Trends in Global Patent Litigation

- **Increasing Number of Patent Suits in the U.S. and China**
  - China leads Asia and (soon) the rest of the world

- **Global Trend Toward Specialized Patent Courts**
  - Recent developments in Switzerland, Russia, China, etc.
  - Unified Patent Court for (most of) Europe

- **Litigation in U.S. v. Rest of the World (RoW)**
  - U.S.: Litigation is expensive and damages are usually important; injunctions are not readily available (eBay v. MercExchange); broad discovery and right to jury trial; attorney fees not automatic
  - RoW: Litigation is less expensive, but damage awards are lower; injunctions are usually important and automatic to winning party; limited or no discovery; no jury trial; “loser pays” more prevalent

- **Risk of NPEs Going Global**
Top 10 Most Active Countries
Number of Patent Suits (2010-2012)

1. China: 30,000
   Tokyo: 2 courts

2. U.S.: 23014
   ED Tex: 96 courts

3. Germany: 8755
   Dusseldorf: 12 courts

4. France: 2390
   Paris: 1 court

5. Italy: 1325*
   Milan: 21 courts

6. Japan: 1265
   Tokyo: 2 courts

7. India: 1225
   Delhi High Court: 605 courts

8. Taiwan: 1088
   IP Court: 1 court

9. England: 807
   London: 1+ courts

10. Canada: 510
    Toronto/Ottawa/Vancouver: 1 court, sits in 3 cities
Historical Patentee Win Rates

<table>
<thead>
<tr>
<th>(U/B) (CI/CO) (# trials required: V/I/D)</th>
<th>2006-2012 # of patent litigations filed</th>
<th>% of cases going to trial (decision on the merits)</th>
<th>2006-2012 Win Rate</th>
<th>Combined win rate for bifurcated country if same patent at issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>China (B)(CI)(2)</td>
<td>30,000&lt;sup&gt;2, 3&lt;/sup&gt;</td>
<td>Inf. Cases ≈ 33% Val. Chall. ≈ 67%</td>
<td>Infringement (2007-2013) 67.8% (194/286); Utility models 72.7%(336/462); Design patents 86% (940/1093) (2007–2013)</td>
<td>Invalidity only Invention patents 48% Utility models 44% Design patents 44%</td>
</tr>
<tr>
<td>US (U)(CO)(1)</td>
<td>23,014</td>
<td>3.1% (720/23,015)</td>
<td>Overall 59.4% (7,924/13,340); Contested 24% (987/4112); Combined trial win rate (bench and jury) 60.4% (696/1152)</td>
<td>Invention patents 33% Utility models 32% Design patents 38%</td>
</tr>
<tr>
<td>Germany (B)(CI)(3)</td>
<td>8755&lt;sup&gt;2&lt;/sup&gt;</td>
<td>≈ 40%</td>
<td>Infringement (Düsseldorf only) (2007-2012) 66% (577/869)</td>
<td>Nullity actions (FPC) (2007–2012) 39.1%</td>
</tr>
<tr>
<td>France (U)(CI)(1)</td>
<td>2390&lt;sup&gt;2&lt;/sup&gt;</td>
<td>≈17% (412/2390)</td>
<td>39% (161/413)</td>
<td></td>
</tr>
<tr>
<td>Japan (U)(CI)(1)</td>
<td>1265</td>
<td>40% (21% (260/1265))</td>
<td>22% (58/259)</td>
<td></td>
</tr>
<tr>
<td>England (U)(CO)(2)</td>
<td>807</td>
<td>13% (105/807)</td>
<td>25% (26/105)</td>
<td></td>
</tr>
<tr>
<td>South Korea (B) (CI)(2)</td>
<td>460&lt;sup&gt;2&lt;/sup&gt;</td>
<td>Inf. cases ≈ 50%</td>
<td>Infringement 26% (106/406) (2000–2009)</td>
<td>Invention patents at least 44% (1486/2659) Utility models at least 45% (754/1361)</td>
</tr>
</tbody>
</table>

