Intellectual Property Litigation: U.S. Trends in Global Perspective

A Guide for Practitioners and Policymakers

REVIEW & ANALYSIS

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CORNERSTONE RESEARCH
Economic and Financial Consulting and Expert Testimony

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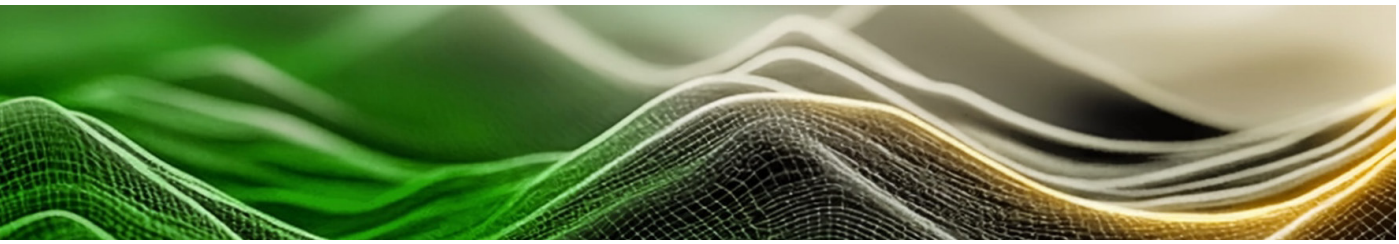


Intellectual Property in the 21st Century

Intellectual property (IP) has shifted from the technical periphery to the center of the global economy. Firm value today is increasingly driven by intangible assets—innovation, technology, data, and brand—making them critical to competition and growth.[1]

INNOVATION CONTINUES AT A FAST PACE

The scale of this shift is stark. In 1975, tangible assets accounted for roughly 83% of S&P 500 market value. By 2025, that relationship had inverted: intangible assets, including patents, software, data, and brands, represented over 90% of firm value.[2] IP is no longer ancillary; it is the core of enterprise value.

IP is also an increasingly central arena of global competition between firms and countries alike. Leadership in critical technologies—such as semiconductors, artificial intelligence (AI), advanced communications, and biotechnology—depends on the ability to generate and commercialize IP. It is no surprise that as the stakes have risen, so has the importance of IP disputes.[3] Courts and administrative bodies play an increasingly pivotal role in defining the scope, validity, and enforceability of IP rights for frontier technologies, thereby shaping incentives for innovation and investment.[4]

IP is no longer ancillary; it is the core of enterprise value.

U.S. PATENT HEADWINDS ARE DRIVING GLOBALIZATION AND SUBSTITUTION

This report examines the shifting center of gravity in global intellectual property. While U.S. patent litigation activity has largely plateaued following the changes of the past decade, it has become highly specialized and concentrated in high-value technology and life sciences sectors where "blockbuster" damages awards continue to underscore the immense economic stakes of intangible assets.

Against this backdrop, U.S. patent enforcement faces increasing procedural headwinds—including administrative review and restricted injunctive relief—driving a "globalization" of disputes and a domestic shift toward trade secret protection.[5] (For details, see the sections below on "The Export of Patent Enforcement" and "The Domestic Substitute: Rise of Trade Secret Litigation.")

GENERATIVE AI IS RESHAPING INTELLECTUAL PROPERTY LAW AND ECONOMICS

The innovation landscape is further being reshaped by the rapid ascent of Generative AI (GenAI), which is blurring traditional IP boundaries and triggering a surge in copyright and inventorship disputes.[6] By analyzing global enforcement trends and emerging AI-related legal disputes, this report highlights the evolving forces shaping innovation and IP strategy worldwide.

Part I: Innovation Continues at a Fast Pace

GLOBAL INNOVATION REMAINS AT HISTORICALLY HIGH LEVELS

While innovation can be measured in various ways, patent data provide a consistent and comparable global metric, reflecting both the scale and direction of technological activity.[7]

Patent grants have increased markedly since 2005, with growth accelerating in the past decade and shifting toward Asia (see **Figure 1**). The past two decades show a clear rebalancing of innovation activity across regions.

The United States' Relative Decline

While the U.S. remains a leading source of high-value innovation, its share of global patenting has eroded. Despite that, the U.S. remains uniquely important within the global innovation ecosystem due to its concentration of high-value technology firms, deep venture capital and research-and-development (R&D) infrastructure, leadership in frontier technologies, and the continued central role of U.S. courts in patent damages and commercial enforcement.[8]

Europe's Mature Innovation Base

Europe has seen moderate growth in patenting, reflecting a mature and stable innovation ecosystem. Europe has not experienced sharp inflection points, instead maintaining a steady trajectory driven by incremental innovation across established industries.

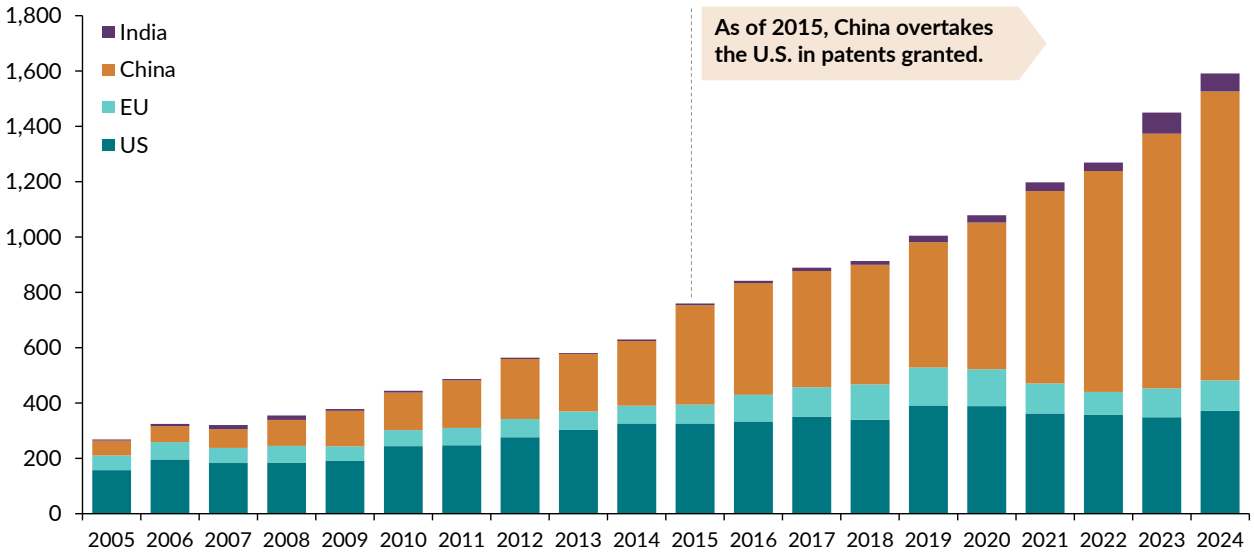
China's Striking Rapid Growth

From a secondary player in the mid-2000s, China has become the primary driver of global patent growth.[9] In addition, Chinese courts and specialized IP tribunals increasingly play central roles in standards-essential patent (SEP) litigation, anti-suit injunction practice, and coordinated multi-jurisdictional enforcement.[10]

India's Emergence

India is the fastest-growing major patent jurisdiction. Its recent acceleration signals a shift from a peripheral player to an emerging innovation hub, supported by expanding R&D activity, policy reforms, and deeper integration into global technology ecosystems.[11]

Figure 1: Global Patent Trend—Total Patents Granted
2005–2024
(in Thousands)



Source: U.S. Patent and Trademark Office (USPTO) PatentsView; World Intellectual Property Organization (WIPO) IP Statistics Data; European Patent Office (EPO) PATSTAT Autumn 2025. See also Endnote 12.

THE RISE AND DIVERSIFICATION OF IP LITIGATION

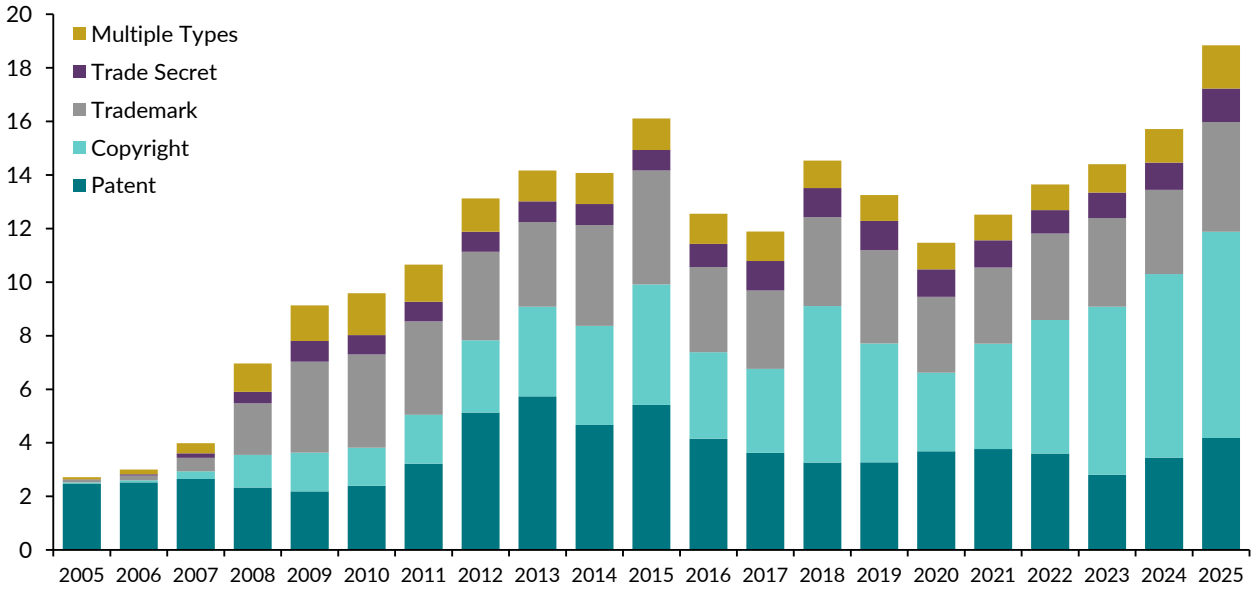
As the global asset value has shifted toward intangibles, the volume of intellectual property disputes surged. This growth was accompanied by a structural evolution in U.S. litigation; once dominated by patents, the docket has diversified into a broader mix of IP rights, mirroring rapid shifts in digital business models and new legal frameworks.[13]

As shown in **Figure 2**, total IP case filings in the U.S. have grown substantially since the mid-2000s, rising from fewer than 3,000 annual cases to nearly 19,000 by 2025.

At the same time, U.S. IP litigation has evolved from being predominantly patent-driven to a more diversified mix across patents, copyrights, trade secrets, and trademarks. The comparative growth of non-patent IP litigation reflects both structural changes in patent enforcement, including the rise of Patent Trial and Appeal Board (PTAB) review, and the rapid growth of copyright, trademark, and trade secret disputes.[14]

This evolution reflects broader changes in the modern innovation economy, where firms increasingly rely on multiple forms of IP protection simultaneously, particularly in software, digital platforms, AI systems, semiconductors, and data-driven technologies.[15]

Figure 2: Total U.S. Intellectual Property Cases Filed by Case Type
2005–2025
(in Thousands)



Source: Lex Machina. See also Endnote 16.

Part II: U.S. Patent Headwinds Are Driving Globalization and Substitution

Although global innovation activity continues to expand, patent enforcement in the U.S. has become more procedurally constrained, fragmented, and uncertain. Institutional and doctrinal developments, including PTAB review, evolving injunction standards following *eBay Inc. v. MercExchange, L.L.C.* (2006), venue concentration, and increasingly complex multi-forum litigation,[17] have reshaped how patent rights are enforced.

