



Q3 in Review

## Q3 in Review: US NPE Upswing Continues as UPC Comes Further into Focus

US patent litigation continued to rise in the third quarter of 2024, increasing by 20% compared to Q3 2023. NPE filings went up for the third quarter in a row, rising by 27% in Q3, while operating company filings ticked upward by 11%.

Additionally, the Patent Trial and Appeal Board (PTAB) has continued to face pushback over its discretionary denial practices, including through an ongoing lawsuit challenging the *NHK-Fintiv* rule that returned to the Federal Circuit for a second time in Q3—as *ex parte* reexaminations, their popularity steadily growing due to *NHK-Fintiv*, jumped substantially this past quarter.

Meanwhile, courts issued several significant decisions on standard essential patent (SEP) matters in the third quarter, including a UK High Court ruling that dismissed an unprecedented rate-setting claim against patent pool [Avanci, LLC](#) and a long-awaited UK Court of Appeal judgment that revisited the royalty rate awarded to [InterDigital, Inc.](#) last year in the country's second-ever fair, reasonable, and nondiscriminatory (FRAND) determination. Furthermore, two SEP lawsuits in the US—one involving InterDigital and Lenovo, and the other targeting pool administrator [Access Advance LLC](#)—have taken a somewhat unusual trip through US state law.

Moreover, Europe's Unified Patent Court (UPC) has continued to take shape after its first year, with data showing a Germany-centric caseload and reflecting the court's growing popularity with NPEs. The UPC's first crop of substantive judgments also reveal how the court has begun to handle key issues like infringement, invalidity, and injunctive relief, though its approach to other areas of law—including FRAND counterclaims—remains in flux.

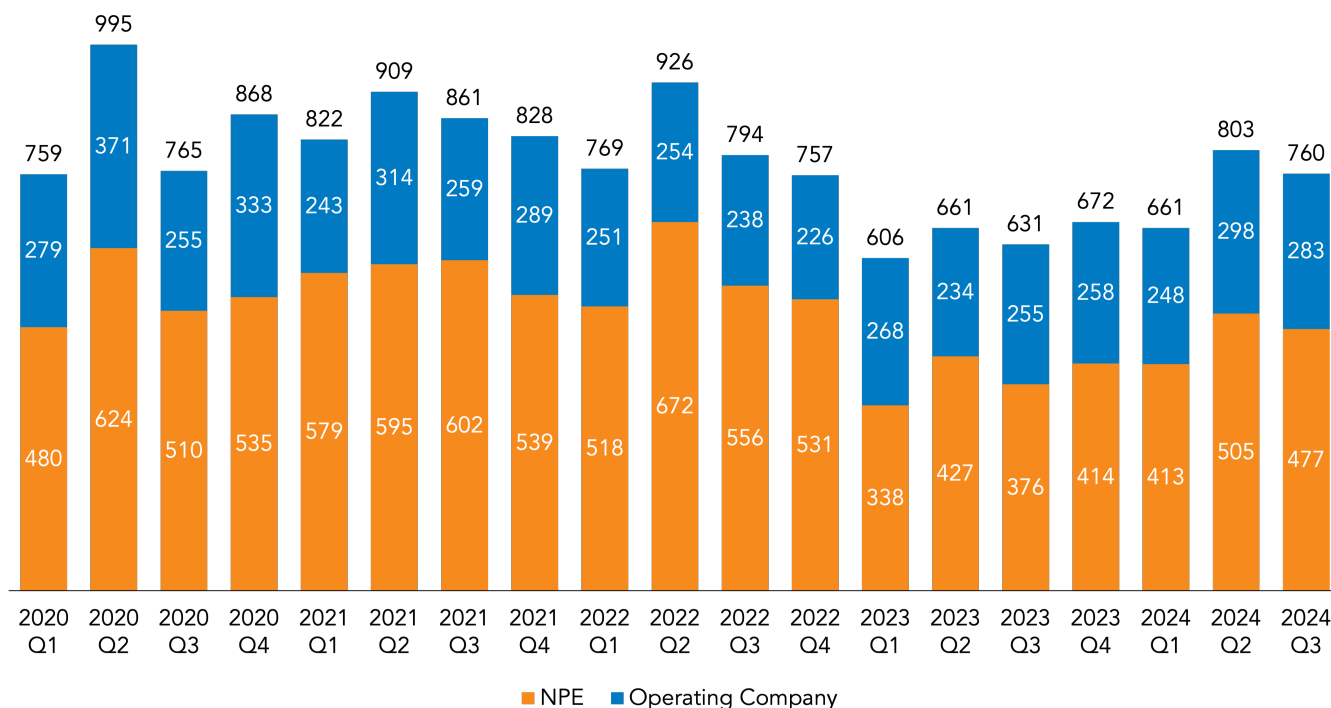
Finally, several notable patent transactions were executed or made public in the third quarter, including one involving a prominent litigation finance firm, while multiple NPE campaigns were launched with the backing of third-party funders.

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## Litigation Update: Q3 NPE Filings Increase Year over Year, Building on Q1-Q2 Growth

NPEs added 477 defendants to patent litigation campaigns in Q3 2024, up by 27% from the same quarter last year (when NPEs added 376 defendants). Third-quarter NPE filings fell by 7% compared to the trailing Q3 average for 2021-2023 and were 6% lower than in Q2 2024. NPE litigation is up by 22% so far this year compared to the first three quarters of 2023.

### NPE and Operating Company Litigation (Defendants Added)



Data also indicate that a majority of NPE litigation in recent years, including Q3, has involved continuing patents, which claim priority to earlier non-provisional US patent applications and are often filed to claim different features of the underlying inventions reflected in those earlier applications as the market evolves. In particular, from January 1, 2019 through September 30, 2024, 60% of all defendants added to NPE campaigns were sued over at least one continuing patent. During that same period, continuing patents accounted for 57% of the total number of patents asserted by NPEs.

Operating companies, meanwhile, added 283 defendants in Q3 2024, up by 11% from the year-ago quarter, up by 13% compared to the trailing Q3 average, and down by 5% compared to the preceding quarter. Year-to-date operating company litigation is up by 10% compared to Q1-Q3 2023.

Defendants Added	Change Compared to:			
	Q3 2024	Q3 2023	Q3 2021-2023 Average	Q2 2024
NPE	477	27%	-7%	-6%
Operating Company	283	11%	13%	-5%
Total	760	20%	0%	-5%

Overall, patent plaintiffs added 760 defendants in the third quarter of 2024, or 20% more than in Q3 2023 and 5% less than Q2 2024, also virtually matching the trailing average. So far this year, patent litigation is up by 17% compared to Q1-Q3 2023.

