

2022

D. DEL. PATENT LITIGATION
REVIEW

▶ EXECUTIVE SUMMARY

Morris Nichols is pleased to provide this snapshot of patent litigation activity in the US District Court for the District of Delaware in 2022.

The District of Delaware continued its role as a leading venue for patent cases in 2022, with the Court receiving 668 new patent filings last year. Delaware remains the dominant venue for Hatch-Waxman (ANDA) patent cases, with 63% of those cases nationwide filed in Delaware in 2022. For more than a decade, Delaware judges have presided over more ANDA cases than all other Courts in the country combined.

All told, the Court's four district judges and four magistrate judges, with assistance from a cadre of visiting judges, presided over 1,684 patent cases pending at some point in 2022 and held 28 trials. At the end of 2022, the Court had 798 open patent cases representing 46% of the Court's full docket.

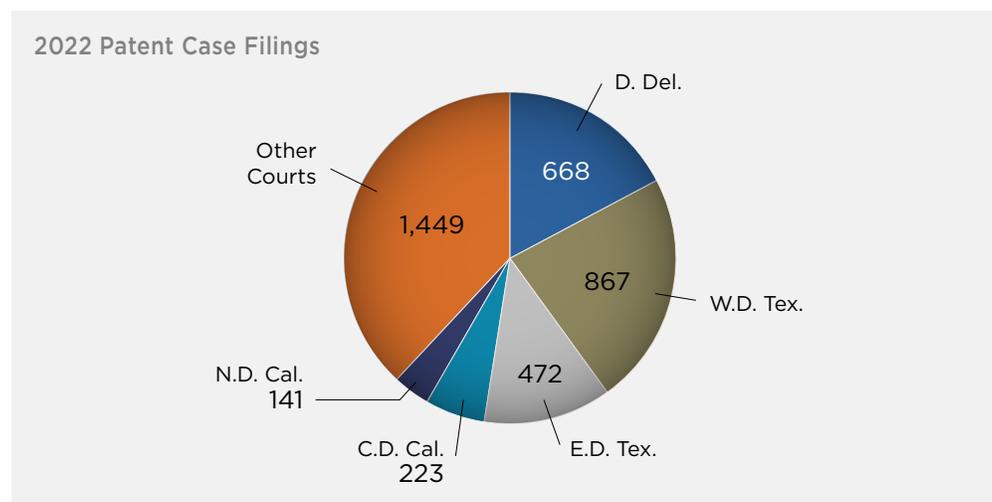
Here, we look back at patent filings, trials, decisions on key issues, and notable developments in the Court.

▶ 2022 PATENT FILINGS

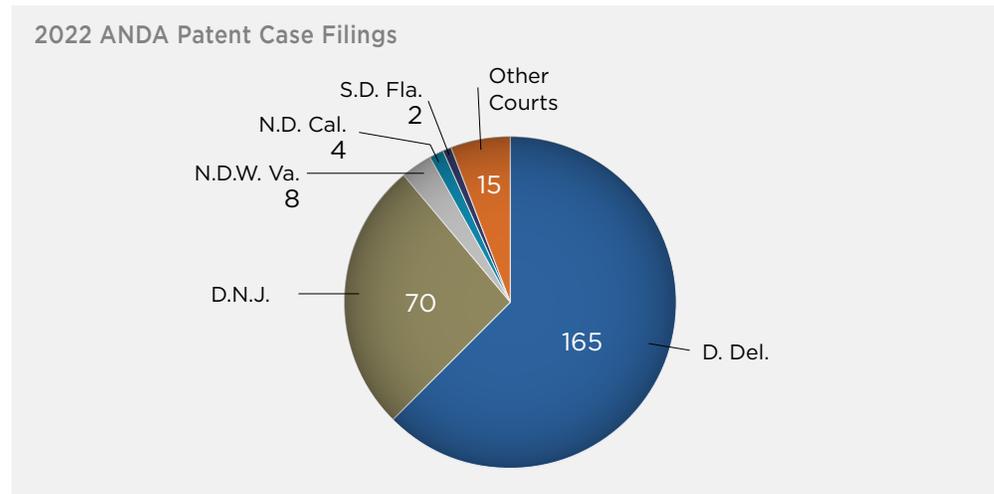
In total, there were 3,823 patent cases filed nationwide in 2022, with the District of Delaware receiving 668 (17%) of those, second only to the Western District of Texas with 867 (23%) patent cases filed last year.