These changes did not reduce the economic importance of patents or diminish demand for enforcement.[18] Instead, they altered how firms protect innovation and where they seek strategic leverage.

The modern patent system increasingly functions as a coordinated global enforcement ecosystem.

As a result, patent enforcement increasingly operates through two parallel responses:

- Substitution toward alternative and complementary forms of protection, particularly trade secrets, in areas where patent enforcement is disclosure-intensive, procedurally uncertain, or poorly suited to protecting AI systems, software, datasets, and manufacturing know-how;[19] and
- Export of disputes to foreign jurisdictions offering stronger injunctions, faster adjudication, or specialized forums.[20]

The modern patent system is therefore no longer primarily domestic. It increasingly functions as a coordinated global enforcement ecosystem spanning courts, administrative bodies, exclusionary forums, and complementary forms of intellectual property protection.

Global Demand for Patent Enforcement

REBOUND AND SPECIALIZATION IN U.S. PATENT LITIGATION

After years of decline, U.S. patent litigation has rebounded in recent years, although in a more specialized and structurally distinct form. Filing levels remain below post-2011 America Invents Act (AIA) levels, but above pre-AIA levels, with disputes increasingly concentrated in high-value technologies, scalable enforcement strategies, and high growth markets.

As shown in **Figure 3**, patent litigation has followed a three-phase pattern: a post-AIA increase in filings; a subsequent decline following a series of procedural and institutional changes; and relative stabilization beginning around 2020. Over the period shown (2005–2025), patenting activity continued to expand even as litigation volumes remained comparatively stable.

These developments across three phases coincided with changes in the patent-enforcement environment, including the growth of PTAB inter partes review (IPR), evolving institution practices (including those associated with *Apple Inc. v. Fintiv Inc.* (2020)[21]) and the emergence of preferred venues such as the Eastern and Western Districts of Texas.

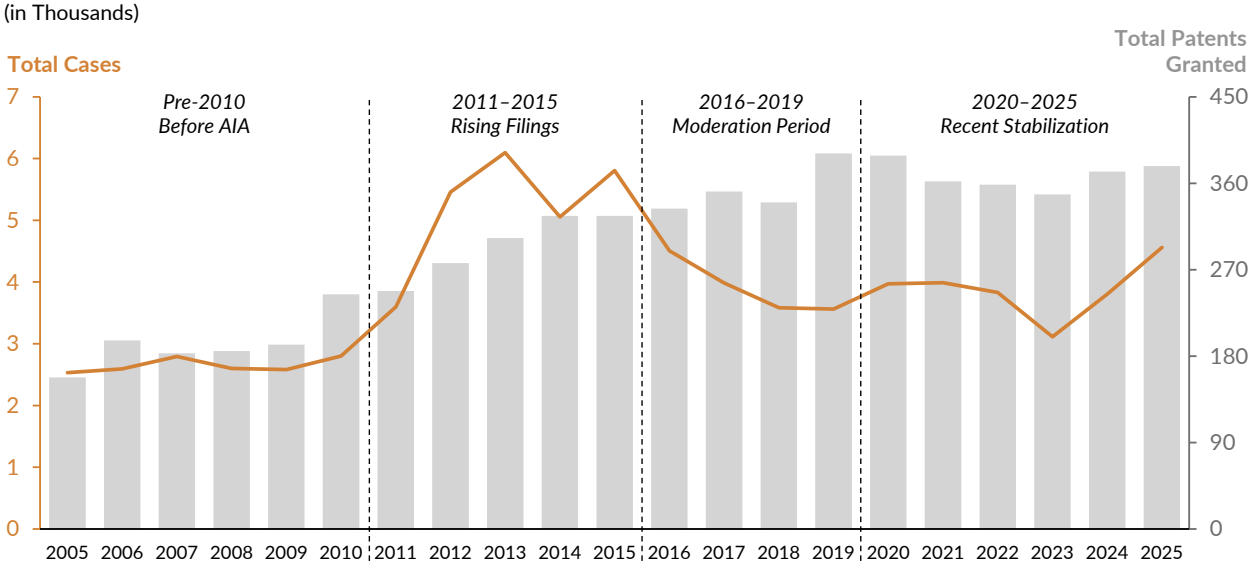
Collectively, these developments appear to have influenced the forums, timing, and mechanisms through which patent disputes are pursued, rather than eliminating enforcement altogether.

Concentration in High-Value Technology Sectors

A defining feature of the current patent landscape is the concentration of litigation in a relatively small number of high-value technology sectors. Telecommunications, computing, and healthcare/medical technology consistently account for a disproportionate share of patent cases, reflecting the growing economic importance of software, semiconductors, AI infrastructure, communications systems, and life sciences innovation (see **Figure 4**).

This concentration suggests that demand for patent enforcement remains strongest in industries with high R&D intensity, complex technology stacks, interoperability requirements, and large downstream commercial markets. These sectors also tend to involve patents with broader strategic significance, greater potential damages exposure, and stronger incentives for coordinated global enforcement.

Figure 3: Total U.S. Patent Cases Filed vs. Total Patents Granted
2005–2025
(in Thousands)



Source: Lex Machina; U.S. Patent and Trademark Office (USPTO) PatentsView. See also Endnote 22.

Foundational Technologies and SEP Disputes

Many of these disputes involve foundational technologies that underpin the modern digital economy, including wireless communications, semiconductors, cloud infrastructure, connected devices, and video compression standards. As a result, SEP disputes remain a major driver of global patent litigation activity.[23] Because these technologies are commercially indispensable and deeply interconnected, disputes increasingly extend across multiple jurisdictions and involve parallel proceedings addressing Fair, Reasonable, and Non-Discriminatory (FRAND) licensing obligations, anti-suit injunctions, and global rate-setting.[24]

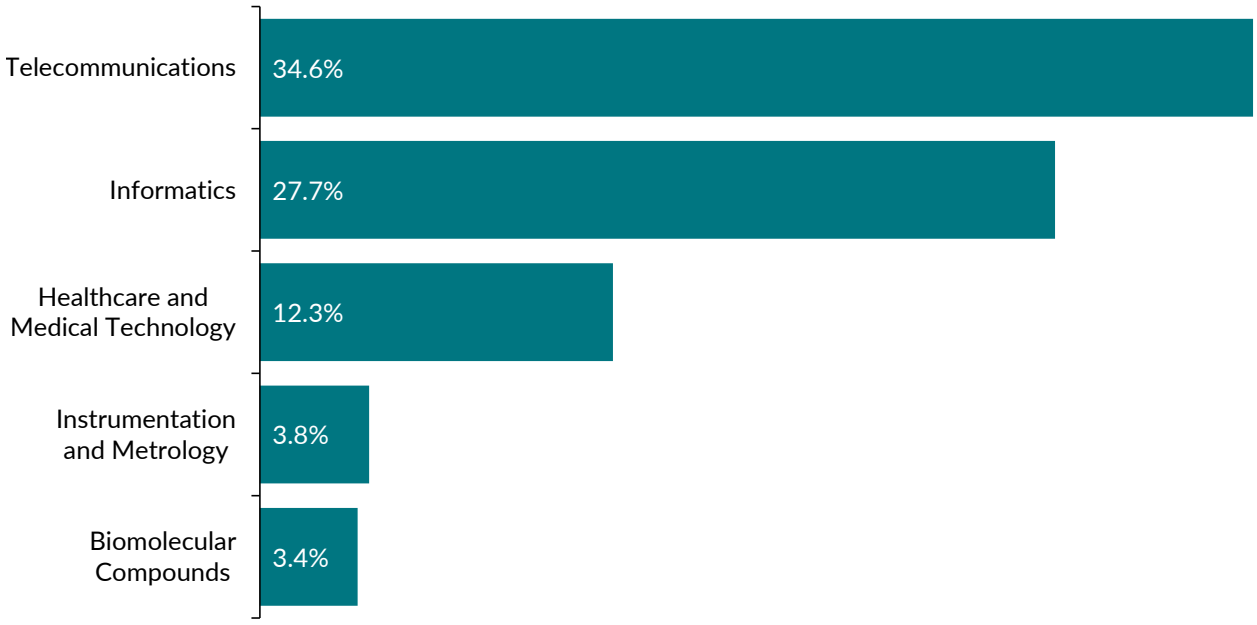
Life Sciences Patents, Commercialization and Exclusivity

The same economic forces operate in life sciences litigation, where patent protection is directly tied to pricing, exclusivity periods, market access, and commercialization timelines. In these sectors, patent dispute outcomes can materially affect competitive positioning and revenue trajectories, particularly for biologics and other high-value therapeutics.[25]

A central feature of this landscape is litigation under the Hatch-Waxman framework, where generic pharmaceutical manufacturers file Abbreviated New Drug Applications (ANDAs) seeking U.S. Food and Drug Administration (FDA) approval by relying on branded drug data.[26] These filings frequently trigger patent disputes prior to market entry, making Hatch-Waxman litigation one of the primary mechanisms through which pharmaceutical patents are challenged and generic competition is introduced.[27]

At the same time, pharmaceutical patenting strategies are increasingly subject to regulatory and policy scrutiny, with potential implications for exclusivity, licensing, and enforcement incentives. Recent developments include heightened U.S. Federal Trade Commission (FTC) scrutiny of Orange Book listings and renewed debate surrounding march-in rights under the Bayh-Dole Act.[28] Together, these developments underscore the continuing centrality of patents to competition and commercialization in life sciences markets.

Figure 4: Share of Total Cases with Utility Patents Belonging to Top Five Industries
2019–2025



Source: Lex Machina; U.S. Patent and Trademark Office (USPTO) PatentsView. See also Endnote 29.

Trends in Parties Bringing Litigation

The rise of Schedule A litigation reflects broader shifts toward scalable enforcement strategies in online commerce ecosystems where infringement is geographically dispersed and highly fragmented.

Schedule A cases, which target large numbers of online sellers with a single complaint, grew from negligible levels before 2020 to approximately 9% of filings by 2025.[30] This growth reflects increasing reliance on high-volume enforcement models enabled by digital marketplaces and platform-based commerce.

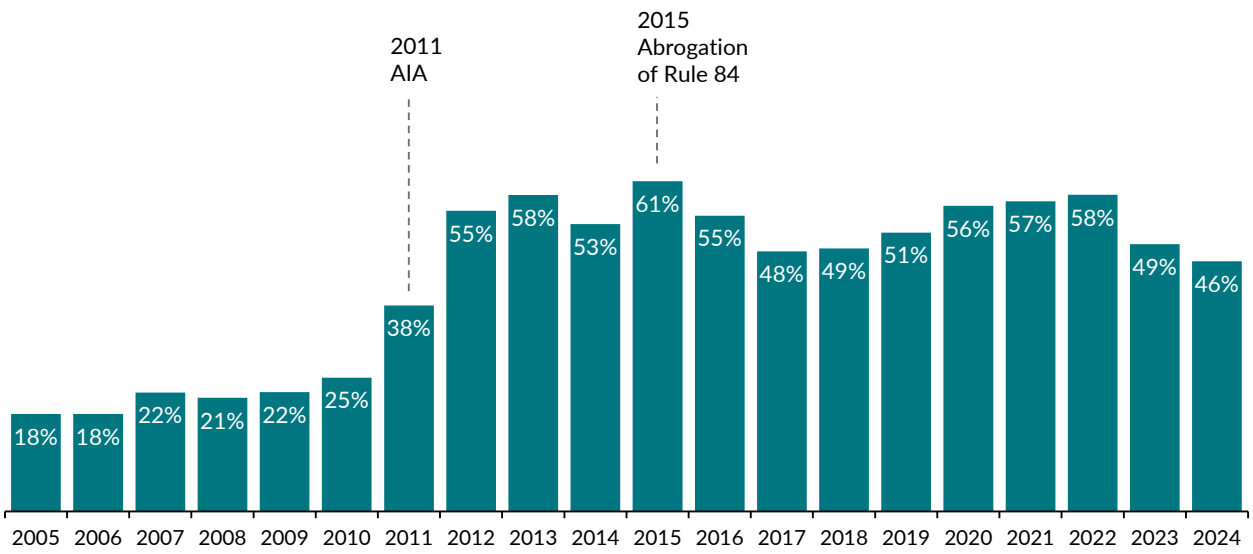
Schedule A cases grew to approximately 9% of filings by 2025.

