

Q2 in Review

July 2024

Q2 in Review: PTAB Reforms Face New Challenges as China Targets Foreign Pools

NPE litigation continued on an upward trend in the second quarter of 2024, rising by 19% compared to Q2 2023. Building on a significant increase in the first quarter, NPE filings were up by 21% in the first half of the year.

In addition, the USPTO moved forward in the second quarter with planned rulemaking on a variety of issues impacting Patent Trial and Appeal Board (PTAB) reviews, including an April 2024 proposal addressing discretionary denials that drew a wide range of stakeholder feedback. However, as Q2 came to a close, the Supreme Court cast those efforts into uncharted waters by overturning the 40-year-old judicial doctrine known as *Chevron*, which required judges to give deference to agency interpretations of reasonably ambiguous statutes—now raising the possibility that the USPTO will face litigation challenging its planned rule changes once implemented.

Moreover, patent pools were in the spotlight in Q2, after it was revealed that China's Supreme People's Court became the first national court to assert the power to set global fair, reasonable, and nondiscriminatory (FRAND) rates for foreign patent pools. Furthermore, a Chinese anti-monopoly agency announced this past week that it had just initiated a formal dialogue with patent pool [Avanci, LLC](#) regarding the compliance of its automotive licensing programs with anti-monopoly laws. The Unified Patent Court (UPC) also began to issue its first rulings specific to standard essential patent (SEP litigation) last quarter, in the process revealing a split between two popular local divisions over licensing transparency—with other local divisions also diverging on issues relevant to NPE litigation more broadly.

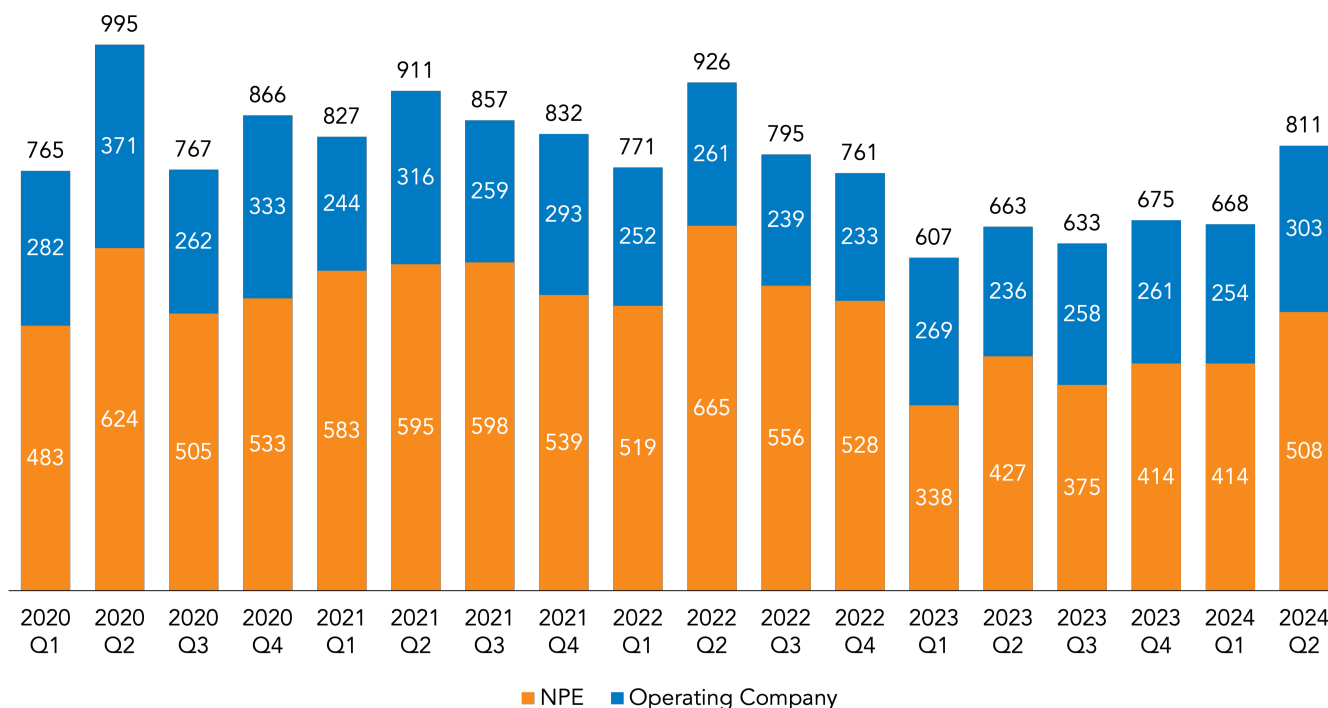
As Q2 drew to a close, a jury in the Eastern District of Texas returned an \$847M verdict in favor of [General Access Solutions, Ltd.](#), a Texas NPE that—according to public records—received litigation funding shortly before commencing that lawsuit. Meanwhile, a close review of litigation data reveals that several of the new US patent litigation campaigns begun during the second quarter can be tied to prominent third-party litigation funders—and USPTO data suggest that more such campaigns are in the pipeline.

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Litigation Update: Upward Trend for NPE Litigation Continues in Q2

NPEs added 922 defendants to patent litigation campaigns in the first half of 2024, a 21% increase from that same period last year (when NPEs added 765 defendants). Operating company litigation went up by 10% in the first half of the year, at 557 defendants added (compared to the 505 defendants added in 1H 2023).

