PATENT LITIGATION RESEARCH:

The Importance of Precision

A **Feit Consumer Insights** Whitepaper
Comparing Docket Navigator and
Lex Machina Data Searches

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Background

Docket Navigator engaged Feit Consulting to develop and implement a study contrasting its service with its primary competitor in this space: Lex Machina, a Lexis product. The purpose of the study was to identify and compare the key differences in the quality and quantity of research results of these two products, in as unbiased and objective way possible.

About the Products:
Docket Navigator (DN) is a patent litigation intelligence platform founded in 2007. It is the only patent litigation service that reports every significant patent litigation event, for every case, every day.

DN deploys a team of US-based legal editors who curate litigation data by hand, noting 29 different types of data for each document and 19 different types of data for each case. With its extensive reporting and curation, DN is able to provide its users with enhanced search capabilities within the most accurate and up-to-date litigation intelligence database available.

Lex Machina, (LM) a division of LexisNexis is an IP litigation research product, providing legal analytics data and software with content modules covering; patent, trademark, copyright, antitrust, and securities.

LM utilizes a proprietary *Legal Analytics Platform* and *Lexpressions* search engine to mine and processes litigation data to reveal insights about judges, lawyers, parties, and cases culled from millions of pages of litigation information, designed to aid in discovery of meaningful patterns in data.

A substantial difference between the two products is DN's utilization of human editors to read and tag cases. Conversely, LM utilizes AI in conjunction with human editors, with a focus on analytics.

Process

To coordinate the study, Feit Consulting assembled a team of four patent research experts - current employees on the research/library staff at AmLaw 50 law firms and regular users of LM.

Through this process Feit Consulting ensured that all participants approached this study agnostically. Feit's role was to provide an environment where researchers could provide candid feedback with no incentive to weigh answers toward one vendor or the other.

The researchers were each given a set of 10 research questions drawn from real-world examples. These questions were developed by DN. DN also provided an answer key (see appendix). The key shows the answers to each question, as performed on DN. The answer key explains exactly how each search was conducted and provides illustrative screen shots so the researchers could easily compare to their search process and results delivered on LM.

Some questions were designed to elicit highly specific results, probing for the most-used IP/Patent outputs, including:

- Number of times U.S. district court decisions have addressed motions for summary judgment asserting patent invalidity based on lack of patentable subject matter under 35 USC § 101.
    - How many granted?
- Patent assertions over a specific time by a specific party.
    - How many found infringed?
- PTAB (Patent Trial & Appeal Board) institution success rate by firm/company.
- The number of Orange Book (FDA approved drugs and pharmaceuticals listing) patents litigated in US district courts.
    - The number of requests for rehearing of an IPR (Inter Partes Review) institution decision during a certain period.
    - How many granted?
- ANDA (Abbreviated New Drug Application) cases filed during a certain period.
- ITC (International Trade Commission) cases terminated during a specified period.
    - What were the accusation outcomes for a specified law firm?

Feit developed a survey where the researchers, while conducting their LM searches, contemporaneously documented their search experiences and the answers they obtained.

After all researchers provided their LM results, Feit Consulting reviewed them and compared the results to the answer key provided by DN. There were no consistent answers from the researchers, and for many questions some researchers could not find any results. Since the researchers had the answers provided by DN they knew they must be doing something wrong regarding the search strategy on LM.

Due to the inconsistency of answers on LM, Feit decided to bring the researchers together to see if as a group they could come to an agreement on how to do the research on LM to get the best results. The consensus on search approach and answers on both services is captured below:

Question 1
How many times has the claim term "individual" been construed in a U.S. district court case? What were the definitions and for which cases/patents were those construed?

Lex Machina - *Search Strategy*
• Filters: District Court Cases • Case Type: Patent • Document Tag: Patent Claim Construction Order • Case Tag: Patent Claim Construction • Keyword: "individual term" or "individual definition" or "individual defined" or "individual construction"
Lex Machina - *Results*
• LM search retrieved 214 unique docket entries, requiring manual review at significant time cost. DN found 3 hits with no manual review.

Question 1 (continued)

How many times has the claim term "individual" been construed in a U.S. district court case? What were the definitions and for which cases/patents were those construed?

Docket Navigator - *Search Strategy*

- Users perform a custom search, selecting the Claim Construction feature.
- Users then select Claim Terms filter and select the claim term (i.e., 'Individual/Individuals') from the drop-down menu:
- Finally, under the Advanced Filters, users select Courts filter to view the results.

Docket Navigator - *Results*

- 3 results
- Definitions requested were clearly provided on-screen:

Question 1 - *Findings*

- DNs "Claim Construction Search" filter generates a precise answer quickly without the need to spend any time manually searching.
- Conversely, LM doesn't have a Claim Construction filter, nor does it have a Definition filter. As a result, there was no easy way to determine definitions without extensive manual searching. The researchers concurred that the best approach to answering the question would be to run several keyword searches with variants of "individual", "construction," "term," and "definition". After these searches were conducted, researchers compiled results into a single spreadsheet and removed duplicates, ending with 214 entries requiring manual review at a significant investment of time.

Question 1 - *Conclusion*

- DN includes filters that allows for a clear understanding of real hits, without a need for manual review.
- Our researchers could not confidently agree on an answer using LM.

Question 2

From Jun. 1st, 2014 - Jun. 1st, 2019, how many U.S. district court decisions have addressed motions for summary judgment asserting patent invalidity based on lack of patentable subject matter under 35 USC § 101? How many of those were granted?

Lex Machina - *Search Strategy*

<u>1st Approach</u>
- Filters: DISTRICT COURT CASES
- Case type: patent
- Case resolutions: Claim Defendant OR Claimant Win, Summary Judgment
- Patent invalidity reason: 101 Subject Matter
- Pending between: 2014-06-01 and 2019-06-01
- Case Tags: General: Order re Summary Judgment

<u>2nd Approach</u>
- Filters: DISTRICT COURT DOCUMENTS
- Case type: patent
- Keyword search: "101 OR patentable AND grant*"
- Pending between: 2014-06-01 and 2019-06-01
- Case Tags: *General: Order re Summary Judgment*

Lex Machina - *Results*

<u>1st Approach</u>
- 56 results, 1 granted

<u>2nd Approach</u>
- 455 results; indeterminate # granted

Docket Navigator - *Search Strategy*

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Docket Navigator - *Results*

- 156 results; 74 granted

Question 2 (continued)
From Jun. 1st, 2014 - Jun. 1st, 2019, how many U.S. district court decisions have addressed motions for summary judgment asserting patent invalidity based on lack of patentable subject matter under 35 USC § 101? How many of those were granted?