NPEs and Monetization-Focused Enforcement

Non-practicing entities (NPEs), including patent assertion entities (PAEs), universities, and individual inventors, remain significant participants in the patent system, although their share of filings declined from peak levels following procedural reforms.

Using the Stanford NPE Litigation Database's recommended classification for PAEs, the share of filings from these entities declined from approximately 55–60% at peak to below 50% in recent years.[31] This shift reflects institutional developments including the abrogation of Rule 84, which curtailed simplified pleadings frequently used by PAEs.[32] See **Figure 5**.

Figure 5: Share of Patent Cases Filed by Patent Assertion Entities
2005–2024



Source: Lex Machina; Stanford NPE Litigation Database, npe.law.stanford.edu. See also Endnote 33.

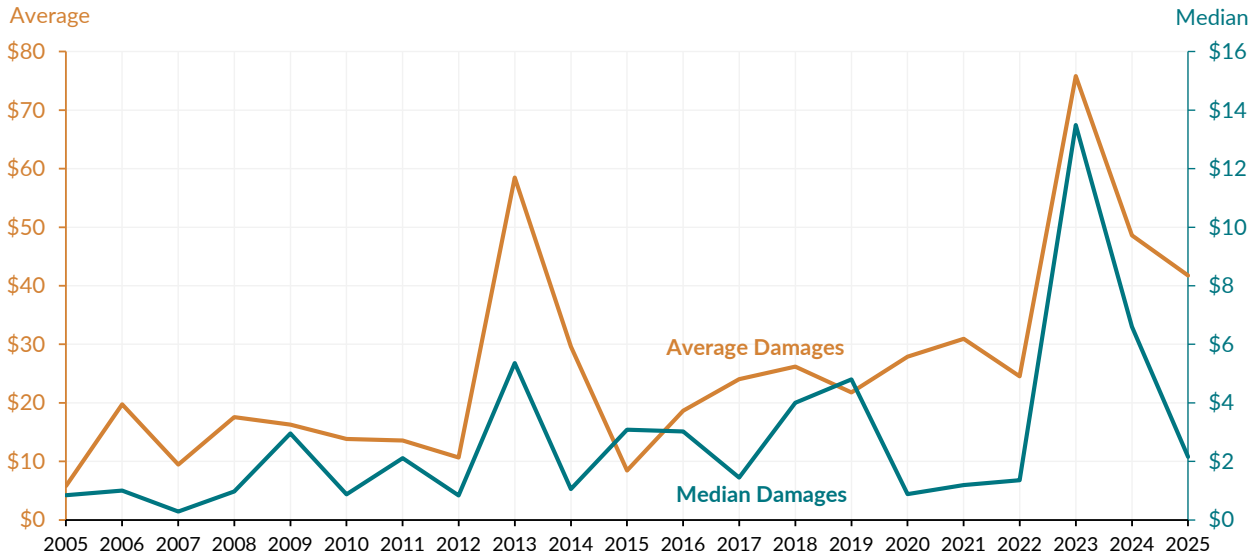
PATENT LITIGATION DAMAGES: OUTLIER AWARDS AND YEAR-TO-YEAR FLUCTUATIONS

The uptick in patent litigation has also come with larger patent damages awards. At the same time, patent damages awards remain highly unpredictable. Awards can range from relatively modest sums to $500+ million verdicts, reflecting differences in the technologies at issue, the commercial importance of patented inventions, and the economic value attributed to infringement.

As shown in **Figure 6**, both average and median plaintiff damages generally increased over time, although annual results fluctuate considerably. Because relatively few cases receive damages awards each year, average damages can be heavily influenced by a small number of blockbuster verdicts.

A key feature of patent damages data is the persistent gap between average and median awards. Median damages awards generally remain in the low single-digit millions, while average awards periodically rise into the tens of millions. This divergence reflects the highly skewed nature of patent damages, where a small number of exceptionally large verdicts account for a disproportionate share of total damages awarded.

Figure 6: Plaintiff Patent Damages Awarded in Patent Cases
2005–2025
(in Millions)



Source: Lex Machina. See also Endnote 34.

Role of Blockbuster Awards

The influence of these "blockbuster" verdicts is illustrated in **Figure 7**. Between 2019 and 2025, several patent verdicts exceeded $300 million, particularly in disputes involving semiconductors, telecommunications, computing, and life sciences technologies. These awards were also concentrated in a relatively small number of venues, including the Eastern and Western Districts of Texas.

Figure 7: Top 10 Patent Damages Awards
2019–2025

Between 2019 and 2025, top verdicts surpassed $300 million, largely in technology and life-sciences cases and often arising in the Eastern and Western Districts of Texas.

Source: Lex Machina. See also Endnote 35.

Allocation Across Plaintiff Types

Total damages vary substantially across plaintiff types. Between 2019 and 2024, product companies accounted for the largest share of aggregate patent damages, followed by NPEs and PAEs.

Case Damages Total by Entity Type[36] 2019–2024	
Product Companies	$5.49 billion
NPEs	$3.99 billion
PAEs	$2.06 billion

Damages by Industry

Average damages also vary across industries. Between 2019 and 2025, among the industries with the largest aggregate damages awards, informatics and telecommunications disputes had the highest average damages awards, substantially exceeding healthcare and medical technology.

Case Damages Averages by Industry[37] 2019–2025	
Informatics	$99.4 million
Telecommunications	$92.7 million
Healthcare and Medical Technology	$33.5 million

Structural Constraints in U.S. Patent Enforcement

Even as patent disputes became more economically significant, the institutional structure of patent enforcement in the U.S. also changed substantially. Reduced access to injunctions, expanded PTAB review, increasing procedural complexity, and strategic venue concentration collectively reshaped the economics of patent litigation.

Importantly, these developments did not reduce demand for patent enforcement. Instead, they altered how firms pursue enforcement and where they seek strategic leverage. Patent disputes increasingly extend across courts, administrative bodies, exclusionary forums, and geographic jurisdictions, requiring more coordinated and multi-forum enforcement strategies.[38]

The restructuring of patent enforcement is most visible across four related dimensions: (i) injunctive relief, (ii) administrative validity review, (iii) U.S. venue competition and adjudication speed, and (iv) globalization of patent disputes.

INJUNCTIVE RELIEF AFTER *EBAY*

United States

The availability of injunctions in U.S. patent litigation declined significantly following *eBay*, which eliminated the presumption of automatic injunctive relief.[39] Courts now apply a four-factor test requiring a showing of (i) irreparable harm, (ii) inadequacy of monetary damages, (iii) a favorable balance of hardships, and (iv) consistency with the public interest.[40]

In practice, these requirements have made injunctions less common, particularly for NPEs, shifting U.S. patent litigation toward monetary damages as the primary remedy. (For details, see the section below on "Injunctive Relief: Decline, Selectivity, and Who Gets It.")

Other Jurisdictions

In contrast, many foreign jurisdictions remain injunction-oriented. Courts in Germany and the Netherlands typically grant injunctions following a finding of infringement, subject to limited defenses.[41] In China, courts have increasingly granted injunctions as part of broader efforts to strengthen IP enforcement, supported by specialized IP courts and streamlined procedures.[42]

More recently, the establishment of the Unified Patent Court (UPC) in 2023 has introduced a centralized European forum capable of issuing pan-European injunctions, often on relatively fast timelines.[43]

As a result, injunction-friendly jurisdictions provide early enforcement leverage in multi-jurisdictional disputes and play a central role in driving settlement and licensing outcomes. (For details, see the section below on "The Export of Patent Enforcement.")

PTAB REVIEW AND PARALLEL VALIDITY CHALLENGES

United States

The AIA introduced administrative patent challenges before the PTAB, most notably IPR, creating a parallel validity track alongside district court litigation.[44] As a result, patent disputes often involve simultaneous proceedings across courts, PTAB, and occasionally the U.S. International Trade Commission (ITC), with appeals centralized at the Federal Circuit.

Recent PTAB practice, particularly discretionary denials under the *Fintiv* framework, has increased uncertainty and elevated the importance of timing and forum coordination.[45] The PTAB may decline review where parallel district court litigation is expected to proceed on a similar or faster timeline, considering factors such as the scheduled trial date, overlap of issues, and the parties' investment in the case.[46] This has led parties to engage in strategic sequencing of proceedings to influence the availability of PTAB review.[47]

Other Jurisdictions

Administrative validity review is also a central feature of patent systems outside the U.S.,

although with different timing and strategic roles. In Europe, the European Patent Office (EPO) provides a centralized post-grant opposition process, serving as an early and efficient validity filter that often shapes subsequent litigation.[48] In China, invalidation proceedings before the national patent authority offer a fast and widely used mechanism, frequently running in parallel with court actions.[49]

Across jurisdictions, these mechanisms operate alongside judicial enforcement, making parallel validity and infringement proceedings a structural feature of patent disputes. Differences in timing and procedure create opportunities for strategic coordination and forum selection. (For details, see the section below on "The Export of Patent Enforcement.")

SPECIALIZED IP COURTS, SPEED, AND FORUM COMPETITION

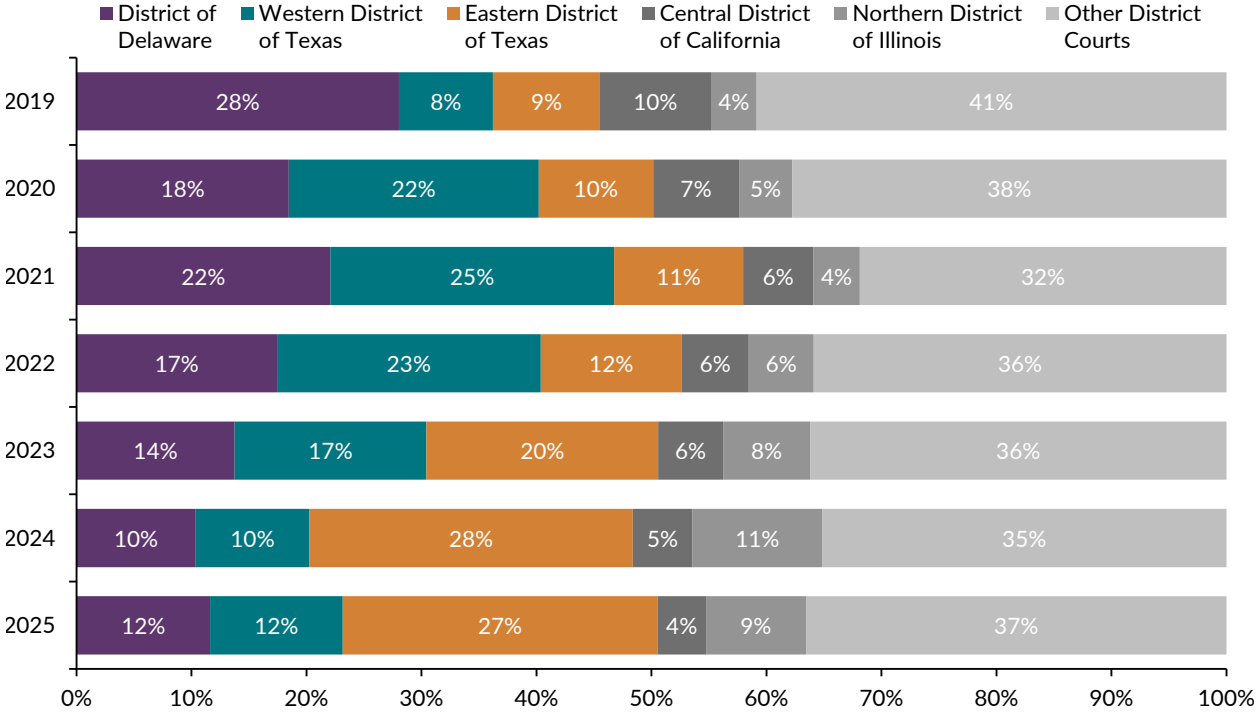
United States

U.S. patent litigation is comparatively slow and procedurally complex, with a median time to trial of 914 days (about 2.5 years) in District Courts from 2015 to 2025.[50] Parallel PTAB proceedings can further extend timelines and increase litigation costs.[51]

At the same time, patent litigation has become increasingly concentrated in a relatively small number of preferred judicial venues. As shown in **Figure 8**, filing patterns shifted significantly over time as litigants gravitated toward courts perceived to offer faster schedules, procedural predictability, and technical experience. The Western District of Texas experienced a rapid increase in filings between 2020 and 2022 before declining following increased transfer activity and judicial changes.[52] Meanwhile, the District of Delaware remained a stable anchor venue due to its importance for corporate defendants, while the Eastern District of Texas regained prominence through its experienced judiciary and efficient docket management.

