

US Patent Reform: Healthy undercurrents, falling tide



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The patent litigation bubble corrected enough for serial litigation and venue concentration to decline.

Backing out serial litigation and cases in the Eastern District of Texas, we observe a generally healthy post-regulatory market environment.

Trends in venue and serial litigation come with growth in patent litigation finance

Alice, TC Heartland, and establishment of the PTAB's IPR process are but a few signposts: a domestic patent litigation bubble is well into market correction. At last look, we see a falling tide of activity targeted by regulatory reform trailed by signs of healthy growth – growth drivers we find reflective of the emergent market for patent litigation finance.

The time to focus solely on PTAB invalidation rates is coming to a close: the macro environment shows declines in the very pipeline of cases the PTAB supports. Taking Lex Machina data on (i) serial litigation prevalence and (ii) trends in venue concentration as a proxy for activity

targeted by regulatory reform, we see a clear rise and fall in the past decade. We also note a healthy growth of filings through 2019 sans serial litigation and E.D. Tex. cases. These trends resonate with what we are hearing from institutional capital: there is no “smart money” in frivolous patent litigation.

Less evident above is a growing appetite for third party financing for patent litigation cases. Whatever burst the bubble for frivolous suits did nothing to dissuade patent owners from passing on litigation costs and removing the expense from their bottom line. Competitive law firms are looking to us for help, sharing contingency upside in favor of partial fee recovery during the pendency of the case. And thus, demand for capital brings litigation finance to patent suits in places like Delaware, California, and the other side of Texas.

Randolph Square is a patent focused specialty finance provider powered by advanced analytics. We bring a capital markets approach to bespoke structuring and funding services for patent litigation. Our edge is data driven, and our roots are in technology: the finance practice emerged from robust patent analytics we continue to offer today.

