

2010 PATENT LITIGATION STUDY BY PWC

PricewaterhouseCoopers (PWC) recently issued a 2010 Patent Litigation Study (Study) based on a database of patent damages awards (from 1980 through 2009), collecting information about patent holder success rates, time-to-trial statistics, and practicing (PE) versus nonpracticing entity (NPE) statistics (all from 1995 through 2009). The Study indicates interesting trends in recent patent litigations, such as the effect of ever rising infringement claims brought by NPEs.

The following are some of the trends indicated by the Study.

Damages

According to the Study, damages awarded to NPEs have risen significantly since 2002. The Study indicates that the median damages awarded for NPEs during the period of 1995 to 2001 was \$5.2 million, while NPEs were awarded a median of \$12.9 million between 2002 and 2009. By contrast, the median damages awarded for PEs has dropped from \$6.3 to \$3.9 million during the same periods of time. The Study also indicates that the median damages awarded by juries have increased significantly over the last three decades. In the 1980s, the median jury award was \$1.1 million, while it was \$10.7 million in 2000s.

Jury v. Bench Trials

According to the Study, a significant trend toward jury trials has emerged since the 1980s, and almost 70 percent of total identified cases were tried by juries in 2009. The Study suggests that higher success rates for patent holders when decided by juries as compared to bench trials is one of the factors that contributed to the increased use of juries. The Study also suggests that a significant increase in damages awarded by juries is another factor of increased popularity of the jury trials.

Success Rate of Patent Holder as the Plaintiff

According to the Study, NPEs tend to experience a lower overall success rate than PEs because a greater percentage of NPE cases are decided or concluded at summary judgment.

Success Rate of Alleged Infringer as the Plaintiff

The Study indicates that alleged infringers have had more success from filing declaratory judgments against NPEs as compared to responding to infringement cases as defendants. However, such success was significantly noted only against NPEs.

Venues

According to the Study, Virginia Eastern District Court, Delaware District Court, and Texas Eastern District Court remain as the U.S. District Courts having more favorable venues for patent holders because of their high success rates and relatively fast dockets.

More information and statistics are available from the PWC 2010 Patent Litigation Study at:

<http://www.pwc.com/us/en/forensic-services/publications/assets/2010-patent-litigation-study.pdf>