These dynamics reflect increasingly strategic forum selection and growing competition among courts as litigants seek procedural advantages capable of affecting case timing, settlement leverage, and enforcement outcomes.[53]

Figure 8: Share of Cases Filed by Top U.S. District Courts
2019–2025



Source: Lex Machina. See also Endnote 54.

Other Jurisdictions

Many non-U.S. jurisdictions provide litigants with a shorter path to adjudication:

- China has established specialized IP courts and a national appellate IP tribunal, improving technical expertise and enabling relatively fast and consistent resolution.[55]
- Europe introduced the UPC, a centralized forum comprising judges from all participating member states of the European Union (EU) and capable of issuing pan-European injunctions, with decisions often expected within 12 to 18 months.[56]
- Germany and other national courts continue to offer fast timelines and predictable outcomes, reinforcing their attractiveness as enforcement venues.[57]

GLOBALIZATION OF PATENT ENFORCEMENT

As U.S. patent enforcement became more procedurally constrained and fragmented, patent disputes increasingly evolved into multi-jurisdictional contests.[58] Rather than reducing enforcement activity, these developments contributed to the "export" of patent litigation into foreign jurisdictions offering stronger injunction regimes, faster procedures, specialized courts, and greater strategic leverage.[59]

Courts outside the U.S. now play an increasingly active role in shaping global enforcement outcomes. In SEP disputes, courts in jurisdictions such as the UK increasingly assert authority to determine global FRAND royalty rates, influencing worldwide licensing terms from a single forum.[60] At the same time, courts, particularly in China, have increasingly used anti-suit injunctions (ASIs) to restrain parallel litigation abroad, often triggering anti-anti-suit injunctions (AASIs) in response.[61]

Some jurisdictions, particularly in Europe, also employ interim licensing frameworks and provisional measures governing the ongoing use of patented technologies while disputes remain pending.[62] Together, these developments reflect the growing globalization of patent enforcement, where litigation strategy increasingly depends on coordinated use of multiple jurisdictions, procedural regimes, and enforcement mechanisms. (For details, see the section below on "The Export of Patent Enforcement.")

Injunctive Relief: Decline, Selectivity, and Who Gets It

LONG-TERM DECLINE IN INJUNCTIONS

Injunctive relief, both preliminary and permanent, has declined significantly since the mid-2000s, with the sharpest and most sustained decline following the Supreme Court's 2006 decision in *eBay Inc. v. MercExchange, L.L.C.*[63]

In *eBay*, the Supreme Court eliminated the presumption of automatic injunctive relief and required courts to apply a four-factor equitable test, including proof of irreparable harm.[64] The decision fundamentally changed patent enforcement strategy and reduced the role of injunctions, particularly permanent injunctions.

Although the effects of *eBay* are most directly visible in permanent injunctions, the same dynamics also affect preliminary injunction practice. Because preliminary injunctions require an early showing of likely success, irreparable harm, and urgency before full merits discovery, trends in preliminary injunction requests provide a useful indicator of broader changes in injunction practice overall.[65]

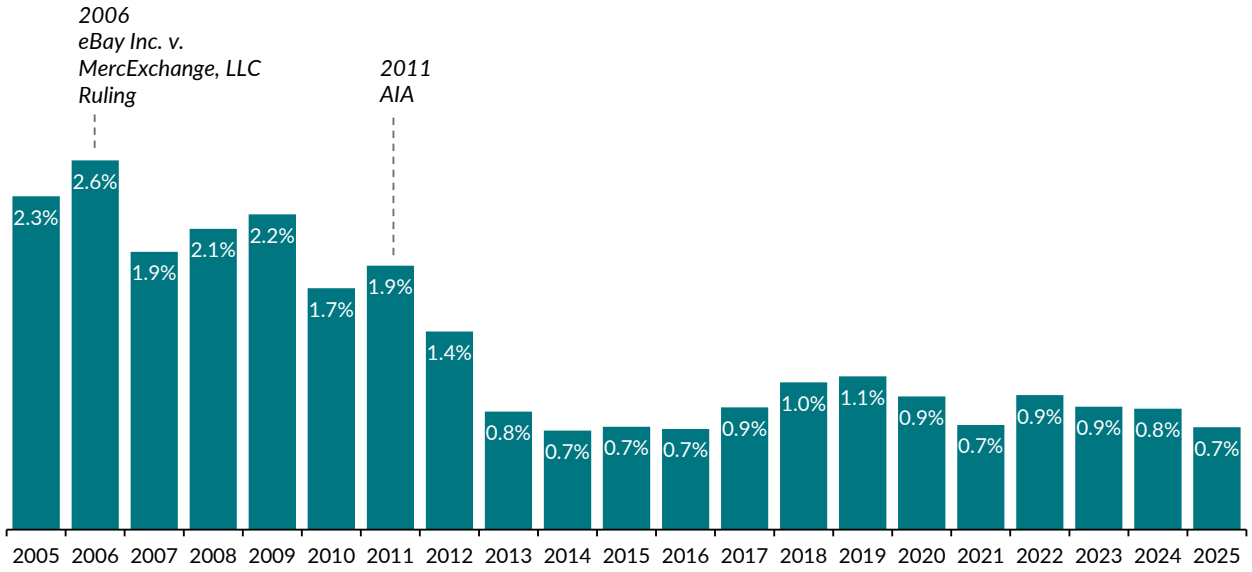
FEWER INJUNCTIONS SOUGHT

The decline in injunctions reflects not only lower grant rates, but also fewer requests for injunctive relief. As shown in **Figure 9**, the share of cases in which preliminary injunctions are sought has decreased over time. There are several broader post-*eBay* trends affecting both preliminary and permanent injunctions:

- Preliminary injunctions are among the most difficult forms of relief to obtain, requiring immediate proof of irreparable harm and expedited judicial intervention.[66]
- As courts became more reluctant to grant injunctions after *eBay*, parties became less likely to seek them, particularly where monetary damages were deemed adequate.[67]
- Fewer injunction requests naturally result in fewer injunction grants, reinforcing the long-term decline in injunctive relief overall.[68]

This shift is consistent with the broader evolution of patent litigation toward damages-focused disputes.

Figure 9: Share of U.S. Patent Cases with Preliminary Injunctions Sought
2005–2025



Source: Lex Machina. See also Endnote 69.

STRUCTURAL EFFECTS OF THE AIA

A further decline is observed following the AIA in 2011–2012, driven by changes in both case composition and litigation pathways.

Joinder Rules (the Denominator Effect)

The AIA restricted joinder, requiring plaintiffs to file separate actions against unrelated defendants.[70] This increased the total number of cases (the denominator), many of which are smaller, early-stage, or settlement-oriented and less likely to involve injunction requests.[71] As a result, the share of cases with injunctions (granted or sought) has declined even if the absolute number of injunctions has not changed proportionally.

Shift Away from District Courts (PTAB)

The introduction of PTAB IPR created an alternative forum for resolving validity disputes. Cases that might previously have proceeded to merits litigation (where injunctions could be sought) are now often resolved at the PTAB, reducing both the number and share of cases in which injunctions are pursued.[72]

Together, these effects have reinforced the post-*eBay* decline by reducing both the likelihood that injunctions are sought and the share of cases in which they arise.

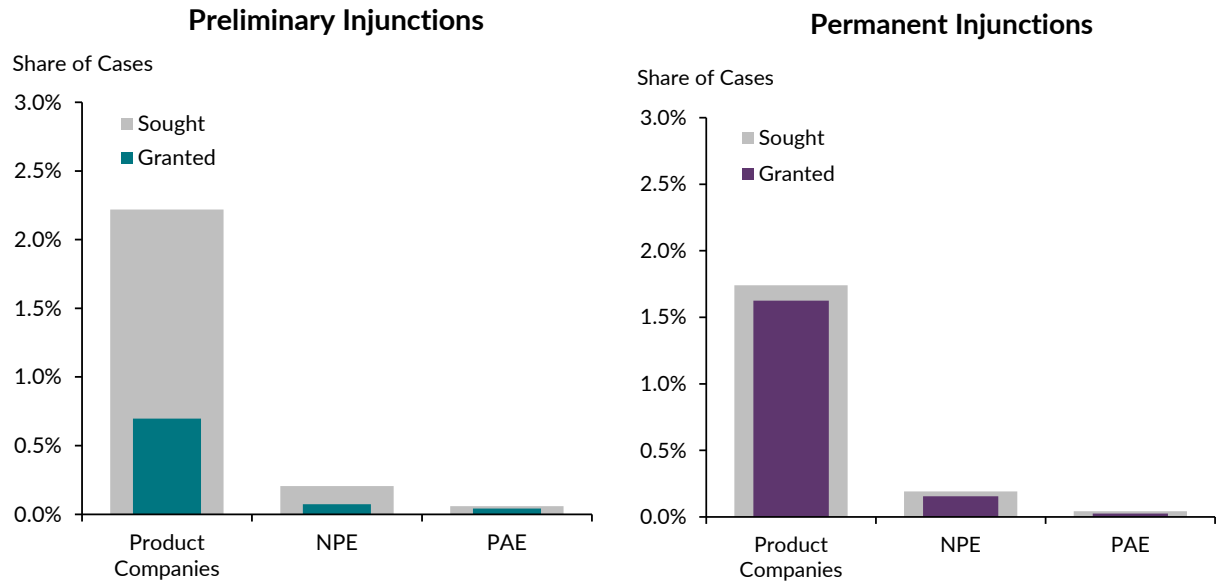
WHO OBTAINS INJUNCTIONS

Injunctive relief is overwhelmingly concentrated among product companies.[73] As shown in **Figure 10**, injunctions are granted primarily to parties that compete in the market, while NPEs receive them only occasionally and PAEs almost never do.[74]

This pattern reflects the *eBay* framework, which emphasizes irreparable harm and competitive injury. Product companies are more likely to demonstrate harm from ongoing infringement (e.g., lost sales or market share), while NPEs and PAEs, which typically seek licensing revenue, face greater difficulty satisfying this standard.[75]

A similar pattern holds for *requests* for injunctive relief, which are also concentrated among product companies. This indicates that the current framework not only affects outcomes, but also litigation strategy, effectively limiting the role of injunctions for entities that do not practice the patented technology.