Question 2 - *Findings*
• Researchers took two approaches to this question on LM, with significantly different results. Some researchers approached this by utilizing LM case tagging and retrieved 56 cases with one "win" granted for the claimants. A spot check of the first five LM results found that only two actually met the search criteria. False hits fell outside of the specified date range in two instances and was mis-tagged for case type in the third. It seems that the date restrictor filter failsl on LM because the date is applied to the *case* and not to the underlying *documents* - thereby missing results within the timeframe of the search parameters. • In the second approach, researchers used the LM documents filter as opposed to case filter. Researchers reported their inability to further filter at the document level on LM, so they devised a keyword search ("101 OR patentable AND grant*"), adding "grant*" to capture case resolutions. The result was 455 "docket entries." A check of the first 40 results found 10 false hits including "grant" appearing in the wrong context and, again, wrong case types. If all of DN's 74 granted motions were included in the above 400+ "hits," it would take a lot of work for the reviewer to parse those out of the hundreds of incorrect results. • Both LM approaches are problematic taking more time to develop and run the searches that brought back flawed results requiring additional manual review.

Question 2 - *Conclusion*
• DN advantage with indexing and accuracy. • LM users were forced to devise their own keyword search and a spot check revealed that approach was wrong a significant amount of the time. • DN's tagging at the document level rather than at the case level leads to a more targeted search. • LM delivered results that fell outside the specified date range and/or lacked the specified decision type. • The researchers could not confidently answer this question using LM.

From Nov. 1st, 2012 - Jun. 1st, 2019, how many rulings on requests for rehearing of an IPR institution decision have there been? How many of those were granted?

Lex Machina - *Search Strategy*

- Filters: <u>Admin/PTAB Documents</u>
- Filed on: 2012-11-01 to 2019-06-01
- Document Tags:
  - Decision Denying Request for Rehearing-Patent Owner (258)
  - Decision Denying Request for Rehearing-Petitioner (391)
  - Decision Granting Request for Rehearing-Patent Owner (9)
  - Decision Granting Request for Rehearing-Petitioner (29)
  - Decision Granting in Par Request for Rehearing-Petitioner (4)

Lex Machina - *Results*

- 691 PTAB Documents – 43 Granted

Docket Navigator - *Search Strategy*

- Filters: <u>Documents</u>
- Postures of Motion: Motion to Reconsider
- Types of Document: PTAB Institution of Inter Partes Review
- Document Filing Date: Nov. 1st, 2012 - Jun. 1st, 2019

Docket Navigator - *Results*

- 1132 Rulings – 41 Granted

Question 3 - *Findings*

- DN advantage as it has a "Motion to Reconsider" filter for Posture of Motion with no equivalent on LM.
- Since LM does not differentiate between different types of requests for rehearing there is no way to narrow them down to requests for rehearing specifically related to IPR institution decisions.
  - Researchers ran five searches using five "request for rehearing" tags, coming back with a combine total of 691 decisions.
  - The final 43 that were determined to be granted was unclear, as a manual review was necessary. A spot check of 5 random documents showed the motion to reconsider was not granted but was denied, making the true LM results to be much less than 43.
- The ability to combine Types of Document and Posture of Motion tags on DN delivered a targeted result of 1,132 rulings including the number granted of 41.

Question 3 - *Conclusion*

- DN advantage due to superior indexing and accuracy.
  - DN's ability to distinguish between types of requests for rehearing could not be matched on LM.
- LM's indexing and tagging errors delivered half the results, with many false hits and required a great deal of manual review.
- Our researchers could not confidently agree on an answer using LM.

Question 4

From Jun. 1st, 2014 - Jun. 1st, 2019, how many rulings on original, contested motions to stay pending IPR have there been? What was the percentage of grants for those in 2018?

Lex Machina - *Search Strategy*
- Filters: District Court Cases
- Case type: patent
- Case resolution= Procedural: Stay
- Pending: 2014-06-01 to 2019-06-01
- Keywords = Stay AND (IPR or "inter partes review")

Lex Machina - *Results*
- 268 cases with stay as a case resolution, with 22% grant rate (60 cases) in 2018

Docket Navigator - *Search Strategy*
- Filters: Documents
- Document Filing Date: Jun. 1st, 2014 - Jun. 1st, 2019
- Postures of Motion: Motion by a Party or Ex Parte / Emergency
- Types of Document: Motion to Stay Pending Inter Partes Review

Docket Navigator - *Results*
- 915 rulings, with a 47% grant rate (430 cases?) in 2018

Question 4 - *Findings*
- DN has an advantage as it indexes documents individually allowing DN to deliver a targeted search result that is considerably larger than LM.
- Researchers reported that LM can filter district court documents by trial and document type but LM is unable to identify specific motions. Because of its inability to filter by specific motion type a term search was required to identify the motion to stay. This term search on LM does not address rulings on original motions and does not allow for further analysis to determine percentage of grants.
- Using LM, the best approach the researchers found was to search for (i) cases with (ii) the terms "stay" and "IPR" or "inter partes review," (iii) with "stay" as a case resolution, (iv) that were "pending" within the requested time period.
- The results on LM were highly deficient, as only 268 cases were identified, which is a third of those found on DN.

Question 4 - *Conclusion*
- The broad nature of LM search and inability to filter results invites false hits with search terms appearing in other contexts.
- DN delivered a superior result with 3x the number of rulings, with no need for manual review.
- Our researchers could not confidently agree on an answer using LM.

Question 5

In cases filed from Jun. 1st, 2014 - Jun. 1st, 2019, how many patents has Apple Inc. asserted in U.S. district court cases? Were any found infringed?

Lex Machina - *Search Strategy*

- Filters: <u>Parties: Apple Inc. or Apple Computer, Inc.</u>
- Case type: patent
- Filed between: 2014-06-01 and 2019-06-01
- <u>From summary page click on Party Roles: Plaintiff case count (7)</u>

Lex Machina - *Results*

- 51 Patents with 2 found infringed (8457145 & 8537757) but none asserted by Apple. All results are from declaratory judgment cases.

Docket Navigator - *Search Strategy*

- *Filters: <u>Patents</u>*
- *Patentees: Apple Inc.*
- *Courts with Cases Involving Patents: U.S. District Courts (some districts)*
- *Filing Dates of Cases Involving Patents: Jun. 1st, 2014 - Jun. 1st, 2019*

Docket Navigator - *Results*

- 16 patents asserted by Apple, 0 found infringed

Question 5 - *Findings*

- LM can only identity the patents in cases in which Apple is a Plaintiff, it cannot tell which patents have been asserted by Apple.
- Researchers noted that LM lists results by cases and does not filter out or display the patents that are being asserted.
- Because LM does not filter, researchers had to download the results to manually count the number of patents being asserted in each case.
  - o Researchers also reported problems exporting LM data into Excel.

Question 5 - *Conclusion*

- DN advantage due to superior indexing.
- LM did not find the answer, it did not locate the 16 patents asserted by Apple.
  - o LM required a manual review of 51 patent results to come up with zero asserted patents.
- LM failed to answer this question correctly.

Question 6

What was the PTAB institution success rate for Banner & Witcoff in 2018 when they represented the Patent Owner?