Delaware continues to reign as the top court for Hatch-Waxman (ANDA) pharma litigation, with 165 new ANDA cases filed in 2022, representing 63% of the 264 ANDA cases filed nationwide.

Top Five Districts for 2022 Patent Filings (All)



Top Five Districts for 2022 ANDA Patent Filings



▶ PLANTIFFS

D. DEL. 2022 MOST ACTIVE PLAINTIFFS

Most Active Plaintiffs (non-ANDA)

Cedar Lane Technologies Inc.
Aperture Net LLC
Hydro Net LLC
DigiPortal LLC
Valyrian IP LLC

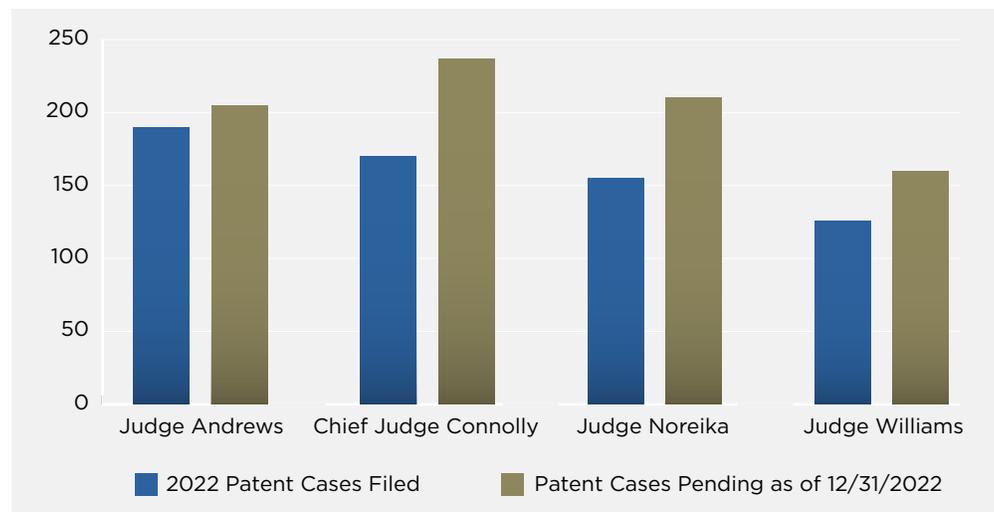
Most Active Plaintiffs (ANDA)

AstraZeneca
Novo Nordisk
PF Prism (Pfizer)
Novartis
Otsuka

▶ JUDGES

While Judge Albright received the vast majority of new W.D. Texas patent cases in 2022, the Delaware cases were split more evenly across the four district court judges.

