the frequency of lost-profits-only awards. Hybrid awards, where both lost profits and reasonable royalties are awarded together, continue to be the exception. There are several reasons why lost profits damages are not as common as reasonable royalties:

- Even patentees eligible for lost profits awards might eschew lost profits claims. Patent holders may not want to risk disclosing the proprietary cost and profit information necessary for the calculation of lost profits.
- Lost profits entitlement can be more difficult to establish. The proliferation of competition and specialized distribution channels provides greater access to substitute products; therefore, even without an alleged infringer's products on the market, consumers may not have purchased the patentee's product.
- Damages awards for price erosion claims have become almost nonexistent in recent years. The cost and complexity of price erosion analyses have reduced the recovery (and likely the pursuit) of price erosion claims.

Fig 7: Composition of damages awards (practicing entities only)



Apportionment: A challenge for over 125 years

What portion of a multi-faceted accused product's sales are attributable to the accused patent-infringing components? Apportionment is a question parties have had to consider since the Supreme Court's ruling in *Garretson v. Clark* in 1884. Recently, the courts have refocused their attention on how damages expert opinions consider apportionment of value between patented and unpatented elements of the complex products that are typically central to many patent infringement disputes. The Federal Circuit has specifically cited "market studies" and "consumer surveys" as potential methods to empirically determine whether—and to what extent—a patented feature is driving consumer demand for an end product.

Conjoint analysis involves the application of statistical analysis to consumer survey evidence to glean consumers' willingness to pay for individual product features. Expert opinions based on conjoint analysis have been used in several recent large patent disputes—including for instance *Apple v. Samsung*; *Oracle v. Google*; and *Microsoft v. Motorola*. However, its importance to such high-profile, large-stakes cases draws heavy scrutiny, and will usually face a challenge on admissibility.

Conjoint analysis can meet the standards for admissibility under Federal Rules of Evidence 702, provided the expert is careful to gather sufficient data in an unbiased manner and to apply it reliably to the facts and circumstances of the case at hand.

Fee shifting in patent cases: How has the landscape evolved?

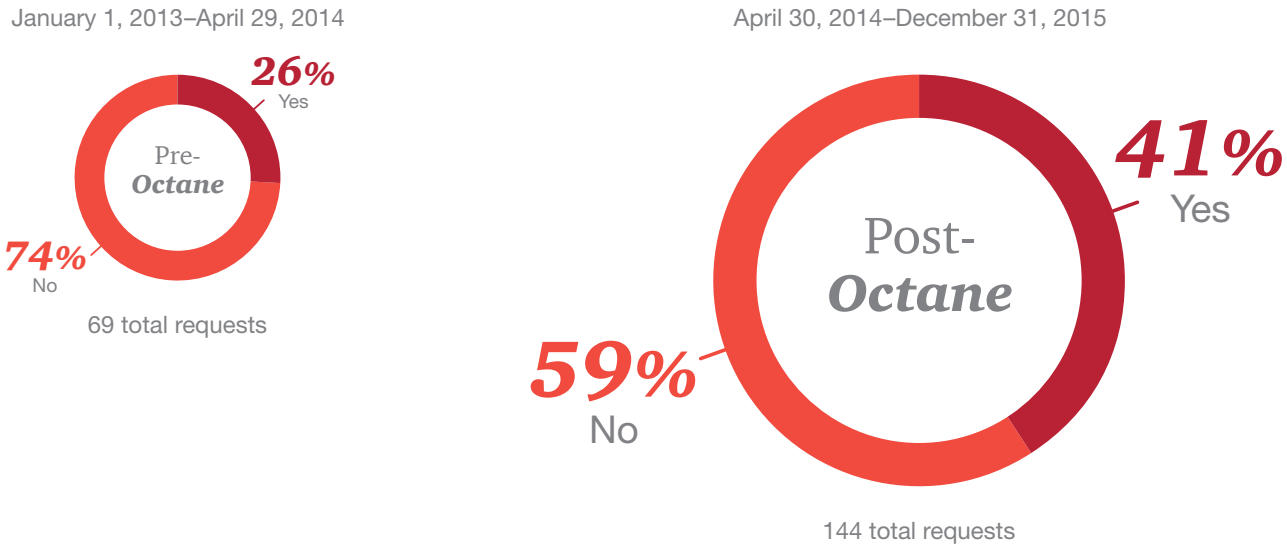
An area that has attracted significant attention in recent years is the application of 35 U.S.C. 285, which allows the court to award reasonable attorneys' fees and costs to the prevailing party in patent litigation. The discussion has focused on the merits of "fee shifting"—making the loser pay the legal costs of litigation. The general consensus is that the Supreme Court's 2014 decisions in *Octane Fitness v. ICON Health & Fitness* and *Highmark v. Allcare Health Mgmt. Sys.* made fee shifting in patent litigation easier.

To study trends in the awarding of attorneys' fees, and the impact of these decisions, PwC analyzed patent decisions between January 1, 2013 and December 31, 2015 that reference 35 U.S.C. 285 (as reported by LexisNexis). This provided a relatively balanced data set prior to (about 16 months) and after (about 20 months) the *Octane* and *Highmark* decisions. We focused solely on those cases where a decision on the merits of awarding attorneys' fees was made (as opposed to analyzing all requests, including open and dismissed claims).

