

Case Outcomes

The complicated, but necessary, process of determining wins and losses in federal patent cases.

INSIDE CASE OUTCOMES

A peek behind the curtain

Patent litigation can be messy and confusing, overwhelming even to the most experienced of judges and practitioners. To parse out the wins and losses, knowledge of case management, claim construction, patent determinations, transfers, consolidations, severances and stays is vital. Breaking cases down to the accusation level is a necessary step in the classification of winners and losers. Docket Navigator's case and accusation outcome model described in this report ensures the most complete and accurate reporting of litigation wins and losses possible.

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IN THE NEWS

"I have had too many demos where vendors had no good explanation for how mixed outcomes are dealt with in their systems. We are all on an analytics learning curve and I really love it when a vendor addresses a hard issue and makes it easy for users to understand how to use the product and interpret what they are seeing."

-Jean O'Grady

Senior Director Research Knowledge at DLA Piper
Editor and Author of Dewey B Strategic

[VIEW ARTICLE](#)

WHAT ARE ACCUSATIONS?

Accusations are similar in concept to a “cause of action” or a “claim for relief.” They have three basic components.

The **FIRST COMPONENT** of an Accusation is the **Patentee**; the party that claims a right to enforce the patent at issue. The **SECOND COMPONENT** is the **Patent Number** of the patent asserted by the Patentee. The **THIRD COMPONENT** is the party that is either accused of infringement or is challenging the validity or enforceability of the patent. In either scenario, this party is called the **Patent Challenger**.

The example above is of *one* Accusation -- *one* **PARTY** asserting *one* **PATENT** against one other **PARTY**. But what if there are multiple parties, and/or multiple patents? Here is an example of what the Accusations look like in a case that has *one* Patentee asserting *three* patents against *two* Patent Challengers:

Here is an example of how that appears in Docket Navigator:

PATENTEE	PATENT	PATENT CHALLENGER
Eighth Street Solutions LLC	10503418	Sophos Group PLC

PATENTEE	PATENT	PATENT CHALLENGER
5th Street Solutions LLC	10503419	Poly Group PLC
5th Street Solutions LLC	10503419	Poly Limited
5th Street Solutions LLC	8664924	Poly Group PLC
5th Street Solutions LLC	8664924	Poly Limited
5th Street Solutions LLC	7600661	Poly Group PLC
5th Street Solutions LLC	7600661	Poly Limited

WHY NOT USE "PLAINTIFF" & "DEFENDANT"?

Using descriptive terms allows a common designation for party roles across all types of cases. In U.S. district court cases plaintiffs are often, but not always, Patentees. Declaratory judgment plaintiffs are Patent Challengers and the defendants in those cases are Patentees. Some cases involve counterclaims of infringement, which could make a defendant both Patent Challenger and Patentee. In addition, patent litigation can occur in the PTAB and the ITC and those agencies use different terms to identify the parties.

THE NEXT STEP: "ACCUSATION OUTCOMES"

Outcomes indicate whether the Accusation was resolved in the Patent Challenger's favor, the Patentee's favor, via settlement, or in a non-merits decision. Here is what the Accusations might look like once all questions of liability have been answered and Outcomes are applied.

PATENTEE	PATENT	PATENT CHALLENGER	OUTCOME
5th Street Solutions LLC	10503419	Poly Group PLC	Settled/Voluntarily Dismissed
5th Street Solutions LLC	10503419	Poly Limited	Patentee Won
5th Street Solutions LLC	8664924	Poly Group PLC	Settled/Voluntarily Dismissed
5th Street Solutions LLC	8664924	Poly Limited	Patent Challenger Won
5th Street Solutions LLC	7600661	Poly Group PLC	Settled/Voluntarily Dismissed
5th Street Solutions LLC	7600661	Poly Limited	Non-Merits Dismissal

WHEN ARE OUTCOMES ENTERED?

Outcomes are assigned when an accusation has been resolved. In U.S. district courts that occurs once the court determines liability, which consists of three components:

- I. an act of infringement
- II. of a valid patent,
- III. that is enforceable.

If **all 3** of these elements are resolved **in the Patentee's favor**, then liability has been established. If one or more elements are resolved **against the Patentee**, nonliability has been established.

If no element has been resolved against the Patentee and **any one** of the elements remain open and disputed, **there has not been a determination of liability** and that accusation remains *unresolved*.

In ITC investigations the Outcomes are entered when the agency determines whether a violation of 19 U.S.C. § 1337 occurred. In PTAB proceedings, the Outcome indicates the resolution of the Accusation with respect to the patentability of the challenged patent.