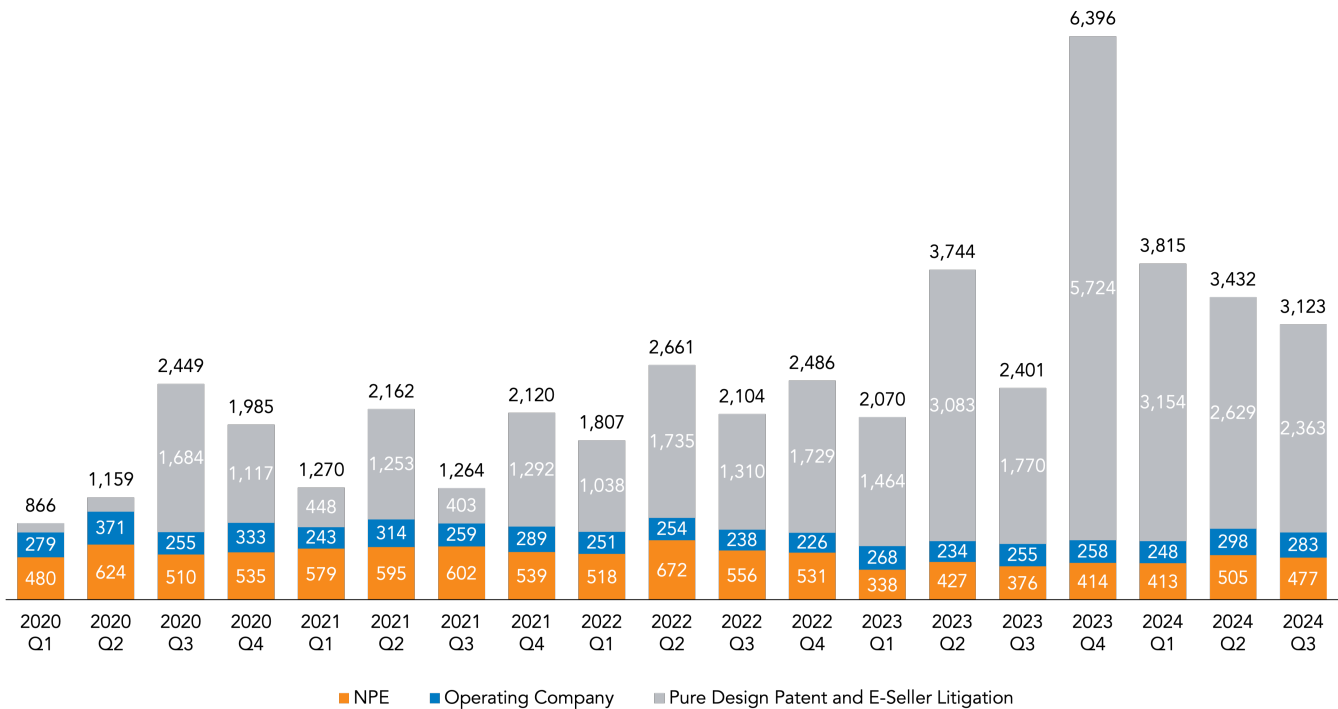
Additionally, the operating company data above leave out another distinct category of litigation filed by a small group of design and utility patent owners targeting copycats and counterfeiters selling products online. RPX excludes such "e-seller" cases from analyses of district court litigation because they tend to follow a different dynamic compared to what one might consider the usual patent suit. These e-seller

cases sometimes name hundreds of defendant entities, many of which may be merely online storefronts or aliases for the same ultimate parent. Also, plaintiffs primarily seek injunctive relief instead of damages, and their cases often end with the e-seller defendant’s failure to answer, followed by a default judgment.

This category of litigation, which began to spike in Q3 2020, is shown in grey below to illustrate its magnitude. As shown by the rightmost bar, e-seller litigation in Q3 2024 accounted for 2,363 defendants added, or 76% of all litigation during the quarter—though this number remains subject to the caveat about defendants potentially having multiple online storefronts noted above.

Apart from the following graph, the other analyses in this report exclude pure design patent and e-seller litigation.

**NPE and Operating Company Litigation by Quarter (Defendants Added)**

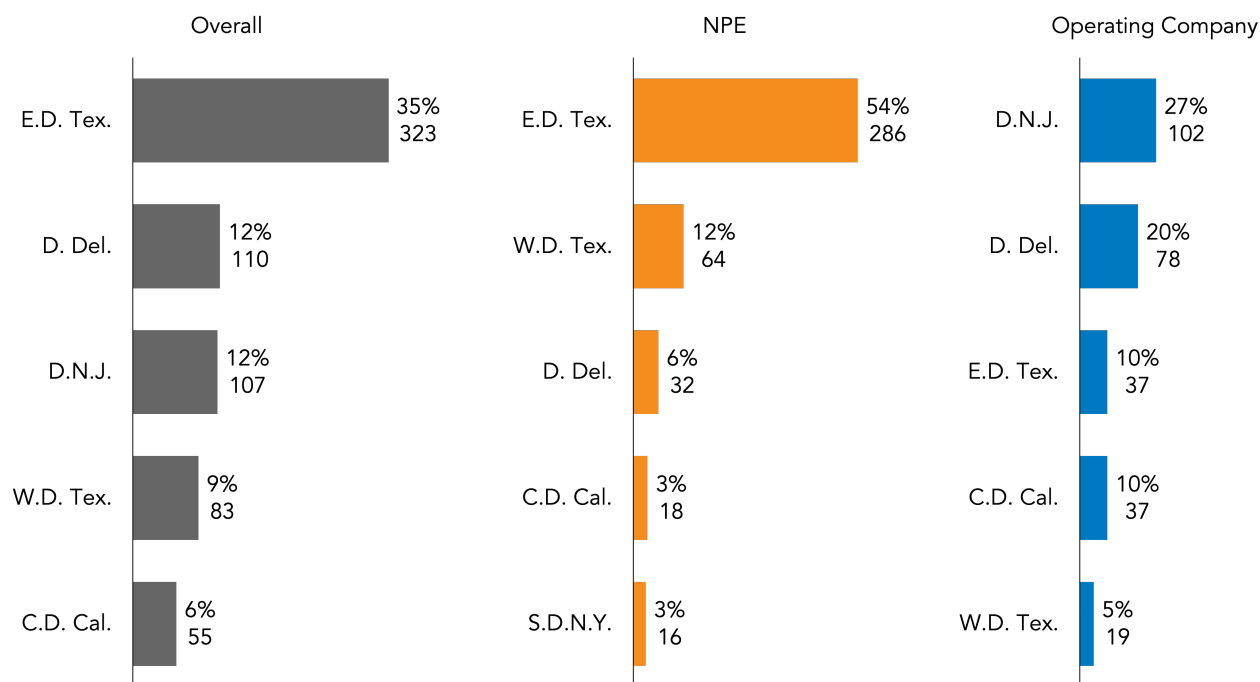




## Venue Update: Delaware IP Edge Probe Continues as Waco Case Assignment Order Further Trims Judge Albright’s Patent Docket

The Eastern District of Texas remained the top patent district in Q3 2024 for both overall litigation and NPE litigation, by a wide margin in both categories. In a distant second place was the District of Delaware, which saw a third as many overall filings—less than 30% of which came from NPEs. The Western District of Texas was in fourth place overall, though it was the number-two district for NPE litigation.

### Top Patent Litigation Districts in Q3 2024 (Defendants Added and Percentage of Total)



#### – Delaware Disclosure Drama Continues

The District of Delaware has fallen considerably in the NPE rankings, likely as the result of a still-ongoing battle over heightened disclosure requirements that Chief Judge Colm F. Connolly imposed in his courtroom in April 2022. Later that year, Judge Connolly grew concerned about potential fraud and attorney misconduct centered around the primary monetization scheme of Texas firm [IP Edge LLC](#) and its consulting arm [MAVEXAR LLC](#), the details of which were drawn into the judicial spotlight after certain plaintiffs under the IP Edge umbrella failed to comply with those disclosure rules. A contentious and drawn-out investigation followed as Judge Connolly probed further, holding evidentiary hearings in which he questioned a range of individuals involved in this scheme—including those plaintiffs’ attorneys, and the individuals, not otherwise patent professionals, who have served as the entities’ nominal owners—and ordering the sweeping production of documents.

All of this scrutiny culminated in the court’s issuance of letters to the US Department of Justice, to the USPTO, and to various state bodies regulating attorney behavior—while IP Edge, beginning in late 2022, stopped filing in Delaware entirely as a result of pressure from Judge Connolly’s investigations. Because IP Edge, which had previously been the top plaintiff by volume by a wide margin, accounted for the bulk of Delaware’s NPE litigation, those numbers plummeted without IP Edge and have not recovered since.