Since April 29, 2014 (the date of these twin Supreme Court decisions), there has been a significant rise in both the percentage of attorneys' fees awards granted under 35 U.S.C. 285, and the total number of times attorneys' fees are awarded. As indicated by the charts, the percentage of attorneys' fees awards granted in the 16 months prior to *Octane* and *Highmark* was 26%, which jumped significantly in the subsequent 20 months to 41%. The average number of fees award decisions also increased from about 4 per month to 7 per month.

Our data indicates that the median attorneys' fees awarded was approximately $0.3 million post-*Octane* and *Highmark* while the maximum amount awarded in fees during this time frame was $12.5 million. Furthermore, post-*Octane* and *Highmark*, the median attorneys' fees awarded represented 82% of the median amount requested.

Fig 8: Attorneys' fees awards pre- and post-*Octane*



Median fees awarded post-*Octane*.....$0.3M
Median % of fee request awarded post-*Octane*.....82%

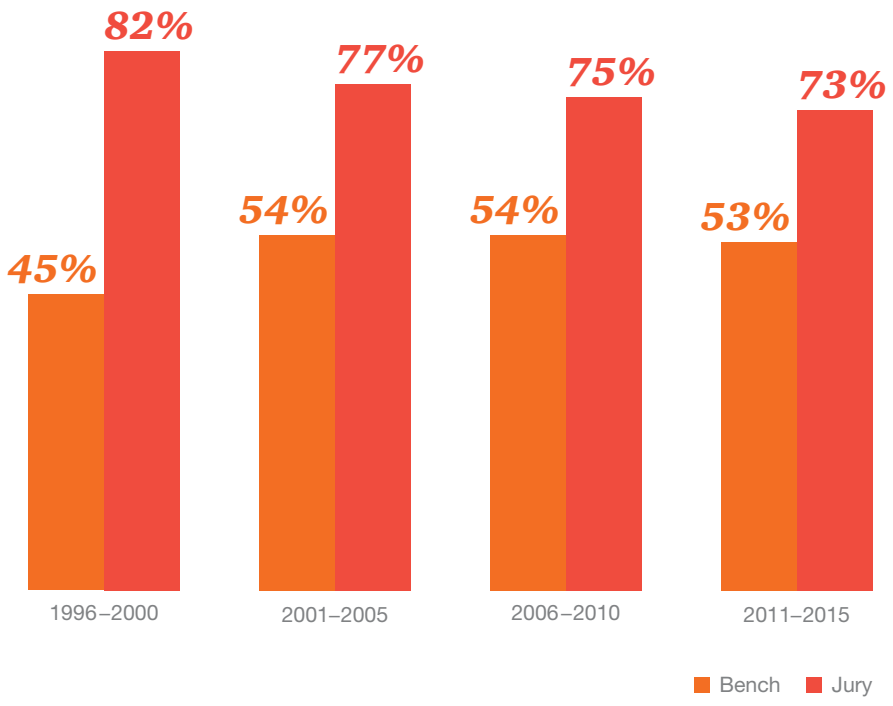
Success rates

Jury vs. bench success gap narrows

Over the last 20 years, patent holders have experienced higher trial success rates with juries than with the bench. However, the margin between bench and jury success rates has narrowed slightly over time, mainly due to the ongoing decline in jury success rates, whereas the bench success rate has remained steady.

Although patentees' success rates with juries has declined over the last 15 years, they are still substantially higher than with the bench. This success gap is even more pronounced for NPEs.

Fig 9: Trial success rates: bench vs. jury



Success rates vary by type of entity and stage of decision

Over the last 20 years, the overall success rate for practicing entities remains about 10% higher than that for NPEs, although the gap in success rates narrows at trial as compared to summary judgment.

Practicing entities are much more successful with judges

Practicing entities find greater success in bench decisions than NPEs, but both practicing entities and NPEs have been significantly more successful when juries decide their cases. The 16% premium in bench decisions success rates for practicing entities over NPEs shrinks with jury decisions, to 6%.