NPE and Operating Company Litigation (Defendants Added)



In the second quarter of 2024, NPEs added 508 defendants to patent campaigns, an increase of 81 defendants (or 19%) compared to Q2 2023, when NPEs added 427 defendants. NPE litigation was 10% below the trailing three-quarter average for Q2 2021-2023 but was 23% more than in Q2 2023.

Operating companies added 303 defendants in Q2, which was 28% more than the year-ago quarter, exceeding the trailing three-quarter average by 12% and coming in ahead of Q1 by 19%.

Overall, patent plaintiffs added 811 defendants in the second quarter of 2024, or 22% more than in Q2 2023, 21% more than Q1 2024, and 3% less than the trailing average.

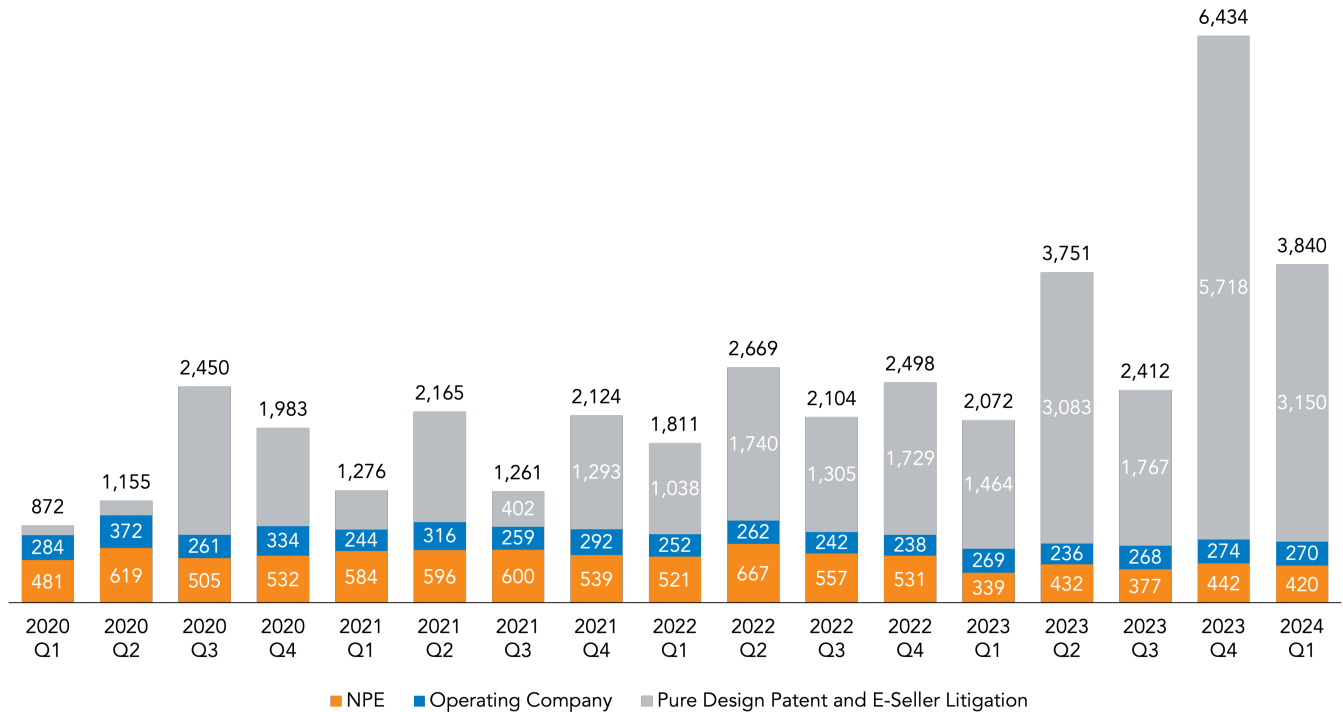
Defendants Added	Change Compared to:			
	Q2 2024	Q2 2023	Q2 2021-2023 Average	Q1 2024
NPE	508	19%	-10%	23%
Operating Company	303	28%	12%	19%
Total	811	22%	-3%	21%

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 Q2 2024 accounted for 2,510 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 remaining analyses in this report exclude pure design patent and e-seller litigation.

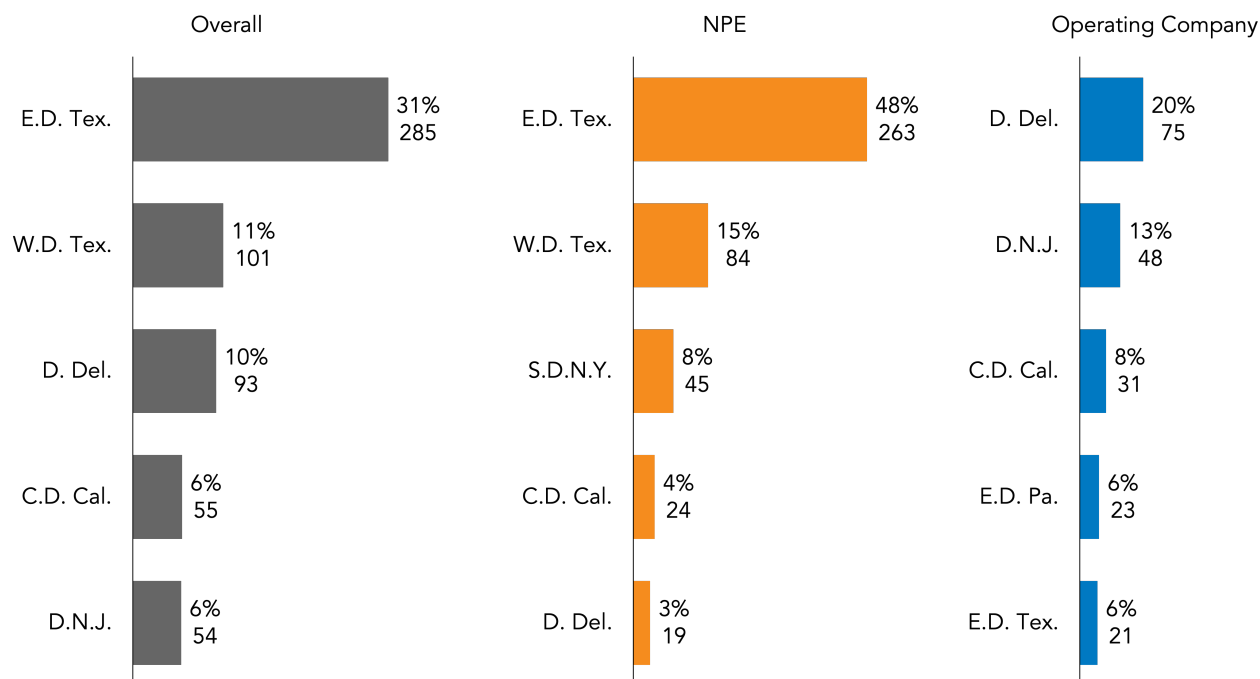
NPE and Operating Company Litigation by Quarter (Defendants Added)