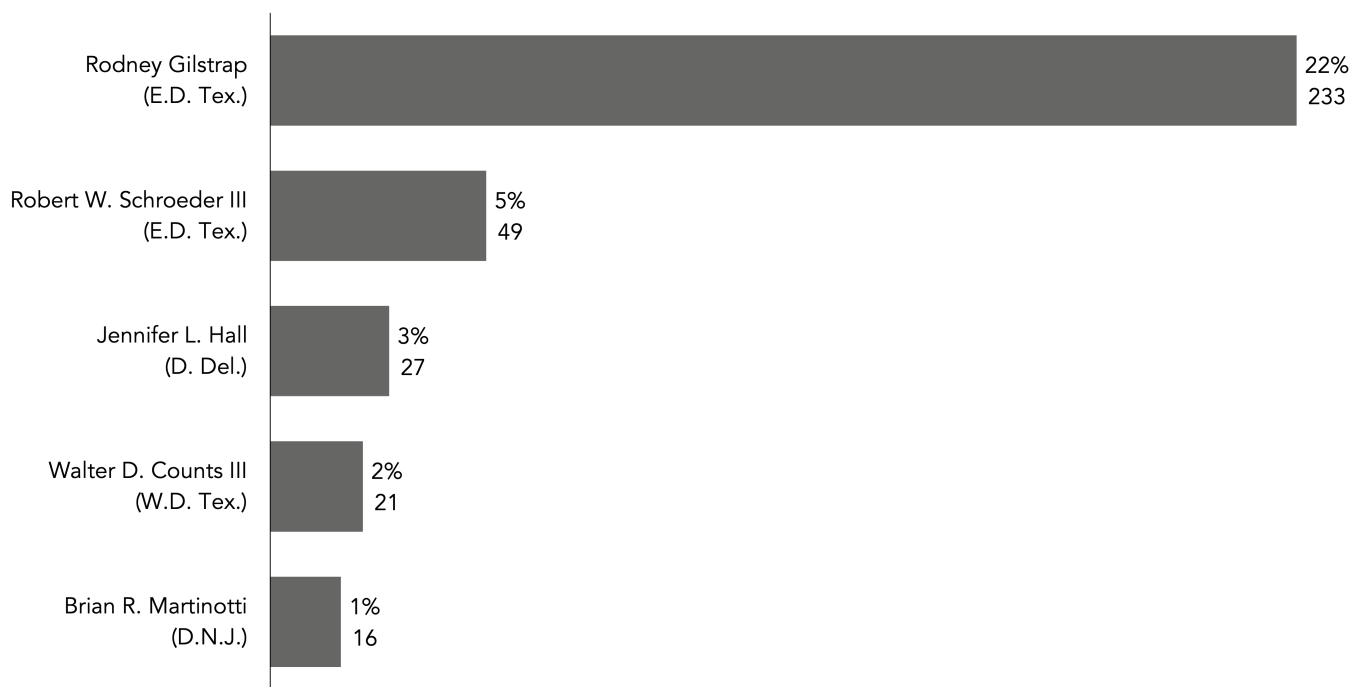
In the meantime, Judge Connolly has continued to seek more information on this scheme from two IP Edge-linked plaintiffs. One is [Backertop Licensing LLC](#), which has tangled with Judge Connolly over the repeated refusal of its sole owner, Texas paralegal Lori LaPray, to return for a second round of in-person

questioning about the assets, control, and behavior of Backertop—a back-and-forth that in August 2023 led Judge Connolly to impose a running civil contempt fine of \$200 per open day of court for her continued resistance. After the Federal Circuit backed Judge Connolly in July, ruling that he had properly acted within his inherent authority by ordering her to appear and by imposing the fine, LaPray finally [appeared before him](#) on September 18 along with Backertop’s counsel. At that hearing, Judge Connolly refused to overturn the fine against LaPray, which by that point totaled \$53K—stating that while he viewed her “to a large extent” as “a victim in this case”, it was necessary to send a “strong signal” that such “deceit” by IP Edge and MAVEXAR would not be tolerated. At that same hearing, Judge Connolly also questioned the counsel and individual owner of a second plaintiff, [Swirlate IP LLC](#), ultimately referring that attorney to state disciplinary authorities.

– **Judge Albright’s Caseload Slims Further Due to Waco Assignment Order**

The nation’s top district judge in Q3 2024 was Eastern District of Texas Chief Judge Rodney Gilstrap, with 22% of all new litigation falling in his court. Western District of Texas Judge Alan D. Albright, who once held first place by a wide margin, now remains well below the top five, overseeing just 1% of the country’s caseload (down from 2% in Q2).

**Top District Judges in Q3 2024 (Defendants Added and Percentage of Total)**



Since taking the bench in 2018, Judge Albright—a former patent litigator—openly sought to attract patent cases to his court. By all accounts he succeeded, resulting in a concentration of cases targeting his courtroom directly. This was possible because filing rules let plaintiffs target a specific division, thereby guaranteeing they would get Judge Albright by filing in Waco, where he is the only district judge. However, a July 2022 case assignment order issued by former Chief Judge Orlando L. Garcia was designed to reduce this concentration, requiring that Waco’s patent cases be randomly assigned among a larger pool of judges, including Judge Albright. By deterring NPE filings in Waco, this in turn has contributed to an overall slide in the venue rankings for the Western District.

In the wake of this order, Judge Albright still saw a disproportionate share of new filings, due to the district’s subsequently developed practice of assigning new cases to the same judge that has overseen litigation involving the same parties and patents. Given the extent of Judge Albright’s prior caseload, many new cases related to those “legacy” lawsuits have ended up before him.

Then came a revised case assignment order issued by current Chief Judge Alia Moses on May 30, 2024. The order maintains the random case assignment policy but now requires parties to “file a motion with sufficient legal and factual justification” if they want to consolidate patent cases and get the presiding judge removed.

