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Patexia Data Science Team



A comprehensive report on the top 100 best performing and most active IPR attorneys and law firms.

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Introduction

This September marks the eighth year since the first Inter-Partes Review (IPR) petition was filed. After its inception on September 16th, 2012, IPR gained popularity every year and quickly became part of the defense strategy utilized by defendants in patent litigation.

The IPR filing activity reached its peak in 2017 with a total of 1,725 petitions. In 2018, we saw a moderate decline of seven percent followed by a whopping decline of 21 percent last year, which was in-line with the drop in patent lawsuits in recent years.

According to our data, there was an uptick in filing activity towards the end of 2019,

and this accelerated in the first half of 2020. In fact, during the second quarter ended on June 30, IPR filing rose 12 percent, compared to the first quarter of 2020. Patent litigation also rose 27 percent in Q2 ([Patexia Insight 85](#)).

With 7,708 IPR petitions filed over the last five years (July 1, 2015 through June 30, 2020), IPR has gained a considerable market size. As a result, the majority of Am Law 100 firms with a robust IP practice have already formed a PTAB (*Patent Trial and Appeal Board*) practice. Also, over the last few years, we have seen several small IP boutiques forming with a focus on IPR and PTAB work.

What is New in Our 4th Report?

We have made a number of improvements to this year's report at the suggestion of our community, and we are confident you will see the added value in these changes.

One of the key questions companies would like to know is the estimated cost of an IPR and potential cost if the case is settled at different phases. This information is also very valuable to law firms as they would like to know how their pricing model stacks up

against other firms. To answer these questions, we conducted a [survey](#) and asked IPR attorneys to help us estimate the IPR cost in 9 different phases as highlighted and explained in Section 2.

We also attempted to estimate and find out the workload and staffing for typical IPR cases to help law firms compare themselves with other firms.

Another significant update was in our ranking methodology. In our previous reports, we measured and ranked attorneys by activity and success (we called it performance). However, we understand that large case numbers would inevitably dilute performance over time (after all, none of us can escape the law of averages!). This makes it unideal to compare the performance scores of firms/attorneys with very different case loads (even though we have a cut-off threshold which we use to exclude law firms or attorneys with very small case-load). By taking these considerations into account, we created a new “*Performance Score*” and “*Performance Ranking*”, which allow us to score and rank companies, attorneys, and firms for both *Activity and Success* combined. In other words, this new performance score is a weighted average of *Success* and *Activity* scores. This new performance ranking helps companies find the highly active and highly successful law firms and attorneys (i.e., the most qualified ones).

Another change we made in this report, was on allocating points for settled cases. In the past three reports, we gave all the points to the petitioner as the assumption was that the patent owner agreed to settle to cut its losses. But as many of our survey respondents indicated, this might not always be the case. As a result, we decided to divide the

point 75/25 between the petitioner and the patent owner (our assumption is that settlement is a better outcome for the petitioner).

We also improved our data quality by giving direct access to attorneys to review and verify their cases on Patexia website. Each IPR attorney was contacted and provided a unique link by our staff to login and access their cases. Our data analysts then reviewed all the changes suggested by the attorneys to make sure they correctly match with public records available through PTAB.

As we continue publishing these annual reports, we try to improve the accuracy (raw data), models, and the report content (type of analyses) each year. Moreover, we have expanded our offerings to cover other areas of IP such as *Patent Prosecution*, *ITC Section 337*, *ANDA/Hatch-Waxman* and *Patent Litigation*.

We consider all the feedback we receive from the IP community to improve and make the reports more useful to everybody, including our law firm and corporate partners. Our analysis has become more complex and covers a wider range than in the past.

This year, in response to our community request, we have increased our coverage of law firms, attorneys and companies to

the top 1,000 most active (up from 500 in prior years). While being in the top 100 in a respected category is a significant accomplishment, as it puts the attorney in the top two percentile, the law firm in the top 10 percentile and the company in almost the top three percentile, knowledge about the remaining participants is quite important and useful as well. We also have provided the additional data in the accompanying Excel file.

