

TRENDS IN PATENT CASES: 1990-2000

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INTRODUCTION

This article illustrates the characteristics of patent cases filed and decided in the United States federal courts. The data used to derive these characteristics is maintained by the Inter-University Consortium for Political and Social Research (“ICPSR”), which is located at the University of Michigan.¹ These time-series data are compiled by the clerks of the courts for the Administrative Office of the United States Courts (“AO”) and include data from all the cases filed in the federal court system.

The clerks of court collect these data with an extensive number of forms.² The information collected relates to the filing and termination of each case in the court, amount awarded (if any), nature of disposition/termination (judgment, settlement, etc.), and several other

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¹ ICPSR is a library of several hundred of databases. Inter-University Consortium for Political and Social Research *Study No. 8429* (Admin. Off. of the United States Courts 2000) (available at <<http://www.icpsr.umich.edu:8080/ABSTRACTS/08429.xml>>) (hereinafter “ICPSR” or “Study # 8429”). Data used for this article may be found at: Federal Judicial Center, *Federal Court Cases: Integrated Data Base, 1970-2000 [Parts 61-66, 70-75; 82-89; 98-99; 103-104; 115-118]* [Computer file], second ICPSR version, Washington, D.C. [producer], 2000, Ann Arbor, MI: Inter-University Consortium for Political and Social Research [distributor], 2001 (available at the ICPSR website, *supra*). ICPSR Study #8429 was used, with several exceptions (noted when used), to derive the results reported in this article.

² Admin. Off. U.S. Cts., SARD Civil Statistics, *Statistics Manual: vol. XI ch. V, The Dist. Ct. Rpt. Forms DC-111, JS-5, JS-6, JS-5A, JS-6A, JS-9, JS-9C, JS-44, and JS-44B* 3-6 (1989) [hereinafter “Statistics Man.”].

variables. These data are collected during two stages in the life of a case – filing stage and termination stage.³

The raw data collected by the AO is assembled by the Federal Judicial Center ("FJC") into a homogeneous and researchable format. The data covers federal/statistical year 1970 (July 1, 1969 - June 30, 1970) through federal/statistical year 2000 (Oct. 1, 1999 – Sept. 30, 2000) for civil cases.⁴

Interesting patterns emerged from an analysis of the FJC data, most notably:

- 1) a substantial increase in the number of patent cases filed over 1990-2000;
- 2) a decline in the number of patent cases with a court judgment, but increase in settlements;
- 3) an increase in the number of patent cases decided in favor of defendants;⁵
- 4) an increase in the proportion of cases with no monetary awards or, if a monetary award was given, the awards were small; and
- 5) a high, and increasing, number of patent cases filed and terminated in the Ninth Circuit.

I. FILINGS AND TERMINATIONS

The data compiled by the FJC and maintained by the University of Michigan's ICPSR (specifically Study # 8429), indicated in Table 1, provides the number of patent cases filed, terminated, and pending⁶ from 1990-2000.⁷ In the period 1991-2000, the number of cases filed each year increased by 111%, from 1178 to 2484.⁸ The number of cases terminated, however, increased by only 94% for the same time period, from 1119 to 2221.⁹ Thus, the number of cases pending each year has

³ ICPSR Abstract, *supra* n.1.

⁴ *Id.* (data was last updated in August 2001, and extends to year 2000 for Civil, Criminal and Appellate cases).

⁵ Note: A defendant may be a patent holder.

⁶ Pending describes the disposition of a case not terminated in the same year in which the case is initiated in a district court.

⁷ ICPSR Abstract, *supra* n.1.

⁸ Filing information is also available from the Judicial Office of the United States Courts since 1993.

⁹ ICPSR, *supra* n.1.

increased (the total number of pending cases increased from 1715 in 1991 to 2888 in 2000).¹⁰

**TABLE 1: NUMBER OF CASES FILED, TERMINATED, PENDING
(1990-2000)**

Year	Number of Cases Filed	Number of Cases Terminated	Number of Cases Pending
1990	*	1,146	*
1991	1,178	1,119	1,715
1992	*	1,670	*
1993	1,553	1,492	*
1994	1,617	1,531	1,915
1995	1,723	1,527	2,104
1996	1,840	1,721	*
1997	2,112	1,843	2,445
1998	2,218	2,060	*
1999	2,318	2,222	*
2000	2,484	2,221	2,888

Source: ICPSR Study #8429# Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

** Data not available from either ICPSR Study #8429 or Judicial Office of the United States Courts.*

Note: Data for Number of Cases Filed in the years 1993, 1996, 1998, and 1999 were supplied from the Judicial Office of the United States Courts, not ICPSR Study #8429. Data year 1993 is available at:

<http://www.uscourts.gov/judicial_business/c2asep97.pdf>; data year 1998 and 1999 may be found at:

<<http://www.uscourts.gov/judbus2000/appendices/c02asep00.pdf>>; data year 1996 may be found in each of these sites.