1 A “win” is defined as a case where at least one claim was found valid and infringed in a court of first impression.
2 Indicates number is estimate based on discussions with GIP participants and incomplete data.
3 In China, utility model and design patent cases account for more than 80% of all patent litigation filed.
4 “U” stands for unified system, where validity and infringement are determined in one forum. “B” stands for bifurcated system, where validity and infringement are determined in separate fora. resulting in separate validity and infringement win rates.
5 “CI” stands for civil law jurisdiction, “CO” stands for common law jurisdiction; note fewer cases to trial in CO jurisdictions.
6 “V/I/D” stands for validity/infringement/damages.
7 While the data shows 260 patent litigation cases decided on the merits, the 1,265 patent cases filed include all patent-related cases such as patent license cases and employee invention cases. 260/1265 gives a figure of 21%, which is too low, considering the denominator is not just patent infringement litigation cases filed. 40% is considered a reasonable estimate.
8 The win rate cannot be determined more precisely according to the GIP definition (all claims maintained without change + half of the claims amended) because this level of data is not available. The number here reflects cases where no claims were invalidated (patent claims remain intact without change). Source: Korean Intellectual Property Office (KIPO) Intellectual Property Tribunal (IPT), 2005–2009.
9 This number only applies if the same patent is involved in an infringement proceeding and a validity challenge; a large number of German infringement cases are decided without a parallel nullity action.

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Increasing Number of Patent Suits in the U.S. and China

- China leads Asia and (soon) the rest of the world

China: Includes infringement cases for invention patents, utility models, and design patents. Since 2010, China only discloses the total amount of patent cases, which includes patent infringement disputes, ownership disputes, licensing disputes, and others. As a result, the numbers for 2010-2012 are estimates.
The Chinese Litigation System—Courts

- Bifurcated system
- Panel of 3 or 5 judges (in first instance, may include one lay person as people’s “juror”)
- Technical expert likely to be involved
- China recently approved proposal to establish IP specialty courts in Beijing, Shanghai, and Guangzhou to handle first instance patent infringement suits
China—Patent Infringement Cases by Type

2007-2011

- Invention: 11%
- Unknown: 21%
- Utility Model: 22%
- Design: 46%

Source: Global IP Project

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Decisions by Technology (2007-2011):

- Mechanical: 38%
- Other: 39%
- Chemical/Materials: 4%
- Electrical: 9%
- Semiconductor/Computer Hardware: 2%
- Medical devices: 3%
- Pharma/ Biotech: 5%

Source: Global IP Project
China—Patent Infringement Cases
Patentee Win Rates

- First instance decisions for leading courts in China (2012)

<table>
<thead>
<tr>
<th>Patent Type</th>
<th>Nationwide</th>
<th>Guangdong Guangzhou Intermediate Court</th>
<th>Shanghai 1st Intermediate Court</th>
<th>Guangdong Foshan Intermediate Court</th>
<th>Guangdong Shenzhen Intermediate Court</th>
<th>Shanghai 2nd Intermediate Court</th>
<th>Jiangsu Nanjing Intermediate Court</th>
<th>Jiangsu Changzhou Intermediate Court</th>
<th>Hunan Changsha Intermediate Court</th>
<th>Liaoning Shenyang Intermediate Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Invention</td>
<td>68.25%</td>
<td>80%</td>
<td>63.64%</td>
<td>0%</td>
<td>0%</td>
<td>33.33%</td>
<td>100%</td>
<td>0%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Utility model</td>
<td>65.22%</td>
<td>80%</td>
<td>25%</td>
<td>80%</td>
<td>0%</td>
<td>60%</td>
<td>60%</td>
<td>50%</td>
<td>100%</td>
<td>33.33%</td>
</tr>
<tr>
<td>Design</td>
<td>86.24%</td>
<td>94.48%</td>
<td>74.28%</td>
<td>48.15%</td>
<td>100%</td>
<td>47.62%</td>
<td>100%</td>
<td>0%</td>
<td>100%</td>
<td>0%</td>
</tr>
<tr>
<td>All Types</td>
<td>75.81%</td>
<td>90.77%</td>
<td>60.27%</td>
<td>51.52%</td>
<td>100%</td>
<td>46.88%</td>
<td>85.18%</td>
<td>33.33%</td>
<td>100%</td>
<td>50%</td>
</tr>
</tbody>
</table>

Source: Global IP Project

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The U.S. Litigation System

U.S. Supreme Court

Federal Circuit

94 District Courts (at least 1 in each state)

Court of Federal Claims

Quasi-Judicial Federal Agencies

International Trade Commission

Patent Trial and Appeal Board

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U.S. Patent Suits Have Increased 120% Since 2004

Note: Patent suits still a small fraction (1%) of all civil filings in the U.S.
Top 10 Venues for Patent Litigation

- Represent about 74% of the total filings (4,783 of 6,448)
- E.D. Tex. remains the most popular