Fig 10: Patent holder success rates: 1996–2015

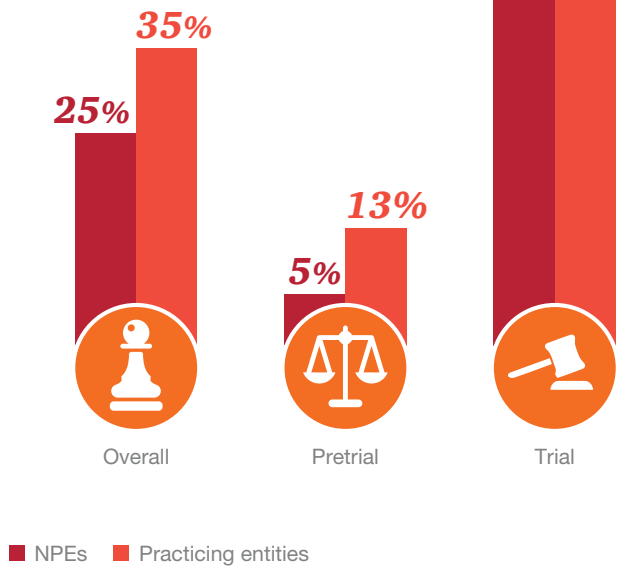
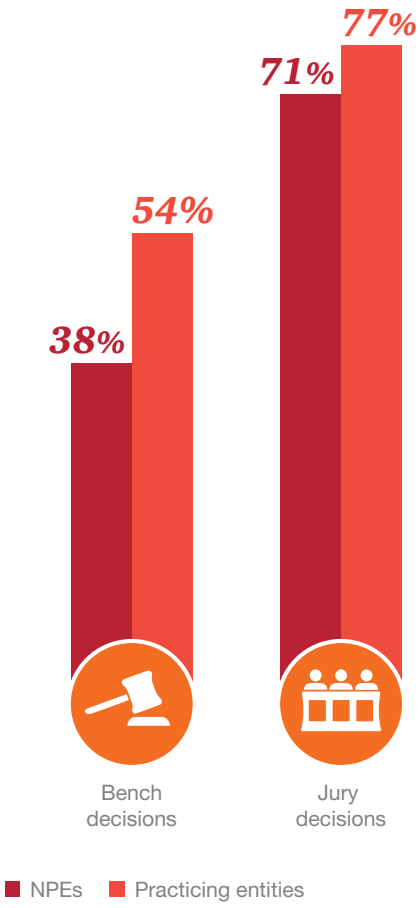


Fig 11: Patent holder success rates at trial: 1996–2015



Practicing entities and NPEs

Disparity between NPE and practicing entity damages continues to grow

Our analysis shows the continuation of a trend that began in the early 2000s: much higher damages awarded to NPEs relative to practicing entities. The NPE median damages award has grown to almost 3x the median for practicing entities in the most current five-year period.

Damages awards are almost

3x greater for NPEs

Fig 12: Median damages award: NPEs vs. practicing entities

Median damages awarded (in $M)

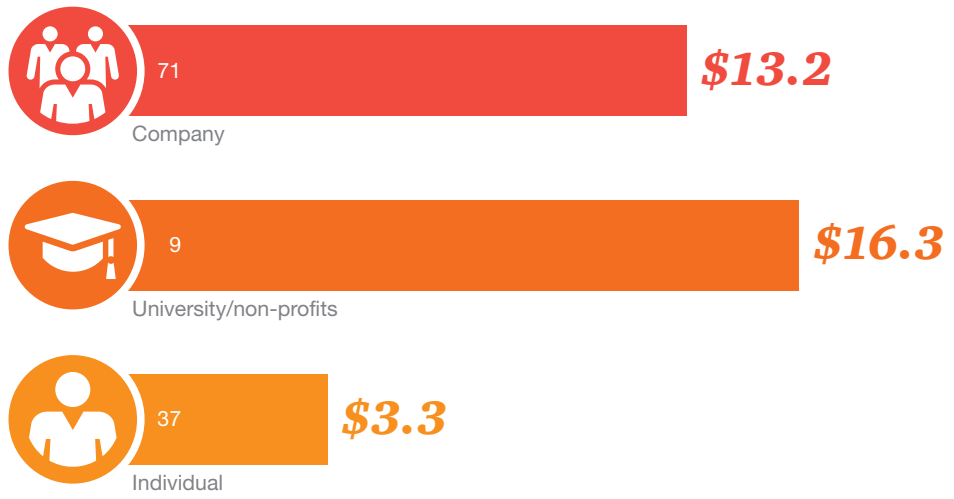
The median damages award for NPEs was significantly higher, while practicing entities enjoyed higher success rates and slightly shorter median time-to-trial.

We further analyzed NPE litigation by NPE type:

1. Companies/for-profit organizations
2. Universities/non-profit organizations
3. Individuals/inventors

We found that universities/non-profits lead in both median damages award and overall success rates, although they comprise a minority of NPE cases.

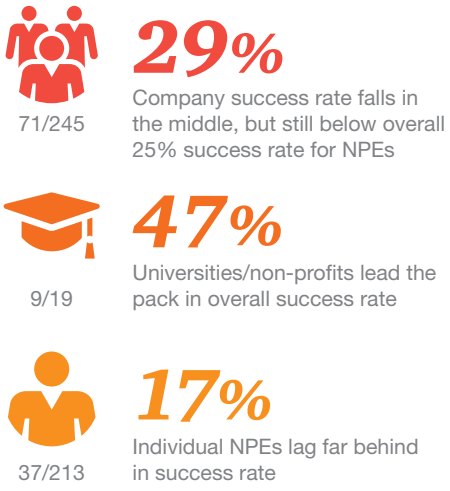
Fig 13: Patent holder median damages award by NPE type: 1996–2015



The number of cases is indicated within the respective row.

Universities/non-profits do ***not*** litigate ***as often*** as other NPE types; however, when they ***do***, they have ***both higher success rates*** and ***median damages***.

Fig 14: Patent holder success rates by NPE type: 1996–2015



The number of cases is indicated below each graphic.