Venue Update: Delaware NPE Filings Drop Further as Second-Place West Texas Hangs On

In Q2 2024, the Eastern District of Texas was once again the top district for overall patent litigation (*i.e.*, filings from all plaintiff types) and NPE litigation. However, the District of Delaware continued its downward slide in the NPE rankings, dropping from third to fifth place—pulling the district from second to third place for overall litigation even though its operating company litigation held relatively steady compared to Q1. Meanwhile, the Western District of Texas climbed to second place for overall litigation in Q2, also remaining the number-two district for NPEs last quarter.

Top Patent Litigation Districts in Q2 2024 (Defendants Added and Percentage of Total)

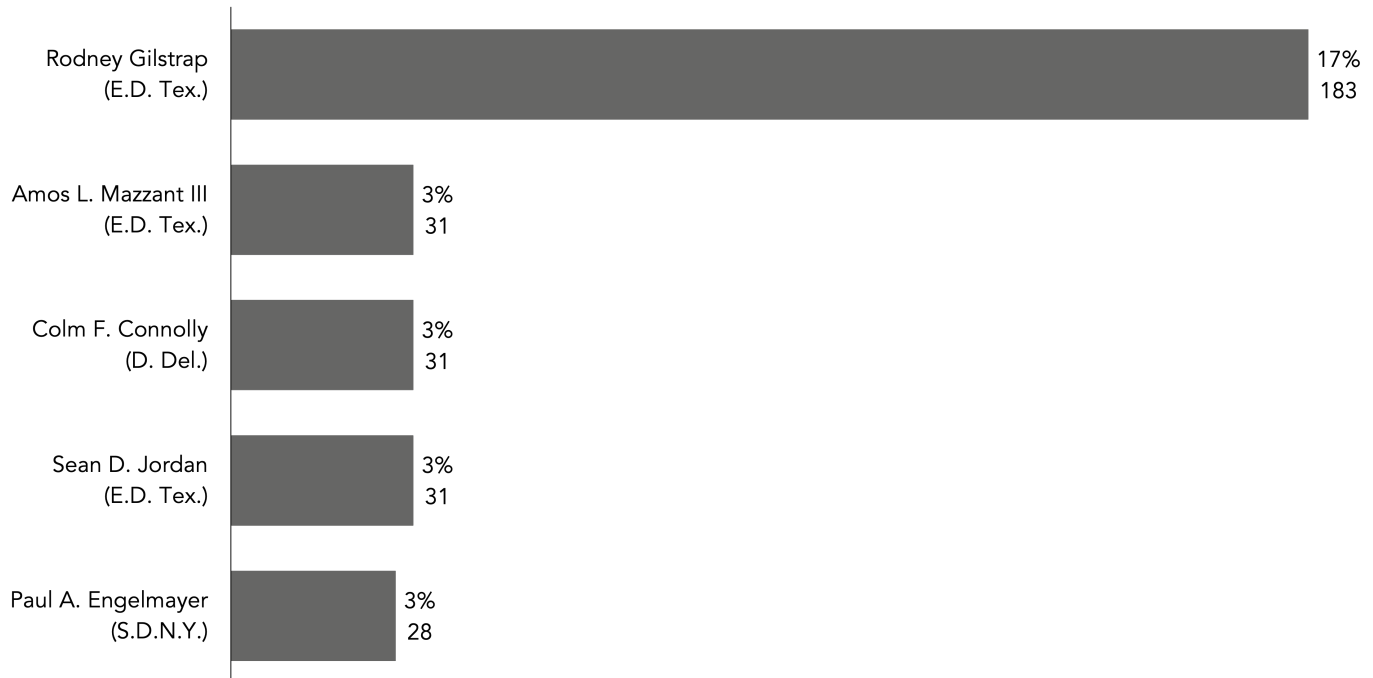


Delaware's NPE numbers have plummeted as a result of pressure over transparency in the courtroom of Chief Judge Colm F. Connolly, who in April 2022 began requiring the wide-ranging disclosure of information on corporate control and funding. Starting later that year, this triggered a heated battle with NPEs linked to monetization firm [IP Edge LLC](#) after Judge Connolly, probing into their failure to comply with those rules, identified [wide-ranging fraud and ethical violations](#) by those involved. IP Edge stopped filing there as a result, and since the firm had previously accounted for much of Delaware's NPE volume, this alone was responsible for most of the drop—but other NPEs have followed suit as well.