Although the number of patent cases terminated each year during 1990 through 2000 has dramatically increased, the number of cases decided by the district courts over the same period have remained relatively stable. Table 2 summarizes the number of terminated patent cases associated with a court judgment for 1990-2000. As shown in Table 2, the percentage of patent cases terminated with a court judgment has declined from about 31% (of total terminations) in 1990 to about 24% in 2000.¹¹ This results from an increasing number of patent cases that are terminated without a court decision, i.e., by out-of-court settlements (or

¹⁰ *Id.*

¹¹ ICPSR, *supra* n 1.

by a similar method) and involve no court action. (The statistics for out-of-court settlements are discussed below in Section II(B).)

The exact reason for the relative stability of terminations involving court judgments is unknown. Plausible reasons for this trend, however, may be that courts are overworked and do not have the capacity to respond to the enormous rise in the number of (possibly complex) patent cases filed.

TABLE 2: NUMBER OF TERMINATED CASES WITH A COURT JUDGMENT (1990-2000)

Year	Number	Percent of Total Cases Terminated in that Year
1990	353	31%
1991	301	27%
1992	478	29%
1993	405	27%
1994	403	26%
1995	373	25%
1996	422	25%
1997	413	23%
1998	556	27%
1999	552	25%
2000	529	24%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

II. METHOD OF DISPOSITION OF PATENT CASES

A. *Patent Cases with a Court Decision*

On a closer examination of the category “Termination with a Court Judgment,”¹² it seems reasonable to cull out certain kinds of court judgments from this category. A “Judgment on Default” requires no court

¹² Types of dispositions defined as a “Termination with a Court Judgment” are: Judgment on Default, Judgment on Consent, Judgment on Motion before Trial, Judgment on Jury Verdict, Judgment on Directed Verdict, Judgment on Court Trial, Judgment on Award of Arbitrator, Stayed Pending Bankruptcy/Trial De Novo after Arbitration, Judgment on Other, Statistical Closing, Appeal Affirmed (Magistrate Judge), and Appeal Denied (Magistrate Judge). Statistics Man., *supra* n. 2, at 17-18.

activity; therefore, “Judgments on Default” should not be categorized as a court decision.¹³ Similarly, a “Judgment on Consent” is defined as –“a judgment, the provisions and the terms of which are settled and agreed to by the parties to the action.”¹⁴ “Judgments on Consent” are signed by a judge or a magistrate and grant some form of affirmative relief to a party.¹⁵ “Judgment on Consent” should, therefore, be classified as a settlement and not be treated as a “Termination with a Court Judgment.”

When cases that are terminated with a “Judgment on Default,” “Judgment on Consent,” and “Statistical Closing”¹⁶ are removed from the “Terminated with a Court Judgment” category, the number of court decisions grew by only 81%.¹⁷ As a percentage of total terminations, court decisions accounted for 15% in 1990, and 14% in 2000 (Table 3).¹⁸ For the entire period (1990-2000), of the total 18,552 terminations, court decisions accounted for 2,600 terminations (or 14%) for patent cases.¹⁹

¹³ *Id.* at 17.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Statistical Closing occurs when the case meets the criteria for statistically closing due to inactivity. Statistics Man., *supra* n. 2, at 18, 26.

¹⁷ ICPSR, *supra* n. 1.