Fig 15: Key statistics for practicing entities and NPEs: 1996–2015

	Median time-to-trial (in years)	Overall success rate	Median damages award
NPEs	2.6	25%	$10,278,804
Practicing entities	2.3	35%	$4,951,934

Industry analysis

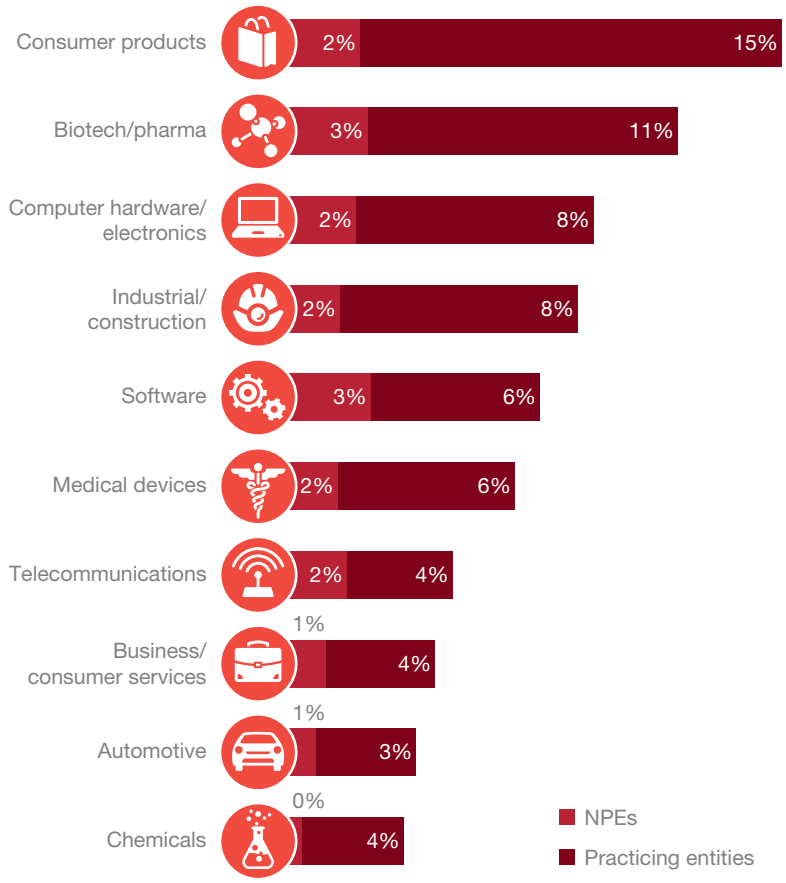
Since ***1996***, consumer products represented ***17%*** of all identified patent cases

Our research shows that the ten most active industry classifications (out of 20) collectively account for almost 90% of identified decisions. Patent cases associated with the consumer products industry were most prevalent, relating to products such as:

- diapers
- infant carriers
- cosmetic palettes
- coffee cartridges

Over our years of tracking industry statistics, biotech/pharma and software industries have risen in prevalence, whereas industrial/construction, medical devices and business services have declined.

Fig 16: Distribution of cases: top ten industries: 1996–2015



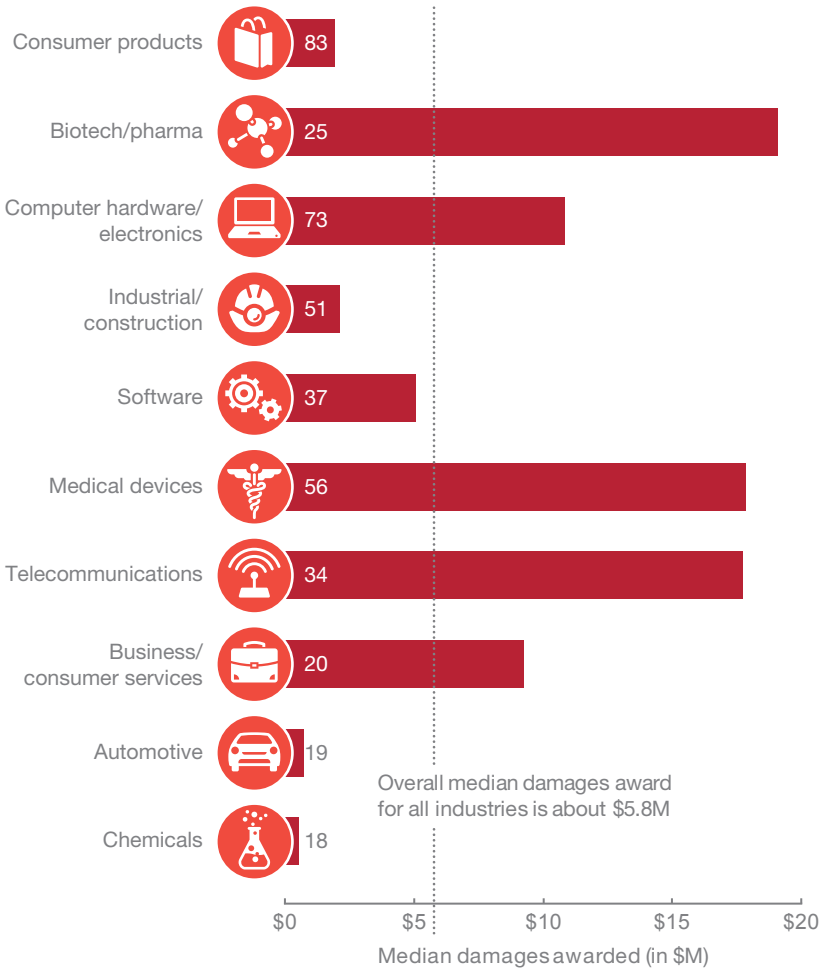
Biotech/ pharma

highest median damages awards

While patents associated with the consumer products industry represented the largest percentage of identified decisions, their median damages award was relatively low compared to those of the nine other most active industries.