This update was done because many corporate clients who did not find their IPR counsel in the top 100, were interested to know about their performance, and they inquired about it after purchasing the report.

We hope that our corporate and law firm clients find this report useful and use it effectively for either counsel selection (corporation) or business development (law firms).



Founder and CEO

September 2020



What's in This Report?

The report content has been divided into the following sections:

- 1. Ranking Methodology:** We explain our activity, success and performance scores, and how we have calculated them for patent owners, petitioners, and their representatives, as well as the PTAB judges.
- 2. Staffing, Cost and Workload:** We analyze the result of our survey, which covered IPR staffing, cost estimation and workload
- 3. IPR Statistics:** We provide an overview of IPR including high-level statistics related to all parties, cases, patents, and claims.
- 4. Case Analysis:** We dive into case-level statistics and analyze *Settlement*, *Denial*, and *Invalidation* rates. We also examine IPC codes and their popularity in IPR.
- 5. PTAB Administrative Judges:** We examine the performance of about 200 *PTAB Administrative Judges*, identifying the most active as well as the best performing from the viewpoint of *Patent Owners* or *Petitioners*.
- 6. Petitioners and Patent Owners:** We identify the most active and the best-performing *Petitioners* and *Patent Owners* over the last five years.
- 7. Law Firms:** We analyze the performance and activity of law firms, comparing and providing rankings for the top firms representing *Petitioners* and *Patent Owners*.
- 8. Attorneys:** We review the performance and activity of attorneys, representing *Petitioners* and *Patent Owners*, comparing and providing rankings for top attorneys on each side.

As per our tradition for this and our other intelligence reports, and in order to have a meaningful comparison, as well as compensating for the time required for each case from filing to completion (e.g., 6 to 18 months), we covered a period of five years (e.g., July 1, 2015, through June 30, 2020). Although the cut-off day for cases was June 30, 2020, we used the latest updates for the cases as of August 30, 2020. Appendix A lists all sources of data used for this report

DISCLAIMER: The data for this report was obtained from public sources including USPTO, PTAB, and PACER, as well as self-reported by attorneys on Patexia website. Patexia has gone to great lengths to provide valid and accurate analysis based on this data. However, Patexia does not guarantee 100 percent accuracy nor take any responsibility for possible losses caused by use of information provided in this report.

Executive Summary

Since its inception in September 2012 through the end of the second quarter, 10,868 IPR petitions have been filed. The IPR filing activity for the period of this study (July 1, 2015 through June 30, 2020) was 7,708 which shows a 5 percent decline compared to the five year period we covered in our third annual report last year (July 1, 2014 through June 30, 2019).

Year-over-year filing peaked at 1,725 in 2017. Since then, the IPR filing has been declining. In 2019, we saw the largest year-over-year decline of around 20 percent. But as we had predicted in our last year's report, in the first half of 2020 we saw signs of recovery for both IPR and district court patent litigation. We anticipate the filing activity to continue its growth in 2020 and then in 2021.

Settlement rate has gone up 15 percentage points, from 16 percent in 2014 to 31 percent in 2018. Meanwhile the rate of *Final Written Decisions* has fallen as much as 11 percentage points over the same period. Overall, out of 5,967 IPR cases that were completed during this period (i.e., settled, denied or received FWD decisions), 41 percent denied institution, 25 percent settled, and 34 received the *Final Written Decision*.

During the five-year reporting period, a total of 7,708 IPRs were filed to challenge 4,886 unique patents and 79,523 unique claims. So far, this has resulted in institution and invalidation of 41,161 and 16,313 claims, respectively.

In the last five years, 2,685 companies have been involved in one or more IPRs. This includes about 1,286 petitioners and 1,665 patent owners. The top 20 petitioners account for about 31 percent of all cases. Apple remains the most active petitioner with 380 IPRs. Uniloc is the most active patent owner with 191 IPRs for this period.