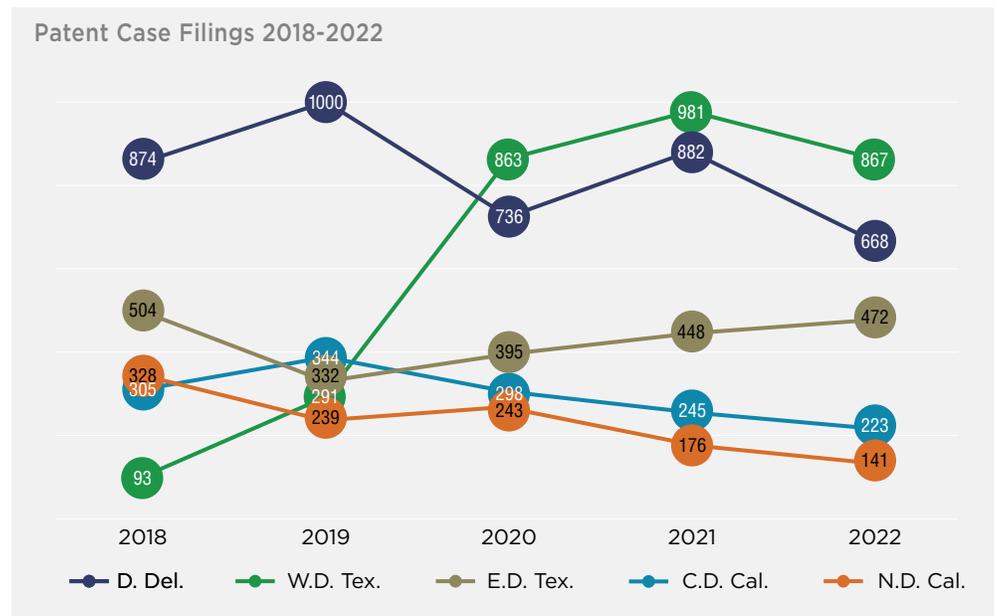
2022 Patent Filings and Pending Cases in D. Del.



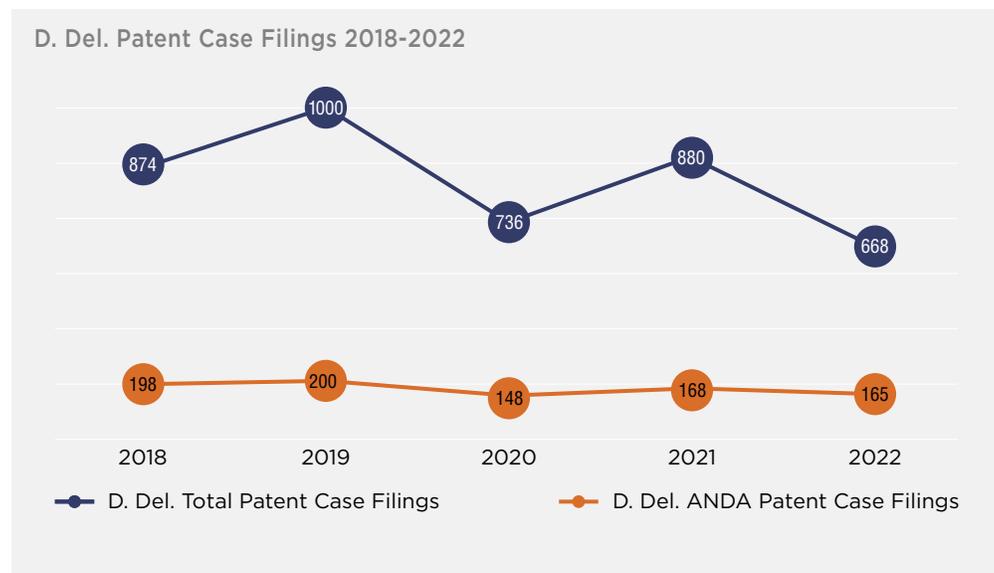
► FIVE-YEAR PATENT FILING TRENDS

For the five-year period ending December 31, 2022, the Delaware court saw the most patent filings, with a total of 4,160 cases (22%) of the 18,971 patent cases filed. The Western District of Texas broke into the top five venues in 2019, and has held the top spot since 2020, with Delaware the second busiest patent court.