¹⁸ *Id.*

¹⁹ *Id.* Of note, approximately 24% of the patent cases in the district courts are terminated for reasons other than court decision or settlement (as defined in this article). *Id.*

**TABLE 3: NUMBER OF TERMINATED CASES WITH A DECISION
(AS REDEFINED) (1990-2000)**

Year	Adjusted Number	Percent of Total Cases Terminated in that Year
1990	168	15%
1991	164	15%
1992	235	14%
1993	201	13%
1994	223	15%
1995	216	14%
1996	250	15%
1997	233	13%
1998	284	14%
1999	313	14%
2000	304	14%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

B. Patent Cases with Settlements

The FJC categorizes cases that were disposed of after an out of court settlement between the parties as “Dismissed because of a Settlement.”²⁰ Interestingly, the number of out of court settlements has increased by 118%, from 367 (or 32% of total terminations) in 1990 to 800 (or 36% of total terminations) in 2000.²¹ Over the entire 1990-2000 period, there were 6599 out of court settlements equaling 36% of terminated patent cases.²²

There are, however, two additional categories of termination or disposition that are similar to settlements and should be included as such. These are “Judgment on Consent” (discussed above) and “Dismissed because of Voluntary Withdrawal.” Voluntary withdrawal is defined as,

²⁰ Statistics Man., *supra* n. 2, at 17.

²¹ ICPSR, *supra* n. 1.

²² *Id.* Another variable, “Procedural Progress at Termination,” allows one to determine the judicial stage at which a case is settled, out of the court. Statistics Man., *supra* n. 2, at 14. More than 32% of patent cases that settle out of the court settle prior to any court activity. ICPSR, *supra* n.1. Interestingly, only about 2% of out-of-court settlements occur during or after a trial. *Id.*

“[p]laintiff voluntarily withdrew the action from judicial review in accordance with Rule 41(a), F.R.Civ.P.” Often times, this occurs because of an agreement between the plaintiff(s) and the defendant(s).²³ As a result of reclassifying these categories as settlements, the number of terminated patent cases increased from 639 (or 56% of total terminations) in 1990 to 1,429 (or 64%) in 2000 (Table 4).

TABLE 4: OUT OF COURT SETTLEMENTS AND ALL SETTLEMENTS (1990-2000)

Year	Number of Cases Settled Out of Court	Percent of Total Terminations	Number of All Cases Settled	Percent of Total Terminations
1990	367	32%	639	56%
1991	441	39%	695	62%
1992	579	36%	1,055	63%
1993	526	36%	947	63%
1994	577	38%	993	65%
1995	533	35%	957	63%
1996	593	34%	1,058	62%
1997	650	35%	1,158	63%
1998	715	35%	1,277	62%
1999	818	37%	1,403	63%
2000	800	36%	1,429	64%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year

III. NATURE OF THE AWARD ASSOCIATED WITH A COURT JUDGMENT

The analysis conducted below includes all terminations where data on awards was available. The data on awards in patent lawsuits is available only if a court decided a given case. Here, unlike the previous discussion, cases terminated with a “Judgment on Consent” are included because the court was privy to the information related to the award.

With respect to court decisions, the FJC database maintains two variables relating to awards – the type and amount of the award.²⁴ The

²³ Statistics Man., *supra* n. 2, at 17. Note: it is up to the plaintiff and the defendant to determine whether to categorize the dismissal from the court as a settlement or as a voluntary withdrawal. The number of voluntary withdrawals has increased from 99 (8.6%) in 1990 to 342 (18.6%) in 1997, and 473 (21.3%) in 2000. ICPSR, *supra* n.1.

²⁴ Statistics Man., *supra* n. 2, at 18-19.

award variable is associated with various judgment types - monetary award, injunction, costs, attorneys' fees, no monetary award, forfeiture/foreclosure, and any combination thereof.²⁵

Specifically, patent cases with no monetary awards have increased rapidly between 1990 and 2000, as indicated in Table 5. In 1990, 227 cases (64% of cases with a court decision) had judgments with no monetary awards, while 413 cases (78%) had judgments with no monetary award in 2000.²⁶ The result is that since 1996, almost three-quarters of patent cases decided by courts have had no monetary award.²⁷

TABLE 5: NUMBER OF TERMINATED CASES WITH NO MONETARY AWARD (1990-2000)

Year	Cases Terminated with Court Judgment	Number of Cases without Monetary Award	Percent of Total Cases with a Judgment in that Year
1990	353	227	64%
1991	301	182	57%
1992	478	328	63%
1993	405	291	66%
1994	403	283	65%
1995	373	285	69%
1996	422	350	75%
1997	413	336	72%
1998	556	418	75%
1999	552	424	77%
2000	529	413	78%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

In patent cases where a monetary award was granted, analysis reveals that although the number of monetary awards appeared to stay more or less steady over 1990 through 2000, there was a slight decline in terms of percentages (Table 6). Moreover, within the set of cases with monetary awards, the number and percentage of small awards (less than a million dollars) has increased significantly. In 1990, twenty-four cases

²⁵ *Id.*

²⁶ ICPSR, *supra* n. 1.