915 law firms have represented patent owners and petitioners. From this number, 469 firms represented petitioners, while 770 firms represented patent owners in one or more cases (some were active on both sides). A total of 4,983 attorneys worked for these firms. From this number, 3,039 attorneys represented petitioners, while 3,335 attorneys represented patent owners. Similar to last year, we will be providing our law firm partners with the most active and best performing IPR badges for 2020.



Appendix



Appendix A

Sources of Data

Data is the foundation and building block of any data-driven analysis. Therefore, collecting data from quality sources and taking extra care in maintaining the data integrity is something we at Patexia take into account very seriously. We have collected our raw data from many sources including:

- Patent Trial and Appeal Board (PTAB) Database
- United States Patent and Trademark (USPTO) Patent Database
- Public Access to Court Electronic Records (PACER)
- Self-reported by attorneys named on the case
- US Patent Classification Database

For this release, we limited the date range of our analysis to the last five years (July 1, 2015 through June 30, 2020).

While the possibility of errors such as typos in legal documents are inevitable, cleaning and organizing the attorney data is even more challenging as attorneys have similar names (or sometimes exactly the same names), change firms, may not update their information, and often use different variations of their names.

Our engineering team has implemented sophisticated machine learning and natural language processing techniques to find the correct matches for various occurrences of the same name. To further minimize the errors, we not only review suspicious matches manually, but also host profile pages for more than 100,000 attorneys and agents who can directly review and add missing cases to our database. All the user added data will again be verified by Patexia internal data team for accuracy.

Appendix B

Patent Owners and Petitioners Statistics

See the attached Excel spreadsheet for the stats related to up to 1,000 most active patent owners and petitioners, involved in one or more IPR cases, filed during the period of our study. The spreadsheet covers the following information for each of the companies:

1. Company name with a link to Patexia page
2. All Cases (Patent Owner + Petitioner)
3. Patent Owner Cases
4. Petitioner Cases
5. Overall Performance Rank
6. Overall Activity Rank
7. Overall Success Rank
8. Patent Owner Performance Rank
9. Patent Owner Activity Rank
10. Patent Owner Success Rank
11. Petitioner Performance Rank
12. Petitioner Activity Rank
13. Petitioner Success Rank
14. 2019 Overall Performance Rank
15. 2019 Overall Activity Rank
16. 2019 Patent Owner Performance Rank
17. 2019 Patent Owner Activity Rank
18. 2019 Petitioner Performance Rank
19. 2019 Petitioner Activity Rank
20. Overall Performance Score
21. Patent Owner Performance Score
22. Petitioner Performance Score
23. Overall Success Score
24. Patent Owner Success Score
25. Petitioner Success Score
26. Overall Activity Score
27. Patent Owner Activity Score
28. Petitioner Activity Score
29. Patent Owner non-pending (Concluded) Cases
30. Petitioner non-pending (Concluded) Cases

Appendix C

Law Firms Statistics

See the attached Excel spreadsheet for the stats related to all 915 law firms, involved in one or more IPR cases, filed during the period of our study. The spreadsheet covers the following information for each of the law firms:

1. Law firm name with a link to Patexia page
2. All Cases (Patent Owner + Petitioner)
3. Patent Owner Cases
4. Petitioner Cases
5. Overall Performance Rank
6. Overall Activity Rank
7. Overall Success Rank
8. Patent Owner Performance Rank
9. Patent Owner Activity Rank
10. Patent Owner Success Rank
11. Petitioner Performance Rank
12. Petitioner Activity Rank
13. Petitioner Success Rank
14. 2019 Overall Performance Rank
15. 2019 Overall Activity Rank
16. 2019 Patent Owner Performance Rank
17. 2019 Patent Owner Activity Rank
18. 2019 Petitioner Performance Rank
19. 2019 Petitioner Activity Rank
20. Overall Performance Score
21. Patent Owner Performance Score
22. Petitioner Performance Score
23. Overall Success Score
24. Patent Owner Success Score
25. Petitioner Success Score
26. Overall Activity Score
27. Patent Owner Activity Score
28. Petitioner Activity Score
29. Patent Owner non-pending (Concluded) Cases
30. Petitioner non-pending (Concluded) Cases