Lex Machina - *Search Strategy*

- Filters: Counsel (Law Firm): Banner & Witcoff
- Case type: PTAB trials
- Trial Flow - Institution Decision: Instituted
- Party Roles: patent owner
- Institution decision: 2018

Lex Machina - *Results*

- 4 trials, 100% won.
- Final Decisions:
    - 1 trial (25%) all claims unpatentable (petitioner won)
    - 3 trials (75%) settled (patent owner won)

Docket Navigator - *Search Strategy*

- Filters: Motion Success
- Patentee Firms: Banner & Witcoff
- Postures of Motion: Motion by a Party
- Types of Document: PTAB Institution of Covered Business Method Review or PTAB Institution of Inter Partes Review or PTAB Institution of Post Grant Review

Docket Navigator - *Results*

- 10 trials, 6 granted

Question 6 - *Findings*

- DN identified 10 cases in which Banner & Witcoff represented the patent owner, 4 of which were denied institution and 6 granted. LM identified only 4 PTAB cases.
- It is noted that PTAB's record system does not support downloading the names of law firms associated with the case, creating challenges for searching by firm name. DN's editorial team has analyzed and tagged cases from 2000 forward including adding the names of law firms associated with the case, data otherwise not parsed for downloading, thereby delivering the better result than LM.

Question 6 - *Conclusion*

- DN located 6 more trials and 2 more successful motions than LM.
- Lack of confidence that LM has a comprehensive dataset or product features that allow the user to search at a granular level.

Question 7
For ITC cases that terminated from Jan. 1st, 2014 - Jan. 31st, 2018, what were the accusation outcomes for Finnegan's patent owner clients?

Lex Machina - *Search Strategy*
Search 1 • Filters: Administrative Venues; ITC Investigations • Case type: patent • Termination Date: 2014-01-01 to 2018-01-31 • No apparent way to search law firms except text search Search 2 • Filters: Counsel (Law Firm) • No apparent ITC coverage
Lex Machina - *Results*
• Consensus that this question can't be answered using LM.

Docket Navigator - *Search Strategy*
• Filters: Accusations • Patentee Firms: Finnegan Henderson Farabow Garrett & Dunner • Courts: International Trade Commission • Case Termination Date: Jan. 1st, 2014 - Jan. 31st, 2018
Docket Navigator - *Results*
• 380 results

Question 7 - *Findings*
• LM doesn't have a way to answer this question. • Researchers tried LM's filter for ITC investigations and reported that law firms are not indexed, requiring a text search by firm name that as one researcher said, "cannot be performed with any accuracy."   o Alternatively, researchers filtered by law firm and again found that there was no apparent ITC coverage for law firms.
Question 7 - *Conclusion*
• DN was able to answer this question and LM could not.

From Jan. 1st, 2014 - Dec. 31st, 2018, how many ANDA patent cases were filed in U.S. district courts?

Lex Machina - *Search Strategy*
- Filters: Federal District Court Cases
- Case Type: patent
- Case Tags: Patent = ANDA
- Filed on: 2014/01/01 to 2018/12/31

Lex Machina - *Results*
- 2027 ANDA Patent Cases

Docket Navigator - *Search Strategy*
- Filters: Cases
- Case Filing Date: Jan. 1st, 2014 - Dec. 31st, 2018
- Cases with Types of Document: Counterclaim -- Infringement – ANDA or Complaint -- Infringement – ANDA or Complaint -- Declaratory Judgment -- ANDA

Docket Navigator - *Results*
- 2008 ANDA Patent Cases

Question 8 - *Findings*
- This is close - both services index ANDA cases.
- LM provided a larger list compared to DN.
    - However, spot checking of LM results uncovered non-ANDA cases tagged as ANDA in the results.
- DN has two different types of complaints to select from, while LM has one category for complaint.
- LM's category includes amended complaints, may duplicate some cases.

Question 8 - *Conclusion*
- Tie between DN and LM

From Jan. 1st, 2014 - Dec. 31st, 2018, how many cases involving Orange Book patents were filed in U.S. district courts?

Lex Machina - *Search Strategy*
- Filters: Federal District Court Cases
- Case Type: patent
- Filed on: 2014/01/01 to 2018/12/31
- Keyword search: "Orange Book"

Lex Machina - *Results*
- 1,998 results

Docket Navigator - *Search Strategy*
- Filters: Cases
- Courts: USDC
- Case Filing Date: 1/1/14-12/31/18
- Patent Technologies: Orange Book

Docket Navigator - *Results*
- 2006 results

Question 9 - *Findings*
- This is close but we give DN slight advantage as it has a set filter for "orange book" whereas LM relies on keyword searching.
- Researchers initially ran the search in the Administrative Venues-Patents tab in LM because there is an Orange Book tag.
- DN's larger result is enhanced as spot checking turned up false hits in the LM results.

Question 9 - *Conclusion*
- DN has more results, plus a spot check of LM showed that many of the hits were false results.
- DN wins again, due to its indexing and accuracy.

How many Design patents were asserted in U.S. district court cases filed from Jun. 1st, 2014 - Jun. 1st, 2015? How many of those patents were found infringed?

Lex Machina - *Search Strategy*
- Filters: Federal District Court cases
- Case type: patent
- Case tag: Design Patent
- Filed on: 2014/06/10 to 2015/06/01

Lex Machina - *Results*
- 281 results; 23 infringed

Docket Navigator - *Search Strategy*
- Filters: Patents
- Patent Type: Design
- Courts with Cases Involving Patents: USDC
- Filing Dates of Cases Involving Patents: 6/1/14-6/1/15
- Infringed: Determinations --> Infringed

Docket Navigator - *Results*
- 381 asserted; 21 infringed

Question 10 - *Findings*
- DN has an advantage because it has a tag for Infringed.
    - As noted in Q2 above, LM doesn't have an option that indexes individual Patents, as opposed to Cases.
- Researchers noted that design and utility patents are combined on LM and that the infringement flag appears to be applied to the case and not individual patents so, in the end, researchers on LM did not know how many design patents were infringed. They only knew how many findings of infringement occurred in cases involving at least one design patent.
    - Required a manual count of number of individual patents asserted in district courts during that time.
- A spot check of LM results showed some patents were listed as "infringed" but in fact had no infringement findings.

Question 10 - *Conclusion*
- DN provides the more targeted search in this case.
- DN advantage due to depth of patent indexing providing precise searching with more accurate and complete results.
- LM found 100 fewer, and of those, many were found to be false hits.

Summary of Findings

The abstract below captures which service performed better and why for each question.

Question	Winner	Reason
1	DN	LM required extensive manual review due to false hits. Researchers found 209 false hits of the 214 total results. DN found 3 hits with no manual review.
2	DN	Researchers could not determine how to approach this question on LM. The first approach they used had a false hit rate of 40%; in the second approach the false hit rate was 25%. Even if coupling both approaches together, there was just 1 definitive result on LM while there were 76 on DN. Complete fail on LM.
3	DN	DN has a "motion to reconsider" filter, LM doesn't. DN provided 1,132 rulings of which 41 were granted. Researchers needed to conduct 5 searchers on LM using different "request for hearing tags" to differentiate between the types of requests for hearing, resulting in 691. Manual review showed 43 granted and spot check of 5 all were false hits.
4	DN	LM does not allow to filter by specific motion. Therefore, manual searching was necessary. DN provided 3x the number of rulings, with no need for manual review at 915 rulings, with a 47% grant rate for 2018. LM was able to only locate 268 cases with stay as a case resolution, with 22% grant rate. LM fails on this question.
5	DN	DN provided 16 patents asserted by Apple, 0 found infringed. LM required a manual review of 51 patent results and was not able to find any asserted patents by Apple. LM fails on this question.