²⁷ *Id.*

(44%) were given monetary awards of less than one million dollars.²⁸ In contrast, forty-six cases (72%) were given monetary awards of less than one million dollars in 2000.²⁹

**TABLE 6: DISTRIBUTION OF AMOUNT AWARDED
(1990-2000)**

Year	≤\$1M Award		>\$1M -≤\$5M Award		>\$5M-≤\$10M Award		>\$10M Award	
	#	%	#	%	#	%	#	%
1990	24	44%	14	26%	6	11%	10	19%
1991	32	56%	13	23%	4	7%	8	14%
1992	60	60%	22	22%	5	5%	13	13%
1993	48	70%	7	10%	2	3%	12	17%
1994	56	64%	9	10%	5	6%	17	20%
1995	47	73%	7	11%	3	5%	7	11%
1996	34	71%	6	13%	2	4%	6	13%
1997	44	61%	15	21%	4	6%	9	13%
1998	45	62%	14	19%	0	0%	14	19%
1999	45	64%	10	14%	4	6%	11	16%
2000	46	72%	9	14%	3	5%	6	9%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

The “Judgment on Consent” category included in this analysis may be responsible for the increase in small monetary awards. As well, this may explain the decline in the number of monetary awards. Since “Judgments on Consent” are similar to settlements, they may involve no or small monetary award. The next section analyzes awards for cases with a court decision without the inclusion of the “Judgment on Consent,” “Judgment on Default,” and “Statistical Closing” categories.

IV. NATURE OF COURT DECISIONS AND ASSOCIATED AWARDS TO PLAINTIFFS

This section captures the trends in awards granted by the district courts to the plaintiffs. First, in order to ascertain that a judgment is an award following a court ruling, the “Judgment on Consent,” “Judgment on Default,” and “Statistical Closing” categories are excluded from Judg-

²⁸ ICPSR, *supra* n. 1.

²⁹ *Id.*

ments, as defined by the FJC. Second, only cases where the court's decision was for the plaintiff are included in the analysis.

The FJC gathers data on a variable titled "Judgment for."³⁰ The variable indicates whether the court decided for the plaintiff or the defendant by assigning values for either outcome.³¹ Alternative values that may be assigned include "Missing" or "Judgment for Both".³² Table 7 summarizes the trends in the "Judgment for" variable.

An analysis of these cases indicates that through the period of 1990-2000, the percentage of court decisions in favor of plaintiffs generally decreased from 39% or higher in years 1990-1994 to 27% in 2000.³³ On the other hand, the percentage of cases decided in favor of defendants has increased from 46% in 1990 to 60% in 2000.³⁴

**TABLE 7: DISTRIBUTION OF DECISIONS
(1990-2000)**

YEAR	Total Decisions	Defendant		Both/Unknown		Plaintiff	
		#	%	#	%	#	%
1990	168	78	46%	25	15%	65	39%
1991	164	79	48%	17	10%	68	41%
1992	235	119	51%	19	8%	97	41%
1993	207	108	52%	19	9%	80	39%
1994	223	126	57%	10	4%	87	39%
1995	216	129	60%	19	9%	68	31%
1996	253	145	57%	42	17%	66	26%
1997	233	124	53%	40	17%	69	30%
1998	284	143	50%	49	17%	92	32%
1999	313	180	56%	36	12%	97	31%
2000	304	181	60%	41	13%	82	27%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

Table 8 compiles data analyzing the type of court award to plaintiffs. Notably, the largest award type was monetary awards, which accounted for 46% of the cases decided during 1990-2000.³⁵ Monetary

³⁰ Statistics Man., *supra* n. 2, at 19.

³¹ *Id.*

³² *Id.*

³³ ICPSR, *supra* n. 1.

³⁴ *Id.*

³⁵ *Id.*

awards peaked at 56% in 1991-1992, but were generally less frequent thereafter (with a low in 1996 of 33%).³⁶ During 1990, 43% of judgments in favor for the plaintiff had a monetary award, but this decreased to 39% in 2000.³⁷ Over the same period, an increasing trend was found for cases terminated with judgments that had no monetary award. Specifically, cases with no monetary award averaged 34% during 1990 through 1995, and increased to 44% during 1996 through 2000.³⁸ Interestingly, cases decided for plaintiffs with no monetary award averaged approximately 38% during 1990 through 2000.³⁹ Cases with no monetary awards may represent cases where the plaintiff is the alleged infringer or that the form of the award for the plaintiff/patent holder was non-monetary in nature, i.e., injunction or foreclosure.

