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ITC Intelligence Report

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Introduction

Using data for day to day decision making has become an integral part of any business operation these days, and the legal sector is not excluded. After the successful release of our first IP intelligence report in 2017, where we analyzed and ranked all the stakeholders in Inter-Partes Review (IPR) based on performance and activity, the report gained more popularity and has gradually become one of the key resources companies rely on to choose their IPR counsel.

This positive feedback prompted us to expand that effort into other intelligence reports including patent prosecution, and now for the first time, this International Trade Commission (ITC) Section 337 Intelligence report.

Several companies reached out to us in early 2019 and asked if we could analyze ITC cases and help them select the right counsel for their case. It took us about six months, and a team of computer scientists and data analysts, to overcome the many obstacles we faced during this complex project. Although the number of cases were not as large as IPR or not even close to patents, cases were by far more complex to analyze.

Most of the ITC cases have more than several hundred documents that are written in different formats and are not necessarily following any standard guidelines. We had to digitally process more than 75,000 documents and extract the information needed for our analysis. The complexity forced us to manually review thousands of documents to insure high quality and accuracy.

After review of thousands of documents, we discovered more than 11,000 professionals involved in a total of 308 ITC cases filed since 2014. Despite our rich database of IP professionals (more than 80K professionals), many of these professionals did not exist in our database as they had other roles such as translators, photographers, court recorders, experts, etc. This added more complexity and made the matching process more complicated. But similar to our other analyses, we managed to solve them one by one.

I would also like to thank our dear attorneys and IP community who provided their time and helped us by clarifying some of the doubts we had for performance measurement of special cases which were not obvious to us. They carefully answered and reasoned why we should consider one outcome over another (Patexia

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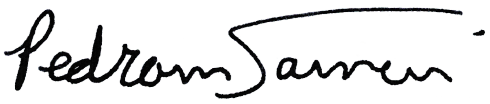
Insight ITC Survey published in October).

In addition, we upgraded our website with new capabilities that now allow all IP attorneys to directly review and verify their cases through their Patexia profile pages. We contacted thousands of ITC attorneys and sent a unique link to each attorney. Many spent time and reviewed their cases which added another layer of confidence to our process, and helped us ensure higher accuracy for our analysis.

We plan to further expand our IP Intelligence offerings in 2020 by providing two other new reports including a Patent Transaction Intelligence Report, and a Patent Litigation Intelligence Report. All these reports will automatically become available to our Concierge Members.

We hope our IP community finds this extensive information useful when making critical day to day decisions about their legal partners.



Pedram Sameni
Founder and CEO

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What's in This Report?

The report content has been divided into the following sections:

1. **Ranking Methodology:** We explain our performance model and how we calculated the performance scores and rankings for complainants, respondents, their representatives, and ITC judges.
2. **IPR Statistics:** We provide a 360-degree overview of ITC from 10,000 feet. We cover high-level statistics about ITC, including all parties, judges and cases, covering January 1, 2014 - December 1, 2019.
3. **Complainants and Respondents:** We identify the most active and the best-performing *Complainants* and *Respondents* over the period of our study.
4. **Law Firms:** We analyze the performance and activity of law firms, comparing and providing rankings for the top firms representing *Complainants* and *Respondents*.
7. **Attorneys:** We review the performance and activity of attorneys, representing *Complainants* and *Respondents*, 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 almost six years, January 1, 2014 through December 1, 2019. Appendix A lists all sources of data used for this report.

Disclaimer: The data for this report was obtained from public sources including EDIS, USPTO, PTAB, and PACER, as well as self-reported by attorneys on the 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 the use of any information provided in this report.

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Executive Summary

In the 308 ITC Section 337 cases filed from January 1, 2014 to December 1, 2019, nine (9) judges, 1,640 companies, 7,596 attorneys, and 396 law firms participated. Out of 1640 companies, 287 companies were named as complainants, while 1,428 were named as respondents.

Our activity scores and rankings were developed based on all 308 cases, whereas the 212 of these 308 cases that terminated during this same period were the basis for performance scores. As with previous reports, we will be providing law firm and attorney participants with the most active and best performing ITC badges for 2020.

Year-over-year ITC activity fluctuated between 40 and 66. The activity peaked in 2017 and went through a small to moderate decline since then, which follows and is in line with the larger trend we have observed in patent litigation in recent years (i.e., similar pattern in district courts and IPR). However, the first nine months of 2019 shows a slight increase in activity.

A total of 889 unique patents were involved in all ITC patent infringement cases. Analyzing these patents by International Patent Classification (IPC) revealed a total of 184 different IPC codes. A61K code was the only life science related IPC in the top 10 IPC codes.

Apple was the most active company overall, with 19 cases, and Adduci Mastriani & Schaumberg was the most active law firm overall with 84 cases.

Data suggests that larger law firms are trying to gain more market share by hiring ITC specialized attorneys. However, there are several small but very active ITC specialized firms that manage a large load of cases. This includes a couple of newly formed firms such as Levi & Smotherly, or Mei & Mark which specializes more on the respondent side.

Finally, nine judges participated in the 308 total and 212 terminated ITC cases analyzed, with mean, min, and max case loads of 37, 1, and 72 respectively. Min, max, and average Judge scores, reflecting the likelihood of a “yes” 337 violation decision in adjudicated cases, were 0.36, 0.75, and 0.56 respectively.

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