E.D. Tex. went from 33 in 2001 to 1513 in 2013 (4585%).
Typical U.S. Litigation Timeline

- Complaint
- Answer/Counterclaims
- Markman Hearing
- Final Judgment
- Appeal

- Pre-Litigation Investigation
- Fact discovery and motion practice
- Pre-Trial Motions
- Post-Judgment Proceedings

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Time From Filing to Decision on the Merits in the 10 Most Active U.S. District Courts

- Central District of California, 36 months
- Eastern District of Texas, 31.4 months
- District of Delaware, 33.1 months
- Northern District of California, 36.7 months
- Southern District of New York, 45 months
- Eastern District of Virginia, 19.1 months
- District of New Jersey, 32.9 months
- Southern District of California, 35.6 months
- Southern District of Florida, 30.1 months
- Northern District of Illinois, 58.1 months

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<table>
<thead>
<tr>
<th>District Court</th>
<th>Patent Litigation Filings in 2012</th>
<th>Patentee Trial Win Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern District of Texas</td>
<td>1266</td>
<td>73%</td>
</tr>
<tr>
<td>District of Delaware</td>
<td>997</td>
<td>51%</td>
</tr>
<tr>
<td>Northern District of California</td>
<td>515</td>
<td>38%</td>
</tr>
<tr>
<td>Central District of California</td>
<td>416</td>
<td>71%</td>
</tr>
<tr>
<td>Northern District of Illinois</td>
<td>237</td>
<td>50%</td>
</tr>
<tr>
<td>District of New Jersey</td>
<td>175</td>
<td>63%</td>
</tr>
<tr>
<td>Eastern District of Virginia</td>
<td>161</td>
<td>62%</td>
</tr>
<tr>
<td>Southern District of New York</td>
<td>150</td>
<td>67%</td>
</tr>
<tr>
<td>Southern District of California</td>
<td>144</td>
<td>70%</td>
</tr>
<tr>
<td>Southern District of Florida</td>
<td>137</td>
<td>89%</td>
</tr>
</tbody>
</table>
The German Litigation System—Courts

- Bifurcated System

- 12 specialized courts for patent infringement disputes (Forum Shopping)

- About 1,000 patent infringement cases started in Germany per year:
  > Düsseldorf  approx. 500
  > Mannheim  approx. 250
  > Munich  approx. 150

- Federal Patent Court: Approx. 250 nullity actions started per year

Düsseldorf District Court (infringement): 66% patentee win rate

Federal Patent Court (nullity) 38% patentee win rate

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German Patent Litigation
Bifurcated System

Infringement proceedings

District Court

Defendant files Nullity action

Federal Patent Court

Nullity action

Judgment

Possible stay

Federal Court of Justice

Higher Regional Court

Appeal

Appeal on points of law

Judgment

Appeal

Patent revoked

Patent limited

Patent upheld
The German Litigation System—Workload

- Patent infringement cases **started** in selected courts

![Graph showing workload over years for different courts](image-url)
The German Litigation System—Workload

- Nullity proceedings started and terminated in Federal Patent Court

![Bar chart showing the number of new proceedings and action proceedings terminated from 2005 to 2013.](chart.png)
The German Litigation System—Win Rates
First Instance Düsseldorf

- Patent infringement decisions (incl. interim proceedings)
- Success rate for patentee 2009-2013: **66%** (533 of 811 decisions)

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The German Litigation System—Win Rates
Düsseldorf Court of Appeal

- Patent infringement appeal decisions (incl. interim proceedings)
- Success rate for patentee 2009-2013: **59%** (148 of 250 decisions)
The German Litigation System—Win Rates
1st Instance Nullity Proceedings

- Success rate for patentee (2009–2013; 1,265 actions) is 38%*

* Global IP Project methodology: win = maintained + ½ win (amended/partially nullified)
The French Litigation System—Courts

- **Cour de cassation**
  - Points of law review
  - Average 80 decisions per year
  - 4 panels ("sections") of 3 judges
  - 12 IP specialist judges

- **Cour d’appel**
  - De novo review
  - Average 60 decisions per year
  - 2 panels ("sections") of 3 judges
  - 6 IP specialist judges

- **Institut national de la propriété industrielle (INPI)**
  - National Institute of Industrial Property

- **Tribunal de grande instance**
  - 15 - 24 months
  - Since Nov 2009, the Tribunal de Grande Instance de Paris has exclusive jurisdiction for patent cases