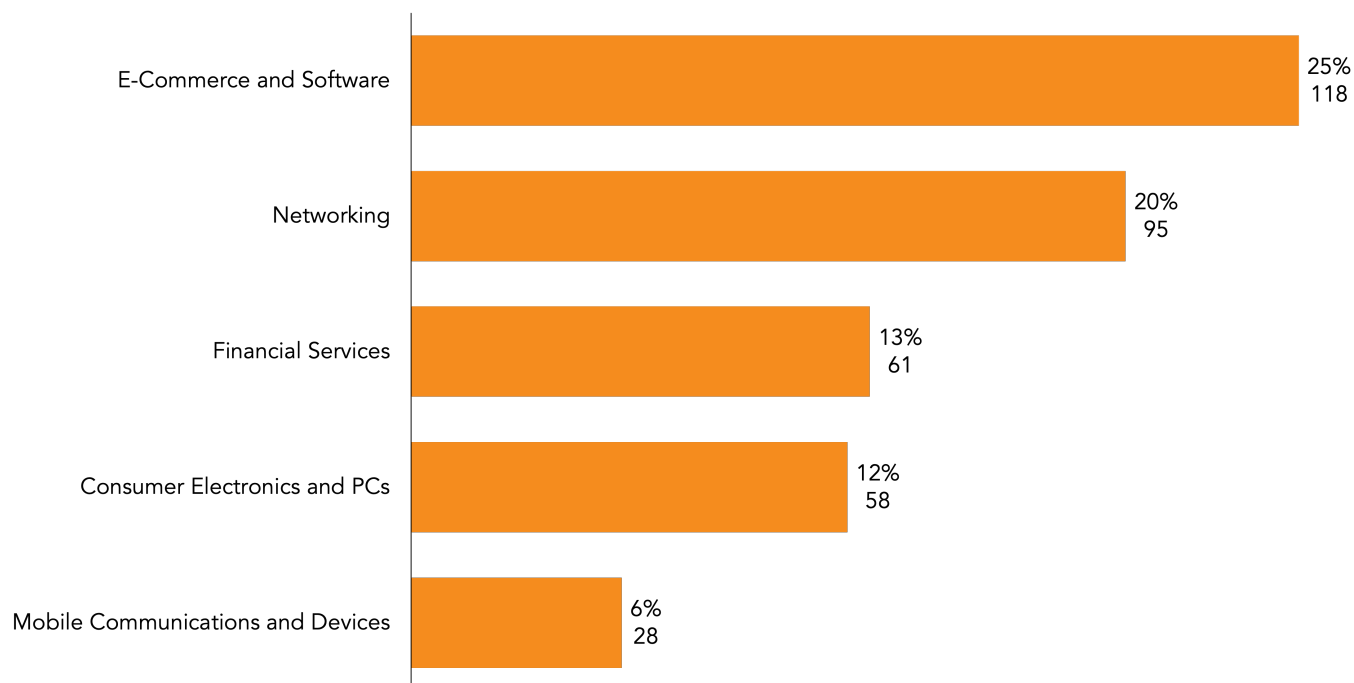
That requirement has led to a dispute in at least one campaign. In June, inventor [Ferid Allani](#) sued Alphabet (Google) and Apple in Waco, the Apple suit getting randomly assigned to Judge Albright and the Google suit to District Judge Leon Schydlower. Allani then filed a motion seeking to reassign the Google suit to Judge Albright and relate it to the Apple case, based in part on the fact that the lawsuits involve the same patents and would allegedly share “issues of claim construction, validity, and/or infringement”—an argument that Google contested, pointing out the lack of overlap in accused products and witnesses. Judge Schydlower denied that motion on August 30, noting that while Allani had styled his motion as invoking the May 30 case assignment order, it did not actually seek “consolidation” as covered by that order. Rather, Judge Schydlower instead rejected Allani’s attempt to merely relate the two cases as based on two orders that do not apply in Waco, one applying to the El Paso Division and the other a case management standing order that only applies for cases already in Judge Albright’s court.

Meanwhile, three other patent cases filed in Waco since the May 30 order were initially assigned to other judges but then reassigned to Judge Albright: Two were reassigned on the judges’ own initiative, merely citing their mutual “consent” to the transfers; and the third was explicitly reassigned because it had the same plaintiff and patent as another case before Judge Albright. Otherwise, lawsuits filed in the wake of the May 30 order and through Q3 do appear to have been assigned randomly, including filings in campaigns with litigation already before Judge Albright—though given that many of those cases were dismissed or settled before much substantive litigation, it is unclear whether similar disputes over case reassignments might have arisen had they continued.

## Market Sector Update: Growing Monetization Enterprises, Inventors, and Funded Plaintiffs Hit E-Commerce and Software in Q3

The top market sector for NPE litigation in Q3 2024 was E-Commerce and Software, accounting for 28% of the defendants added to patent litigation campaigns. Networking saw the second highest amount of NPE litigation in the third quarter, followed by Financial Services, Consumer Electronics and PCs, and Mobile Communications and Devices.

### Top NPE Market Sectors in Q3 2024 (Defendants Added)



NPEs targeting this sector in Q3 included multiple plaintiffs belonging to larger monetization enterprises. Among them were two NPEs linked to a familiar figure in patent monetization, a former inventor who in recent years has shifted to the assertion of patents acquired from others. One of those entities, [Hyperquery LLC](#), returned to litigation in late July with a [new round of suits](#) targeting mobile app stores. The other, [Torus Ventures LLC](#), revived a campaign of its own earlier that same month with a [wave of new complaints](#) against a long list of companies, primarily insurance companies and banks, over their websites' support of the TLS 1.3 security protocol. Additionally, August saw [Muvox LLC](#)—one of a growing web of New Mexico plaintiffs represented by the same law firm—file its [first litigation](#) over music services with song recommendation features and AI-based music generation tools.

Also tagging this sector last quarter were a variety of inventors and inventor-backed plaintiffs, including several training their patents on products with features related to messaging. For instance, late September saw inventor [Riccardo Vieri](#) kick off a [new campaign](#) against systems for sending “automated and personalized” SMS advertisements. One day later, [LaVault.com, LLC](#) began its own campaign focused on social media apps with [“disappearing messaging” features](#). Another plaintiff zeroed in on social media, but with more of a video focus, was [Weple IP Holdings LLC](#), which in August filed its [first complaint](#) over social media services that support viewing and posting text and video content. Additionally targeting short-form video services was inventor-controlled [ART Research and Technology, L.L.C. \(d/b/a ANZU\)](#), which in early August [added a new case](#) to the campaign it launched in May 2023.

Other notable campaigns focused on cloud storage in Q3. In late August, [Daedalus Blue LLC](#) opened up its [third litigation campaign](#), asserting former operating company patents against online storage

platforms with certain file management and authentication features. Earlier that month, [Quick Vault, Inc. \(d/b/a CloudVault\)](#) also revived its sole campaign with a new suit over [cloud storage systems](#) with data access management and usage tracking functionality.

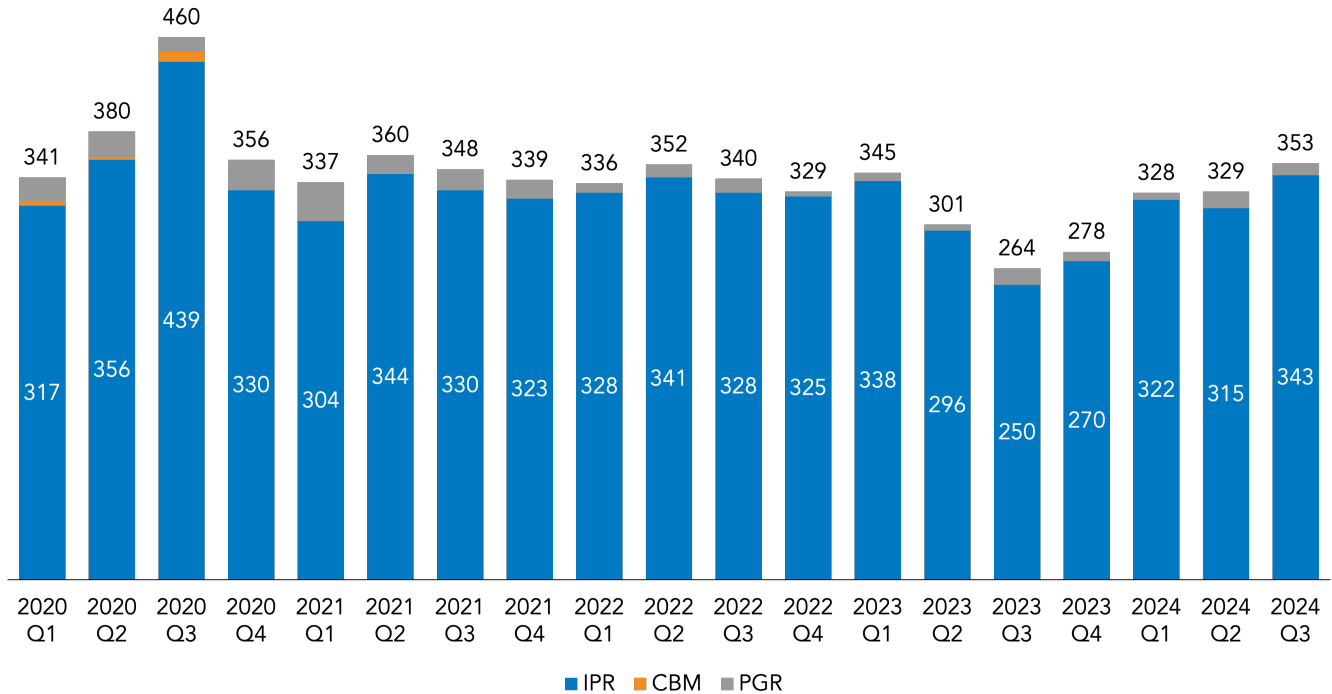
Finally, Q3 saw two plaintiffs backed by the same prominent litigation funder continue to expand their existing litigation campaigns. In [late July](#) and [mid-August](#), one of those plaintiffs—[AGIS Holdings Inc.](#) subsidiary [AGIS Software Development LLC](#)—filed multiple waves of new complaints targeting software products with location-sharing and messaging functionality. The other, [RFCyber Corp.](#), filed a [fresh wave of complaints](#) the month before over products with contactless payment functionality and mobile apps, as well as certain automobiles and related software. See the Patent Market Update below for more on NPE litigation and third-party funding in Q3.