Patented technology associated with the biotech/pharma, medical devices and telecommunications industries experienced a significantly higher median damages award than other industries.

Fig 17: Median damages award: top ten industries: 1996–2015



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

Intellectual property disputes and Daubert *standards*

Expert witnesses are critical to many types of litigation matters—but particularly so in intellectual property disputes, where technical and financial experts play an essential role. A successful challenge to your expert's opinion under the *Daubert* standards can result in partial or total exclusion of the opinion—jeopardizing or, at worst, completely derailing your litigation. PwC's *Daubert* Study focuses on trends and outcomes in *Daubert* challenges to financial experts between 2000 and 2015, and provides insight into why experts were excluded. The *Daubert* Study found that in 2015, intellectual property disputes resulted in the greatest number of challenges to financial experts. Further ringing the alarm bells, over the last 16 years, the exclusion rates of financial experts have been highest in intellectual property matters, as well as in product liability cases. "Lack of reliability", either on its own or in combination with other factors, has consistently been the main reason for financial expert witness exclusions since 2000.

These insights underscore the importance of identifying and working with the right financial expert—particularly as litigants and federal courts grapple with the complicated financial and damages issues that are so prevalent in intellectual property disputes.

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The growing threat of trade secret theft

PwC's *Global Economic Crime Survey*[2] analyzed the economic crime experiences and feedback from more than 6,000 respondents across the globe, and found that theft of trade secrets and intellectual property (IP) still runs rampant. In the US, of those that have experienced economic crime in the past two years, 15% have suffered IP infringement. These rates are double those of global experiences of IP theft (7% in 2016).

Undoubtedly, transfer-of-wealth/intellectual property attacks are one of the most lethal economic crimes that can befall an organization. The theft of critical IP—trade secrets, product information, negotiating strategies and the like—can be called "extinction-level events."

Damages could extend to the billions of dollars, and include the destruction of an entire line of business, a company, or even a larger economic ecosystem.

PwC and the Center for Responsible Enterprise and Trade (CREATe)[3] collaborated to develop a multilevel framework for private sector organizations to analyze their trade secret portfolios.

It is in every company's self-interest to improve trade secret protection and to use their leverage to encourage the companies they work with to do the same. Protecting trade secrets and IP is paramount to an organization's success—and its very survival. See related insights here:

PwC's Global Economic Crime Survey 2016—US Results:

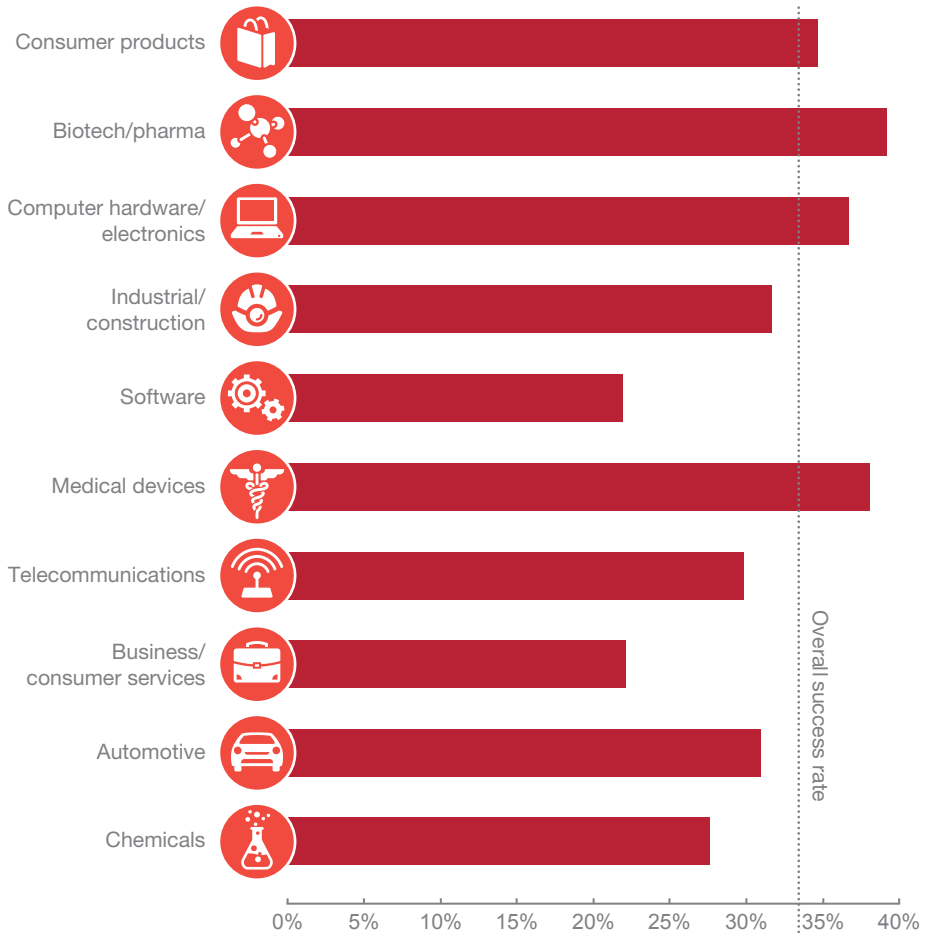
Economic Impact of Trade Secret Theft:

1. **Identify and categorize trade secrets**
2. **Threat actor and vulnerability assessment**
3. **Relative value ranking**
4. **Economic impact analysis of threat event**
5. **Secure trade secret portfolio**

Success rates fairly consistent across industries

While the overall success rate (trial and summary judgment combined) for all industries during the 20-year study period was approximately 33%, holders of patents related to the consumer products, biotech/pharma, computer hardware/electronics and medical devices industries achieved success rates higher than the overall median.