West Texas, which was the top patent district from Q2 2020 to Q4 2022, has also fallen in the rankings due to another key development in 2022: That July, former Chief Judge Orlando L. Garcia issued an order designed to reduce the concentration of patent litigation before District Judge Alan D. Albright, who had successfully (and openly) sought to attract patent litigation to his court. This was made possible by divisional filing rules that let plaintiffs file directly in a preferred division—letting them pick Judge Albright by filing in Waco, where he is the only district judge. The order changed this rule solely for patent cases brought in Waco, providing that they would randomly be assigned among a larger group of judges throughout West Texas, including Judge Albright. This appears to have reduced Waco's appeal to NPEs, which added just 54 defendants there in Q2 2024, compared to 103 in Q2 2023.

Perhaps not surprisingly, Judge Albright has continued to fall in the rankings as a result, failing to break the top five for the first time in Q2. The top district judge last quarter remained Chief Judge Rodney Gilstrap, with 17% of the country's patent litigation falling in his court.

Top District Judges in Q2 2024 (Defendants Added and Percentage of Total)



Though he saw a smaller portion of the nation's overall patent caseload in Q2, Judge Albright has continued to receive a disproportionate share of Waco's patent litigation despite that order, with 48% of Waco's Q2 filings ending up before him. The primary reason is that in the months following the 2022 case assignment order, the Western District adopted a practice of assigning each new patent complaint to the same judge that previously oversaw related cases involving the same parties and patents. In practice, this has led Judge Albright to receive the lion's share of those "legacy" filings, given the number of prior cases in existing litigation campaigns that had already fallen in his courtroom before the case assignment order was handed down.

That said, stakeholders have debated whether this could potentially change as a result of a revised case assignment order issued by current Chief Judge Alia Moses on May 30, 2024. That order maintains the random case assignment policy but now provides the following new language on related cases: "Parties seeking to consolidate patent cases contending all cases are related shall file a motion with sufficient legal and factual justification in the court and with the judge presiding over the case sought to be removed". However, it remains to be seen whether fewer movants will succeed in getting related cases reassigned, or whether the order will just preserve the status quo with a more fulsome record.

While it is too early to decisively answer this question, at least one judge has indicated that the existing practice should continue. On June 4, after the new order took effect, District Judge Kathleen Cardone, who had been randomly assigned a case from [Proxense, LLC](#), transferred that case to Judge Albright with his consent, holding that "[t]o facilitate efficient docket management, all related cases are ordinarily allocated to the Judge that was randomly assigned the earliest-numbered related case" (as provided in a district-wide [order](#) issued in 2003 that concerns case assignments in *multi-judge* divisions).

Plaintiffs and their counsel have also begun to look beyond Waco in seeking a preferable West Texas venue. In particular, patent cases are increasingly flowing to the Midland-Odessa Division, where District Judge David Counts essentially adopted Judge Albright's standing order governing patent cases, with some minor changes, shortly after the issuance of the July 2022 case assignment order. Since the July 2022 order and its May 2024 replacement are both specific to patent cases filed in Waco, plaintiffs are still free to target Midland-Odessa, where they are guaranteed to get Judge Counts, the division's only

district judge, under the same single-judge filing loophole that enabled Judge Albright's former dominance.

Though Judge Counts had scarcely ever overseen patent cases before the assignment order and his adoption of Judge Albright's rules, with just one defendant added in his courtroom in 2021, his caseload has risen steadily each year since, reaching 12 defendants added in 2022 and 35 in 2023. While these are still relatively small numbers, it is also worth noting that one of the top plaintiff-side firms by volume, Ramey LLP, has increasingly focused on Midland-Odessa. Though Ramey filed virtually no cases there before Q3 2022, it has filed a steadily greater share of its litigation there, even as its overall filings in the district have dipped: After accounting for 14% of the firm's West Texas litigation in 2023 (at 16 defendants added, or 46% of Judge Counts's total 2023 caseload), 75% of the defendants added by Ramey in West Texas in Q1 2024 were in Midland-Odessa (albeit, at just nine of 12 total), and 55% in Q2 (six out of 11 defendants).

Market Sector Update: Upswing in Networking NPE Litigation Fueled by Plaintiffs Linked to Industry Veterans and Monetization Firms

A breakdown of NPE litigation by market sector shows that Networking saw the greatest increase in filings in Q2 2024, going up by 116% compared to Q2 2023. Other sectors with significant upticks included E-Commerce and Software (which saw an 85% increase), Financial Services (63%), and Automotive (57%). Sectors with fewer filings included Consumer Electronics and PCs (which decreased by 43%), Semiconductors (38%), and Mobile Communications and Devices (31%).