Question	Winner	Reason
6	DN	DN located 10 trials, with 6 (60%) granted. LM found 4 trials, 4 granted (100%) granted.
7	DN	DN found 380 results. Researchers on LM were unable to answer this question. LM failed on this question.
8	LM/DN (tie)	DN found 2,008 ANDA Patent Cases. LM located 2,027 but included some non-ANDA cases incorrectly tagged.
9	DN	DN found 2,006 results, LM located 1,998. DN includes a pre-set filter for 'Orange Book', LM requires user constructed keyword searching and manual review. While LM and DN returned a similar number for results, spot checking those revealed a number of false hits. DN found more accurate results, faster.
10	DN	DN found 381patents, 21 infringed. LM located 281 patents, 23 infringed. DN includes a tag for infringed patents, LM includes an infringement tag, but tag is applied to the case, not the patent.

Researchers could not answer most of these patent research questions using LM comfortably. 4 of the 10 questions were completely unanswerable using LM. There was only 1 question that LM performed as well as DN.

It would take researchers considerably more time to verify their research on LM than it would on DN due to DN's easy to use and find filters. LM lacks key filters and indexing to allow researchers to do their work quickly. Using LM, a manual review and refinement of search strategy was nearly always necessary to attempt to answer the questions.

Our researchers felt DN outperformed LM on 9 of the 10 questions and tied on one other. They felt DN was clearly the better choice for patent litigation related docket work. DN delivers more precise and targeted results.

A **Feit Consumer Insights** Whitepaper

The graph below shows the type and frequency of researcher comments when contrasting LM to DN:

**DOCKET NAVIGATOR
RESULTS BY COMMENT**
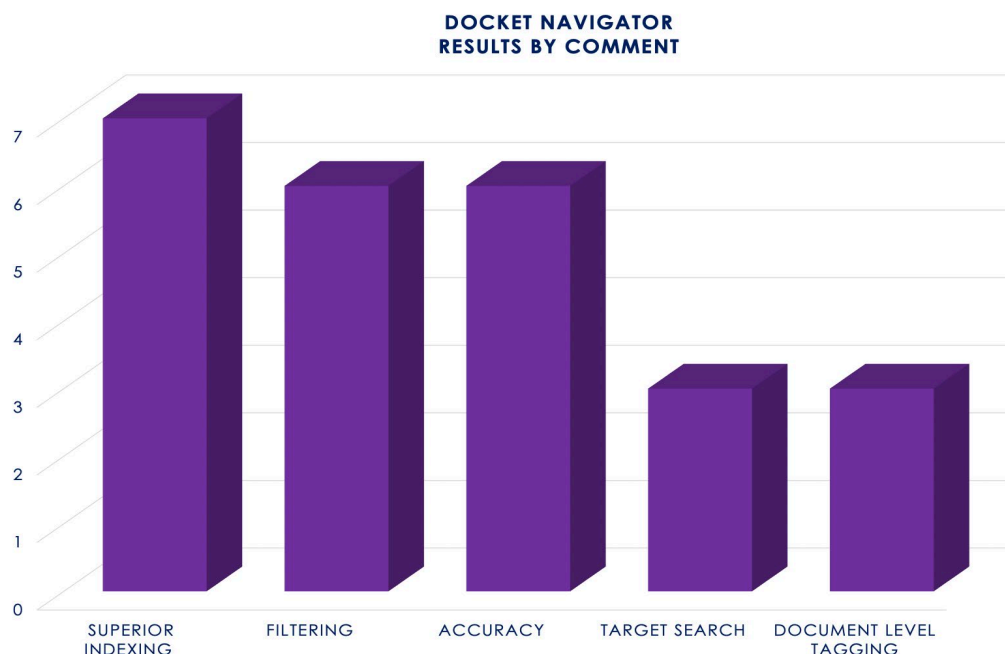
- A recurring theme that emerged in the results is that DN indexes at the document level, rather than the case level, providing researchers more options to combine various data points to bring back the desired results.
- Accuracy is another area in which LM results were found to be problematic.
  - Spot checks of LM results turned up incorrect tagging in Q3, Q8, and Q9 and results outside of set date restrictions in Q2 and Q10.

Researchers expressed confidence with DN's results. DN indexing at fine level and simple search interface allowed researchers to return more complete and accurate results that our researchers were more confident about.

The need to vet results manually was a key researcher issue. Time is always a constraint, and manual review is a time-consuming process. Additionally, the need to manually select and remove bad results reduces user confidence in the reliability of the results. In nearly all questions, researchers reported the necessity for manual review of LM, often in a very large number of search results with false hits. This costs the researchers a deal amount of time.

Conclusion

This study indicates that DN is a superior patent litigation research platform in terms of usability, data coverage, and search results as compared to LM. While LM has other strengths as an analytical tool, this study revealed that DN is a better solution for patent litigation research. The four researchers agreed completely that DN handled the questions in our survey faster and more reliably than LM.

For any enterprise with a significant stake in patent litigation, the value of the precision in the DN search engine and data tagging versus LM delivers cost and time savings, more reliable results and a subsequent reduced risk of failure in patent related ventures or cases.

Caveat on the study: Questions and answer key for this study were created by DN. Feit reached out to LM with an invitation to review the researchers' methodology and queries, however, Lexis (LM's parent company) declined, citing company policy. Also, the study was limited to 4 participants. While we feel confident that they were representative examples of LM users in the marketplace, we cannot know if a different group of researchers would have had more success with LM.

Appendix - DN Question/Answer Key

ANSWER KEY

Docket Navigator Decathlon

1. How many times has the claim term "individual" been construed in a U.S. district court case? What were the definitions and for which cases/patents were they construed?

Answer

3 times:

1. Construed in *Hewlett-Packard, et al v. Gateway Inc* to mean "spaced apart from one another and not joined to one another" (Patent no. 5625532)
2. Construed in *BASCOM Global Internet Services, Inc. v. AT&T Inc.* to mean "separate or discrete" (Patent no. 5987606)
3. Construed in *Minton v. NASD, et al* to mean "no restriction or limitation on the identity of the traders" (Patent no. 6014643)

Overview

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Since this question asks for the construction of claim terms and their definitions, we'll use a **Claim Constructions** search. This search type allows you to filter for construed claim terms by judge, jurisdiction, etc. Other aspects of the question can be addressed with **Filters** within a Documents search, as shown in the diagram below.