Fig 18: Patent holder success rates: top ten industries: 1996–2015



[2] PwC's *Global Economic Crime Survey* 2016. PwC, 2016.
[3] Economic Impact of Trade Secret Theft. CREATe.org and PwC, 2014.

Judge and district comparisons

Across districts: results may vary

Certain jurisdictions (particularly Delaware, Texas Eastern, Virginia Eastern, and Wisconsin Western) continue to be more favorable venues for patent holders, with shorter time-to-trial, higher success rates and greater median damages awards.

The table below presents the 15 most active districts and their categorical rankings for each of these metrics, with the overall ranking based on a simple average of the three scores.

The overall ranking of the districts remained relatively stable, with the top five districts in terms of favorability to patent holders staying the same. Delaware overtook Virginia Eastern this year to claim the #1 spot.

Fig 19: District court rankings: 1996–2015

Overall rank	District	Median time-to-trial (in years)	Rank	Overall success rate	Rank	Median damages award	Rank
1	Delaware	2.0	4	40%	4	$17,000,000	3
2	Texas Eastern	2.3	6	54%	1	$9,402,274	5
3	Virginia Eastern	1.0	1	28%	10	$32,651,682	2
4	Wisconsin Western	1.1	2	37%	5	$7,997,380	6
5	Florida Middle	1.9	3	52%	2	$226,503	15
6	Texas Southern	2.0	5	21%	15	$58,017,546	1
7	New Jersey	2.7	11	36%	6	$16,507,459	4
8	Texas Northern	2.4	9	47%	3	$4,788,595	10
9	California Central	2.3	7	27%	11	$3,322,719	11
10	New York Southern	2.5	10	31%	7	$2,580,864	12
11	Massachusetts	3.6	14	30%	8	$6,152,537	7
12	California Northern	2.8	12	26%	12	$5,157,682	9
13	Florida Southern	2.4	8	24%	13	$386,519	14
14	Minnesota	2.9	13	30%	9	$2,498,695	13
15	Illinois Northern	3.7	15	23%	14	$6,080,118	8
	Overall (all decisions identified)	**2.4**		**33%**		**$5,779,003**	

The overall ranking for these courts are based on their relative ranking for each of the three statistical measures, equally weighted.

NPE decisions relatively concentrated in a handful of districts

Cases with NPEs as patent holders were concentrated in a few districts. The top five districts (out of 94 total) with the most identified decisions involving NPEs accounted for 45% of all such decisions—and the top ten districts accounted for 60%. The percentage of NPE decisions in the most active NPE districts continues to increase, indicating continued concentration of NPE cases in certain courts. The districts with the most identified NPE decisions, however, present a mixed message in relative NPE success rates.

Texas Eastern, with the most identified NPE cases by far, also has one of the highest success rates, almost double the NPE average. However, the next two districts in NPE case counts yielded significantly lower success rates than the overall NPE average.

While NPE litigation has become widespread, our data shows that NPEs continue to target a very small and select group of districts, with mixed success.

Fig 20: District courts with most identified decisions with NPE as patent holder: 1996–2015

District	Decisions involving NPEs	Total identified decisions	NPE % of total decisions	NPE success rate
Texas Eastern	66	165	40%	48%
Illinois Northern	39	151	26%	13%
California Northern	39	196	20%	13%
Delaware	37	248	15%	27%
New York Southern	32	137	23%	16%
California Central	21	103	20%	33%
Massachusetts	15	80	19%	27%
Florida Southern	12	41	29%	17%
Virginia Eastern	12	61	20%	17%
Texas Southern	11	53	21%	9%
Texas Northern	11	38	29%	64%
Pennsylvania Eastern	10	32	31%	20%
Florida Middle	10	42	24%	50%
All identified decisions	**477**	**2,281**	**21%**	**25%**

Includes districts with 10 or more identified decisions involving an NPE as the patent holder.

Statistics by judge

We also captured information on the active presiding judges in identified patent litigation disputes.

The median damages award in cases presided over by seven of these judges significantly exceeds the overall median damages award, possibly indicating that larger disputes tend to be handled by more experienced judges.

Interestingly, patent holder success rates for seven of these judges also exceeds the overall 33% success rate, particularly in the Eastern District of Texas, whose judges' overall success rates are roughly twice the national average.