NPE Litigation by Market Sector, Q2 2023-2024 (Percent Change, Defendants Added)

		Q2 2023	Q2 2024
Automotive	57%	14	22
Biotech and Pharma	-100%	6	1
Consumer Electronics and PCs	-43%	117	67
Consumer Products	-58%	24	10
E-Commerce and Software	85%	81	152
Financial Services	63%	35	57
Industrial	56%	9	15
Media Content and Distribution	14%	14	16
Medical	42%	12	17
Mobile Communications and Devices	-31%	36	24
Networking	116%	49	106
Other Sectors	-22%	9	7
Semiconductors	-38%	21	14

Among the NPEs contributing to that swell in Networking litigation were several plaintiffs controlled by industry veterans. One was [Innovations In Memory LLC](#), which in May [launched a campaign](#) targeting networking hardware (including servers and switches) and enterprise storage products that allegedly incorporate certain memory devices. The plaintiff was formed by an individual behind multiple firms engaged in patent monetization and/or financing (presently including Armada IP Capital, and formerly [Soryn IP Group, LLC](#)) and who also previously served as an engineer at [InterDigital, Inc.](#) Another such plaintiff was [Encryptawave Technologies LLC](#), which in late June expanded its ongoing litigation campaign with a [new wave of complaints](#) over a wide range of devices (e.g., computers, label printers, smartphones, smart microwave ovens, tablets, thermostats, and TVs) that support the WPA2 protocol within certain authentication tools. Encryptawave is managed by [Inferential Capital LLC](#), which is controlled by two individuals who variously report past positions with [Wi-LAN Inc.](#), [IPNav](#), and [Acacia Research Corporation](#). Also adding new cases to an existing Networking campaign was [Freedom Patents LLC](#), which filed a series of [mid-June complaints](#) alleging infringement through devices (e.g., gateways, MIMO modules, and TVs) that implement MIMO Wi-Fi functionality. Freedom Patents is managed by a Texas attorney behind several other litigating NPEs, including [American Patents LLC](#); [Dynamic Hosting Company LLC](#); [Liberty Patents LLC](#); [Panther Innovations LLC](#); [Plectrum LLC](#); and [Snyders Heart Valve LLC](#).

Also joining the fray were two plaintiffs linked to well-known monetization firms. In early May, [Fleet Connect Solutions LLC](#), a plaintiff associated with Texas-based [Empire IP LLC](#), added [another complaint](#) to the campaign it launched in December 2020, here hitting networking products (e.g., access points, firewalls, and routers) that support Bluetooth, IEEE 802.11ac/b/n, and LTE connectivity. Additionally, [Iarnach Technologies Limited](#), an NPE linked to Dublin monetization firm Atlantic IP Services Limited, added a [third defendant](#) to its ongoing optical networking campaign in early April, alleging

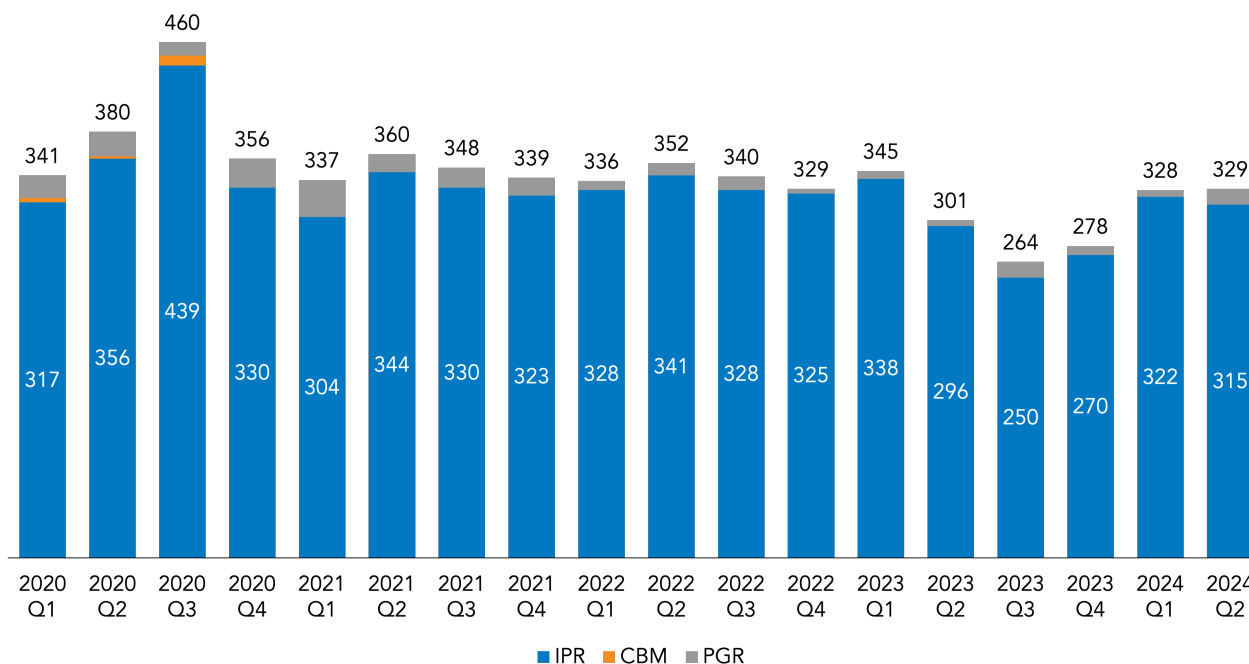
infringement through products and services related to providing DPoE v2.0-compliant networks, including optical networking hardware, transport networks, and DOCSIS back-office equipment.

Q2 also saw networking litigation from [CelluPlex LLC](#), which in late June [kicked off a campaign](#) over telephone systems that can connect to cellular phones via Bluetooth; and [Lab Technology LLC](#), which in late May [started its own campaign](#) over cellular networking products, including LTE modems and processors incorporating them, adding more complaints throughout June (see [here](#) and [here](#)). Both plaintiffs are part of a growing group of New Mexico-based NPEs represented by Rabicoff Law LLC that have recently launched litigation, also including [Data Resonance LLC](#), [e-Beacon LLC](#), [Payvox LLC](#), and [Pointwise Ventures LLC](#).