DETERMINING WHEN AN ACCUSATION HAS AN OUTCOME IS NOT ALWAYS CLEAR, AND CAN BE DISPUTED.

MEMO ENDORSED ORDER terminating 708 Motion to Amend/Correct. ENDORSEMENT:

1. There is no need for the court to read the issue of obviousness because I have already invalidated the patent on other grounds. I have adjudicated every claim – I have invalidated the patents. They are no longer valid patents. Nothing requires me to decide whether an Invalid patent is invalid on every asserted ground.
2. You cannot infringe an invalid patent. There is nothing to infringe. I would think that was obvious.

I refuse to “pretend” that there is a valid patent to infringe and make findings as though there were one. In fact, I am DONE making findings.

If anyone thinks the judgment needs to be amended, submit away.

(Signed by Judge Colleen McMahon on 9/16/2020) (mml) (Entered: 09/16/2020)

Ferring Pharmaceuticals Inc. et al v. Serenity Pharmaceuticals, LLC et al, SDNY-1-17-cv-09922, #710

DEFINING OUTCOMES

WHAT IS A PATENTEE WIN?

If the Patentee succeeds in establishing liability (infringement of a valid, enforceable patent), this is considered a win for the Patentee.

WHAT IS A PATENT CHALLENGER WIN?

If the Patent Challenger succeeds in establishing that a patent is invalid, unenforceable, or not infringed, this is considered a win for the Patent Challenger.

WHAT IS A NON-MERITS DISMISSAL?

If the accusation is dismissed on procedural grounds such that the issues of infringement, validity or enforceability are never reached, this is considered a non-merits dismissal. Common examples include Rule 12 motions.

WHAT IS A SETTLED/VOLUNTARY DISMISSAL?

If the parties settle, or if a component of an Accusation is voluntarily withdrawn or dropped from the case, and the decision to do so was not prompted by an unfavorable ruling, this is classified as Settled/Voluntarily Dismissed.

HERE ARE SOME COMMON OUTCOMES SCENARIOS:

ESSENCE OF COURT/AGENCY ORDER	HAS AN OUTCOME OCCURRED?
The Patent Challenger infringed, but other defenses such as invalidity, or enforceability, (laches, equitable estoppel, inequitable conduct, etc.) remain unresolved.	No. The court has not resolved validity or enforceability. The Patentee has won on one element (infringement) but still has two to go.
The Patent Challenger's defense(s) fail, but infringement remains unresolved.	No. The second or third elements have been resolved (or partially resolved) in the Patentee's favor, but the first element has yet to be determined.
The Patent Challenger does not infringe.	Yes. One element was resolved in the Patent Challenger's favor.
The asserted claims of the patent are invalid.	Yes. One element was resolved in the Patent Challenger's favor.
The patent is unenforceable due to inequitable conduct.	Yes. One element was resolved in the Patent Challenger's favor.
The court determines infringement, validity and enforceability (or the defenses were not asserted) either in a single order or a series of orders.	Yes. All elements were resolved in the Patentee's favor or were not disputed by the Patent Challenger.

WHAT ABOUT APPEALS?

The Outcomes described above reflect the final determination of accusations by a U.S. district court, the ITC or the PTAB. If an Outcome is subject to appeal, Docket Navigator records a separate appellate Outcome. If there is further appeal (*en banc* review or petition to the Supreme Court) or remand, Docket Navigator records additional Outcomes to show the progression at each stage of litigation. Here is what the Accusations might look like once all appeals and post-appeal proceedings are complete.

ACCUSATIONS			OUTCOMES		
Patentee	Patent	Patent Challenger	USDC	CAFC	Remand
5th Street Solutions LLC	10503419	Poly Group PLC	Settled/Voluntarily Dismissed	N/A	N/A
5th Street Solutions LLC	10503419	Poly Limited	Patentee Won	Affirmed	N/A
5th Street Solutions LLC	8664924	Poly Group PLC	Settled/Voluntarily Dismissed	N/A	N/A
5th Street Solutions LLC	8664924	Poly Limited	Patent Challenger Won	Reversed & remanded	Patentee Won
5th Street Solutions LLC	7600661	Poly Group PLC	Settled/Voluntarily Dismissed	N/A	N/A
5th Street Solutions LLC	7600661	Poly Limited	Non-Merits Dismissal	N/A	N/A

Please note: Processing of appellate and post-appellate Outcomes is a work in progress and is not yet viewable.