**TABLE 8: DISTRIBUTION OF AWARDS FOR THE PLAINTIFF
(1990-2000)**

Year	No Monetary Award		Monetary Award and Other		Injunction Only		Costs & Attorney's Fees Only		Others/ Missing	
	#	%	#	%	#	%	#	%	#	%
1990	26	40%	28	43%	8	12%	2	3%	1	2%
1991	17	25%	38	56%	7	10%	6	9%	0	0%
1992	28	29%	54	56%	9	9%	3	3%	3	3%
1993	31	39%	39	49%	7	9%	1	1%	2	3%
1994	28	32%	47	54%	6	7%	5	6%	1	1%
1995	27	40%	32	47%	8	12%	1	1%	0	0%
1996	31	47%	22	33%	8	12%	4	6%	1	2%
1997	27	39%	31	45%	7	10%	3	4%	1	1%
1998	44	48%	33	36%	18	20%	14	15%	1	1%
1999	37	38%	47	48%	7	7%	4	4%	2	2%
2000	38	46%	32	39%	8	10%	3	3%	1	1%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

³⁶ *Id.*

³⁷ ICPSR, *supra* n. 1.

³⁸ *Id.*

³⁹ *Id.*

V. PATENT CASES HANDLED BY EACH CIRCUIT

The United States federal court system has ninety-four district courts, with each assigned to one of the twelve federal circuits. Each circuit's data concerning workload reveals some striking patterns (Table 9). Of the twelve circuits, four circuits - Second Circuit, Third Circuit, Seventh Circuit, and Ninth Circuit - account for approximately 55% of the patent cases terminated for the period 1990 through 2000.⁴⁰ Further, another 17% of the cases were jointly handled by the Fifth Circuit and the Sixth Circuit over the same period.⁴¹

The Ninth Circuit, consisting of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and Northern Mariana Islands, is the busiest circuit. The Ninth Circuit accounts for approximately 25% of the cases terminated over 1990 through 2000.⁴² In terms of district courts, the top ten district courts handled approximately 45% of the terminated patent cases.⁴³ The top ten district courts, in the order of their workload, were: Central District - California, Northern District - California, Northern District - Illinois, Southern District - New York, District - New Jersey, District - Massachusetts, District - Delaware, Northern District - Texas, District - Minnesota, and Eastern District - Michigan.⁴⁴

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ ICPSR, *supra* n. 1. Note: a preliminary analysis of the relationship between the amounts awarded and the circuit of filing does not reveal any significant results. A more detailed study analyzing this relationship would be a related and relevant study, which could produce interesting results.

**TABLE 9: NUMBER OF PATENT CASES HANDLED BY EACH CIRCUIT
(1990-2000)**

Circuit of Filing	Number of Cases	Percent of Total Cases Terminated
D.C.	227	1%
1st Circuit	821	4%
2nd Circuit	1,793	10%
3rd Circuit	1,913	10%
4th Circuit	1,150	6%
5th Circuit	1,540	8%
6th Circuit	1,592	9%
7th Circuit	1,928	10%
8th Circuit	1,040	6%
9th Circuit	4,513	24%
10th Circuit	764	4%
11th Circuit	<u>1,271</u>	<u>7%</u>
Total	18,552	100%

Source: ICPSR Study #8429

Note: Data for 1992 covers 15 months because of a change in the definition of the Federal Year.

CONCLUSION

The study of the time-series data on patent cases filed and terminated in the United States federal courts reveals some interesting trends.

First, the number of patent cases filed each year has increased from 1990-2000. Further, although the number of patent cases terminated has also increased, it has not risen as fast. Therefore, the number of cases not terminated in a year has gone up (adding to the total number of pending cases). Moreover, the increase in terminations is not because of an increase in the decisions by the courts, but due to a rise in the settlements.

Second, the percentage of cases decided in favor of the plaintiff declined over the period 1990 through 2000. Furthermore, over the same time period, the cases with a court judgment tended to grant fewer monetary awards in later years within the period. Even if monetary awards were granted, these awards were generally smaller.

Finally, the distribution of patent cases between the twelve circuits is uneven. The Ninth Circuit, alone, handles nearly a quarter of the patent cases. Furthermore, of the ninety-four district courts, the top ten district courts handle 45% of the terminated patent cases.