PTAB Update: As USPTO Continues Rulemaking Push, Supreme Court Eliminates *Chevron* Deference

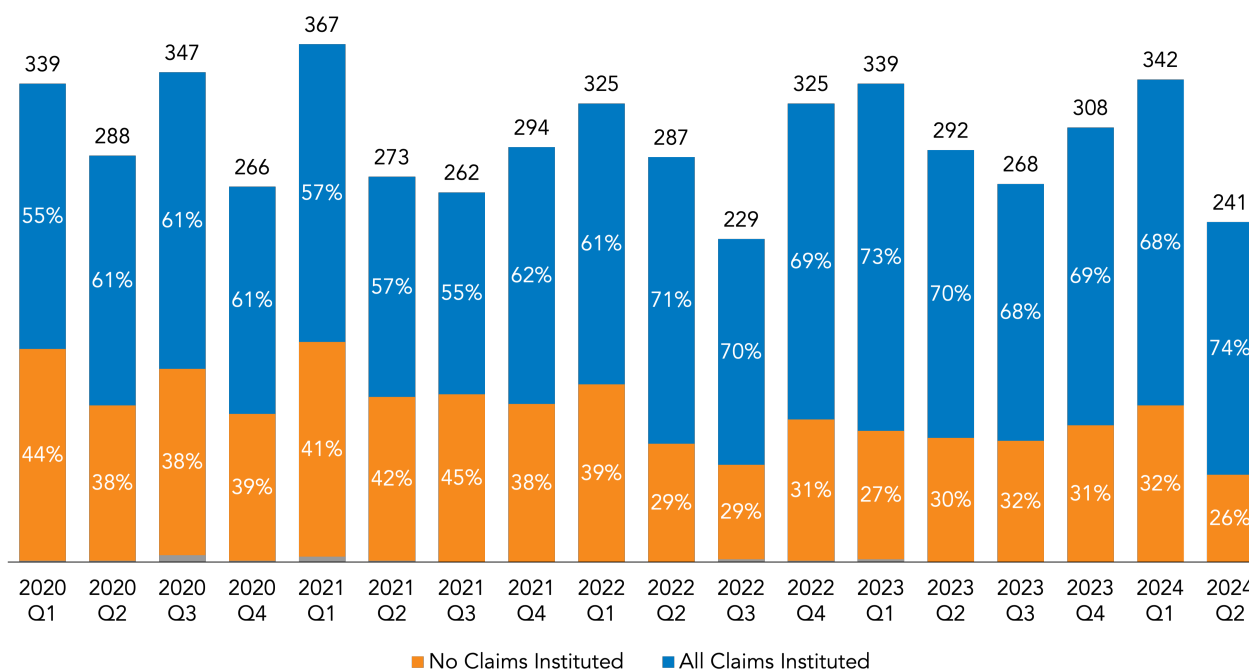
The Patent Trial and Appeal Board (PTAB) saw 329 petitions for America Invents Act (AIA) review in the second quarter of 2024, including 315 petitions for *inter partes* review (IPR) and seven petitions for post-grant review (PGR). Filings were up by 9% compared to Q2 2023, which saw 301 petitions filed; but were flat compared to Q1 2024, during which 328 petitions were filed. Filing rates also held relatively steady in the first half of the year, which was up by just under 2% from that same period last year.

AIA Review Petitions Filed



The PTAB instituted trial for 74% of the AIA review petitions addressed in Q2, up from that same quarter last year (during which the institution rate was 70%) and from Q4 2023 (68%). The institution rate for the first half of the year was 70%, versus 71% in 1H 2023.

AIA Review Institution Rates



The standards governing institution—in particular, the rules allowing the PTAB to discretionarily deny AIA review petitions—were among the areas of greatest focus in Q2 for the USPTO, which has steadily pushed to reform a variety of internal procedures using notice-and-comment rulemaking over the past year.

In late April, the USPTO released a long-awaited [Notice of Proposed Rulemaking](#) (NPRM) addressing discretionary denials before the PTAB that included just a subset of the changes from a far more sweeping—and far more controversial—rules package released in April 2023. While that earlier proposal (styled as an Advance Notice of Proposed Rulemaking, or ANPRM) floated the codification and expansion of the Board’s discretionary denial practices under *NHK-Fintiv* as well as the creation of a standing requirement, the newer NPRM is limited to rules concerning “serial” and “parallel” petitions as well as validity arguments previously addressed by the USPTO, also creating a separate briefing process for discretionary denials and requiring the filing of pre-institution settlement agreements. [Public comments](#) submitted in response to the newer, more limited package by the June 18 deadline reflected feedback from a broad set of stakeholders, including licensors, frequent defendants, industry groups, and even the US Federal Trade Commission (FTC).

However, those efforts saw a potentially significant setback as Q2 came to a close, when the US Supreme Court overturned a 40-year-old doctrine called *Chevron* deference that has, until now, given many agencies wide latitude to set certain regulations.

Under *Chevron*, courts were required to defer to federal agencies’ interpretation of the laws governing them when those statutes were ambiguous. For cases satisfying the various “preconditions” required for *Chevron* to apply, courts had to apply a two-step test: they would first ask “whether Congress has directly spoken to the precise question at issue”. If the court found that “the statute is silent or ambiguous with respect to the specific issue”, it would have to defer to the agency’s reading if it was “based on a permissible construction of the statute”.