Appendix D

Attorneys Statistics

See the attached Excel spreadsheet for the stats related to the top 1000 most active attorneys, involved in one or more IPR cases, filed during the period of our study. The spreadsheet covers the following information for each of the law firms:

1. Attorney name with a link to Patexia page
2. Law firm name with a link to Patexia page
3. All Cases (Patent Owner + Petitioner)
4. Patent Owner Cases
5. Petitioner Cases
6. Overall Performance Rank
7. Overall Activity Rank
8. Overall Success Rank
9. Patent Owner Performance Rank
10. Patent Owner Activity Rank
11. Patent Owner Success Rank
12. Petitioner Performance Rank
13. Petitioner Activity Rank
14. Petitioner Success Rank
15. 2019 Overall Performance Rank
16. 2019 Overall Activity Rank
17. 2019 Patent Owner Performance Rank
18. 2019 Patent Owner Activity Rank
19. 2019 Petitioner Performance Rank
20. 2019 Petitioner Activity Rank
21. Overall Performance Score
22. Patent Owner Performance Score
23. Petitioner Performance Score
24. Overall Success Score
25. Patent Owner Success Score
26. Petitioner Success Score
27. Overall Activity Score
28. Patent Owner Activity Score
29. Petitioner Activity Score
30. Patent Owner non-pending (Concluded) Cases
31. Petitioner non-pending (Concluded) Cases

Appendix E

Survey Questions

The following questions were designed to help us estimate the cost and workload in different stages of an IPR case.

We understand that the cost estimation is not simple and is a function of many factors including the party (petitioner vs. patent owner), number of patents and defendants involved in the district court case (if there is a case), strategy, complexity, etc.

For simplicity, we only considered this from the petitioner's perspective and divide the process into the following 9 phases:

- Phase 0: Patent and Prior Art Review
- Phase 1: Draft and file IPR petition and one expert declaration
- Phase 2: Evaluate the patent owner's preliminary response
- Phase 3: Evaluate Board's institution decision, draft and file evidentiary objections as necessary, prepare the expert for deposition, defend the expert in the deposition, and responses and motions as necessary during patent owner's discovery period
- Phase 4: Evaluate the patent owner's response and expert declaration, draft and file evidentiary objections as necessary, take the deposition of patent owner's expert, and responses and motions as necessary during petitioner's discovery period
- Phase 5: Draft and file petitioner's reply and supplemental expert declaration, draft and file motion to exclude evidence as necessary
- Phase 6: Prepare for and conduct the oral hearing
- Phase 7: Evaluate final written decision and draft and file request for rehearing as necessary
- Phase 8: Appeal File and conduct appeal to Federal Circuit

Questions

1. How often do you manage an IPR project under a fixed or capped fee structure?

- Never
- About 25% of the time
- About 50% of the time
- About 75% of the time
- All the time

2. Which technology area covers a considerable area of your IPR projects?

- Electrical and Hardware
- Software and Internet
- Mechanical
- Pharma and life Sciences
- Other

3. What is your estimated attorney fee for Phase 0 - Patent and Prior Art Review?

- Less than \$7K
- Between \$7K to \$12K
- Between \$12K to \$15K
- More than \$15K

4. What is your estimated attorney fee for Phase 1 - Draft and file IPR petition and one expert declaration?

- Less than \$50K
- Between \$50K to \$75K
- Between \$75K to \$100K
- More than \$100K

5. What is your estimated attorney fee for Phase 2 - Evaluate patent owner's preliminary response?

- Less than \$2,500
- Between \$2,500 to \$7,500
- Between \$7,500 to \$10,000
- More than \$10K

6. What is your estimated attorney fee for Phase 3 - Evaluate Board's institution decision, draft and file evidentiary objections as necessary, prepare the expert for deposition, defend the expert in the deposition, and responses and motions as necessary during patent owner's discovery period?