Figure 10: Preliminary and Permanent Injunction Grants and Requests by Plaintiff Type in U.S. Patent Cases
2019–2024



Source: Lex Machina. See also Endnote 76.

The Domestic Substitute: Rise of Trade Secret Litigation

As patent enforcement in the U.S. became more procedurally complex, disclosure-intensive, and uncertain, firms increasingly shifted toward trade secrets as both complements and selective substitutes for patents. This trend is especially pronounced in AI systems, software, datasets, semiconductor manufacturing, algorithms, and other technologies where secrecy itself provides strategic value.[77]

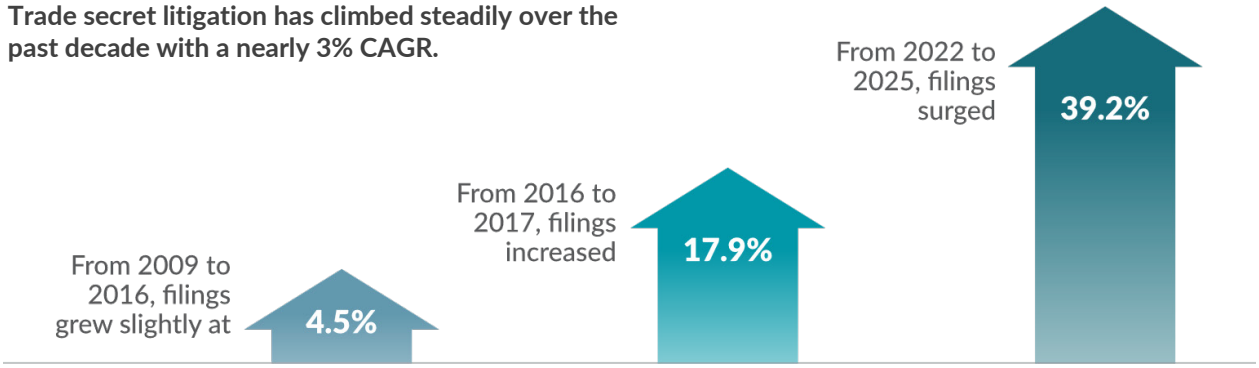
Unlike patents, trade secrets do not require public disclosure and are not vulnerable to PTAB validity challenges.[78] As a result, they increasingly provide an attractive alternative in areas where patent enforcement may be costly, uncertain, or poorly suited to rapidly evolving technologies.[79]

UNITED STATES

Trade secret litigation remains a smaller but growing component of IP disputes. **Figure 11** shows a clear upward trend in filings over time, with a noticeable acceleration following the Defend Trade Secrets Act of 2016, which created a federal cause of action that allowed plaintiffs to bring trade secret claims directly in federal court under a uniform nationwide framework and expanded enforcement options.[80] More recently, filings have increased sharply from 2022 through 2025, indicating a renewed acceleration in trade secret disputes. Consistent with this pattern, **Figure 2** above shows a gradual increase in the share of trade secret cases since 2016.

Figure 11: Total U.S. Trade Secret Cases Filed
2009–2025

Trade secret litigation has climbed steadily over the past decade with a nearly 3% CAGR.



Source: Lex Machina. See also Endnote 81.

The ITC: Fast-Track Exclusionary Relief

The ITC plays a distinctive role in patent enforcement, offering a fast, exclusion-based alternative to district court litigation. Unlike federal courts, the ITC cannot award monetary damages but can issue exclusion orders that bar infringing imports from entering the U.S.[82]

ITC proceedings under Section 337 are typically faster than district court cases, often reaching a final determination within 15 to 18 months.[83] The availability of import bans, combined with limited defenses and no jury trial, makes the ITC an appealing forum for patentees seeking immediate commercial impact.[84]

The ITC functions as a strategic complement to district court litigation.

The ITC remains a central venue in disputes involving electronics, semiconductors, and consumer devices, where imported products are integral to U.S. markets.[85]

Cases frequently proceed in parallel with district court litigation, creating dual-track strategies (injunction-like relief at the ITC combined with damages in District Courts).[86]

The ITC has also been active in SEP-related disputes, although public interest considerations can limit exclusion orders in certain cases.[87]

As a result, the ITC functions as a strategic complement to district court litigation, providing a form of quasi-injunctive relief within the U.S. system.[88] In global disputes, ITC actions are often paired with European injunction proceedings and U.S. damages claims, reinforcing the ITC's role in coordinated, multi-forum enforcement.[89]

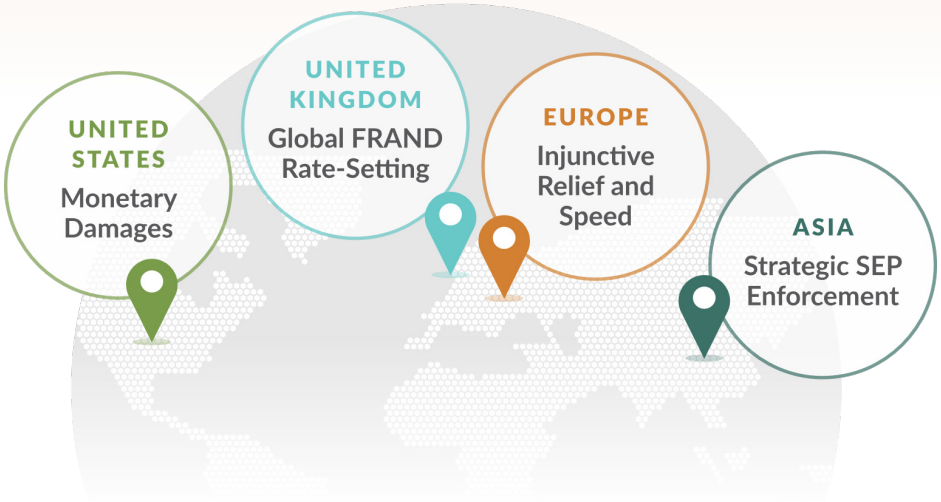
The Export of Patent Enforcement

As injunctions became harder to obtain in the U.S. and validity challenges increasingly shifted to PTAB proceedings, litigants expanded use of foreign jurisdictions offering faster timelines, stronger injunction regimes, and specialized procedural tools.[90] Patent enforcement for global technologies increasingly operates through coordinated multi-forum campaigns that leverage differences in remedies, timing, and institutional structure across jurisdictions.

The U.S. remains central to global patent disputes, particularly as the primary forum for monetary damages, but it is no longer the sole center of gravity. Patent litigation is increasingly multi-jurisdictional by design, especially in SEP, semiconductor, and platform-related disputes involving parallel proceedings across Europe and Asia.[91]

Jurisdictions now play complementary roles within the global enforcement system: the U.S. for damages, Europe for injunction-oriented enforcement, the UK for global FRAND rate-setting, and China for SEP coordination and ASI practice.[92]

Patent enforcement increasingly operates through coordinated global strategies rather than single-forum litigation, with litigants leveraging differences in remedies, speed, and procedure across jurisdictions.



Europe: The Injunction-Oriented Complement to the U.S.

Europe has become a pillar of global patent enforcement, offering faster adjudication, stronger injunctive remedies, and increasingly centralized forums. Compared to the U.S., some European jurisdictions provide more reliable access to exclusionary relief, making them attractive venues in multi-forum strategies.[93]

The European system is defined by the interaction of two institutions: the EPO and the UPC. The EPO provides a centralized mechanism for validity challenges, while the UPC enables pan-European enforcement in a single forum.[94] Together, they are reshaping how patent rights are challenged, enforced, and coordinated across Europe.

EPO OPPOSITIONS: CENTRALIZED VALIDITY CHALLENGES

The EPO provides a centralized post-grant opposition system, allowing third parties to challenge patent validity within nine months of grant.[95] This mechanism offers an early, unified review of validity before enforcement proceeds across national courts.

The EPO opposition process differs from U.S. PTAB IPR. Opposition operates as a reassessment of patentability at the European level, rather than as a litigation-style proceeding.[96] By contrast, PTAB IPR is more adversarial and trial-oriented, with higher invalidation rates.[97]

Outcomes are frequently material: patents are often amended or revoked, particularly in pharmaceuticals, chemicals, and other high-value sectors. These proceedings are commonly used ahead of or alongside litigation, shaping the scope and strength of asserted rights.[98]

As a result, EPO oppositions serve as a first-line validity filter, influencing downstream enforcement and litigation strategy across jurisdictions.

UPC: A NEW ENFORCEMENT HUB

The UPC represents a structural shift toward centralized, multi-country enforcement in Europe. Since its launch in June 2023, activity has scaled rapidly, with filings increasing across technology, life sciences, and SEP-related disputes.[99]

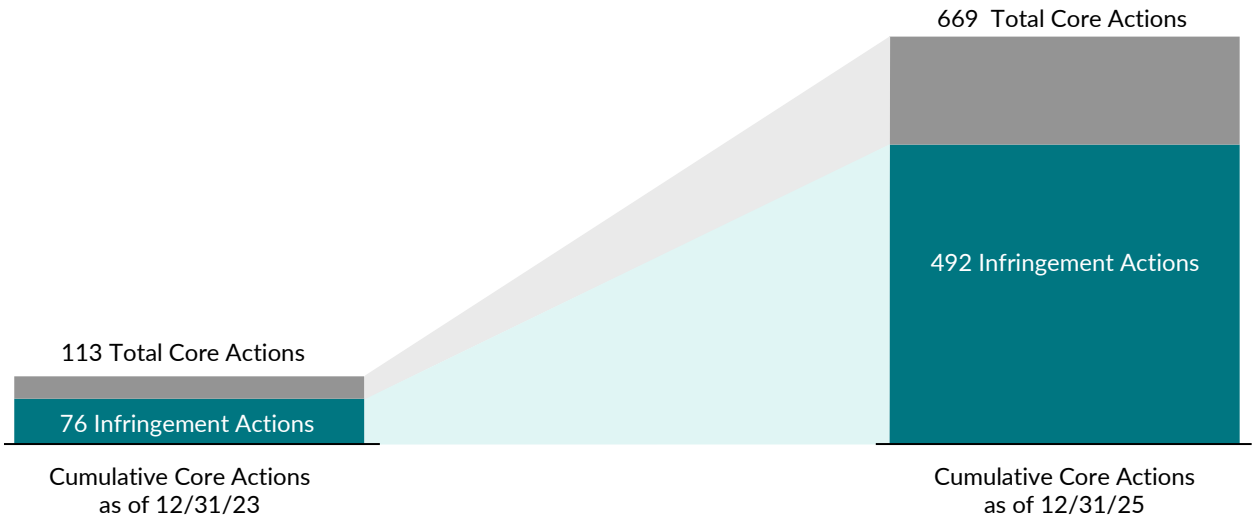
Its key features including pan-European injunctions, streamlined procedures, and 12 to 18-month timelines make it a powerful forum for coordinated enforcement.[100]

Filing data shows a steady ramp-up in activity, with infringement actions representing a majority of core first instance actions for cases filed with the UPC (see **Figure 12**). This pattern underscores the UPC's role as an offensive enforcement venue, particularly for securing early, broad injunctions. In practice, the UPC is integrated into multi-forum strategies, often combined with EPO oppositions for validity challenges and national courts for additional leverage.[101]

As shown in **Figure 13**, UPC litigation is concentrated in a small number of technology areas, with Telecommunications, Healthcare/Medical Technology, and Informatics accounting for most cases. This closely mirrors U.S. patent litigation (see **Figure 4**), where disputes are likewise driven by high-value, IP-intensive sectors.