Complicated?

Maybe, but necessarily so.

You might ask why Accusations and Outcomes need such granular modeling.
Why does it have to be so complicated?

The answer is this - *The only way to really know who is winning and who is losing in patent litigation is by looking at each Accusation in the case.* Consider the example case above in which some Accusations were settled, some won by the Patentee, others by the Patent Challenger, and still others dismissed for non-merits reasons. Who "won" that case? That question is impossible to answer unless each Accusation is examined and assigned an Outcome.

THE FINAL STEP: CASE OUTCOMES

In a Patent Case, the phrase “Case Outcome” can be somewhat confusing. Some claims and counterclaims in the case may be won, others lost and still others settled, making it difficult to discern who “won” or “lost” the case. In Docket Navigator, Case Outcomes are based on Accusation Outcomes. Once all of the Accusations in a case are resolved, Accusation Outcomes can be applied. Docket Navigator then categorizes Cases into four classifications based on the mix of Accusation Outcomes in those Cases.

- **“Patentee Win”** includes cases with any of the following accusation outcomes:
 - Patentee Win
 - Non-Merits Dismissal (in declaratory judgment cases and PTAB cases)
- **“Patent Challenger Win”** includes cases with any of the following accusation outcomes:
 - Patent Challenger Win
 - Non-Merits Dismissal (in non-declaratory judgment cases)
- **“Mixed”** includes cases with a combination of the above types of outcomes.
- **“Settled/Voluntarily Dismissed”** includes cases with only settled or voluntarily dismissed accusation outcomes.

Here is what the Case Outcomes might look like once all appeals and post-appeal proceedings are complete.

Case	Patentee	Asserted Patent	Patent Challenger	Accusation Outcome	Case Outcome
Case 1	Company A	Patent Z	Company B	Patentee Win	Mixed
			Company C	Patent Challenger Win	
		Patent Y	Company B	Patentee Win	
			Company C	Patentee Win	
Case 2	Company D	Patent X	Company E	Patentee Win	Patentee Win
			Company F	Patentee Win	
			Company G	Settled	
Case 3	Company D	Patent W	Company H	Non-Merits Dismissal	Patent Challenger Win
			Company I	Settled	

Sounds great in theory, but how does it all shake out in real life?

Many litigation models make sense in a vacuum, but will they hold up in reality? Let's take a look at a few "real life" scenarios for each of the above described Case Outcomes.

REAL LIFE CASE OUTCOMES

PATENTEE WIN

In this consolidated case, Teva and its affiliates asserted one patent against Slayback, for a total of 3 accusations. The court found that the patent was not invalid and infringed, resulting in an overall win for the Patentees.

[VIEW CASE](#)

FILE ● Teva Pharmaceuticals International GMBH et al v. Slayback Pharma Limited Liability Company DDE-1-18-cv-00117								
FILTERS		OPTIONS	VIEW	PRINT	Accusations & Outcomes			3 Results
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Patentee	Patent	Patent Challenger	Outcome	Type of Document	Case Filing Date ▼	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Cephalon, Inc.	9572887	Slayback Pharma LLC	Patentee Won	Findings of Fact and Conclusions of Law	Jan. 19, 2018	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Eagle Pharmaceuticals, Inc.	9572887	Slayback Pharma LLC	Patentee Won	Findings of Fact and Conclusions of Law	Jan. 19, 2018	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Teva Pharmaceuticals International GmbH	9572887	Slayback Pharma LLC	Patentee Won	Findings of Fact and Conclusions of Law	Jan. 19, 2018	

PATENT CHALLENGER WIN

In this consolidated case, Nokia was the “winner” because all of the claims against them were decided by summary judgment of non-infringement:

[VIEW CASE](#)

