

2019/2020 Federal Circuit Year in Review

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We are pleased to present Gibson Dunn's eighth "Federal Circuit Year In Review," providing a statistical overview and substantive summaries of the 130 precedential patent opinions issued by the Federal Circuit between August 1, 2019 and July 31, 2020. This term was marked by significant panel decisions with regard to the constitutionality of the PTAB and its jurisdiction and procedures (*Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), *Samsung Electronics America, Inc. v. Prisia Engineering Corp.*, 948 F.3d 1342 (Fed. Cir. 2020), and *Nike, Inc. v. Adidas AG*, 955 F.3d 45 (Fed. Cir. 2020)), subject matter eligibility (*American Axle & Manufacturing, Inc. v. Neapco Holdings LLC*, 967 F.3d 1285 (Fed. Cir. 2020) and *Illumina, Inc. v. Ariosa Diagnostics, Inc.*, 952 F.3d 1367 (Fed. Cir. 2020)), and venue (*In re Google LLC*). The issues most frequently addressed in precedential decisions by the Court were: obviousness (43 opinions); infringement (24 opinions); claim construction (22 opinions); PTO procedures (21 opinions); and Jurisdiction, Venue, and Standing (19 opinions).

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Use the Federal Circuit Year In Review to find out:

- The easy-to-use Table of Contents is organized by substantive issue, so that the reader can easily identify all of the relevant cases bearing on the issue of choice.
- Which issues may have a better chance (or risk) on appeal based on the Federal Circuit's history of affirming or reversing on those issues in the past.
- The average length of time from issuance of a final decision in the district court and docketing at the Federal Circuit to issuance of a Federal Circuit opinion on appeal.
- What the success rate has been at the Federal Circuit if you are a patentee or the opponent based on the issue being appealed.
- The Federal Circuit's history of affirming or reversing cases from a specific district court.
- How likely a particular panel may be to render a unanimous opinion or a fractured decision with a majority, concurrence, or dissent.
- The Federal Circuit's affirmance/reversal rate in cases from the district court, ITC, and the PTO.

The Year In Review provides statistical analyses of how the Federal Circuit has been deciding precedential patent cases, such as affirmance and reversal rates (overall, by issue, and by District Court), average time from lower tribunal decision to key milestones (oral argument, decision), win rate for patentee versus opponent (overall, by issue, and by District Court), decision rate by Judge (number of unanimous, majority, plurality, concurring, or dissenting opinions), and other helpful metrics. The Year In Review is an ideal resource for participants in intellectual property litigation seeking an objective report on the Court's decisions.

Gibson Dunn is nationally recognized for its premier practices in both Intellectual Property and Appellate litigation. Our lawyers work seamlessly together on all aspects of patent litigation, including appeals to the Federal Circuit from both district courts and the agencies.

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Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Federal Circuit. Please contact the Gibson Dunn lawyer with whom you usually work or the authors of this alert:

Mark A. Perry - Washington, D.C. (+1 202-887-3667, mperry@gibsondunn.com)

Omar F. Amin - Washington, D.C. (+1 202-887-3710, oamin@gibsondunn.com)

Nathan R. Curtis - Dallas (+1 214-698-3423, ncurtis@gibsondunn.com)

Please also feel free to contact any of the following practice group co-chairs or any member of the firm's Appellate and Constitutional Law or Intellectual Property practice groups:

Appellate and Constitutional Law Group:

Allyson N. Ho - Dallas (+1 214-698-3233, aho@gibsondunn.com)

Mark A. Perry - Washington, D.C. (+1 202-887-3667, mperry@gibsondunn.com)

Intellectual Property Group:

Wayne Barsky - Los Angeles (+1 310-552-8500, wbarsky@gibsondunn.com)

Josh Krevitt - New York (+1 212-351-4000, jkrevitt@gibsondunn.com)

Mark Reiter - Dallas (+1 214-698-3100, mreiter@gibsondunn.com)

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