

Analyzing Data Trends To Shape Complex Litigation Strategy

Law360, New York (May 28, 2015, 5:20 PM ET) --

Often, companies and attorneys have to decide where to bring a case, and as we all know, courts differ from one another. In making jurisdictional decisions, it's important to understand those differences — and to have some hard data to make comparisons. With the understanding that jurisdictional data trends can shape complex litigation strategy, we took a look at the time to resolution of disputes in the U.S. District Courts and Courts of Appeals. We also focused on specific metrics in patent cases in six key districts. The findings outlined below show that time to trial, favorable courts and other litigation trends can influence where and when to file.

District Courts: Comparing Performance

Drawing on U.S. federal court summary statistics from across the nation, we looked at how long it takes various jurisdictions to move a civil matter from filing to disposition.

In terms of time-to-resolution, the statistics show that there is a wide variation across districts. A half dozen resolve cases in six months or less on average, including the Eastern District of Virginia, which can still be considered a “rocket docket.” But twice as many districts take a year or more. And the difference between the slowest district, the Eastern District of Arkansas, and the fastest, the Eastern District of Pennsylvania, can be measured in years.

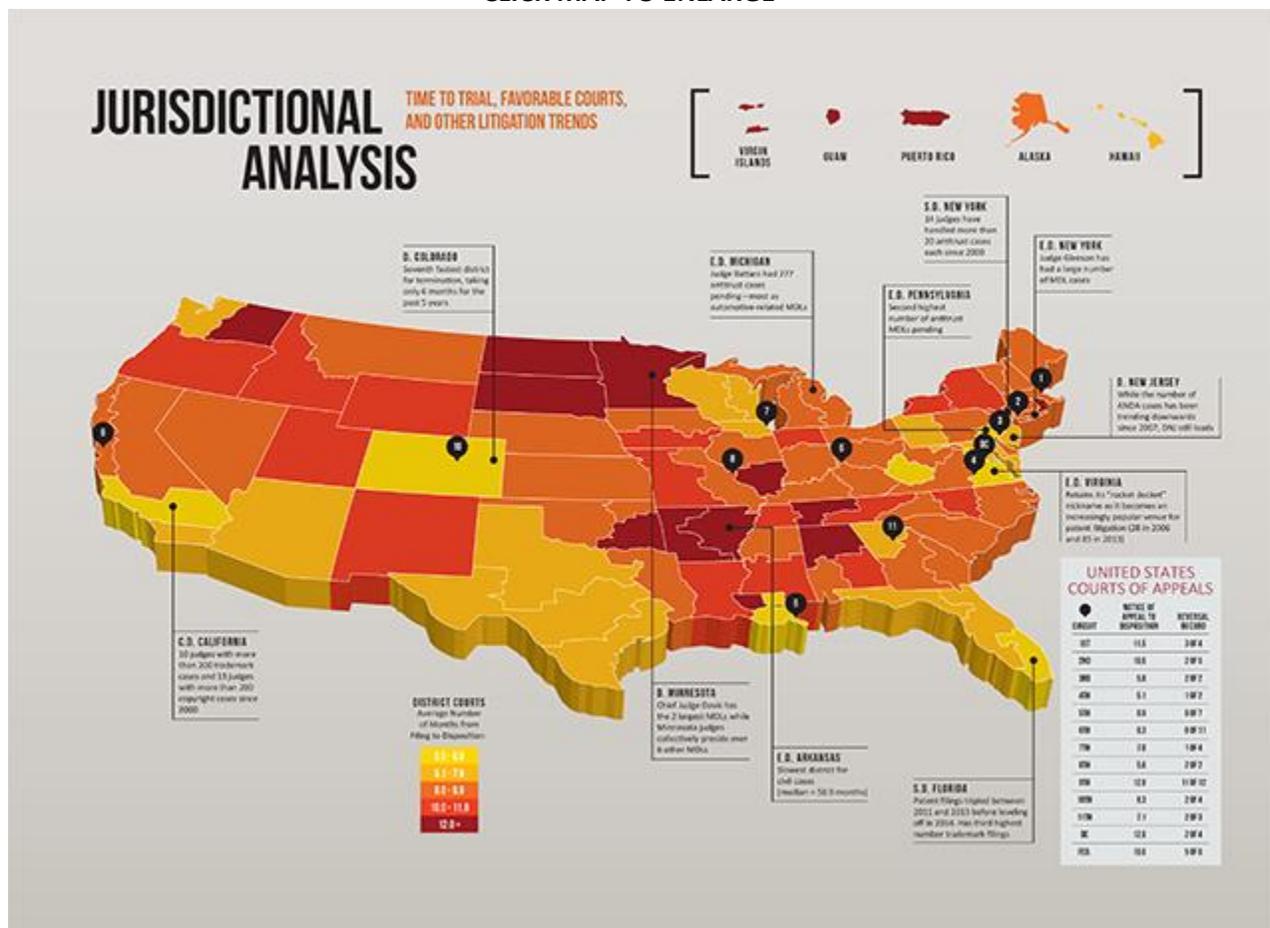
Turning to the types of cases being handled by various courts, it is clear that some have deeper experience with specific issues. For example, as one might expect, the Central District of California and the Southern District of New York handle a relatively high number of trademark and copyright cases. Somewhat surprisingly, however, so too does the Southern District of Florida.