FILE ● Traxcell Technologies, LLC v. Nokia Solutions and Networks Oy EDTX-2-17-cv-00044								
FILTERS		OPTIONS	VIEW	PRINT	Accusations & Outcomes			6 Results
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Patentee	Patent	Patent Challenger	Outcome	Type of Document	Case Filing Date ▼	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Traxcell Technologies, LLC	8977284	Nokia Solutions and Networks Oy	Patent Challenger Won	Motion for Summary Judgment -- Noninfringement	Jan. 12, 2017	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Traxcell Technologies, LLC	8977284	Nokia Solutions and Networks US LLC n/k/a Nokia of America Corporation	Patent Challenger Won	Motion for Summary Judgment -- Noninfringement	Jan. 12, 2017	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Traxcell Technologies, LLC	9510320	Nokia Solutions and Networks Oy	Patent Challenger Won	Motion for Summary Judgment -- Noninfringement	Jan. 12, 2017	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Traxcell Technologies, LLC	9510320	Nokia Solutions and Networks US LLC n/k/a Nokia of America Corporation	Patent Challenger Won	Motion for Summary Judgment -- Noninfringement	Jan. 12, 2017	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Traxcell Technologies, LLC	9642024	Nokia Solutions and Networks Oy	Patent Challenger Won	Motion for Summary Judgment -- Noninfringement	Jan. 12, 2017	
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Traxcell Technologies, LLC	9642024	Nokia Solutions and Networks US LLC n/k/a Nokia of America Corporation	Patent Challenger Won	Motion for Summary Judgment -- Noninfringement	Jan. 12, 2017	

REAL LIFE CASE OUTCOMES

MIXED

In this case, USAA asserted 5 patents against Wells Fargo. USAA won on 2 patents, lost on 2, and settled another. This led to the case being given a “Mixed” outcome:

[VIEW CASE](#)

FILE ● United Services Automobile Association v. Wells Fargo Bank, N.A. EDTX-2-18-cv-00366									
EQ	FILTERS OPTIONS VIEW PRINT				Accusations & Outcomes				5 Results
☑	☑	Patentee		Patent	Patent Challenger	Outcome	Type of Document	Case Filing Date	☑
☑	☑	United Services Automobile Association		10013605	Wells Fargo Bank, NA	Patentee Won	Judgment (Judge)	Aug. 17, 2018	PDF
☑	☑	United Services Automobile Association		10013681	Wells Fargo Bank, NA	Patentee Won	Judgment (Judge)	Aug. 17, 2018	PDF
☑	☑	United Services Automobile Association		8392332	Wells Fargo Bank, NA	Patent Challenger Won	Motion for Summary Judgment -- Patent Invalid	Aug. 17, 2018	PDF
☑	☑	United Services Automobile Association		8708227	Wells Fargo Bank, NA	Settled/Voluntarily Dismissed	Motion to Dismiss - Voluntary Dismissal (FRCP 41(a))	Aug. 17, 2018	PDF
☑	☑	United Services Automobile Association		9224136	Wells Fargo Bank, NA	Patent Challenger Won	Motion for Summary Judgment -- Patent Not Invalid	Aug. 17, 2018	PDF

SETTLED

In this consolidated case, Traxcell asserted 3 patents against Huawei. Huawei settled before things got messy, resulting in their case being classified as Settled, even though other cases in the consolidation resulted in wins and losses for the remaining parties:

[VIEW CASE](#)

FILE ● Traxcell Technologies, LLC v. Huawei Technologies USA Inc. EDTX-2-17-cv-00042									
EQ	FILTERS OPTIONS VIEW PRINT				Accusations & Outcomes				3 Results
☑	☑	Patentee		Patent	Patent Challenger	Outcome	Type of Document	Case Filing Date	☑
☑	☑	Traxcell Technologies, LLC		8977284	Huawei Technologies USA Inc.	Settled/Voluntarily Dismissed	Motion to Dismiss - Voluntary Dismissal (FRCP 41(a))	Jan. 12, 2017	
☑	☑	Traxcell Technologies, LLC		9510320	Huawei Technologies USA Inc.	Settled/Voluntarily Dismissed	Motion to Dismiss - Voluntary Dismissal (FRCP 41(a))	Jan. 12, 2017	
☑	☑	Traxcell Technologies, LLC		9642024	Huawei Technologies USA Inc.	Settled/Voluntarily Dismissed	Motion to Dismiss - Voluntary Dismissal (FRCP 41(a))	Jan. 12, 2017	

[See another party's win](#) in the Patent Challenger Won example above, which is in this same consolidation after Huawei was dismissed.

How to Find Accusation & Case Outcomes in Docket Navigator

HOW TO FIND ACCUSATION & CASE OUTCOMES IN DOCKET NAVIGATOR

WHEN VIEWING A CASE

Clicking a case name in Docket Navigator, or in a Docket Navigator email, opens the Case Profile for that case. The Summary tab contains both the Case Outcome and the underlying Accusation Outcomes for that case. It is a great way to see how a case was resolved without having to read through the entire docket.