2
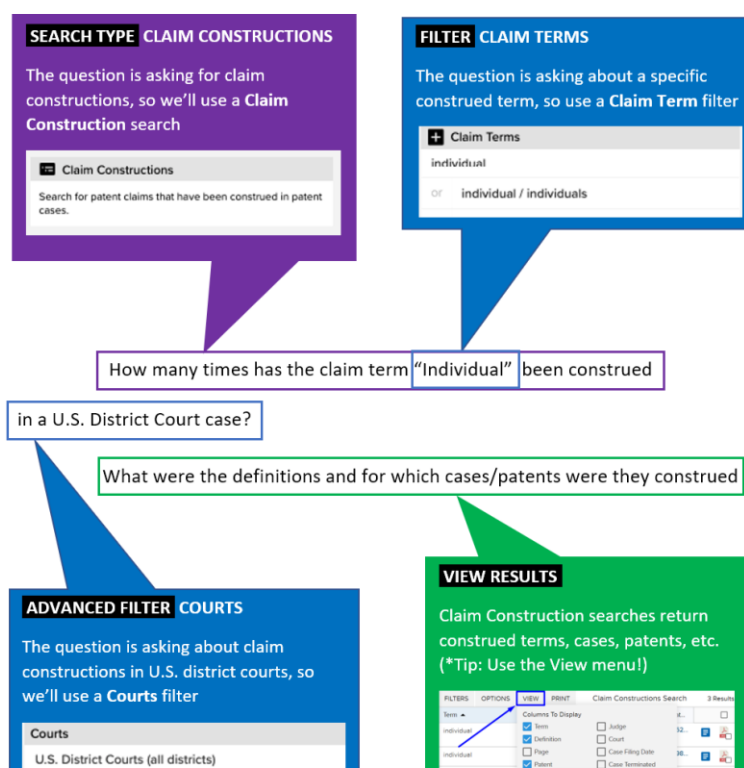
STEP 1 – SEARCH TYPE

On the main search page, under the Custom Search section, select a **Claim Constructions** search

*Note: If the Claim Construction search is not visible on your screen, click "Show All Search Types"

STEP 2 – FILTERS:

Using the **Claim Terms** filter, select "Exactly," type '*Individual*' and select that claim term (and its homologue: 'Individual/Individuals') from the drop-down menu

3

Under Advanced Filters tab* select the **Courts** filter

*__Note__: If you don't see a filter on the main filters page, it's probably on the Advanced Filters tab!

Select *U.S. District Courts (USDC).* Clicking the box next to that option will automatically select all of the individual U.S. district courts

STEP 3 – VIEW RESULTS

Click "View 3 Results" to view the search results

On the search results page, click "View" and select "Case" to display case names in the search results. Then click "Update Layout"

4

The search results now display the three types of information requested: patent numbers, definitions, and case name

*ProTip: You can edit the filters by clicking the "Filters" button

2. From Jun. 1st, 2014 - Jun. 1st, 2019, how many U.S. district court decisions have addressed motions for summary judgment asserting patent invalidity based on lack of patentable subject matter under 35 USC § 101? How many of those were granted?
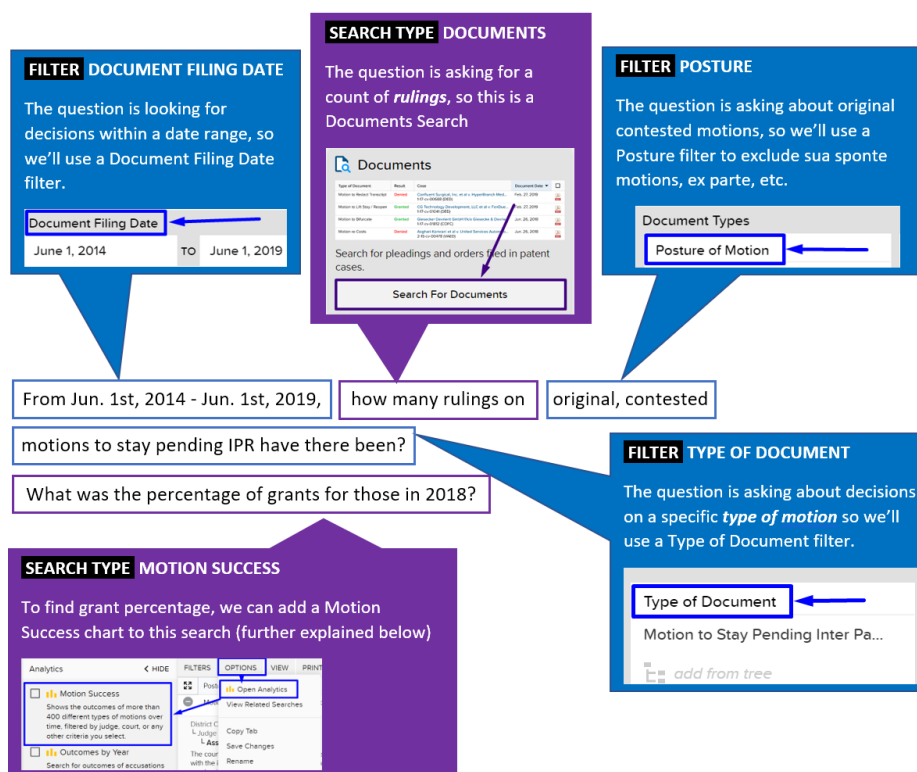
Answer

156 Decisions - 74 Granted

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for a count of "decisions" (i.e., Orders), so a **Documents** search will provide the answer. Other aspects of the question can be addressed with **Filters** within a Documents search, as shown in the diagram below.

6

STEP 1 – SEARCH TYPE

On the main search page, select a **Documents** search

STEP 2 – FILTERS:

Overview

Using the **Posture of Motion** filter, select *Motion by a Party*

Using the **Type of Document** filter, select *Motion for Summary Judgment – Patent Invalid*

7

Using the **Legal Issue** filter, select *Unpatentable Subject Matter (35 USC § 101)*

STEP 3 – VIEW RESULTS

Click "View 156 Results" to view the search results

8

3. From Nov. 1st, 2012 - Jun. 1st, 2019, how many rulings on requests for rehearing of an IPR institution decision have there been? How many of those were granted?

Answer

1132 Rulings – 43 Granted

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for a count of "rulings" (i.e., Orders), so a **Documents** search will provide the answer. Other aspects of the question can be addressed with **Filters** within a Documents search, as shown in the diagram below. The tricky part of this question is recognizing that a "request for rehearing" of IPR decisions doesn't call for a separate document type – but rather the *same* document type (*PTAB Institution of Inter Partes Review*) with a *Motion to Reconsider* posture. If you caught that, kudos!

STEP 1 – SEARCH TYPE

On the main search page, select a **Documents** search

STEP 2 – FILTERS:

Overview

Using the **Posture of Motion** filter, select *Motion to Reconsider*

Using the **Type of Document** filter, select *PTAB Institution of Inter Partes Review*

10

Using the **Document Filing Date** filter, enter the relevant dates

STEP 3 – VIEW RESULTS

Click "View 1132 Results" to view the search results.

Click **Filters → Related Filters** to view a breakdown of the Order Results

*Frequent Mistakes: Searching using the "PTAB Rehearing" legal issue instead of the legal posture "Motion to Reconsider."

11

4. From Jun. 1st, 2014 - Jun. 1st, 2019, how many rulings on original, contested motions to stay pending IPR have there been? What was the percentage of grants for those in 2018?

Answer

915 rulings, with a 47% grant rate in 2018

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for a count of "rulings" (i.e., Orders), so a **Documents** search will provide the answer. Other aspects of the question can be addressed with **Filters** within a Documents search, as shown in the diagram below. The tricky part is catching that "original, contested motions" means filtering under **Posture of Motion** for "Motion by a Party" and "Emergency" motion types (excluding stipulated, *ex parte*, *sua sponte* motions, etc. which are not original contested motions). To find the success rates for the motions, create a chart showing those orders broken down by year using **Options → Open Analytics → Motion Success**.