Fig 21: Most active district court judges: 1996–2015

Rank	Judge last name	Judge first name	District	Identified decisions	Identified trial decisions	Median damages award	Overall success rate	Median time-to-trial (in years)
1	Robinson	Sue	Delaware	79	42	$21,922,403	34%	1.9
2	Sleet	Gregory	Delaware	38	30	$34,120,392	50%	1.9
3	Stark	Leonard	Delaware	29	16	$16,017,824	52%	3.1
4	Gilstrap	Rodney	Texas Eastern	20	15	$15,000,000	55%	2.6
5	Clark	Ron	Texas Eastern	15	13	$6,957,610	73%	1.8
6	Huff	Marilyn	California Southern	12	6	$42,897,464	42%	2.1
7	Montgomery	Ann	Minnesota	12	2	$2,644,176	42%	2.9
8	Young	William	Massachusetts	11	3	$237,127	18%	1.7
9	Darrah	John	Illinois Northern	11	3	$10,312,017	9%	3.5
10	Alsup	William	California Northern	11	4	$19,414,174	9%	1.6

A look at appeals

Summary appellate statistics

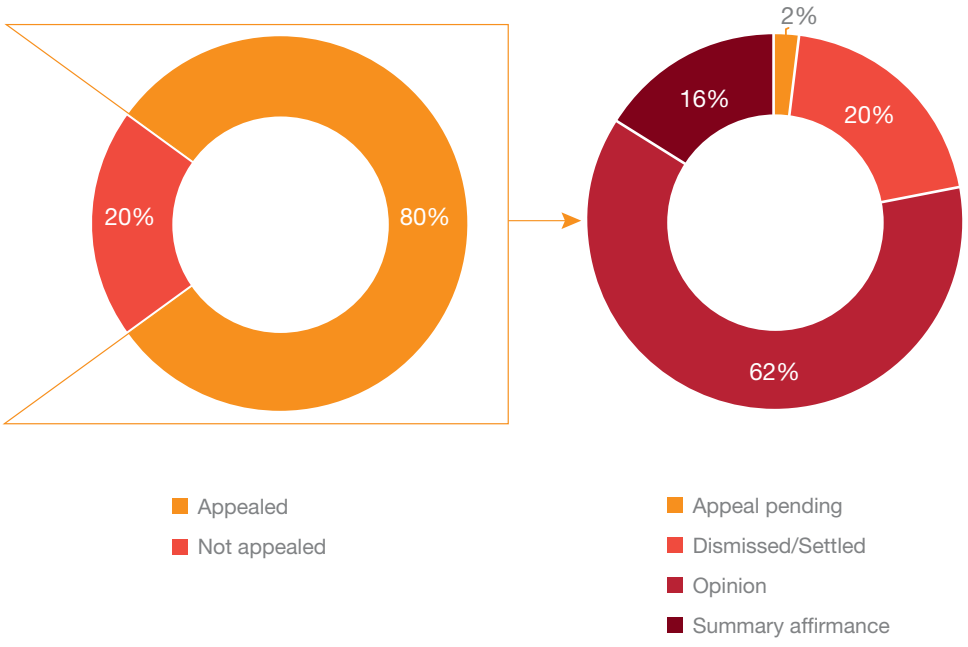
Our analysis of appellate outcomes in patent litigations from the Federal Circuit began with district court decisions originally tried between 2006 and 2013.

We selected this period to ensure that the majority of cases appealed had reached a conclusion at the Federal Circuit. We then researched the appellate status of such cases through December 2015.

The District Court decision is the first step on a long road. Over 4/5 of these decisions are appealed, and more than half of appeals overturn one or more aspects of the lower court's decision.

Appeals were lodged in 80% of the cases we analyzed—with over three-quarters of appeals having reached a conclusion in the form of an opinion or summary affirmance (where the Federal Circuit upheld the district court decision without further explanation or discussion).

Fig 22: Status of district court cases: 2006–2013 decisions



Almost

30% of ***district court cases*** are ***appealed*** by ***both*** parties

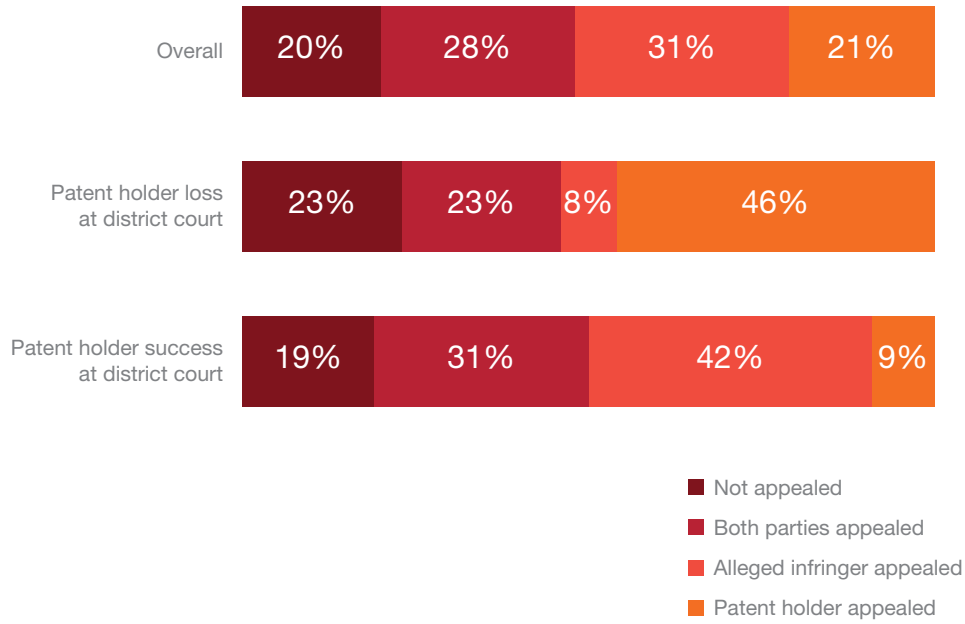
The grass is always greener? Both winners and losers continue to appeal to the Federal Circuit

Our study found that post-trial, the alleged infringer appeals more often overall (31% individually) than the patent holder (21% individually). Patent holders win more often at trial (65% trial win rate in 2006–2015), and thus have less reason to appeal than the "loser".