FILE ● Boehringer Ingelheim Pharmaceuticals Inc. et al v. Sun Pharmaceutical Industries Ltd. et al DNJ-3-16-cv-01727

Summary

By The Numbers	Determinations	Remedies	Judges
Parties: 10	Infringed: 0	Damages: 0	Peter G. Sheridan ((District))
Filings: 28	Not unenforceable: 1	Permanent injunctions: 8	Tonianne J. Bongiovanni ((Magistrate))
Asserted Patents: 1	Not invalid: 1	Preliminary injunctions/TR..: 0	
Accusations: 24	Not infringed: 0		
Claim Constructions: 0	Unenforceable: 0		
	Invalid: 1		

This Case's Outcome: Patent Challenger Won

Patentees	Patent Challengers
Boehringer Ingelheim Corporation f/k/a Boehringer..	Mylan Inc.
Boehringer Ingelheim International GmbH	Mylan Laboratories Limited
Boehringer Ingelheim Pharma GmbH & Co. KG	Mylan Pharmaceuticals Inc.
Boehringer Ingelheim Pharmaceuticals Inc.	Sun Pharma Global FZE
	Sun Pharmaceutical Industries Inc.
	Sun Pharmaceutical Industries Limited f/k/a Ranbaxy..

Patent Challenger Won, Patent Challenger Won, Patent Challenger Won, Patent Challenger Won, Settled/Voluntarily Dismissed, Settled/Voluntarily Dismissed

HOW TO FIND ACCUSATION & CASE OUTCOMES IN DOCKET NAVIGATOR

WHEN VIEWING A PATENT

Clicking a patent number in Docket Navigator, or in a Docket Navigator email, opens the Patent Profile for that patent. The Summary tab contains both the overall patent performance and aggregated outcomes for the parties involved in that patent's accusations. It is a great way to see how a patent has performed in litigation without having to read through all of its cases.

The screenshot displays the Patent Profile for Patent 9549938, titled "Boron-containing small molecules". The interface includes navigation tabs (FILTERS, OPTIONS, VIEW, PRINT, RESET) and a "Summary" tab. The main content area is divided into three sections:

- Patent Performance:** A red-bordered box with a red header "OUTCOME" containing the text "Patent Performance" and "Unsuccessfully Litigated (Based on 7 Cases)".
- Party Litigation Outcomes:** A red-bordered box with a red header "OUTCOME" containing a table of outcomes for patentees and challengers.
- Firms Representing Patent Challengers:** A table listing law firms and their respective counts.
- Firms Representing this Patent's Patentees:** A table listing law firms and their respective counts.

Patent 9549938
Boron-containing small molecules

Inventors
Baker; Stephen J. (Collegeville, PA), Akama; Tsutomu (Sunnyvale, CA), Hernandez; Vincent S. (Watsonville, CA), Hold; Karin M. (Belmont, CA), Maples; Kirk (San Jose, CA), Plattner; Jacob J. (Berkeley, CA), Sanders; Virginia (San Francisco, CA), Zhang; Yong-Kang (San Jose, CA), Fieldson; Gregory T. (Morgantown, WV), Leyden; James J. (Malvern, CA)

OUTCOME

Patent Performance

Unsuccessfully Litigated

(Based on 7 Cases)

Party Litigation Outcomes
(aggregated from 7 cases)

Party	Outcome
Patentees	
Anacor Pharmaceuticals, Inc.	Lost
Patent Challengers	
Aleor Dermaceuticals Ltd.	Won
Amneal Pharmaceuticals LLC	Won
Apotex Corp.	Won
Apotex Inc.	Won
Ascent Pharmaceuticals, Inc.	Won
Aurobindo Pharma Limited	Won

Firms Representing Patent Challengers

Wilson Sonsini Goodrich & Rosati	3
Step toe & Johnson - WV PLLC	2
Richards Layton & Finger	2
Potter Anderson & Corroon	2
Carlson Caspers Vandenburg & Lindquist	2
Young Conaway Stargatt & Taylor	1
Shaw Keller	1
Rogowski Law	1
Polsinelli	1
Phillips McLaughlin & Hall	1
Morris James	1
Locke Lord	1

Firms Representing this Patent's Patentees

Williams & Connolly	3
Schrader Companion Duff & Law	2
Morris Nichols Arsht & Tunnell	2

HOW TO FIND ACCUSATION & CASE OUTCOMES IN DOCKET NAVIGATOR

WHEN COMPARING LAW FIRMS

Creating a Firm Comparison Report in Docket Navigator reveals a variety of data about firms, including their wins and losses in patent cases. The Outcomes Comparison tab displays Case Outcomes for the selected firms through an array of lenses such as Patent Challenger or Patentee representation, specific Technology Centers, or ANDA cases. The underlying Case Outcomes for each firm is also available in the same folder. It is a great way to see how law firms are performing in specific types of cases or venues.