## PTAB Update: *NHK-Fintiv* Challenge Pushes Forward as Reexams Surge

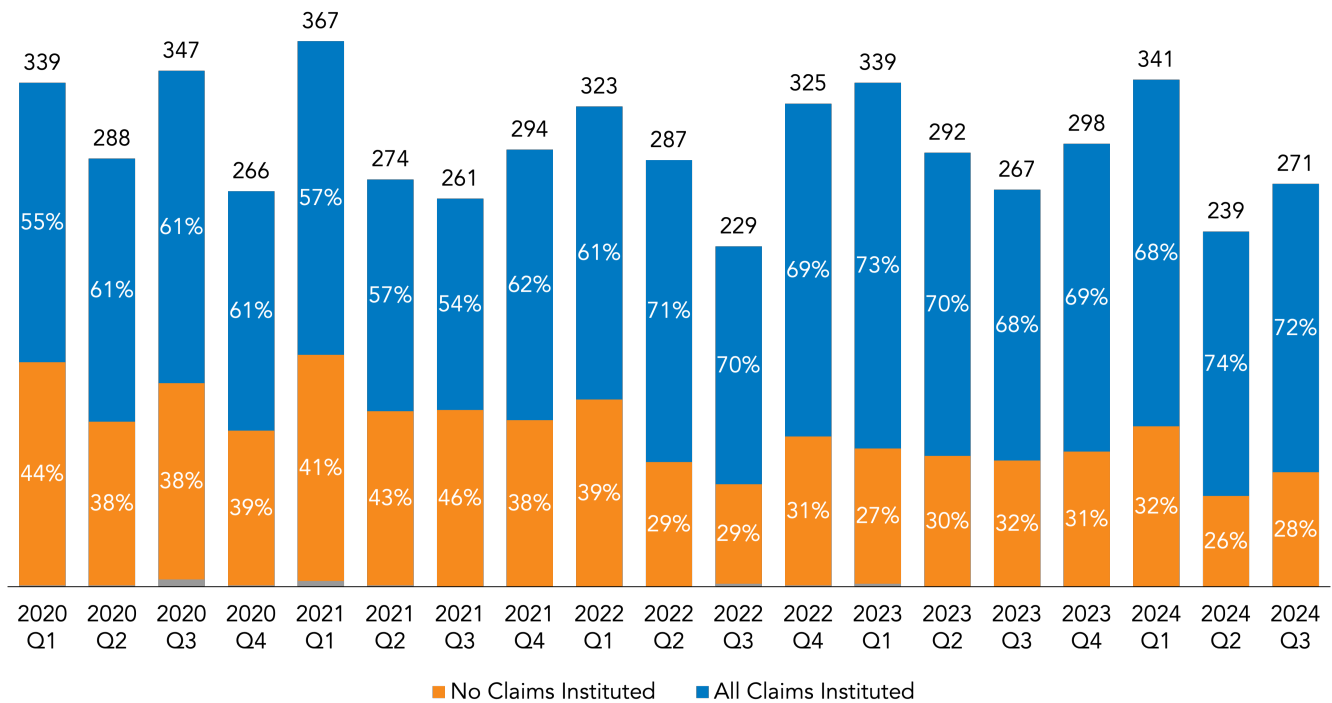
The Patent Trial and Appeal Board (PTAB) saw 353 petitions for America Invents Act (AIA) review in the third quarter of 2024, including 343 petitions for *inter partes* review (IPR) and ten petitions for post-grant review (PGR). Filings were up by 34% compared to Q3 2023, which saw 264 petitions filed; and were 7% higher than in Q2 2024, during which 329 petitions were filed.

### AIA Review Petitions Filed



The PTAB instituted trial for 72% of the AIA review petitions addressed in Q3, up from that same quarter last year (during which the institution rate was 68%) but down slightly from Q2 2024 (74%).

### AIA Review Institution Rates



## – Lawsuit Fighting *NHK-Fintiv* Rule Returns to the Federal Circuit

That increase in the institution rate comes as a fight continues over the PTAB’s practice of discretionarily denying institution based on the status of parallel litigation under *NHK-Fintiv*. In November 2021, Northern District of California District Judge Edward J. Davila dismissed all counts of a lawsuit filed by Alphabet (Google), Apple, Cisco, and Intel that sought to set the rule aside. However, in March 2023, the Federal Circuit revived one of the three alleged bases for such relief: that the rule is procedurally unsound because it should have been implemented via notice-and-comment rulemaking under the Administrative Procedure Act (APA). Judge Davila dismissed that claim on remand in April 2024, and now the plaintiff-appellants have pushed back in their opening brief on appeal—arguing that the lower court was wrong to conclude that *NHK-Fintiv* is not a “substantive” rule that is therefore not subject to the APA’s rulemaking requirement.

## – *SoftView v. Apple*: Federal Circuit Holds That Estoppel Regulation Is a Proper Use of USPTO’s Statutory Power

The Federal Circuit also addressed the extent of the USPTO’s regulatory authority in a different context in its July precedential decision in *SoftView v. Apple*, which the full court declined to revisit in early October. That case dealt with estoppel, the principle establishing that when a party’s validity challenge reaches a final decision, that party is then limited in its ability to subsequently take certain related actions, including relitigating certain validity arguments in another proceeding, as reflected in the AIA and various regulations issued by the USPTO under that law. In *SoftView*, the Federal Circuit [upheld one such regulation](#), one that prevents patent owners from “obtaining” claims that are “not patentably distinct” from claims invalidated by the PTAB—a broader estoppel standard than the one that applies for validity challenges in district court litigation. The appellate court found that the USPTO was within its authority to issue that regulation in the first place, under a provision of the AIA (35 USC § 316(a)(4)) that empowers the agency to issue regulations governing the interplay of IPR and other USPTO proceedings. However, the court additionally determined that the PTAB had been wrong to find that the provision also bars “maintaining” existing claims that meet this same criterion.

That said, the Federal Circuit noted in a footnote that the USPTO’s “authority under Section 316(a)(4) is not unbounded”, merely empowering it to regulate IPR proceedings and not legislate new patent laws. The court explicitly stated that it was not here addressing the “exact limits” of Section 316(a)(4), and that it would need to do so in a case with dedicated briefing on that issue—importantly, briefing that addresses the impact of the Supreme Court’s June 28 opinion in *Loper Bright Enterprises v. Raimondo*. That [landmark decision](#) overturned a 40-year-old doctrine called *Chevron* deference that had previously given many agencies wide latitude to set certain regulations. While *Chevron* required courts to defer to federal agencies’ interpretation of the laws governing them when those statutes were ambiguous, *Loper Bright* now provides that no such deference is required. Stakeholders have observed that *Loper Bright* could, at the very least, expose the USPTO’s regulatory efforts to setbacks in the form of litigation, even if the remaining, lesser standard of deference still standing (*Skidmore*) could give the USPTO a tool to defend regulations challenged under the Supreme Court’s new holding.