Top Five Districts Five-Year Filing Trends



Delaware Five-Year Filing Trends

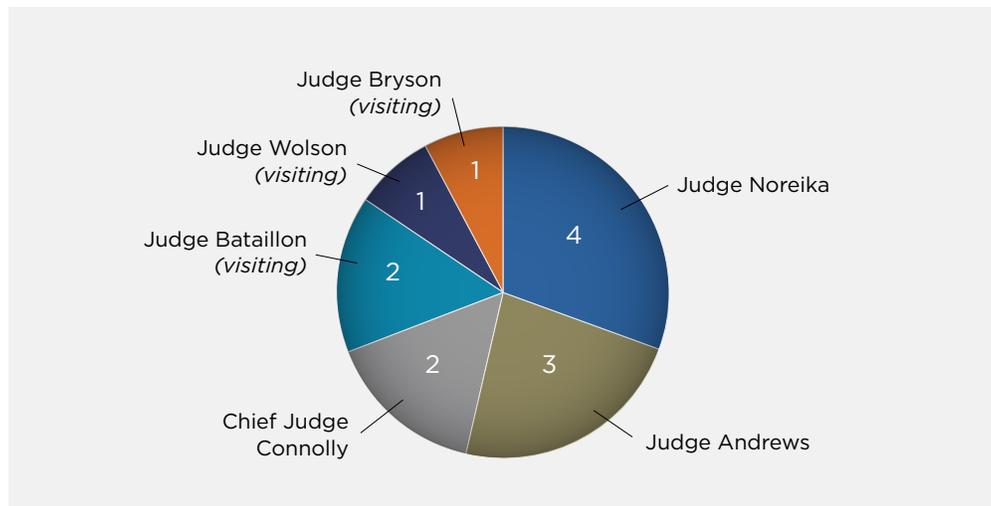


▶ 2022 PATENT TRIALS

PATENT JURY TRIALS

The District of Delaware led the nation in the number of patent jury trials in 2022, with 13 trials going to verdict, representing 20% of the patent jury trials nationwide in 2022. Judge Noreika presided over four jury trials, Judge Andrews held three, Chief Judge Connolly held two, with the other four presided over by visiting Judges Bataillon, Wolson, and Bryson.

2022 Patent Jury Trials



\$433,960,821
TOTAL JURY VERDICT
DAMAGES

JURY VERDICTS

Delaware juries sided with the patentee in nine cases, awarding total damages of \$433,960,821 in 2022. The bulk of that sum went to Complete Genomics, which won a \$333,801,990 verdict in a case against Illumina (Judge Noreika presiding).

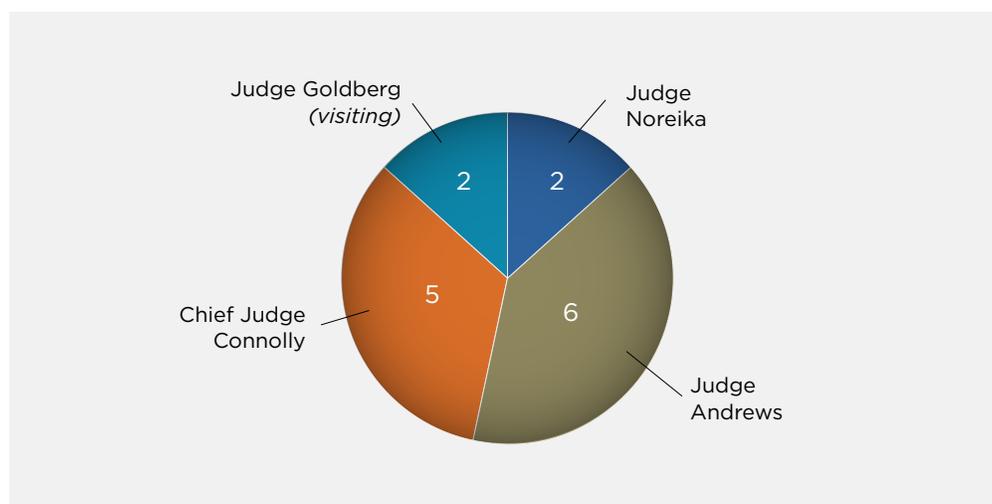
Case	Presiding Judge	Jury Verdict Damages	In favor of
Complete Genomics, Inc. v. Illumina, Inc.	Noreika	\$ 333,801,990	Complete Genomics
Shopify Inc. et al v. Express Mobile, Inc.*	Andrews	\$ 40,000,000	Express Mobile (Counterclaim Plaintiff)
PureWick Corporation v. Sage Products LLC	Noreika	\$ 28,014,738	PureWick
RSB Spine, LLC v. DePuy Synthes Sales, Inc. et al.	Andrews	\$ 12,000,000	RSB Spine, LLC
Rex Medical, LP v. Intuitive Surgical, Inc. et al	Noreika	\$ 10,000,000	Rex Medical
Aqua Connect, Inc. et al v. TeamViewer US, LLC	Noreika	\$ 5,700,000	Aqua Connect
Osseo Imaging, LLC v. Planmeca USA Inc.	Bataillon	\$ 2,300,000	Osseo Imaging
Magnolia Medical Technologies, Inc. v. Kurin, Inc.	Connolly	\$2,144,093	Magnolia Medical
CR Bard Inc. et al v. AngioDynamics Inc.	Bataillon	TBD (bifurcated)	CR Bard