12

STEP 1 – SEARCH TYPE

On the <u>main search page</u>, select a **Documents** search

STEP 2 – FILTERS:

Overview

Using the **Posture of Motion** filter, select *Motion by a Party; Emergency/Ex Parte*

Using the **Type of Document** filter, select *Motion to Stay Pending Inter Partes Review*

13

Using the **Document Filing Date** filter, enter the relevant dates

STEP 3 – VIEW RESULTS

Click "View 915 Results" to view the search results

To find grant percentages, click **Options → Open Analytics → Motion Success**

That will open a new tab with a motion success chart of that data
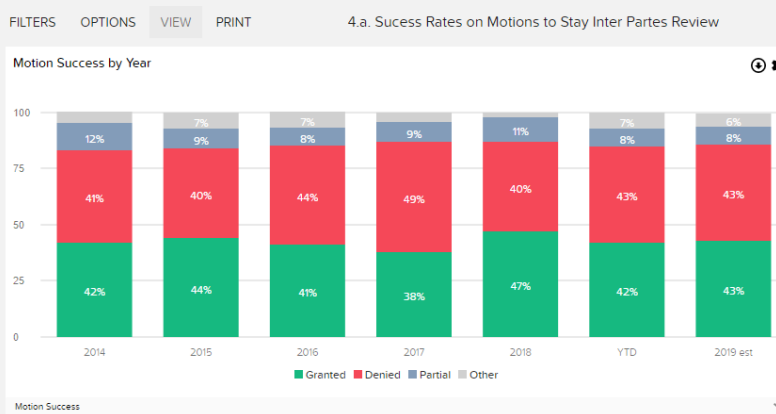
*Frequent Mistakes: Failing to add a Posture of Motion filter to exclude uncontested motions

14

5. In cases filed from Jun. 1st, 2014 - Jun. 1st, 2019, how many patents has Apple Inc. asserted in U.S. district court cases? Were any found infringed?

Answer

17 patents asserted, 1 found infringed.

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for a count of patents, so a **Patents** search will provide the answer. Other aspects of the question can be addressed with **Filters** within a Patents search, as shown in the diagram below. The trick here is recognizing that the patents Apple 'has asserted' means searching for Apple as the Patentee. In a Patents search, filters for **Parties** are under the **Advanced Filters** page – just remember to click the drop-down and switch the filter-type to 'Patentees.' Once you add the date and court filters (also on the **Advanced Filters** page), you're all set!

15

STEP 1 – SEARCH TYPE

On the main search page, select a **Patents** search

STEP 2 – FILTERS:

Overview

Using the **Parties** filter, enter Apple Inc. and select "Patentees" using the dropdown

Using the **Court with Cases Involving Patents** filter, select *U.S. District Courts*

Using the **Case Filing Date** filter, enter the relevant dates

16

STEP 3 – VIEW RESULTS

Click "View 17 Results" to view the search results.

Click **Filters → Related Filters → Determinations** to view a breakdown of patent Determinations

17

6. What was the PTAB institution success rate for Banner & Witcoff in 2018 when they represented the Patent Owner?

Answer

6 Institutions granted; 4 Institutions denied.

Since the question is asking about PTAB institution success rates, you might be tempted to use a **PTAB Institutions** search, or a **Documents** search for *PTAB Institution of _____.* While both of those searches will ultimately lead to the right answer, there is quicker solution here: a **Motion Success** chart

Overview

To build a **Motion Success** chart, start by clicking on the chart-type on the homepage (under Analytics). The trick for the filters is recognizing that the patents Apple 'has asserted' means searching for Apple as the Patentee. In a Patents search, filters for **Parties** are under the **Advanced Filters** page – just remember to click the drop-down and switch the filter-type to 'Patentees.'

Shortcut Alert!

If you're familiar with our Database, you may recognize that **PTAB Institution Success Rates** is one of the pre-built charts in the Firm Profiles. You can access that chart with just a few clicks either directly through the **Firm Profile**, or, starting from an existing binder, you can select that chart tab individually to add to your binder!

FILTER TYPE OF DOCUMENT

The question is asking about rulings on *institution events*, so we'll use a Type of Document filter.
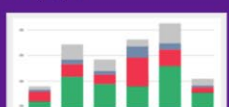
Type of Document

PTAB Institution of Covered Busine...

or   PTAB Institution of Inter Partes...

or   PTAB Institution of Post Grant ...

SEARCH TYPE MOTION SUCCESS

Since this question is looking for institution *success rate*s, we'll use a **Motion Success** Chart (under the Analytics section of the main search page)

What was the PTAB institution | success rate

for Banner & Witcoff in 2018 when they represented the Patent Owner

FILTER FIRMS (PATENTEE FIRMS)

We're looking for institution success for a Firm when they represented a specific type of client (Patent Owner) - we'll need to filter for Banner & Witcoff in the **Firms** filter, and then use the drop down to toggle to **Patentee Firm**.

Firms ˅

☐ Firms
Counts only documents in cases in which the selected FIRMS represented a party.

☑ Patentee Firms
Counts only documents in cases in which the selected FIRMS represented a patentee.

18

STEP 1: SEARCH TYPE

On the main search page, select a **Motion Success** chart under **Analytics**

STEP 2: FILTERS

Using the **Firms** filter, enter *Banner & Witcoff* and select "Patentee Firms" using the dropdown

Using the **Posture of Motion** filter, select *Motion by a Party*

Using the **Type of Document** filter, select *PTAB Institution of [IPR/CBM/PGR]*

STEP 3: VIEW RESULTS

Click "View 69 Results" to view the search results.

***Protip**: Use the gear icon on the chart to toggle to show percentages
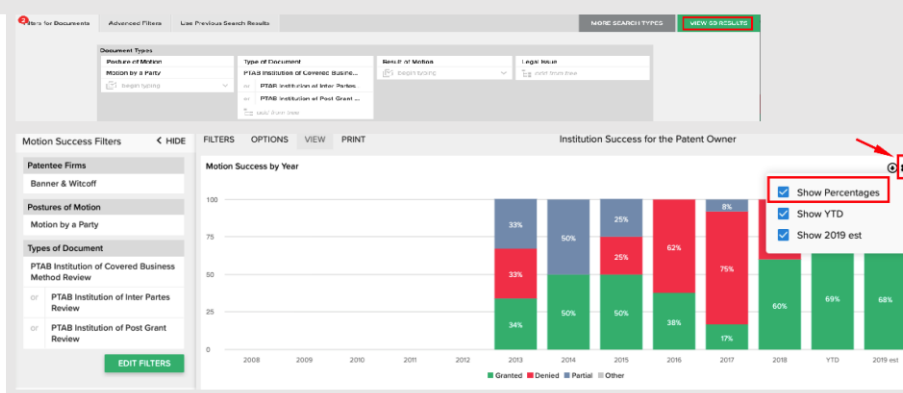
19

7. For ITC cases that terminated from Jan. 1st, 2014 - Jan. 31st, 2018, what were the accusation outcomes for Finnegan's patent owner clients?