- Unified System
- Around 350 cases filed per year
- Average of 60 decisions per year by Court of Appeal
- 2 panels ("sections") of 3 judges
- 6 IP specialist judges
- Average of 80 decisions per year by Court of First Instance (Paris)
- 4 panels ("sections") of 3 judges
- 12 IP specialist judges
The French Litigation System

Nature of Cases
Tribunal de Grande Instance de Paris
(2000-2013)

- Majority of cases are infringement actions (80%)
- Nullity actions (4%) are less prevalent
- Right to appeal; approx. 35% of cases are appealed
- First outcome is usually determinative; majority of decisions (84%) are affirmed in whole or part
The French Litigation System


EP patents became the majority in 2009

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The French Litigation System

Nature of Cases by Industry (2006-2013)

Patentee win rates shown above each category

Household products, industrial techniques, construction

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Court Structure

- Unified System
- About 150 cases per year
- Patent infringement disputes may be commenced in the London Patents Court (part of High Court) or IPEC (small claims; £500,000 or less)
Patent cases started per year


Independent counts for 2011 & 2012:
Actions commenced: 160 & 170
Patents in dispute: 227 & 221
Total "German Equivalent" cases 327-371 & 318-362
Decisions By Technology (2006-2013):

- Nearly half of all case were life sciences/medical
- The proportion of mechanical cases is growing as more mechanical patents are litigated in the IPEC
Win Rate by Technology:

Overall patentee win rate of 27% (35 out of 129 decisions where infringement/validity in dispute during 2006-2013)
The Japanese Litigation System—Courts

- Unified System
- Approx. 160 to 190 cases per year
- Specialized IP Courts
  - Tokyo & Osaka District Courts have specialized divisions for IP disputes
  - Staffed with technical experts
How Long It Will Take?

Source: Intellectual Property High Court

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The Japanese Litigation System—Win Rates
Tokyo and Osaka District Courts
Patentee Win Rate (2006-2014)

2006-2008 invention patent and utility model
2009-2013 invention patent, utility model, and design patent
2014 data is provisional
Results of Invalidation Trials at JPO (Invention Patents)
Main Characteristics of Korean Patent Litigation

- Civil law system
- Bifurcated proceedings

• However, an infringement court considers validity issues as well and denies enforcement of the patent if it finds the patent to be clearly invalid.
Main Characteristics of Korean Patent Litigation

IP Specialized Court and Panels

- Patent Court
  (established in 1998; hears appeals of decisions by KIPO)
- IP Specialized Panels
  - Seoul Central District Court (3 panels) and Seoul High Court (2 panels)
- Assisted by technical advisors who previously served as patent examiners or trial examiners at KIPO

Relatively fast resolution

- 1st instance infringement action takes 9-18 months
- Expedited review of invalidation action pending in parallel with related infringement action
“Partial win” means only part of the remedies sought by plaintiff were granted.
Patent Invalidation Rate (IPT of KIPO)

<table>
<thead>
<tr>
<th>Year</th>
<th>Invalidation Trial (IPT)</th>
<th>Invalidation Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>630</td>
<td>70.4%</td>
</tr>
<tr>
<td>2010</td>
<td>651</td>
<td>64.9%</td>
</tr>
<tr>
<td>2011</td>
<td>722</td>
<td>62.8%</td>
</tr>
<tr>
<td>2012</td>
<td>664</td>
<td>64.5%</td>
</tr>
<tr>
<td>2013</td>
<td>573</td>
<td>59.6%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>3,240</td>
<td>64.4%</td>
</tr>
</tbody>
</table>
**Korean Patent Litigation Timeline**

**Civil Court Action in parallel with Invalidation Action**

1. **Complain Filing**
   - Pre-litigation Preparation: 1 - 3 months **Note 1**
   - KIPO Action (By Defendant)

2. **District Court Decision**
   - 9 - 18 months **Note 2**

3. **High Court Decision**
   - 8 - 14 months
   - 3 - 5 months; or 1 - 2 years **Note 3**
   - Total: 2.5 - 4 years

4. **KIPO Inv. Action Filing**

5. **KIPO Decision**
   - 8 - 15 months

6. **Patent Court Decision**
   - 7 - 11 months
   - 3 - 5 months; or 1 - 2 years **Note 3**
   - Total: 2 - 3.5 years

7. **Supreme Court Decision**

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**Note 1:** Depends on validity/infringement analysis + availability of infringing product/testing

**Note 2:** Factors include damages claim, foreign service, litigation "style", etc.

**Note 3:** 3-5 months for summary dismissal; 1-2 years otherwise

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