

2018/2019 Federal Circuit Year in Review

Client Alert | December 19, 2019

We are pleased to present Gibson Dunn's seventh "Federal Circuit Year In Review," providing a statistical overview and substantive summaries of the 115 precedential patent opinions issued by the Federal Circuit over the 2018-2019 year. This term was marked by two *en banc* decisions, as well as significant panel decisions in patent law jurisprudence with regard to subject matter eligibility (e.g., *Athena Diagnostics, Inc. v. Mayo Collaborative Services, LLC*, 915 F.3d 743 (Fed. Cir. 2019), and *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306 (Fed. Cir. 2019)), venue for patent cases (e.g., *In re Google*, 914 F.3d 1377 (Fed. Cir. 2019)), and the application of IPR proceedings to pre-AIA patents (*Celgene Corp. v. Peter*, 931 F.3d 1342 (Fed. Cir. 2019)). The issues most frequently addressed in precedential decisions by the Court over the last year were: obviousness (38 opinions); claim construction (31 opinions); infringement (20 opinions); subject matter eligibility (16 opinions); and PTO procedures (15 opinions).

Related People

[Nathan R. Curtis](#)

Use the Federal Circuit Year In Review to find out:

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

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

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

Please click here to view the [FEDERAL CIRCUIT YEAR IN REVIEW](#)

GIBSON DUNN

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

Mark A. Perry - Washington, D.C. (+1 202-887-3667, mperry@gibsondunn.com)
Omar F. Amin - Washington, D.C. (+1 202-887-3710, oamin@gibsondunn.com)
Nathan R. Curtis - Dallas (+1 214-698-3423, ncurtis@gibsondunn.com)

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

Appellate and Constitutional Law Group:

Allyson N. Ho - Dallas (+1 214-698-3233, aho@gibsondunn.com)
Mark A. Perry - Washington, D.C. (+1 202-887-3667, mperry@gibsondunn.com)

Intellectual Property Group:

Wayne Barsky - Los Angeles (+1 310-552-8500, wbarsky@gibsondunn.com)
Josh Krevitt - New York (+1 212-351-4000, jkrevitt@gibsondunn.com)
Mark Reiter - Dallas (+1 214-698-3100, mreiter@gibsondunn.com)

© 2019 Gibson, Dunn & Crutcher LLP

Attorney Advertising: The enclosed materials have been prepared for general informational purposes only and are not intended as legal advice.

Related Capabilities

[Appellate and Constitutional Law](#)

[Intellectual Property](#)