The perspective of who won and who lost at trial gives a more nuanced view of frequency of appeals by side.

- ***"Losers"***: Based on our data, losing patent holders appeal more often (46% individually) than losing alleged infringers (42% individually).
- ***"Winners"***: 9% of successful patent holders and 8% of successful alleged infringers appeal individually. This demonstrates that even a favorable outcome at the district court can leave a party not fully satisfied—whether on issues involving the patent claims, product and territory coverage, damages awarded, pre-/post-judgment interest, enhanced damages, or permanent injunction.

Fig 23: Appeals after district court decisions: 2006–2013



Appellate outcomes: a mixed bag

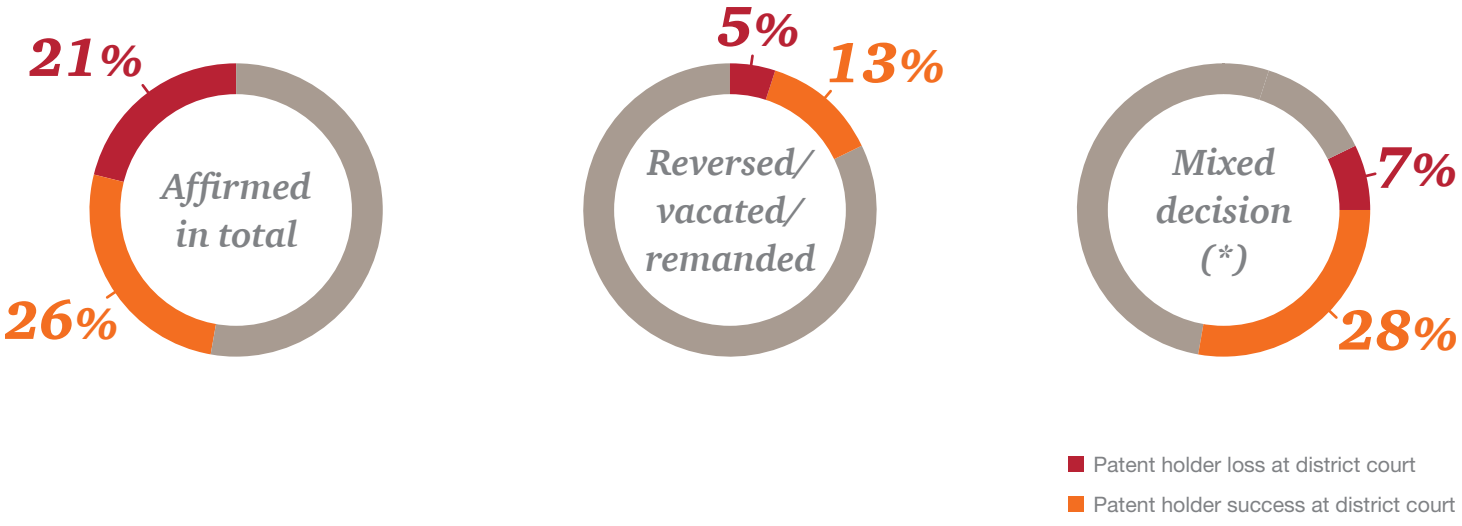
Our analysis shows that 35% of appealed patent infringement cases were mixed decisions; some aspects of the appeal were affirmed while others were reversed, remanded or vacated. Additionally, almost half of cases were affirmed in total and 18% were entirely reversed, vacated and/or remanded.

In total, roughly half of appealed cases are affirmed (47%) and half are modified in some regard (53%); however, the likelihood of any given appeal outcome varies according to which party won or lost the initial district court case.

53%

of appealed cases are ***modified*** in some regard

Fig 24: Appeal outcome by success of patent holder in district court: 2006–2013



(*) Mixed decisions are decisions in which the appeal was both affirmed in part and reversed, vacated or remanded in part.

Methodology

To study the trends related to patent decisions, PwC identified final decisions at summary judgment and trial recorded in two Lexis Advance databases, US District Court Cases and Jury Verdicts and Settlements, as well as in corresponding docket entries from LexisNexis CourtLink.

The study identified 2,281 district court patent decisions issued since 1996. Some figures cited in this study have been rounded, therefore totals may not equal the sum of their components.

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 at summary judgment.
- ***Cases decided at trial*** include those district court patent infringement cases where a decision was rendered by a judge or jury after trial.
- A ***success*** includes instances where a liability 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 an entity that does not have the capability to design, manufacture, or distribute products with features protected by the patent.
- ***Median damages*** have been adjusted for inflation to 2015 US dollars.

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