Note: Post-trial motions remain pending in all cases as of December 31, 2022, except Complete Genomics where the parties entered a stipulated satisfaction of judgment.

ANDA BENCH TRIALS

There were 15 ANDA bench trials in Delaware in 2022, with Judge Andrews presiding over six, Chief Judge Connolly presiding over five, and Judge Noreika and visiting Judge Goldberg each presiding over two.

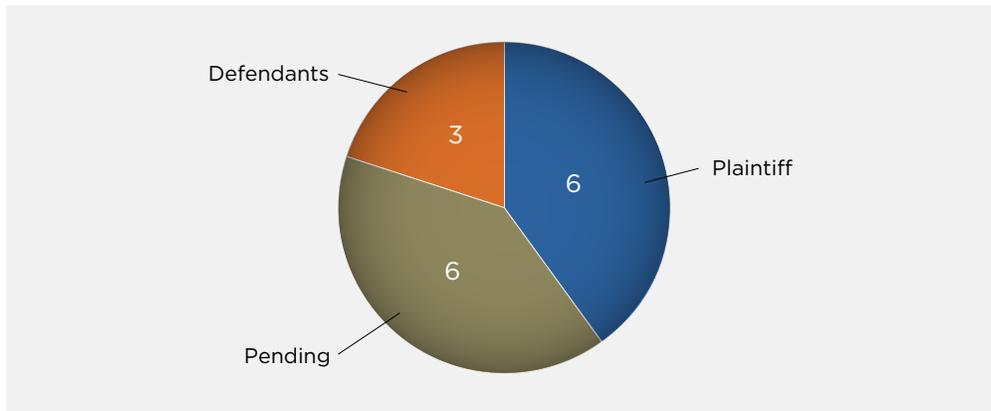
2022 ANDA Bench Trials



JUDGMENTS IN ANDA CASES

Following post-trial briefing, Plaintiffs prevailed in six of the ANDA trials, while Defendants prevailed in three. The six remaining bench trials had post-trial briefing still pending as of January 31, 2023.