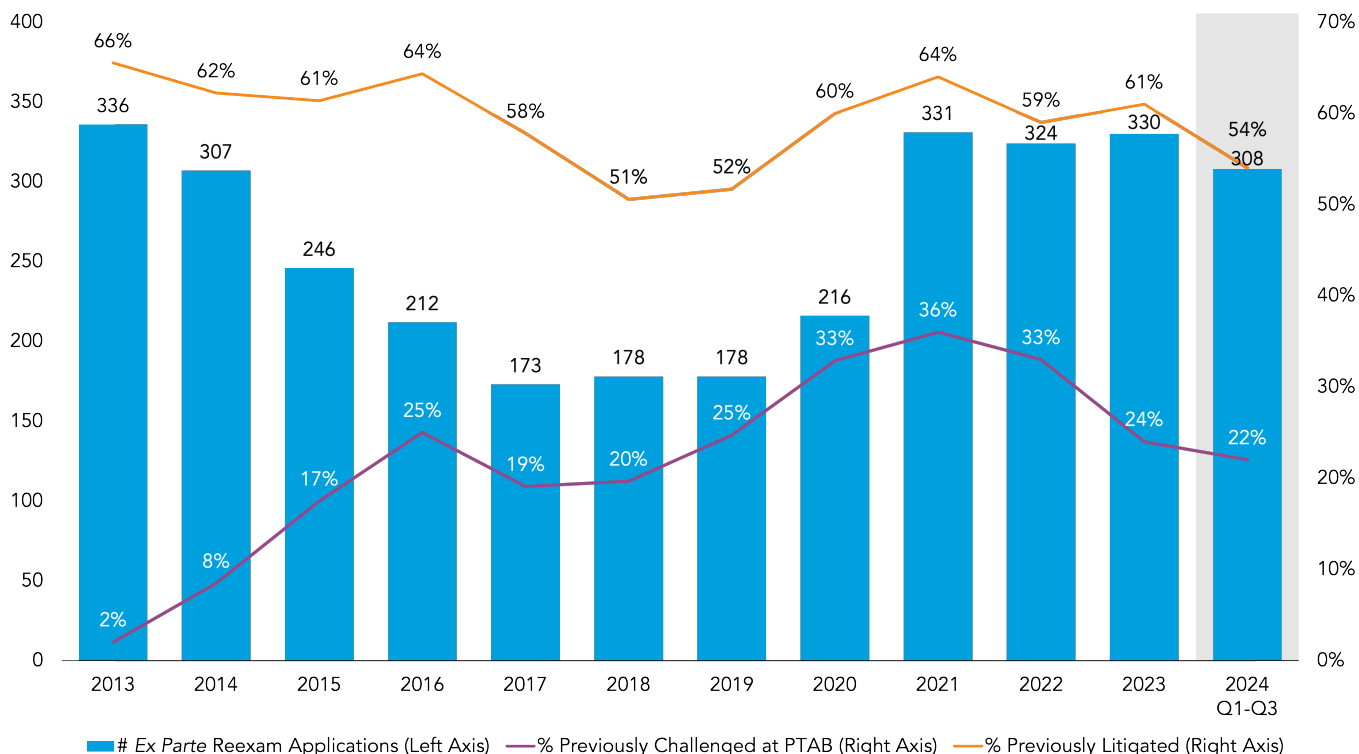
## – *Ex Parte* Reexams Continue to Climb

One development that is likely the result of the prolonged uncertainty that has surrounded *NHK-Fintiv*—including the aforementioned litigation, the USPTO’s ongoing efforts to reform the practice via formal rulemaking, and now potential regulatory challenges to those rulemaking proposals due to *Loper Bright*—is an increase in *ex parte* reexaminations. Among other potential advantages, *ex parte* reexams are not subject to discretionary denials to the same extent as IPR and do not trigger estoppel.

The number of requests for *ex parte* reexam went up by 21% in 2020 and then by 53% in 2021, peaking that year. Since then, reexam filings have held steady at roughly 330 requests per year in 2022 and 2023.

The data for Q1-Q3 2024 indicate that this year may substantially outpace both 2022 and 2023, as the total to date has already reached 308 reexam requests filed. Q3, in particular, was significantly higher than the last five third quarters, exceeding Q3 of last year by 62%. The share of patents with reexam requests that have also been challenged at the PTAB continues to fall, reaching just 22% in 2024 so far—further indicating a shift away from IPR. Additionally, 54% of patents with reexam requests have also been litigated in district court, though this marks a drop from 2023 (when that overlap was 61%).

### Ex Parte Reexam Filings and the Share of Challenged Patents with Prior Litigation and PTAB Reviews



Note: Data as of October 7, 2024. Due to the delayed availability of filing dates and related data from the USPTO, this analysis is subject to change. Grey box indicates incomplete data for the year.

## FRAND Update: UK and US Courts Tackle SEP Royalties and Patent Pool Disputes

### – UK: Court Dismisses Case Against Avanci, Revisits InterDigital SEP Award

UK courts issued multiple decisions tackling standard essential patent (SEP) issues in Q3. Among them was a notable ruling concerning the extent of the court's jurisdiction over certain fair, reasonable, and nondiscriminatory (FRAND) licensing claims.

In 2020, the UK became the first country where courts have asserted the jurisdiction to set the terms of a global FRAND license to a SEP portfolio. Though courts there have also found that implementers can seek such FRAND determinations proactively, rather than in response to an infringement claim, no UK court has yet allowed such a rate-setting claim against a patent pool. In mid-July, the UK High Court doubled down on this posture, [ruling](#) that automaker Tesla could not seek a FRAND determination for the entire 5G pool administered by defendant [Avanci, LLC](#), neither through certain claims against Avanci itself nor by treating pool licensor [InterDigital, Inc.](#) as a "representative" of the other Avanci SEP owners. However, Justice Timothy Fancourt, writing for the court, expressed "some concern" that the applicable law required this "odd" result.

The UK High Court's decision to bar Tesla's rate-setting claim against Avanci stands in sharp contrast to the [approach recently taken in China](#). In June 2024, the Supreme People's Court (SPC) reportedly ruled that Chinese courts may set the terms of a global FRAND license for an entire foreign patent pool, apparently the first time any court has done so—reaching this conclusion in a case brought by another implementer, TCL, against [Access Advance LLC](#)'s HEVC Advance pool. China has also placed Avanci's pool under anti-monopoly scrutiny, with a Chinese agency's late-June announcement of an unprecedented inquiry into Avanci's business model.

Another significant development came in litigation between InterDigital and Lenovo, which in March 2023 culminated in the country's second-ever determination of a global FRAND license by the UK High Court. In mid-July, the UK Court of Appeal issued its long-awaited [appellate judgment](#) in that case, ruling in part that the lower court applied flawed reasoning in its rate-setting analysis—as a result, increasing the per-unit rate for defendant Lenovo from \$0.175 to \$0.225 and the total lump sum awarded to plaintiff [InterDigital, Inc.](#) from \$138.7M to \$178.3M. However, as was the case for the lower court's ruling, the final rate here was far closer to the one sought by Lenovo.