The screenshot displays the 'Firm Comparison Report' interface in Docket Navigator. The main content area is titled 'Case Outcomes When Representing Patent Challengers' and shows three donut charts for Baker Botts, Finnegan Henderson Farabow Garrett & Dunner, and 'Outcomes for All Cases USDC'. The charts show the distribution of case outcomes: Patent Challenger Won (red), Patentee Won (blue), and Mixed Outcome (yellow). The 'Outcomes for All Cases USDC' chart also includes Patentees Won (orange).

Firm	Total Cases	Patent Challenger Won (%)	Patent Challenger Won Count	Patentee Won (%)	Patentee Won Count	Mixed Outcome (%)	Mixed Outcome Count
Baker Botts	46	91.30%	42	0%	0	6.52%	3
Finnegan Henderson Farabow Garrett & Dunner	47	91.49%	43	0%	0	6.38%	3
Outcomes for All Cases USDC	3,195	78.78%	2,517	15.77%	504	5.45%	174

The interface includes a sidebar with a navigation menu, a top navigation bar with 'FILE' and 'Firm Comparison Report', and a right-hand panel with filters for 'Representing' (Patentees, Patent Challengers), 'Forum Type' (USDC, ITC, PTAB), 'Courts' (All), 'Year of Termination' (2016-2020), 'Technology Center' (All), 'ANDA Cases' (ANDAs, Non-ANDAs), and 'Chosen Outcome Type' (Patent Challenger Won, Patentee Won, Mixed Outcome).

HOW TO FIND ACCUSATION & CASE OUTCOMES IN DOCKET NAVIGATOR

WHEN COMPARING LAW FIRMS

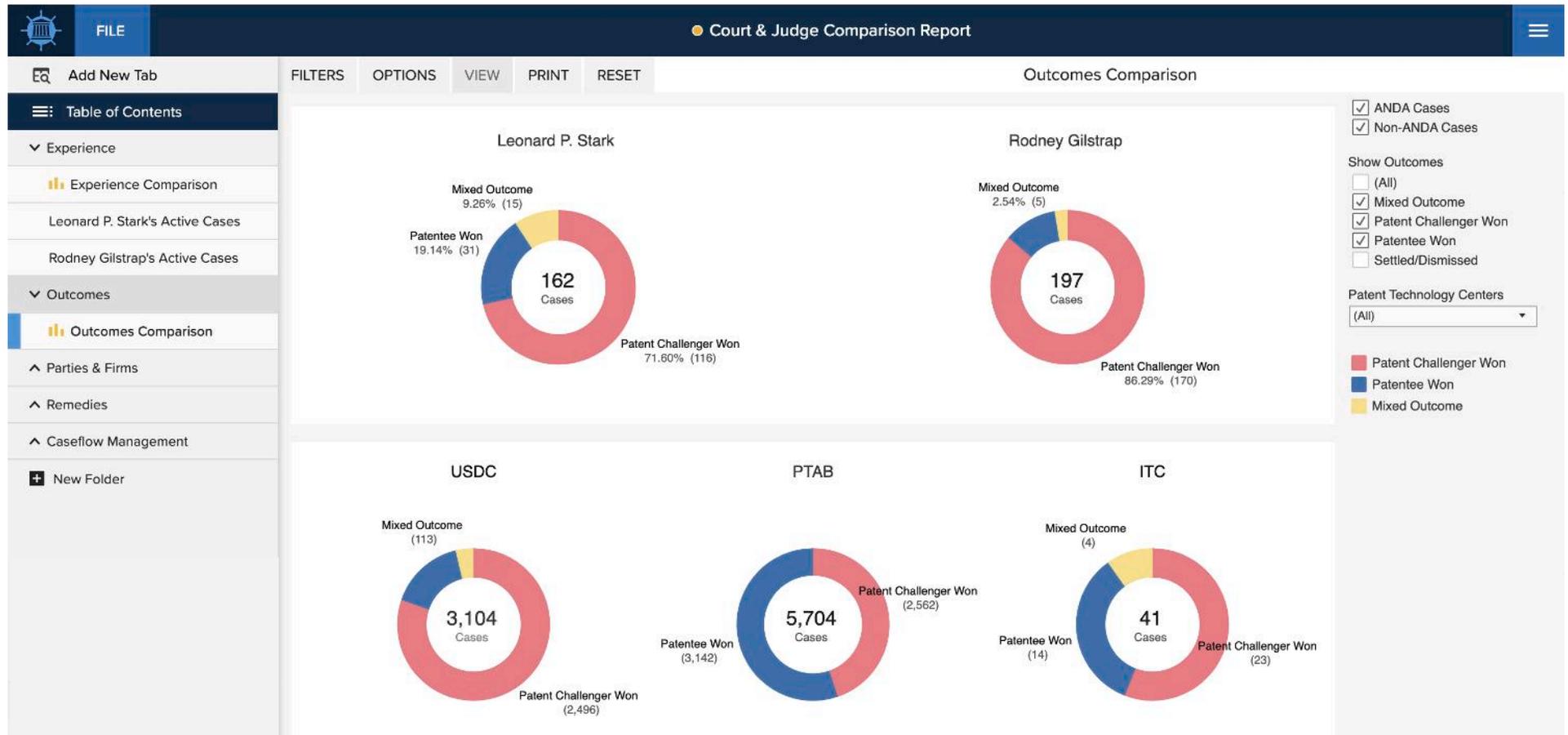
The Year in Review also has informative charts that rank law firms by calculating their win-rates when specific criteria is selected. The "Top Firms by Win Rate" tab displays firms in order of their ratio of wins vs. losses. By default, this win-rate is calculated using Case Outcomes with regard to the parties the firms represented. The win-rate calculations can be customized using the toggles on the page. For example, you can specify a minimum number of Case Outcomes required for a firm to appear on the list. This prevents firms with a small number of data points from unduly skewing the results:



HOW TO FIND ACCUSATION & CASE OUTCOMES IN DOCKET NAVIGATOR

WHEN COMPARING COURTS OR JUDGES

Creating a Court & Judge Comparison Report in Docket Navigator is a great way to display a court or judge's tendency to favor Patentees or Patent Challengers. The Outcomes Comparison tab reveals Case Outcomes for the selected courts and judges from different perspectives such as the patent Technology Centers at issue, or ANDA cases. It is a quick and easy way to see how litigants are faring when certain judges are assigned to their cases.



JUDGMENT CALLS AND EXCEPTIONS

As with any litigation model, there are some judgment calls that have to be made and policies that have to be set. For example, as granular as this model is, it does not go deeper than the “patent” level. Specifically, it does not distinguish if individual claims of a patent were won or lost. Typically*, for purposes of this model, if at least one claim of a patent is found invalid, that is considered a loss for the Patentee, even if other claims of the patent were not analyzed by the court. The reason for this policy is because (i) the win/loss line has to be drawn somewhere, and (ii) a case can be made that if a patent loses one of its claims during a legal proceeding, it has lost value. Reasonable minds can disagree with this policy, which is why we are providing this “peek behind the curtain.” Making this policy public allows practitioners to have a logical explanation at hand as to why a case might be classified as a loss for the Patentee by this model.

*With regard to the above caveat word "typically," of course there are exceptions. In the scenario in which only one claim was found invalid (resulting in a loss for the Patentee by our rules), there are situations in which other claims of the same patent are found not invalid, and infringed. This would be considered a win for the Patentee, even though they lost one claim of their patent along the way.

Another exception is in PTAB cases. Because we track PTAB cases on more granular level than USDC cases, we know which claims of the patents are found unpatentable or not. Therefore, in PTAB cases, if some claims are found unpatentable and others not unpatentable, the Case Outcome will be classified as “Mixed.” In cases in which the PTAB allows the Patentee to amend one or more challenged claims, that decision is reflected in special PTAB-specific outcomes.

SPECIAL CASES

What happens when parties are each asserting their own patents against each other?

In many cases, parties can be both a Patentee and a Patent Challenger because they are asserting their own patents, and also challenging the validity of their opponent’s patents. When this happens, the case outcome will necessarily be “Mixed” unless all of the accusations are settled.

What happens when the parties “voluntarily dismiss” their claims, but only because of an unfavorable ruling in a related case?

A popular defense in patent litigation is to file a related claim in another forum such as the PTAB and request that the original case be stayed pending the outcome of the related proceeding. When a court grants a stay in that situation, and the claims are disposed of in a way that favors one side in the related proceeding, that becomes the disposition of the case outcome in the original case as well. This is similar to when parties “agree to be bound” by a decision in a related case. The resolution in the related case becomes the outcome in the stayed case. Other examples are rulings in the ITC, the CAFC, or the USPTO.