Answer

380 Accusations (breakdown in binder)

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for Outcomes of Accusations, so we'll use an Accusations search type. Accusations data is unique Docket Navigator and basically corresponds to the claims in a lawsuit (Accusations) and the resolution of those claims (Outcomes). More complete definitions can be found in our User Guide. Other aspects of the question can be addressed with **Filters** within an Accusation search, as shown in the diagram below.

FILTER COURTS

The question is asking about cases in the ITC, so we'll use a **Court** filter. In this context "court" includes any tribunal that resolves disputes.

Courts
International Trade Commission

ADVANCED FILTER CASE TERMINATION DATE

The question is looking for decisions within a date range, so we'll use a **Case Termination Date** filter.

Case Termination Date   Autofill ∨

January 1, 2014   TO   January 31, 2018

For ITC cases | that terminated from Jan. 1st, 2014 - Jan. 31st, 2019,

what were the accusation outcomes | for Finnegan's patent owner clients?

SEARCH TYPE ACCUSATIONS

The question is asking for accusations/outcomes, so this is an **Accusations** Search

FILTER FIRM (PATENTEE)

We're looking for outcomes for a specific law firm's clients, so we'll use a **Firm** filter and select **Patentee Firms**.

+ Firms ∨

☐ Firms
Searches for patent accusations in cases in which the selected FIRMS represented a party.

☑ Patentee Firms
Searches for patent accusations in cases in which the selected FIRMS represented a party asserting or defending a patent.

20

STEP 1 – SEARCH TYPE

On the main search page, select an **Accusations** search

STEP 2 – FILTERS:

Overview

Under the **Firms** filter, enter *Finnegan* and select "Patentee Firms" using the dropdown

Using the **Courts** filter, select *International Trade Commission*

Under the **Advanced Filters Tab**, enter the relevant dates into the **Case Termination Date** filter

21

STEP 3 – VIEW RESULTS

Click "View 380 Results" to view the search results

Click **Filters → Related Filters → Outcome** to view a breakdown of Outcomes

22

8. From Jan. 1st, 2014 - Dec. 31st, 2018, how many ANDA patent cases were filed in U.S. district courts?
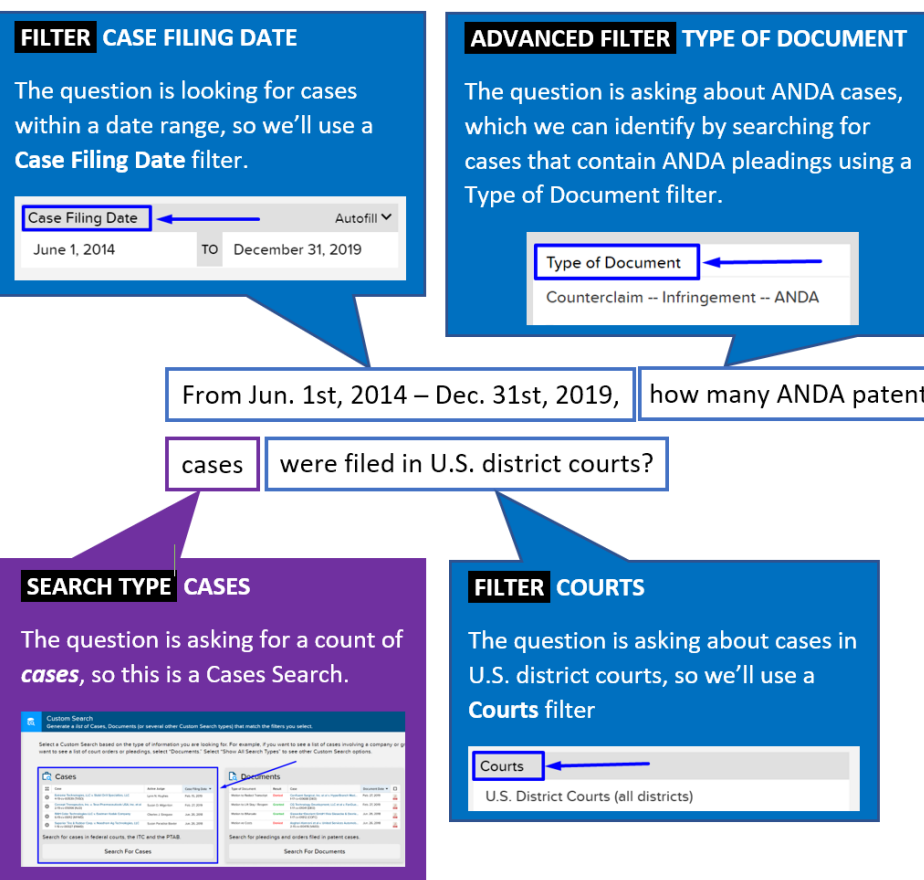
Answer

2006 Cases

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for a count of cases, so we'll use a **Cases** search type. To find ANDA cases, filter for cases that contain ANDA pleadings using a **Type of Document** filter. Here, you'll want to select each of the ANDA pleadings that could contain ANDA claims: *Complaint – Infringement (ANDA), Complaint – Declaratory Judgment (ANDA),* and *Counterclaim – Infringement (ANDA)*. This will narrow your results to just cases that contain those documents – i.e., all ANDA cases. From there, just add a quick date filter and you're all set!

FILTER **CASE FILING DATE**

The question is looking for cases within a date range, so we'll use a **Case Filing Date** filter.

Case Filing Date		Autofill ⌄
June 1, 2014	TO	December 31, 2019

ADVANCED FILTER **TYPE OF DOCUMENT**

The question is asking about ANDA cases, which we can identify by searching for cases that contain ANDA pleadings using a Type of Document filter.

Type of Document
Counterclaim -- Infringement -- ANDA

From Jun. 1st, 2014 – Dec. 31st, 2019,   how many ANDA patent

cases   were filed in U.S. district courts?

SEARCH TYPE **CASES**

The question is asking for a count of *cases*, so this is a Cases Search.

FILTER **COURTS**

The question is asking about cases in U.S. district courts, so we'll use a **Courts** filter

Courts
U.S. District Courts (all districts)

23

STEP 1 – SEARCH TYPE

On the main search page, select a **Cases** search

STEP 2 – FILTERS:

Overview

Under the **Advanced Filters** tab, use the **Type of Document** filter, select *Complaint – Infringement -- ANDA, Complaint – Declaratory Judgment - ANDA,* and *Counterclaim – Infringement - ANDA*

Use the **Case Filing Date** filter to enter the relevant dates

STEP 3 – VIEW RESULTS

Click "View 2006 Results" to view the search results

*Frequent Mistakes: Attempting to filter for ANDA cases using *Legal Issues* instead of searching for ANDA pleadings using *Document Types.*