### – US: Implementers Bring State Law Bad-Faith Assertion Claims Against Patent Pools

Another notable aspect of the *InterDigital v. Lenovo* dispute came in the campaign's US leg, which has taken a rather unusual detour through US state law. In September 2023, just over two months after a final judgment in the UK case, InterDigital sued Lenovo in the federal Eastern District of North Carolina as well as a parallel action before the International Trade Commission (ITC). Both actions focused solely on infringement, with neither asserting claims related to FRAND issues—as no US court (or adjudicative agency) has yet asserted the power to impose the terms of a global FRAND license, unlike in the UK. Lenovo would subsequently characterize these US cases as an attempt to make up for the fact that the High Court had awarded far less than InterDigital had requested in the UK action. In response, Lenovo brought a counterclaim under the North Carolina Abusive Patent Assertions Act (NCAPAA), one of a variety of state statutes that make it unlawful to make claims of bad-faith patent assertion. Here, Lenovo's counterclaim argues that InterDigital has violated that statute through its alleged failure to conduct an adequate pre-suit investigation, to make a license offer based on a reasonable estimate of its value, for making a meritless claim, and for making an unjustified claim for injunctive relief. In March 2024, that counterclaim survived an InterDigital motion to dismiss, and in August the court [partially granted](#) a related discovery request from Lenovo with respect to the production of "demands" sent by InterDigital to other companies.

This is not the only US-based pool dispute that has taken such a state law detour. In late July, HP filed suit in the Massachusetts Superior Court Business Litigation Session against Access Advance and three of its licensors, alleging that the parties breached their commitments to license their SEPs on FRAND

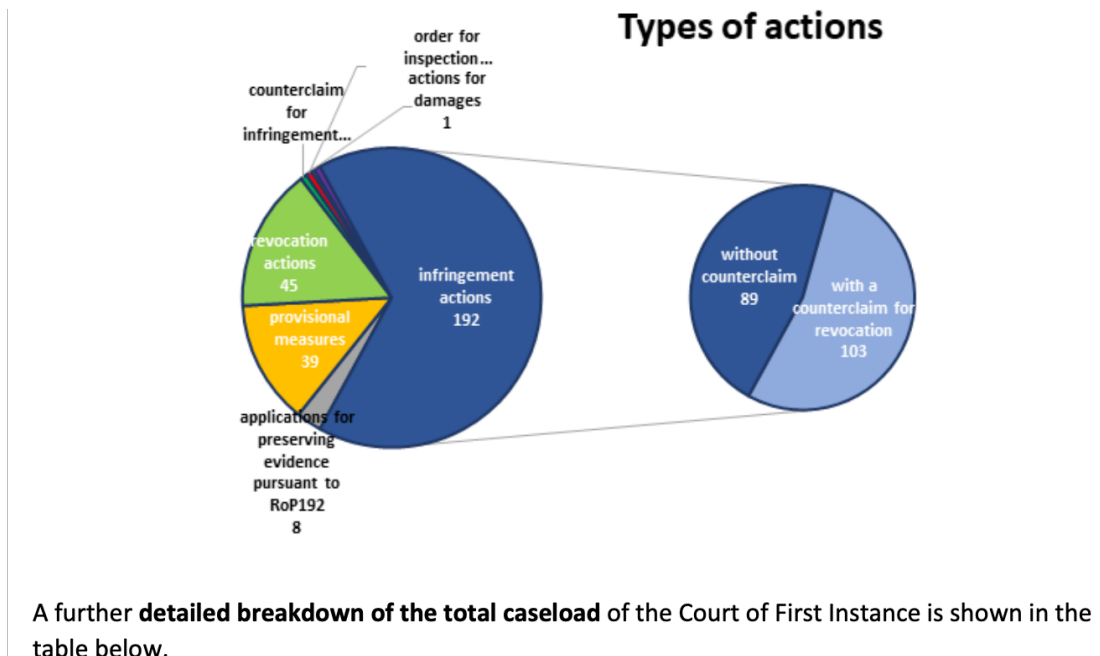
terms by failing to offer a lower rate accounting for HP's existing rights to 70% of the pool's patents, and by filing litigation in Germany and before the Unified Patent Court (UPC) in an improper attempt to force it to take a license. Among other claims for relief, the complaint seeks a declaratory judgment of the terms and conditions for a FRAND license to the remaining unlicensed patents. In late August, the pool defendants [removed](#) that case to the District of Massachusetts. HP has since [moved](#) to remand the case back to state court, arguing that its claims are based in contract law, not patent law, and thus contain no federal questions.



## UPC Update: Caseload, NPE Activity, Outcomes, and Notable Decisions at Year One

When the Unified Patent Court (UPC) finally began operations in June 2023, it had been in the making for years, having been held up by Brexit and also multiple constitutional battles in Germany. Since then, with jurisdiction in 18 participating European states, the UPC has become, by certain metrics, the largest patent litigation forum in the world—and one that aims to render decisions on the merits in just over 12 months.

On October 1, 2024, the UPC [released](#) the latest caseload data for its inaugural year, reporting the receipt of 502 cases since June 1, 2023 and through Q3 2024, of which 192 were identified as patent infringement actions.



	Infringement	Counterclaim for revocation	Revocation	Counterclaim for infringement	Appl. for provisional measures	Appl. for preserving evidence	Appl. for Order for inspection	Request for damages	Declaration of noninfringement
Paris CD	1	4	37	2					1
Paris LD	11	17				1			
Munich CD		1	5						
Munich LD	70	94			16	1			1
Milan CD	1		3		1				
Milan LD	7	2			1	3	1		
Düsseldorf	42	27			9		1		
Mannheim	25	36			1				
Hamburg	14	15			5			1	
Nordic-Baltic RD	6	12				1			
The Hague	10	4			3				
Brussels	2					1			
Helsinki	1								
Copenhagen	1				1	1			
Lisbon					1				
Ljubljana									
Vienna	1				1				
<b>Total</b>	<b>192</b>	<b>212</b>	<b>45</b>	<b>2</b>	<b>39</b>	<b>8</b>	<b>2</b>	<b>1</b>	<b>2</b>

Source: The data and images above were extracted from the UPC’s October 1, 2024 report “Case load of the Court since start of operation in June 2023 update end September 2024”.

As shown above, of the divisions within the UPC's Court of First Instance, Germany's four local divisions received the most infringement filings during the court's first year, with the Munich Local Division taking the lion's share.

Uncertainty around the UPC's approach to SEPs and FRAND issues might account for this imbalance. SEP licensing was not a significant practice when the treaty that led to the UPC's creation (the UPC Agreement, or UPCA) was ratified in 2013, and that treaty does not address FRAND matters.

As a general matter, the UPC must draw on a complex set of laws, from multiple sources, to fill gaps and answer questions left unresolved by the UPCA (and by the UPC's since-enacted Rules of Procedure). In particular, EU law has primacy over the UPC, though as a practical matter it is the UPCA that governs patent enforcement before the court. Any gaps are to be filled by national law in participating EU member states. That national law must itself be construed in conformity with the EU's IPR Enforcement Directive, which requires EU member states to establish a minimum set of measures, procedures, and remedies for effective IP rights (IPR) enforcement across the EU.

Thus, stakeholders are looking to national courts for clues on how the UPC will fill in the gaps, while patent owners have so far appeared to prefer filing their cases at the UPC local divisions located in countries viewed as favorable—in particular, Germany.

#### – NPEs at the UPC

At this time, access to UPC pleadings is severely limited, with third parties/members of the public generally barred from gaining access to court documents without qualified legal representation. In addition, the UPC's troubled case management system continues to be criticized, although the UPC did recently [announce](#) that it intends to develop a new system, this one in cooperation with the European Patent Office (EPO).