Yet on June 28, a 6-3 Supreme Court majority overturned *Chevron* in its decision in *Loper Bright Enterprises v. Raimondo*. In *Loper Bright*, Chief Justice John Roberts, writing for the majority, grounded its decision in the history of agency oversight, arguing that under a principle established by the Founders, courts have the sole and independent authority to interpret federal statutes on questions of law. Agency interpretations of legal issues, the majority further found, have historically been granted just “due respect” and treated as informative, while only factual determinations would be given any deference. Courts have given greater weight, the majority explained, to agency interpretations “issued contemporaneously with the enactment of the statute” and those based on an agency’s “specialized expertise”.

The fact that the Administrative Procedure Act (or APA, a “cornerstone” law that was enacted in 1946 and governs agency rulemaking and court oversight) provides no deferential standard for when agencies answer relevant questions of law, while doing so for agency policymaking and factfinding, confirms “that courts decide legal questions by applying their own judgment” and that “agency interpretations of statutes—like agency interpretations of the Constitution—are not entitled to deference”. *Chevron*, per the majority, violates the APA’s “command” that courts must decide all relevant questions of law and interpret statutes, by requiring agencies to “‘ignore, not follow’, the conclusion they would have otherwise reached using their ‘independent judgment’” (citation omitted).

In overturning *Chevron*, the majority took the significant step of breaking *stare decisis*, the principle under which the Supreme Court generally respects its prior precedent, finding that each of the applicable factors—“the quality of [the precedent’s] reasoning, the workability of the rule it established, . . . and reliance on the decision”—weighed in favor of reversal. For quality of reasoning, the majority argues that *Chevron* and cases applying it failed to “grappl[e] with the APA” and highlights the “flaws” that have led the Court to narrow the decision and provide various exceptions over the years. As to *Chevron*’s workability, the majority highlights the difficulty courts have faced in attempting to provide a “meaningful definition” of the requisite ambiguity. Lastly, the majority contends that *Chevron* has not

“been the sort of stable background rule that fosters meaningful reliance” (internal quotation marks omitted) given the Court’s “constant tinkering with and eventual turn away from” that decision. This makes it a gamble whether *Chevron* will be invoked at all or produce a consistent outcome if it is, the majority argues. Moreover, it contends that “[r]ather than safeguarding reliance interests, *Chevron* affirmatively destroys them” by enabling “an agency to change positions as much as it likes”.

Stakeholders debating the likely impact of *Loper Bright* have focused in part on its potential impact on prior decisions. As a general matter, the majority states that the Court does “not call into question prior cases that relied on the *Chevron* framework”, ruling that those decisions “are still subject to statutory *stare decisis* despite our change in interpretive methodology” unless some “special justification” is provided beyond “[m]ere reliance on *Chevron*”. However, some stakeholders have echoed a counterpoint from the dissent penned by Justice Elena Kagan, who remarked that “[c]ourts motivated to overrule an old *Chevron*-based decision can always come up with something to label a ‘special justification’”.

Additionally, *Chevron*’s elimination still leaves a more limited form of deference known as *Skidmore*, which provides that courts may rely on agency interpretations, even for questions of law, when based on agency’s “specialized expertise”, with weight to be given dependent on “the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control”.

In any event, *Chevron* has been applied less frequently with respect to the USPTO. Notably, the last time that the Supreme Court applied *Chevron* was in a patent case, *Cuozzo Speed Technologies v. Lee*, in which the Court deferred to a USPTO regulation that applied a different claim construction standard (broadest reasonable interpretation) in PTAB proceedings from the one used in district court (*Philips*). (The USPTO subsequently used this same authority to switch the PTAB over to *Philips*.) Moreover, the USPTO is somewhat unique in that it is overseen by a specialist appellate court, the Federal Circuit, that has never shown deference to the USPTO on substantive rulemaking. The Federal Circuit rarely applied *Chevron* in evaluating rules promulgated by the Patent Office, and though it has upheld some USPTO regulations challenged on that basis, the court did not reach a consensus on the proper bounds of *Chevron* deference as applied to USPTO regulations while *Chevron* was still in effect (failing to do so in its split *Aqua Products* [decision](#) in 2017).