24

A **Feit Consumer Insights** Whitepaper

9. From Jan. 1st, 2014 - Dec. 31st, 2018, how many cases involving Orange Book patents were filed in U.S. district courts?
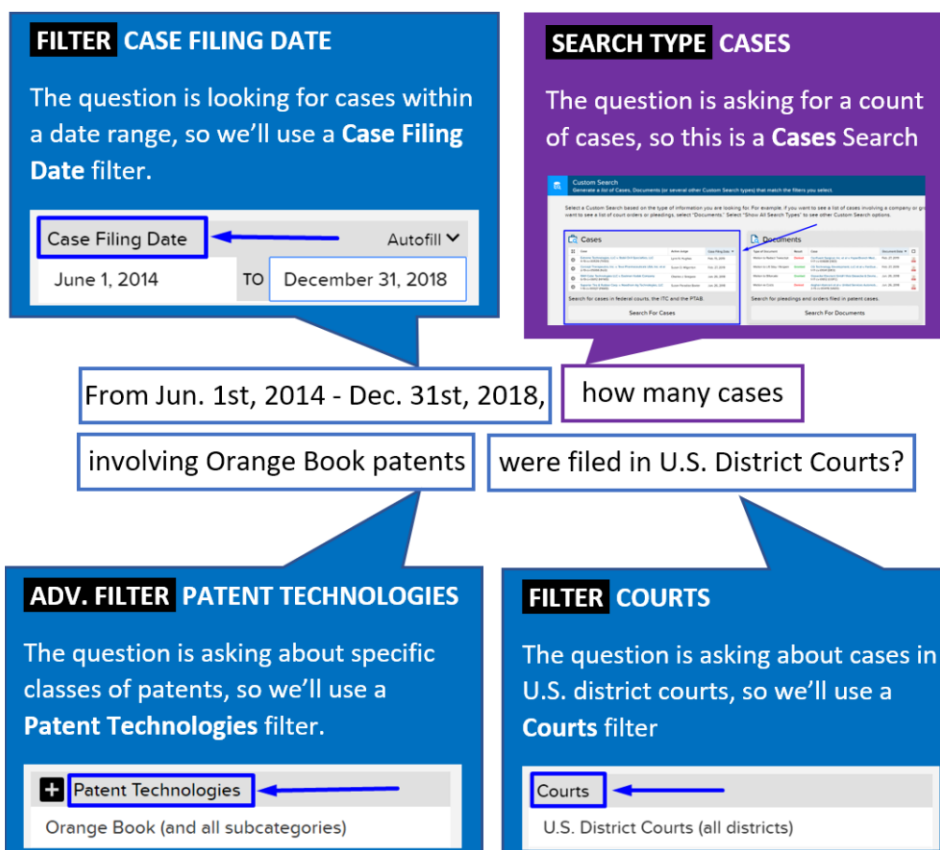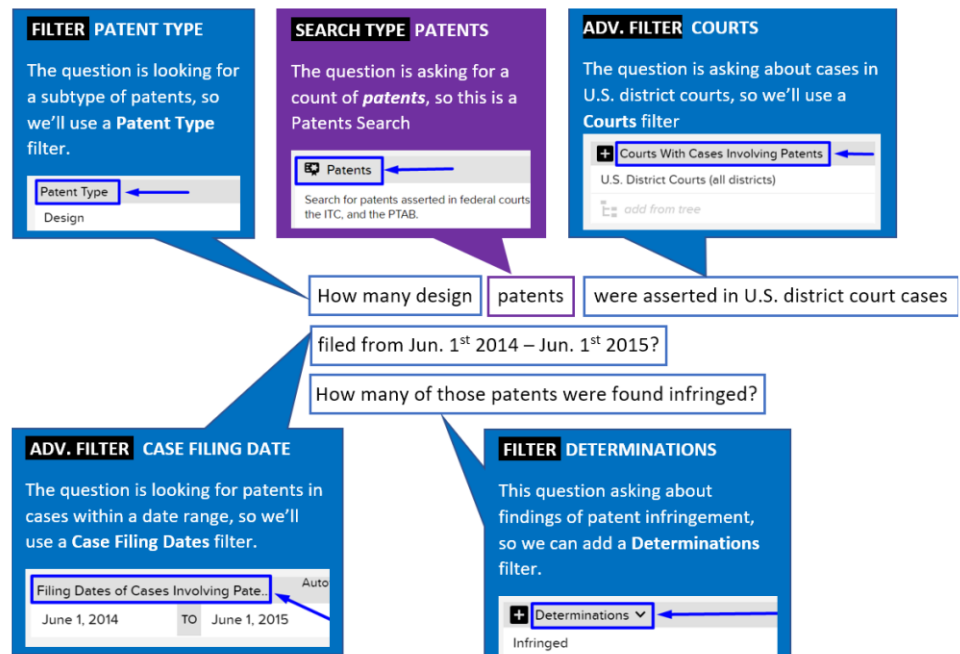
Answer

1884 Cases

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for a count of cases, so we'll use a **Cases** search type. Other aspects of the question can be addressed with **Filters** within an Accusations search, as shown in the diagram below. Docket Navigator contains listings of most major patent classification systems (CPC, USPC) as well as PTAB and Orange Book codes all of which can be accessed with a Patent Technologies filter.

FILTER CASE FILING DATE

The question is looking for cases within a date range, so we'll use a **Case Filing Date** filter.

Case Filing Date — Autofill ⌄
June 1, 2014 — TO — December 31, 2018

SEARCH TYPE CASES

The question is asking for a count of cases, so this is a **Cases** Search

From Jun. 1st, 2014 - Dec. 31st, 2018,

how many cases

involving Orange Book patents

were filed in U.S. District Courts?

ADV. FILTER PATENT TECHNOLOGIES

The question is asking about specific classes of patents, so we'll use a **Patent Technologies** filter.

➕ Patent Technologies
Orange Book (and all subcategories)

FILTER COURTS

The question is asking about cases in U.S. district courts, so we'll use a **Courts** filter

Courts
U.S. District Courts (all districts)

25

STEP 1 – SEARCH TYPE

On the main search page, select a **Cases** search

STEP 2 – FILTERS:

Overview

Using the **Courts** filter, select *U.S. District Courts*

Use the **Case Filing Date** filter to enter the relevant dates

Under the **Advanced Filters** tab, use the **Patent Technologies** Filter to enter *Orange Book*

STEP 3 – VIEW RESULTS

Click "View 1884 Results" to view the search results

26

10. How many Design patents were asserted in U.S. district court cases filed from Jun. 1st, 2014 - Jun. 1st, 2015? How many of those patents were found infringed?

Answer

382 Patents, 61 Infringed

When converting a real-world question into a Docket Navigator query, the first step is to consider what type of information answers the question. If the question calls for a list of cases, a **Cases** search will provide the answer. If the question calls for a list of patents, use a **Patents** search.

Overview

This question is asking for a count of patents, so we'll use a **Patents** search type. Other aspects of the question can be addressed with **Filters** within a Patents search, as shown in the diagram below.

27

STEP 1 – SEARCH TYPE

On the <u>main search page</u>, select a **Patents** search

STEP 2 – FILTERS:

Using the **Patent Type** filter, select "Design" from the dropdown

Under the Advanced Filters tab, use the **Court with Cases Involving Patents** filter to select *U.S. District Courts*

Using the **Case Filing Date** filter, enter the relevant dates

STEP 3 – VIEW RESULTS

Click "View 382 Results" to view the search results

*Frequent Mistakes: Using a Cases search instead of a Patents search.

28