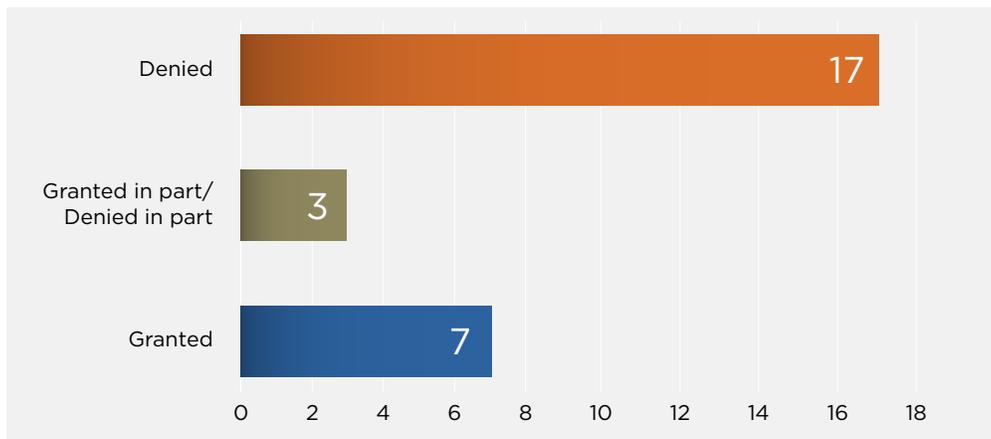
2022 ANDA Trial Judgments



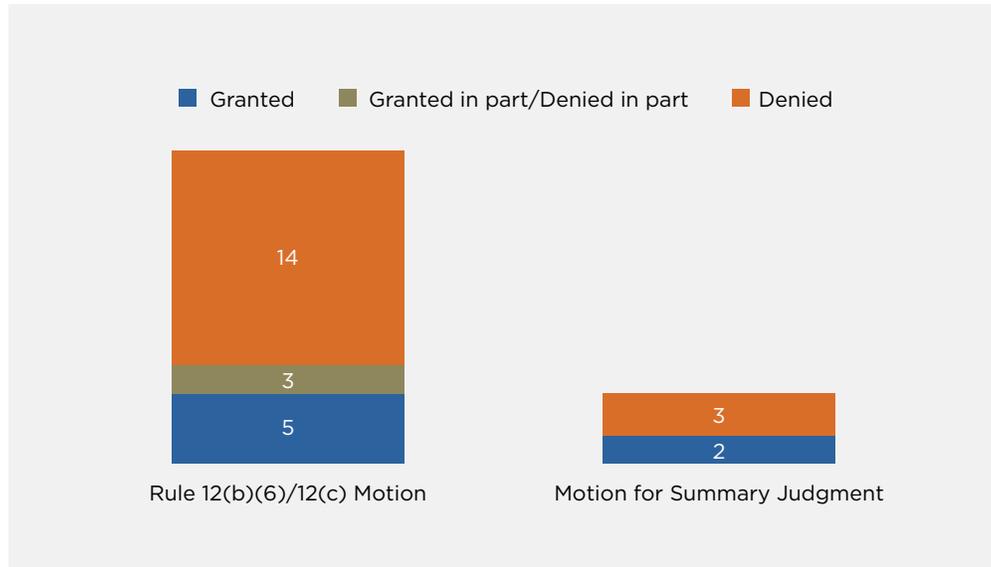
▶ PATENT-ELIGIBLE SUBJECT MATTER: DECISIONS UNDER 35 U.S.C. § 101

Delaware judges continue to see a relatively high rate of motions challenging patent eligibility under 35 U.S.C. § 101, with 27 decisions issued in 2022, with only 7 (26%) of those granting the motion in full. That is down considerably from 2020, where the Court decided 54 motions under § 101, and granted 22 (41%).