While obtaining pleadings in a pending matter remains challenging if not impossible, UPC metadata does provide a glimpse into which plaintiffs have waded into UPC waters since June 2023. Among those plaintiffs are a number of NPEs with active litigation here in the US, including [Daedalus Prime LLC](#), [Headwater Research LLC](#), [ICPillar LLC](#), [Innovative Sonic Limited](#), [Lionra Technologies Limited](#), and [Network System Technologies LLC](#).

The list of NPEs litigating at the UPC also includes a European subsidiary of [Atlas Global Technologies LLC](#), the latter an [Acacia Research Corporation](#) plaintiff that has not filed any new US litigation since 2023; [Labrador Diagnostics LLC](#) and [Sun Patent Trust](#), neither of which has filed any new litigation in the US in several years; and multiple NPEs that have yet to bring any litigation in the US (as of the publication date of this report): [Ballinno BV](#), [Nera Innovations Limited](#), [ONA Patents SL](#), [Suinno Mobile & AI Technologies Licensing OY](#), and [Total Semiconductor, LLC](#).

#### – UPC Outcomes After Year One

Now that the UPC has passed the one-year mark, the court has begun to issue its first full decisions on the merits—and as a result, a clearer picture of the court's approach began to emerge in the third quarter.

Many of the court's initial decisions have ended adversely for patent owners. *JUVE Patent* has [characterized](#) those rulings as restricting or nullifying a majority of the patents at issue, while *IAM* has [reported](#) that most of the initial wave of final decisions included rulings of either invalidity and/or noninfringement. While it is too early to identify any long-term trends, these initial outcomes underscore one of the key pitfalls for potential plaintiffs: that while the UPC's wide reach offers the prospect of injunctions and damages, it also exposes patents to revocation actions with effect across all 18 member states. This can be particularly impactful for pharmaceutical patent owners, which are heavily represented in the early set of plaintiffs: Flagship drugs are sometimes protected by a smaller number of patents relative to the larger portfolios that cover technologies like cellular networking.

However, the UPC's approach to preliminary injunctions has offered better news for patent owners, particularly those accustomed to the restrictive standard that governs in the US—where plaintiffs must show a likelihood of success on the merits, that they would suffer irreparable harm without an injunction, that the balance of hardships favors an injunction, and that the public interest would not be harmed by an injunction. The UPC's rules are less stringent, generally requiring a likelihood of success on the merits and a showing that no unreasonable delay occurred, with the court also weighing relative harms. Moreover, the UPC has even explicitly held that NPEs may obtain preliminary relief. Thus far, while outcomes have been evenly split, the court has generally shown a willingness to grant preliminary injunctions when the facts show it is "appropriate and necessary", including on an *ex parte* basis (with no hearing for the defendant).

#### – Decisions Reflect Evolving Approach on Some Issues

For various other substantive and procedural issues, the UPC's approach is still evolving—in part because issues being addressed for the first time are sometimes decided inconsistently between different local divisions. This is possible because according to the Paris Local Division, local divisions are [not necessarily bound](#) by the decisions of another local division, at least under some circumstances. When such splits arise, it can fall to the Court of Appeal to provide clarity.

One recent example of such a split involves the discretionary power to order a plaintiff to pay a security to cover the defendant's costs, which can be based on concerns that the plaintiff would be unable to cover a subsequent cost order. Earlier this year, two UPC local divisions reached different conclusions in weighing whether to impose securities against two separate US-based NPEs: The Munich Local Division denied a request from Volkswagen for a security against [Network System Technologies LLC](#) (NST), finding that the plaintiff's thinly capitalized structure was appropriate for an NPE, finding that the defendant had failed to show outright insolvency, and concluding that if necessary, NST's patents could be sold as collateral to pay a potential cost order. In contrast, the Paris Local Division granted a request against [ICPillar LLC](#), finding that its limited income posed a sufficient risk to justify a security—also rejecting a US insurance policy offered by the plaintiff as a guarantee in the alternative.

However, the Court of Appeal came down against the plaintiffs in both cases when [reviewing those decisions](#) in September. With respect to NST, it held that the Munich Local Division had set an overly high standard of proof by requiring "precise evidence of insolvency", finding to the contrary that Volkswagen had sufficiently shown a risk that NST could not pay its costs. Moreover, it agreed with Volkswagen that NST's patents were not a potential source of recovery, as their value would be zero or near zero if they were found invalid or not infringed. As for ICPillar, the Court of Appeal both upheld the security imposed by the Paris Local Division and agreed that a US insurance policy would be insufficient.

Another notable split arose in April in some of the court's first decisions that dealt with SEP-specific issues—in particular, the requirements for the production of relevant license agreements as related to determining a FRAND rate. In early April, the Munich Local Division adopted a relatively expansive approach in its rulings on a set of parallel requests by defendant Oppo to compel the production of certain license agreements from plaintiff Panasonic—granting its request for all licenses covering patents declared essential to 4G standards. On the other hand, in mid-May, the Mannheim Local Division denied a similar request covering licenses to 3G and 4G patents, holding that ordering such production would be inappropriate if the alleged infringer were found to be unwilling—a determination that had not yet been made in this case.

On September 24, the Court of Appeal upheld the Mannheim LD's more restrictive decision, agreeing that it was not appropriate to order the production of license agreements before a determination of the defendant's willingness is made. Significantly, the appellate court also affirmed the Mannheim court's related determination that compelling production would be premature given uncertainty over "whether the Court has competence to address" the defendant's FRAND determination counterclaim.

Further clarity on this key jurisdictional question may come in October, when the Mannheim court will hold a hearing on Oppo's FRAND defense—the first time that the UPC will have considered this issue.

– **Member-Exclusive Webinar**

RPX members have exclusive access to a webinar produced in parallel to this quarterly report, covering the basics of the UPC and the Unitary Patent, caseload and NPE filings, and a look at what is attracting patent plaintiffs and litigation funders to the UPC, plus a deep dive on outcomes and remaining uncertainties on some key issues. Members can view this webinar [here](#).

## Patent Market Update: Notable Transactions; New NPE Campaigns with Third-Party Funding

RPX subject matter experts take a systematic approach to reviewing public records to uncover notable patent transactions as well as signs or evidence of litigation financing, arming RPX member companies with timely strategic intelligence in support of their individual patent strategies. Certain research is made exclusively available to RPX members via RPX Empower.

### – Notable Patent Transactions Made Public in Q3

RPX identified several patent transactions executed or made public in the third quarter that may be deemed noteworthy in light of the involvement of operating company portfolios and/or assignees with a history of litigating patents. Among those assignments was a relatively sizeable transaction—175 US patents, for which \$26M was reportedly paid—involving an affiliate of litigation finance firm Parabellum Capital. RPX also flagged movement in July of roughly 50 US patents from a chipmaker to a newly formed NPE that appears to be associated with West U Capital. Entry points into those notable assignments are available to RPX members [here](#) and [here](#), respectively.

### – New Funded NPE Litigation—and a Large Verdict in a Funded Case

The third quarter of 2024 also saw multiple new campaigns launched by NPEs tied by public records to specific third-party litigation funders, including two associated with a Silicon Valley-based monetization firm (which also brought new litigation in multiple of its other, ongoing funded campaigns). The defendants targeted by funded plaintiffs in Q3 run the gamut, including device makers, wireless carriers, e-commerce companies, and carmakers, among others. RPX members can access a round-up of new funded litigation—and coverage of a large verdict in a funded case—[here](#).

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## Additional RPX Patent Market Intelligence

Visit [RPX Empower](#) for further analysis and up-to-date information on patent litigation and market trends.