- Less than \$25K
- More than \$50K
- Between \$25K to \$50K

7. What is your estimated attorney fee for Phase 4 - Evaluate patent owner's response and expert declaration, draft and file evidentiary objections as necessary, take the deposition of patent owner's expert, and responses and motions as necessary during petitioner's discovery period?

- Less than \$25K
- Between \$35K to \$50K
- Between \$25K to \$35K
- More than \$50K

8. What is your estimated attorney fee for Phase 5 - Draft and file petitioner's reply and supplemental expert declaration, draft and file motion to exclude evidence as necessary?

- Less than \$25K
- Between \$50K to \$75K
- Between \$25K to \$35K
- More than \$75K
- Between \$35K to \$50K

9. What is your estimated attorney fee for Phase 6 - Prepare for and conduct oral hearing?

- Less than \$25K
- Between \$50K to \$75K
- Between \$25K to \$50K
- More than \$75K

10. What is your estimated attorney fee for Phase 7 - Evaluate final written decision and draft and file request for rehearing as necessary?

- Less than \$5K
- Between \$5K to \$15K
- Between \$15K to \$25K
- More than \$25K

11. What is your estimated attorney fee for Phase 8 - Appeal File and conduct appeal to Federal Circuit?

- Less than \$75K
- Between \$75K to \$150K
- Between \$150K to \$225K
- Between \$225K to \$300K
- More than \$300K

12. Does the IPR cost change by the number of independent grounds of invalidity included in the IPR? For example, an IPR that tries to invalidate Claim 1 in one ground is less costly than arguing two separate grounds.

- Yes, definitely! Arguing multiple separate grounds of invalidity will cost more
- No, not at all! The cost is not a function of number of grounds of invalidity

13. Is there any discount provided if there are more than one patent from the same family?

- No discount
- Less than 25%
- Between 25% to 50%
- More than 50%

14. What is the estimated cost of Experts?

- Less than \$25K
- Between \$25K to \$35K
- Between \$35K to \$50K
- Between \$50K to \$75K
- More than \$75K

15. What is the average hourly rate for your IPR associates?

- Less than \$350 an hour
- Between \$350 to \$500 an hour
- Between \$500 to \$600 an hour
- Between \$600 to \$700 an hour
- More than \$700

16. What is the average hourly rate for your IPR partners?

- Less than \$500 an hour
- Between \$500 to \$750 an hour
- Between \$750 to \$1,000 an hour
- Between \$1,000 to \$1,250 an hour
- More than \$1,250

17. Any additional comments on cost and workload?

Staffing

We understand that law firms allocate their resources differently. In terms of staffing,

how many partners and associates are assigned to a typical IPR case by your firm:

18. For partners:

1 2 3

19. For associates:

0 1 2

20. How would the staffing be affected on the petitioner side, if the number of patents grows to 5 (how many more partners or associates are needed)?

21. Any additional comments on staffing?

Performance Measurement

The following questions will help us calculate the points for each side (petitioner

and patent owners) under different circumstances.

22. How should we allocate the points for settled cases?

Background: For the last three years, we assumed a settled case is a victory for the petitioner. While this is not always the case, we believe that in the majority of cases, when an IPR is settled, it is a sign that the petitioner's prior art was strong and the patent owner decided to settle rather than continuing the fight and burning more cash.

- 0 for the patent owner and 100% for the petitioner (similar to last years)
- 50% for the patent owner and 50% for the petitioner
- 25% for the patent owner and 75% for the petitioner
- None of the above (please explain)

23. Should we give extra weight to attorneys with higher activity?

Background: For the last three years, we had a cut-off number (e.g., a minimum of 40 concluded cases in five years). Only attorneys or firms with more cases than the threshold were included in the rankings. But once included, we treated everybody the same.

We are considering to change our performance score function to a weighted function which takes into account the activity. That means having a higher activity in general, can have some positive weight on the performance score.

- I agree that more activity should improve the performance
- Activity has nothing to do with the performance and it should not impact the performance

24. Your work Email address (optional):

25. Any additional comments (other challenges, suggestions, ...)

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