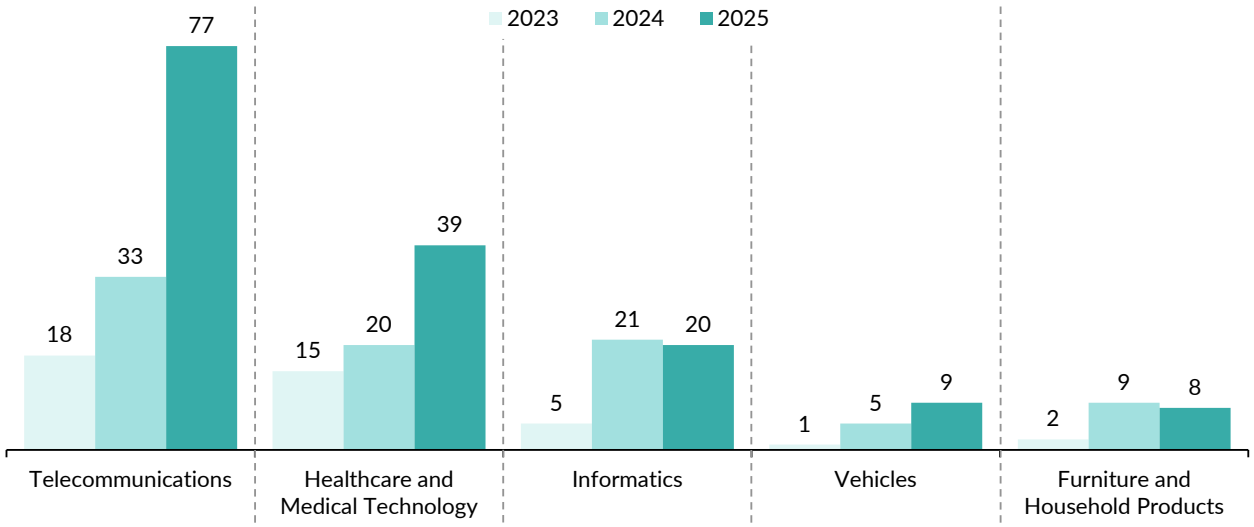
The composition, however, differs. Since the inception of the UPC, Healthcare/Medical Technology represents a larger share of UPC cases than of U.S. patent cases, consistent with Europe's strength in pharmaceuticals and medical devices and the value of pan-European injunctions. In addition, Vehicles and Furniture/Household Products appear among the top sectors but are less prominent in the U.S., reflecting areas of European industrial specialization, particularly in automotive manufacturing.[102]

Figure 12: Infringement Actions Account for the Majority of UPC Filings
2023–2025



Source: Unified Patent Court (UPC). See also Endnote 103.

Figure 13: UPC Infringement Cases Belonging to Top Industries
2023–2025



Source: Unified Patent Court (UPC) Cases Search. See also Endnote 104.

GERMANY: THE CORE INJUNCTION FORUM

Germany remains Europe's primary patent litigation venue, defined by speed, predictability, and strong injunctive relief. Its system is bifurcated, meaning infringement and validity are decided in separate proceedings: regional courts adjudicate infringement, while the Federal Patent Court (and on appeal, the Federal Court of Justice) determines validity. This structure allows courts to grant injunctions before validity is finally resolved, creating the so-called "injunction gap" and strengthening patentee leverage.[105]

German national courts saw a 13.8% increase in patent cases in 2025.

Recent Developments

The 2021 amendment to the German Patent Act introduced an explicit proportionality defense, allowing courts to deny or tailor injunctions in exceptional cases. The reform also sought to narrow the injunction gap by promoting earlier validity assessments.[106] In practice, however, courts have applied proportionality narrowly, and injunctions remain the default remedy in most cases.[107]

German national courts experienced a sharp decline in patent case filings following the launch of the UPC in June 2023, with filings decreasing by 23% in 2023 and a further 8.2% in 2024.[108] At the same time, UPC activity expanded rapidly in Germany, with approximately 70% of UPC proceedings concentrated in the German UPC's five divisions.[109] However, filings in German national patent courts rebounded in 2025, increasing by 13.8%.[110] This rebound may reflect increasing interaction between national courts and the UPC. In particular, Munich hosts a significant share of UPC activity, which appears to coincide with increased parallel litigation in the national courts.[111]

SEP Litigation

Germany remains a central venue for SEP disputes under the *Huawei v. ZTE* framework, with courts placing significant weight on whether the implementer is a willing licensee.[112] In *Nokia v. Oppo*, courts granted injunctions after finding insufficient engagement in licensing negotiations, contributing to Oppo's temporary market exit.[113] In *Sisvel v. Haier*, the Federal Court of Justice reinforced a strict interpretation of implementer obligations, requiring timely and unconditional willingness to license.[114] More recent disputes involving Xiaomi and automotive suppliers confirm that injunctions continue to be issued where FRAND defenses are not substantiated.[115]

Post-reform decisions further show that proportionality and public-interest defenses rarely displace injunctive relief, with courts in Munich and Düsseldorf rejecting arguments based on supply disruption or downstream effects.[116]

Despite the rise of the UPC, Germany continues to attract a high volume of filings due to its fast timelines and reliable injunction outcomes, making it the primary forum for securing early enforcement leverage in global patent disputes.

NETHERLANDS: SPEED AND TACTICAL FLEXIBILITY

The Netherlands serves as a fast, flexible forum for interim relief, particularly through the courts in The Hague.

Dutch courts are frequently used for rapid preliminary injunctions and early-stage filings, often in coordination with German or UPC proceedings.[117] English-language proceedings and efficient case management enhance their role in cross-border disputes.[118]

While some cross-border functions have shifted to the UPC, Dutch courts remain relevant for urgent, tactical enforcement, particularly in technology and life sciences.[119]

As a result, the Netherlands functions as a first-mover jurisdiction, complementing broader European enforcement strategies.[120]

UK: GLOBAL FRAND AND LICENSING POWER

The UK has established itself as a leading forum for high-value, technically complex patent disputes, particularly in SEP litigation. Despite Brexit and the UK's non-participation in the UPC, UK courts continue to play a distinctive role in determining global FRAND licensing terms, extending their influence beyond domestic infringement disputes.

Recent Developments

The UK Supreme Court's decision in *Unwired Planet v. Huawei* confirmed that UK courts may set worldwide licensing rates and condition injunctive relief on acceptance of those terms.[121] Subsequent cases have reinforced and expanded this framework. In *InterDigital v. Lenovo*, the courts further developed the methodology for determining global FRAND rates and addressed issues of interim licensing and parallel proceedings.[122]

UK courts continue to play a distinctive role in determining global FRAND licensing terms.

Similarly, in *Conversant v. Huawei & ZTE*, UK courts affirmed their willingness to adjudicate global licensing disputes even where the underlying patents are largely foreign, reinforcing the UK's role as a central forum for SEP rate-setting.[123] More recently, in *Optis v. Apple*, the English courts set a global FRAND royalty rate following a full trial, further cementing the UK's role as a central forum for SEP rate-setting.[124]

As a result, the UK functions as a global pricing and licensing forum within the patent system, complementing injunction-driven enforcement in continental Europe (Germany, UPC) and damages-focused litigation in the U.S.

Asia: Coordination, Scale, and Strategic SEP Enforcement

CHINA: GLOBAL RATE-SETTING AND STRATEGIC COORDINATION

China has emerged as a major patent litigation venue, combining large market scale, fast proceedings, and increasingly sophisticated courts. While historically focused on domestic enforcement, Chinese courts now play an expanding role in global patent and SEP disputes, particularly where access to the Chinese market is commercially critical.[125] This institutional expansion has coincided with substantial growth in patent litigation activity in China over the last decade (**Figure 14**).

Institutional Development

China has built a specialized IP system, including dedicated IP courts in Beijing, Shanghai, and Guangzhou, and the Supreme People's Court IP Tribunal, which hears nationwide appeals in technology cases.[126] These reforms have improved consistency, technical expertise, and speed, enabling Chinese courts to handle complex patent disputes at scale.[127]

Recent Developments: Global FRAND and Anti-Suit Tools

Chinese courts have become increasingly assertive in SEP litigation. In *Oppo v. Sharp*, the Supreme People's Court confirmed that Chinese courts may determine global FRAND licensing terms.[128] Courts have also deployed ASIs to restrain foreign proceedings, most notably by the Wuhan Intermediate People's Court in disputes involving Xiaomi and InterDigital.[129] Other courts, including the Shenzhen Intermediate People's Court, have played active roles in SEP disputes involving major technology companies.[130]

Cross-Border Disputes and Recent Cases

China has been central to several high-profile global disputes. In the multi-jurisdictional conflict between Nokia and Oppo, Chinese proceedings ran alongside litigation in Germany, the UK, and other jurisdictions, illustrating China's growing role in coordinated global enforcement campaigns.[131] Chinese courts have also been active in disputes involving Huawei and Samsung Electronics, including cases addressing royalty-setting and jurisdictional coordination.[132]

As a result, China now functions as both a rate-setting and strategic coordination forum, interacting directly with proceedings in Europe and the U.S. Its combination of speed, market leverage, and willingness to shape global licensing outcomes has made it a central venue in modern patent litigation strategy.[133]

INDIA: EMERGING SEP FORUM AND PHARMACEUTICAL LITIGATION HUB

India has become an increasingly important patent litigation venue, particularly in pharmaceuticals and SEP disputes. Its significance is driven by market scale, pricing sensitivity, and a judiciary willing to engage in complex, high-stakes cases.

Institutional Development

Recent reforms have strengthened India's patent enforcement framework. The abolition of the Intellectual Property Appellate Board (IPAB) in 2021 consolidated jurisdiction in the High Courts, while the creation of specialized IP divisions, particularly in the Delhi High Court, has improved efficiency, expertise, and consistency in patent adjudication.[134]

SEP Litigation and AASI Responses

India has emerged as a key venue in global SEP disputes, often in direct interaction with proceedings in China, Europe, and the U.S. Courts have addressed licensing conduct, interim royalties, and jurisdictional conflicts.[135] Notably, in disputes involving InterDigital and Xiaomi, Indian courts issued AASIs in response to Chinese ASIs, preserving their ability to adjudicate domestic disputes.[136] Similarly, cases involving Ericsson and Samsung Electronics have reinforced India's role in addressing FRAND

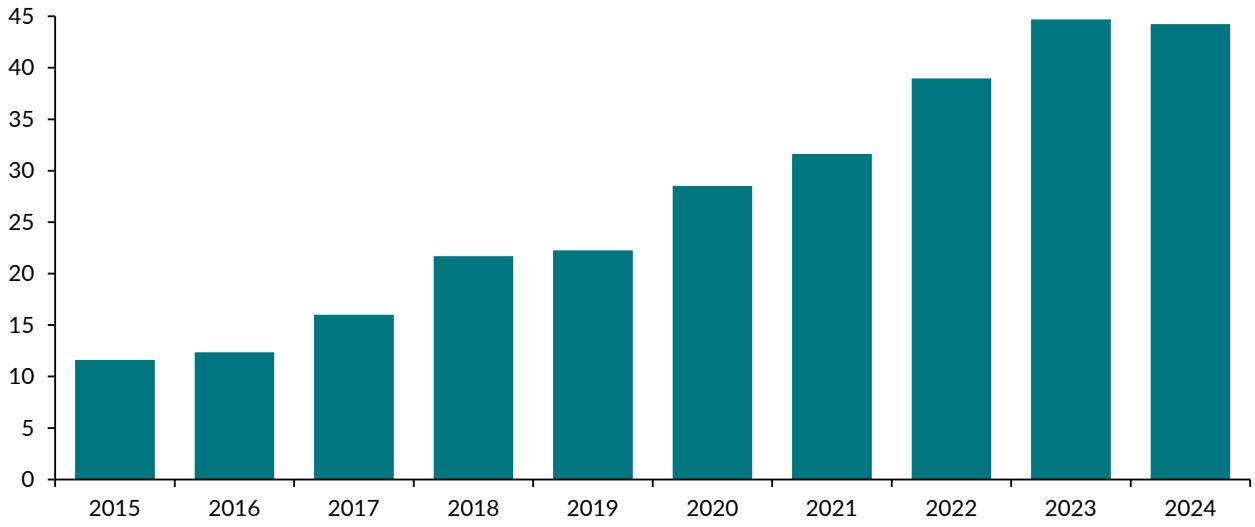
obligations and interim licensing arrangements.[137]

Pharmaceutical Litigation and Public Interest

India remains a critical venue for biopharmaceutical disputes, where patent enforcement is closely intertwined with public health considerations. Courts have demonstrated a willingness to weigh access to medicines, pricing, and compulsory licensing principles, particularly in cases involving life-saving drugs.[138] This creates a distinct enforcement environment compared to the U.S. and Europe, with greater emphasis on public interest and affordability.