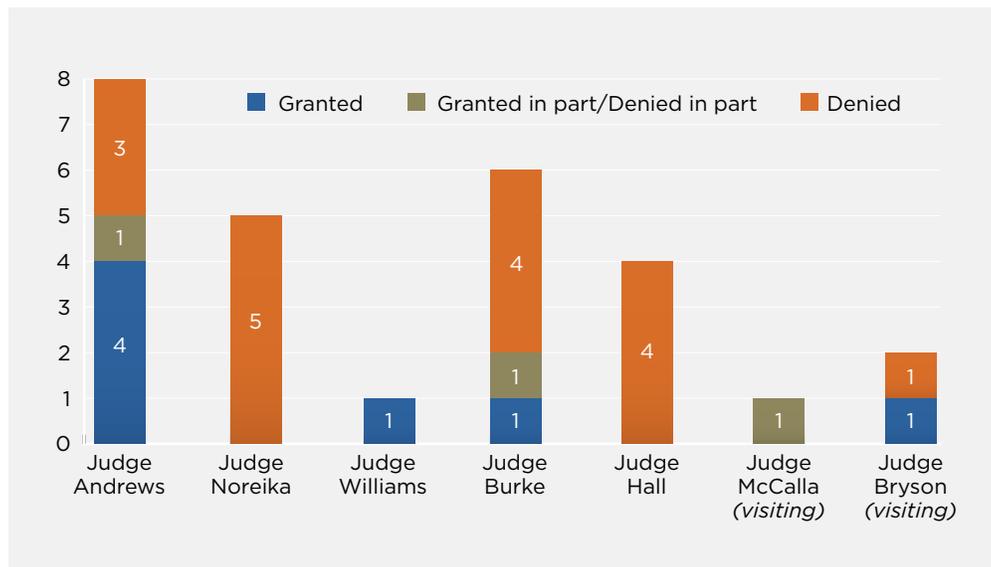
27 Decisions under 35 U.S.C. §101



Motion Type



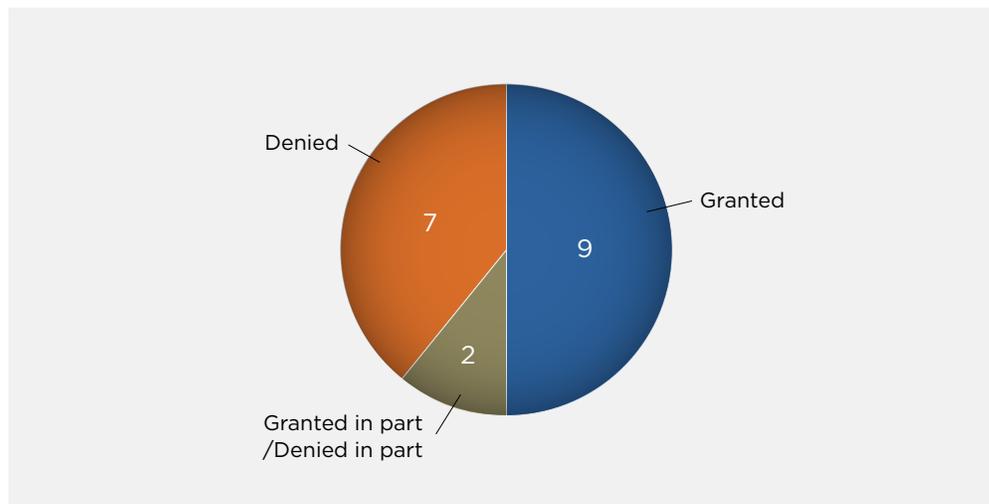
Decisions by Judge



▶ DECISIONS ON MOTION TO STAY PENDING IPR

The Court issued 18 decisions on motions to stay pending *Inter Partes* Review, granting half of those. Motions were denied or denied in part where an IPR was not instituted on all patents (or all asserted claims), or the stage of the case did not warrant a stay.

18 Total Decisions (on the merits)



▶ OTHER NOTABLE DEVELOPMENTS ON THE COURT

Judge Leonard P. Stark was elevated to the Court of Appeals for the Federal Circuit in March 2022, after 12 years as a District Court Judge in Delaware where he served as Chief Judge from 2014 to 2021. During his time on the Delaware bench, Judge Stark presided over more than 2,700 patent cases and 85 trials. He continues to serve as a visiting judge in the District of Delaware.

Judge Gregory B. Williams joined the Court on September 1, 2022, as the 28th United States District Judge for Delaware since the Court's founding in 1789. Judge Williams brings a wealth of experience to the bench after 28 years in private practice. Judge Williams filled the vacancy left by Judge Stark's elevation to the Federal Circuit.

Chief Magistrate Judge Mary Pat Thyng will retire on March 31, 2023, after more than three decades on the bench. Delaware's longest-serving Magistrate Judge earned a national reputation as a skilled mediator – tirelessly working with the parties to drive a resolution, often late into the night, and always with a good dose of humor.

Laura D. Hatcher will succeed Judge Thyng as the newest Magistrate Judge. Ms. Hatcher will come to the Court from the U.S. Attorney's Office, where she currently serves as the Chief of the Civil Division. Prior to serving as an Assistant U.S. Attorney, Ms. Hatcher was in private practice for 10 years.