What happens when the parties “voluntarily dismiss” their claims, but only because of an unfavorable ruling in the instant case?

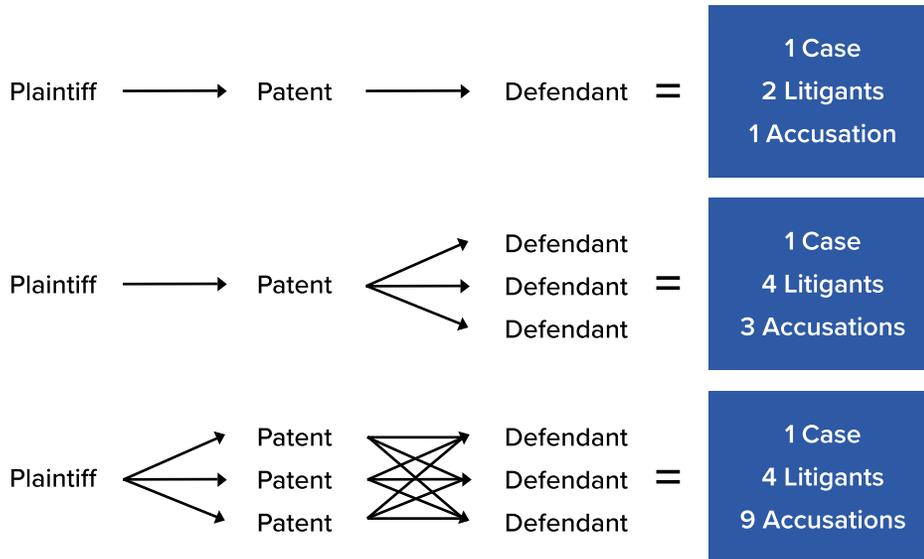
If the dismissal document makes it clear that a prior unfavorable ruling by the court is the basis for the dismissal, the case will be classified as a win or loss, even though the motion for dismissal may be based on Rule 41. A common example is after the court construes a term, and the parties stipulate to dismissal because of that construction.

GLOSSARY

Accusation

In a Patent Case, an Accusation is a request for a relief, the resolution of which could determine if a patent has been infringed or the patent's validity or enforceability.

For example, a case with one plaintiff asserting one patent against one defendant would involve one Accusation. A case with one plaintiff asserting 5 patents against 10 defendants would result in 50 Accusations. Multiple claims involving the same parties and patents (e.g., a claim of infringement and a declaratory judgment counterclaim of invalidity or unenforceability) are counted as a single accusation. In a PTAB proceeding, each challenge to the patentability of a patent counts as a patent accusation. In a PTAB proceeding, each challenge to the patentability of a patent counts as a patent accusation. Docket Navigator records Accusations as a group of data consisting of a Patentee name, a Patent Challenger name (often an accused infringer), the patent being asserted or challenged, and the Outcome of the Accusation.



Accusation Outcome

In a Patent Case, an Accusation Outcome is the resolution of an Accusation. In U.S. district court cases, the Accusation Outcome indicates the resolution of the Accusation with respect to the issue of liability. For example, a finding of noninfringement would be recorded as a Patent Challenger win because there was no finding of infringement liability. In ITC investigations, Accusation Outcome indicates the resolution of the Accusation with respect to the question of whether a violation of 19 U.S.C. §1337 occurred. In PTAB proceedings, Accusation Outcome indicates the resolution of the Accusation with respect to patentability of the challenged patent. Patent Accusation Outcomes indicate whether the Patent Accusation was resolved in the Patent Challenger's favor, the Patentee's favor, via settlement, or in a non-merits decision. Accusations resolved by the parties (e.g., via voluntary dismissal or settlement) are recorded as settlements. Accusations resolved by the court on grounds other than the merits of the patent claims are recorded as non-merits decisions. These can occur in a number of procedural settings, but most commonly are FRCP 12(b) dismissals for failure to state a claim, lack of personal jurisdiction, lack of subject matter jurisdiction, lack of standing, etc. See also Case Outcomes below.

Patent Accusation			Accusation Outcome
Patentee	Asserted Patent	Accused Infringer/Patent Challenger	Result
Company A	Patent X	Company B	Patentee Win
Company A	Patent X	Company C	Accused Infringer Win
Company A	Patent Y	Company B	Patentee Win
Company A	Patent Y	Company C	Patentee Win

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