As a result, India functions as both an emerging SEP forum and a key pharmaceutical litigation venue, interacting directly with proceedings in China, Europe, and the U.S. Its combination of market importance, judicial assertiveness, and public-interest considerations makes it an increasingly relevant component of global patent litigation strategy.

Figure 14: First-Instance Civil Patent Cases Filed in China
2015–2024
(in Thousands)



Source: Supreme People's Court of China, China National Intellectual Property. See also Endnote 139.

South America: Emerging Tactical Enforcement Venues

BRAZIL: MARKET IMPORTANCE AND PROCEDURAL EVOLUTION

Brazil has become an important patent litigation venue, particularly in pharmaceuticals, telecommunications, and consumer products.[140] In addition to its large domestic market, Brazil is notable for its willingness to grant preliminary injunctions, making it an increasingly attractive forum in global patent enforcement strategies.[141]

Institutional Framework

Patent validity is adjudicated by federal courts, often involving participation from the national patent office (Instituto Nacional da Propriedade Industrial (INPI)), while infringement actions may proceed in parallel.[142] Historically, litigation in Brazil has been slower and more procedurally complex than in the U.S. or Europe, although recent reforms and increased specialization have improved efficiency.[143]

Recent Developments

A key structural shift followed the Brazilian Supreme Court's decision striking down the automatic patent term extension mechanism (Article 40 sole paragraph) in 2021, which had previously extended patent terms to compensate for examination delays.[144] This decision has led to increased litigation over patent term, validity, and exclusivity periods, particularly in the pharmaceutical sector.[145]

Brazilian courts have also shown a growing willingness to grant preliminary injunctions in appropriate cases, especially where patent rights are tied to high-value or time-sensitive products, although outcomes remain less predictable than in Germany or the UPC.[146]

Litigation Dynamics

Patent disputes in Brazil are often closely linked to regulatory and market access issues, particularly in pharmaceuticals, where litigation may intersect with pricing controls and public health considerations.[147] As a result, enforcement strategies frequently combine patent litigation with administrative and regulatory proceedings.[148]

While Brazil is not a primary forum for global coordination in the same way as Europe, the UK, or China, it plays an important role as a market-specific enforcement venue, where outcomes can have meaningful commercial impact in a large and growing economy.

COLOMBIA: EMERGING SEP VENUE

Colombia has emerged as an important venue for patent enforcement, particularly within coordinated multi-jurisdictional litigation campaigns. While not a major forum in terms of case volume or global influence, Colombia has attracted attention for its willingness to grant injunctive relief and the leverage that such remedies can provide in global licensing disputes, particularly in Latin America.[149]

This trend is especially visible in SEP litigation. In *Ericsson v. Apple* (2022), a Colombian court issued a preliminary injunction against certain Apple products based on alleged infringement of a 5G SEP, drawing international attention to Colombia as a potential SEP enforcement venue.[150] *Ericsson v. Lenovo/Motorola* (2023-2024) further highlighted Colombia's role in broader multi-jurisdiction SEP disputes, with Ericsson pursuing numerous enforcement actions against local entities and distributors.[151] More recently, enforcement campaigns involving Ericsson and Transsion included Colombia alongside proceedings in Asia and Europe as part of broader global SEP strategies.[152]

Part III: GenAI Is Reshaping Intellectual Property Law and Economics

The structural changes reshaping patent enforcement are occurring alongside a broader transformation in how innovation, content, and proprietary information are created and commercialized. GenAI is increasingly blurring the traditional boundaries between patent, copyright, trade secret, and trademark law.

BROAD AND INTERCONNECTED IMPACTS ON IP LAW

Unlike earlier technology shifts that primarily affected individual areas of intellectual property, AI systems implicate multiple forms of protection simultaneously.[153] A single AI platform may involve patents covering chips, infrastructure, and model architectures; copyrights tied to training data and outputs; trade secrets protecting datasets and model weights; and trademarks associated with branding and synthetic content.[154]

As a result, AI-related disputes increasingly cut across historically separate legal and economic frameworks. Questions involving ownership, licensing, authorship, market substitution, data access, and commercialization are becoming interconnected rather than isolated within individual areas of IP law.

CREATING AND VALUING IP

At the same time, AI is reshaping the economics of intellectual property itself. The ability to generate software, text, images, music, video, and other digital content at scale is changing how firms protect competitive advantage, monetize intangible assets, and evaluate innovation incentives in data-driven markets.[155]

AI and Copyright: Training Data, Fair Use, and Market Substitution

UNITED STATES

AI-related copyright disputes have rapidly become one of the most consequential developments in modern intellectual property law.[156] As AI systems train on massive datasets and generate content at scale, courts are increasingly being forced to address foundational questions regarding the scope of copyright protection in the age of machine learning.

The U.S. has emerged as the central venue for these disputes, reflecting the concentration of major AI developers, content creators, and copyright owners. Many of these cases turn on the scope of the fair use doctrine. Unlike more rules-based copyright systems, U.S. fair use analysis applies a multi-factor framework focused on transformativeness, commerciality, and market effects—issues that now sit at the center of AI litigation.[157]

AI-related copyright litigation has expanded rapidly since the first wave of GenAI cases emerged in 2023. Annual filings grew from 16 cases in 2023 to 70 cases in 2025, and the total number of disputes now exceeds 150 total cases.[158]

What began with lawsuits brought by artists, authors, and image licensors has evolved into a broad wave of litigation involving news organizations, music publishers, software developers, educational publishers, and other copyright owners. Despite the diversity of plaintiffs and works at issue, these cases are converging around several core questions:[159]

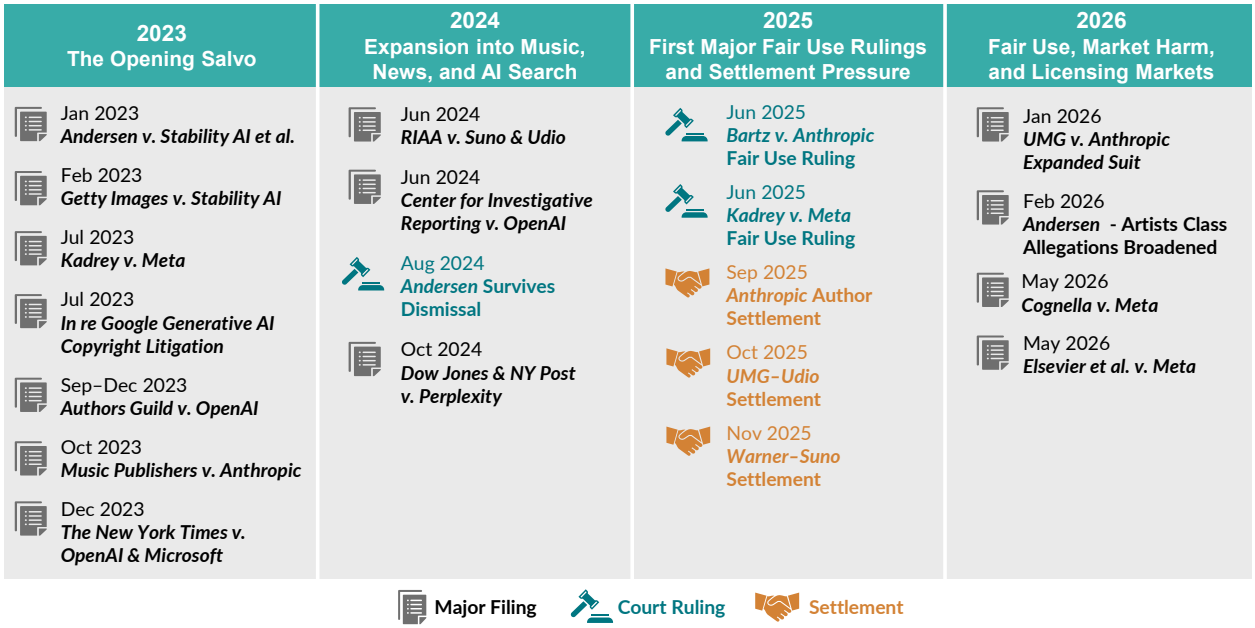
- Whether the large-scale ingestion of copyrighted works to train AI models constitutes transformative fair use or impermissible copying.
- Whether AI-generated outputs reproduce protected expression, imitate distinctive styles, or function as substitutes for original works.
- How responsibility should be allocated across model developers, platforms, and end users.
- Whether AI-generated outputs qualify for copyright protection and what level of human contribution is required.
- Whether AI systems interfere with existing or emerging licensing markets for text, images, music, software, and other creative content.

Figure 15 illustrates the progression of AI copyright litigation from training-data disputes to battles over fair use, market harm, and licensing. The first wave of cases, filed in 2023, focused primarily on the use of copyrighted books, images, music, and news content as training data.[160] By 2024, litigation had expanded across creative industries, reaching music generation (*RIAA v. Suno & Udio*), journalism (*Center for Investigative Reporting v. OpenAI*), and AI-powered search (*Dow Jones v. Perplexity*).[161]

The landscape shifted in 2025 with the first major fair use rulings in *Bartz v. Anthropic* and *Kadrey v. Meta*, which suggested that AI training may be transformative under certain circumstances while leaving open questions regarding market harm and substitution.[162] At the same time, a series of high-profile settlements involving Anthropic, Suno, Udio, and major music rights holders signaled a trend toward negotiated licensing arrangements.[163]

As of 2026, the litigation has increasingly moved beyond the threshold question of whether AI training is permissible and toward questions of economic impact.[164] Ongoing disputes, including *Cognella v. Meta*, *Elsevier v. Meta*, and *Andersen v. Stability AI*, are expected to further define the role of market substitution, licensing-market effects, and other forms of economic harm in AI copyright disputes.[165]

Figure 15: Landmark AI Copyright Filings, Rulings, and Settlements



Source: Lex Machina; BakerHostetler AI Case Tracker; Mishcon de Reya Generative AI Case Tracker

GLOBAL DIVERGENCE IN COPYRIGHT FRAMEWORKS

Copyright enforcement is evolving globally in response to GenAI and platform-based distribution, but legal standards differ significantly across jurisdictions, particularly regarding permissible uses of copyrighted works.[166]

Europe

The EU does not recognize a broad fair use doctrine, instead relying on enumerated statutory exceptions, including text and data mining (TDM) under the EU Copyright Directive (2019).[167] These are more rule-based and limited in scope, often requiring rights-holder opt-outs. Courts in Germany and other member states are actively applying these rules in emerging AI-related disputes.[168]

United Kingdom

The UK applies a narrower "fair dealing" framework, limited to specific purposes (e.g., research, criticism), with ongoing policy discussions and litigation addressing its application to AI-related uses.[169]

China

China applies a closed-list framework of limitations and exceptions, without a broad fair use doctrine.[170] Courts, including specialized IP tribunals, are actively addressing AI-generated content and platform liability, often applying a more structured, rights-holder-protective approach.[171]

India

India follows a fair dealing framework similar in structure to the UK, with courts beginning to address disputes involving digital platforms and AI-related uses, although the law remains at an early stage of development.[172]

These differences are likely to encourage forum competition, regulatory fragmentation, and strategic litigation across jurisdictions, particularly as AI systems operate globally while copyright laws remain territorial.