Judge Richard G. Andrews will take Senior Status at the end of December 2023, which will present a vacancy to be filled by President Biden in early 2024. Judge Andrews expects to maintain a full caseload as a Senior Judge, adding to the strength of the Delaware bench.

Chief Judge Connolly appointed a new District Court [Lawyer Advisory Committee](#) in July 2022 to review the Court's Local Rules and procedures and propose any changes. The Committee's first order of business was a recommendation that the Court move the filing deadline to 5:00 p.m. ET, which the [Court adopted](#) as of September 1, 2022.

After a COVID-induced hiatus, the [District of Delaware Bench & Bar Conference](#) will once again bring together patent litigators and their clients from across the country on September 21 and 22, 2023, at the Hotel du Pont in Wilmington.

▶ ABOUT MORRIS NICHOLS

Morris Nichols has one of the leading Intellectual Property Litigation practices in the United States. Best known for our market leading experience in patent litigation, we also represent clients in complex disputes involving trade secrets, trademarks, copyrights, unfair competition, and antitrust. We have successfully litigated cases involving products and services in all areas of technology and for clients across a broad range of industries.

▶ ABOUT THE AUTHORS

[Michael Flynn](#): Michael is a partner in Morris Nichols's IP Litigation group where he represents clients in a wide variety of industries, with a particular focus on pharmaceuticals, web-based technology, networking, biotechnology and consumer products.

He has represented clients in more than 300 intellectual property cases, including cases involving patent, trademark, and copyright infringement, trade secrets, trade dress, unfair competition, and antitrust issues.

Chambers USA has recognized Michael for Delaware Intellectual Property since 2016. He has also been ranked by *IAM Patent 1000*. In 2022, he was appointed by Chief Judge Connolly to the Lawyer Advisory Committee for the District of Delaware. Michael devotes a portion of his time to pro bono matters and serves on several Morris Nichols committees, including its Diversity and Recruiting Committees.

Ben Yenerall: Ben is an associate with the Intellectual Property Litigation group. His practice focuses on patent, copyright, and trademark cases encompassing many areas of technology.

While in law school, Ben was a judicial intern to the Honorable Richard G. Andrews of the US District Court for the District of Delaware. He also served as an online editor for the *Villanova Law Review*, a student ambassador, and member of the IP Law Society.

While completing his undergraduate studies in biology with a neuroscience concentration, Ben also gained valuable technical experience working in a life sciences lab.

► SAVE THE DATE

Hear more perspectives on developments in the District of Delaware at the 2023 District of Delaware Bench & Bar Conference to be held September 21-22, 2023, in Wilmington, Delaware.

All data in this report is compiled from Lex Machina, Docket Navigator, and PACER, using each of those sources as a cross-check against the others. Where discrepancies occurred among the data, efforts were made to normalize the results.

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▶ INTELLECTUAL PROPERTY LITIGATION PRACTICE



Jack B. Blumenfeld
Senior Partner

T 302-351-9291
jblumenfeld@morrisnichols.com



Karen Ann Jacobs
Partner

T 302-351-9227
kjacobs@morrisnichols.com



Megan E. Dellinger
Partner

T 302-351-9366
mdellinger@morrisnichols.com



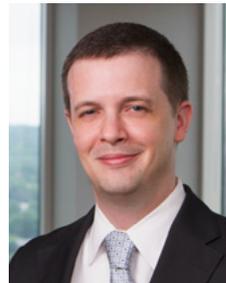
Rodger D. Smith II
Partner

T 302-351-9205
rsmith@morrisnichols.com



Brian P. Egan
Partner

T 302-351-9454
began@morrisnichols.com



Jeremy A. Tigan
Partner

T 302-351-9106
jtigan@morrisnichols.com



Michael J. Flynn
Partner

T 302-351-9661
mflynn@morrisnichols.com



Jennifer Ying
Partner

T 302-351-9243
jying@morrisnichols.com