The statistics also indicate a number of “hot spots” for multidistrict litigation. These include the Eastern District of Pennsylvania, the Eastern District of New York and the Eastern District of Michigan. This list presumably reflects the efforts of the Judicial Panel on Multidistrict Litigation to decentralize such cases away from large, busy commercial areas in order to spread workloads around and provide more courts with experience in this often-complex litigation.



Elizabeth Figueira

CLICK MAP TO ENLARGE



Finally, it is important to note that this research represents a current snapshot — that is, one moment in time. When courts are among the slowest in resolving cases, that can prompt action, with the federal court system devoting more resources to alleviate a backlog of cases in a specific jurisdiction. So these jurisdictional comparisons are an evolving picture that bears watching over time.

District Courts and Patent Cases

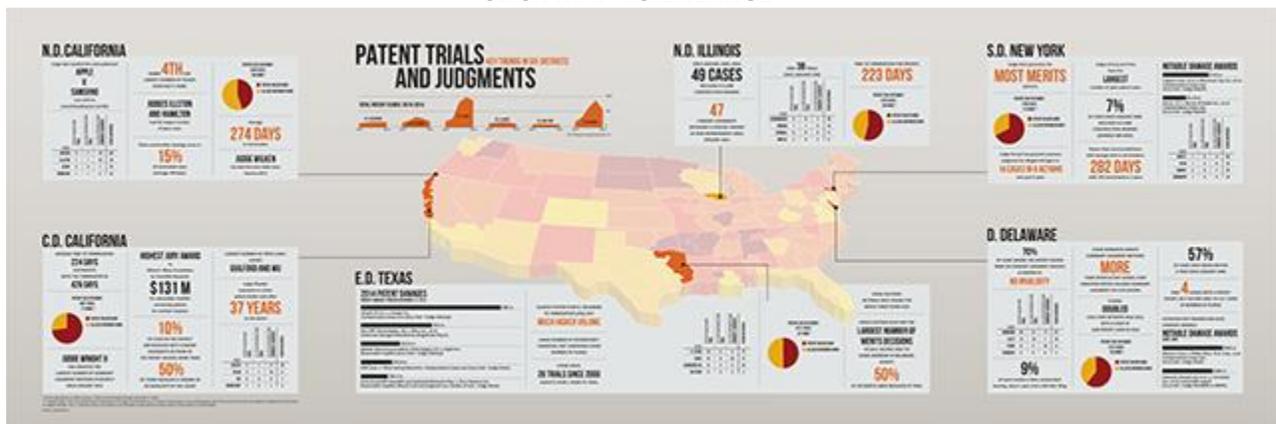
Patents and patent litigation play an increasingly critical role for many businesses, and knowing what to expect in a given courtroom can be important for litigators. With that in mind, we looked at data from several district courts that handle high volumes of patent cases, with the goal of developing a more fact-based understanding of how such cases are handed in these courts.

In 2014, the data shows, patent case filings were down 19 percent and antitrust filings were down 23 percent, after peaking in 2013. This is due to factors such as patent owners' increased reliance on pre-litigation licensing strategies and the increased potential for fee shifting, which presumably discourages some patent holders from suing. The Patent Office's relatively new post-grant review processes — created under the America Invents Act — have no doubt had a significant impact as well. These review proceedings provide what many see as an attractive alternative to litigation, and they have made the Patent Office the third most commonly used venue for patent challenges, behind only the Eastern District of Texas and the District of Delaware.

The research also examined outcomes in terms of whether patent owners or alleged infringers won cases. Looking across the districts, it appears that patent holders actually have a slight edge. In addition, even though conventional wisdom tells us that the Eastern District of Texas tends to be especially plaintiff-friendly, the data shows that each side there wins about the same percentage of cases. However, that district, along with a few others, has produced some of the highest damages awards — and those are the kinds of developments that make the news, shape public perceptions and give general counsel pause.

We also looked into actions of individual district court judges, and highlighted some of the key findings here. It was striking to see that some judges in a given district handle large numbers of patent cases, while others handle close to none. The implication is that some judges may have more experience-based knowledge than others when it comes to the technical issues and nuances often involved in patent cases. The reviews of judges' profiles also provided indications of their key decision points: that is, the data tells us that some are more likely to grant summary judgment motions, while others are more interested in pushing cases to trial (and possible settlement).

CLICK MAP TO ENLARGE



The statistics developed in this research are just that — statistics. They don't necessarily tell us why certain courts tend to behave as they do. But they do provide insights that can be used to help litigators understand a court's tendencies, set expectations, and develop litigation strategies.

—By Keith Harrison and Elizabeth Figueira, Crowell & Moring LLP

Keith Harrison is a partner in Crowell & Moring's Washington, D.C., office and leader of the firm's trial practice team.

Elizabeth Figueira is counsel in the firm's New York office and a member of the litigation group.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.