AI-Assisted Innovation and Patent Law

AI systems are also beginning to reshape core assumptions underlying patent law. As AI becomes increasingly integrated into scientific research, engineering, coding, and product design, courts and patent offices are confronting new questions involving inventorship, disclosure, enablement, and obviousness.

Unlike earlier software tools, GenAI systems can synthesize prior art, optimize designs, generate technical solutions, and automate portions of the research process itself.[173] As a result, AI is beginning to blur traditional distinctions between human conception and machine-assisted innovation.

INVENTORSHIP AFTER *THALER*

The most prominent AI-related patent disputes to date involve inventorship. Litigation surrounding the DABUS AI system, including *Thaler v. Vidal* in the U.S. and parallel proceedings abroad, largely established that current patent systems require human inventorship.[174] Courts in the U.S., Europe, and the UK rejected patent applications naming an AI system as the sole inventor, emphasizing that existing statutes contemplate human inventors.[175]

At the same time, these decisions left unresolved a more practical and commercially significant question: how patent law should treat inventions developed with substantial AI assistance. As GenAI systems become more deeply integrated into drug discovery, semiconductor design, materials science, and software development, traditional concepts of conception and inventorship may become increasingly difficult to apply.[176]

DISCLOSURE, ENABLEMENT, AND AI-ASSISTED RESEARCH

AI-assisted innovation also raises new questions surrounding disclosure and enablement.[177] Patent systems historically rely on a basic exchange: inventors receive exclusivity in return for disclosing how to practice the invention.[178]

AI systems complicate this framework because many machine-learning models are opaque, difficult to reproduce, and dependent on proprietary training data, parameter tuning, and computing infrastructure.[179] In some cases, even developers may not fully understand how specific outputs or solutions were generated.[180]

At the same time, AI-assisted research tools may reshape how courts evaluate obviousness by changing the economics of prior-art discovery and experimentation.[181] GenAI systems can rapidly analyze technical literature, identify cross-disciplinary connections, and reduce search and experimentation costs. Over time, these capabilities may influence how courts evaluate motivation-to-combine arguments, reasonable expectations of success, and the overall scope of ordinary skill in the art.[182]

AI, Intellectual Property, and Global Governance

AI, TRADE SECRETS, AND PROPRIETARY ADVANTAGE

AI is also increasing the strategic importance of trade secret protection. Many of the most commercially valuable components of modern AI systems, including model weights, training datasets, retrieval systems, optimization methods, and infrastructure configurations, are difficult to patent, costly to reproduce, and are often kept confidential rather than publicly disclosed.[183]

This shift reflects the changing economics of AI competition. Competitive advantage increasingly depends not only on algorithms themselves, but also on access to proprietary data, computing infrastructure, fine-tuning methods, and deployment architectures. In many cases, these assets are more effectively protected through secrecy than through traditional patent disclosure.[184]

As a result, disputes involving employee mobility, confidential information, infrastructure access, and AI system design are likely to become increasingly important.[185] These tensions are especially pronounced in markets where leading AI researchers and engineers move frequently across competing firms and where a small number of companies control critical computing and data resources.[186]

AI is increasing the strategic importance of trade secret protection.

AI, AUTHORSHIP, AND SYNTHETIC CONTENT

AI-generated content is also beginning to reshape doctrines involving authorship, branding, and commercial identity. Courts and policymakers increasingly confront questions concerning ownership of AI-generated works and the level of human contribution necessary for legal protection.[187]

AI–generated content is reshaping trademark law.

Recent U.S. Copyright Office guidance emphasizes the continuing importance of human creative contribution, while leaving unresolved how much human selection, editing, prompting, or arrangement is required for protectability.[188] As AI-generated outputs become more sophisticated, these questions are likely to become increasingly important across publishing, entertainment, advertising, and software markets.[189]

AI is simultaneously reshaping trademark law by changing how branding, marketing, and commercial identity are created and distributed online. AI systems can now generate logos, product names, advertising copy, voices, images, and synthetic influencers at scale, raising new questions involving source identification, likelihood of confusion, brand imitation, and authenticity.[190]

Unlike traditional trademark disputes centered on counterfeit goods or direct imitation, AI-related disputes increasingly involve probabilistic similarity, stylistic imitation, and automated generation of branded content at scale.[191] As models ingest large volumes of branded content from the internet, disputes may increasingly focus on whether AI-generated outputs dilute brand identity, misappropriate goodwill, or falsely imply affiliation or endorsement.[192]

These issues are likely to intersect with broader debates surrounding platform liability, intermediary responsibility, and synthetic media as AI-generated commercial content becomes increasingly realistic and scalable.

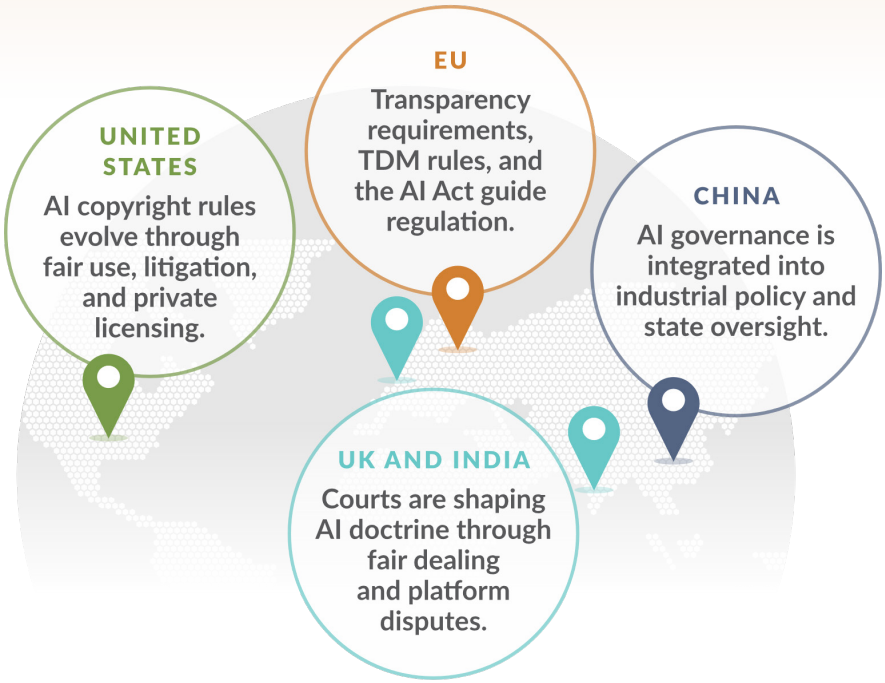
GLOBAL DIVERGENCE IN AI AND IP GOVERNANCE

Global approaches to AI governance and intellectual property are diverging rapidly. Different jurisdictions are balancing innovation incentives, copyright protection, competition concerns, transparency obligations, and industrial policy in materially different ways.

The U.S. continues to rely heavily on fair use, litigation-driven doctrinal development, and private licensing arrangements.[193] The EU increasingly emphasizes transparency obligations, TDM rules, and broader AI governance frameworks through measures such as the EU AI Act.[194] China is integrating AI regulation into broader industrial and technological policy while relying heavily on specialized courts and administrative oversight. The UK and India continue to develop AI-related doctrines through evolving fair dealing frameworks and platform-related disputes.[195]

These differences are likely to accelerate regulatory fragmentation, forum competition, and strategic multi-jurisdictional litigation as AI systems increasingly operate across borders while intellectual property laws remain nationally defined.

Divergent approaches to AI and IP governance are driving forum competition and cross-border disputes.



Endnotes

[1] Intellectual property spans a range of intangible assets, including patents, trade secrets, copyrights, and trademarks, each protecting different dimensions of innovation. Patents protect technical inventions; trade secrets cover proprietary know-how and data; copyrights govern creative works and digital content; and trademarks protect brands and consumer identity. Together, these rights form a complementary system of protection, with firms increasingly deploying multiple forms of IP in parallel.

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[3] "How IP Shapes Market Dynamics," *IPBA Connect*, 2026, https://profwurzer.com/how-ip-shapes-market-dynamics/; "Intellectual Property and the U.S. Economy: Third Edition," U.S. Patent and Trademark Office, https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf.

[4] Laurent Manderieux, "The Relationship Between Intellectual Property and Administrative Law," in *Handbook on Intellectual Property Research*, eds. Irene Calboli and Maria Lillà Montagnani (Oxford University Press, 2021), https://academic.oup.com/book/41122/chapter/350439315.

[5] "An International Guide to Patent Case Management for Judges," *World Intellectual Property Organization*, 2021, Chapter 10.7 (Civil Remedies), https://www.wipo.int/patent-judicial-guide/en/full-guide/united-states/10.7; Christopher Simboli, "The Growing Trend Toward Trade Secret Protection and Away from Patent Protection," *Parsons Behle & Latimer*, 2026, https://parsonsbehle.com/insights/the-growing-trend-toward-trade-secret-protection-and-away-from-patent-protection.

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[7] Unlike other forms of IP such as trade secrets or brand value, which are less observable, patent filings and grants are systematically recorded across jurisdictions, making them a widely used proxy for innovation. See Riitta Katila, "Measuring Innovation Performance / Using Patent Data to Measure Innovation Performance," *International Journal of Business Performance Management* 2 (2000): 180–193, https://web.stanford.edu/~rkatila/new/pdf/KatilaUsingpatentdata.pdf.

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[34] Damages only include damages awards tagged by Lex Machina as type patent. Damages only include cases in which all awarded parties are tagged by Lex Machina as plaintiffs. Patent cases include all

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[35] Patent damages are labeled as damage type "Patent." Damages only include those cases in which all awarded parties are tagged as "Plaintiffs." Patent cases include all cases tagged by Lex Machina as including a "Patent" component. Total damages are calculated using the "amount" field, and Schedule A damages are excluded from these calculations. Terminated Year is determined by the date on which the case is terminated.

[36] Damages only include damages awards tagged by Lex Machina as type patent. Damages only include cases in which all awarded parties are tagged by Lex Machina as plaintiffs. Patent cases include all cases tagged by Lex Machina as including a patent component. Cases are categorized by their terminated year. Schedule A damages are excluded from these calculations. Following the Stanford NPE Litigation Database methodology, cases with damages are classified as Product Companies, NPEs, and PAEs. Product Company cases are defined as cases that only include a plaintiff that is assigned or was previously assigned as category 8 ("Product Company"). NPE cases are defined as cases that include a plaintiff that is not assigned or was not previously assigned as category 8 ("Product Company"). PAE cases are defined as cases that include a plaintiff that is assigned or was previously assigned category 1 ("Acquired Patents"), 4 ("Corporation Heritage"), or 5 ("Individual-Inventor-Started Company"). Note that PAE cases are a subset of NPE cases. See Shawn P. Miller et al., "Introduction to the Stanford NPE Litigation Dataset," October 23, 2017, https://law.stanford.edu/wp-content/uploads/2017/10/Introduction-to-the-Stanford-NPE-Litigation-Dataset-10.23.2017.pdf.

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