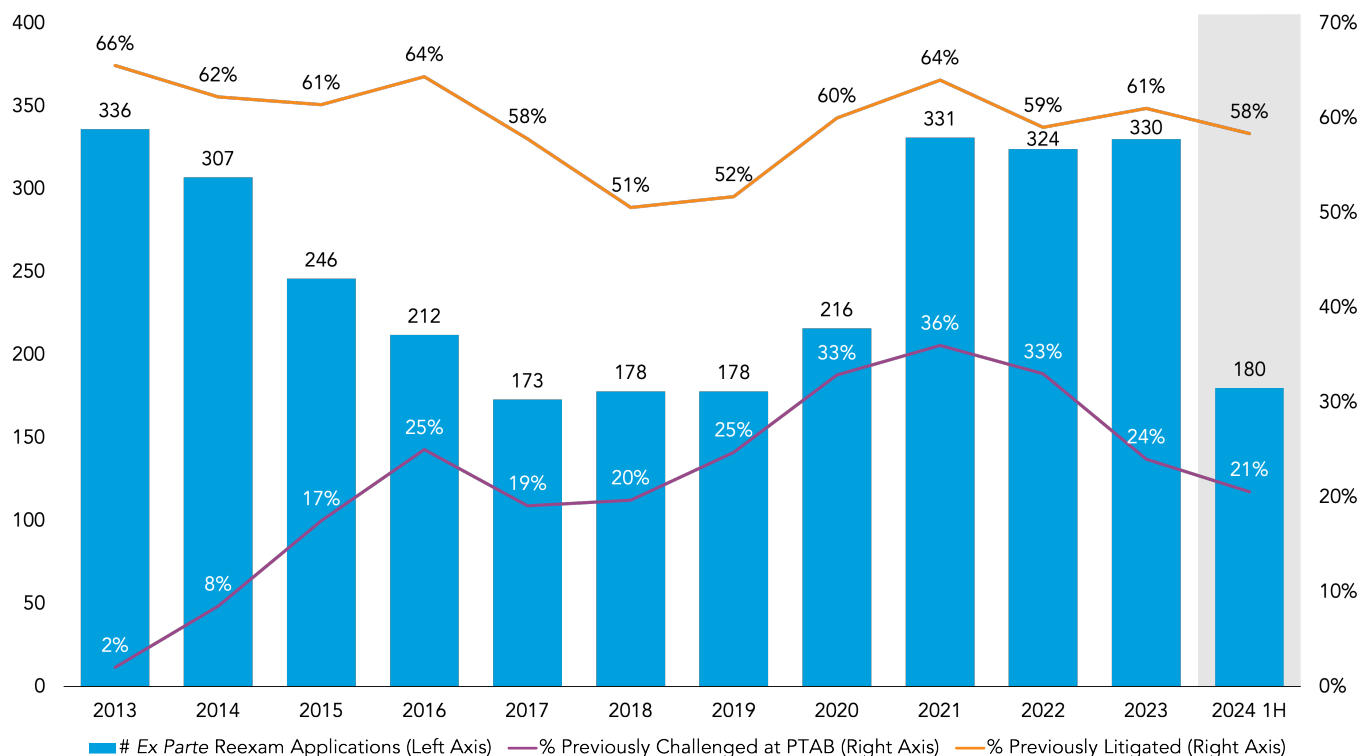
Some have [observed](#) that *Loper Bright* may encourage opponents of current USPTO regulations to file litigation challenging those policies—including issues where the Federal Circuit did not previously decide the propriety of those regulations under *Chevron*, such as whether PTAB precedential opinions were entitled to such deference. As for policies yet to be finalized, such challenges could cause roadblocks and delays for the USPTO’s rulemaking proposals on discretionary denials, as described above, and other regulations recently proposed by the Patent Office (including the proposed codification of rules governing director reviews). Nonetheless, certain stakeholders (including Christopher “Kit” Crumbley, a former PTAB Lead Administrative Patent Judge) have [argued](#) that while litigation is likely, few rules are likely to be struck down, in part because the USPTO may still bolster its regulations under *Skidmore* by attempting to provide fulsome, “persuasive reasoning” justifying its relevant interpretations of the law.

- **Reexams More Popular than Ever in 1H 2024**

As PTAB stakeholders react to the unknowns left in the wake of *Loper Bright*, uncertainty of a different sort has kept contributing to a different, ongoing trend: With institution in AIA review trials perceived as less certain as a result of the *NHK-Fintiv* rule, defendants continued to gravitate toward *ex parte* reexaminations, which are not subject to such denials to the same extent as AIA reviews. *Ex parte* reexam filings first began to rise in response to the initial uncertainty triggered by the *NHK-Fintiv* rule: The number of such requests went up by 21% in 2020 and then by 53% in 2021, peaking that year. Since then, yearly reexam filings have held steady, remaining around 330 requests for each of in 2022 and 2023 (with the latter standing out as the second-highest filing year of the past decade).

Reexam filings so far this year suggest that 2024 could be an even busier year. Filings spiked in Q1, which saw 40% more reexam requests than that same quarter one year prior. The increase was smaller but still substantial for the second quarter, which saw 27% more requests than Q2 2023—with the total number of requests brought in the first half of the year 33% greater than that same period last year. The share of patents subject to reexam requests that were also previously challenged at the PTAB has also continued to fall, from 36% in 2021 to 24% in 2023 and to 21% in the first half of 2024. Meanwhile, the share of those reexam patents also litigated in district court has held steady since 2022. This all suggests that defendants have been relying less on the PTAB as uncertainty over discretionary denials persists, and that reexams have remained a frequently utilized defensive tool as a result.

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



Note: Data as of July 8, 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: Chinese Court Asserts Rate-Setting Power for Foreign Pools; UPC Issues First SEP Rulings

– *China: Greater Scrutiny of Foreign Patent Pools by Courts and Anti-Monopoly Agency*

In 2021, China became the second country, following the UK, where courts have asserted the power to set the terms of fair, reasonable, and nondiscriminatory (FRAND) licenses for global standard essential patent (SEP) portfolios. Now, China's Supreme People's Court has reportedly held that Chinese courts may also establish global FRAND rates for entire "foreign patent pools", apparently the first time that any court has done so—affirming a ruling in favor of TCL and against patent pool administrator [Access Advance LLC](#).

As reported by Chinese-language WeChat blog [Corporate Patent Watch](#) and [IAM](#), TCL filed the litigation below in 2022 in two venues: one in the Shenzhen Intermediate People's Court seeking the determination of a FRAND rate, in response to allegedly "unfairly high prices" sought by Access Advance through its HEVC Advance pool (as characterized by *Corporate Patent Watch*); and the other in the Guangzhou Intermediate People's Court, asserting that Access Advance had abused its "dominance in the HEVC pool market" (per *IAM*). Access Advance then objected to the court's jurisdiction, appealing a series of adverse rulings up to the Supreme People's Court. *IAM* reports that the Supreme People's Court handed down its decision on market abuse in May, and its ruling asserting jurisdiction over pools' global FRAND rates on June 20.

Few details are otherwise available on the contents of those decisions, which followed a ruling in 2021 where the UK High Court declined to exercise rate-setting jurisdiction over Access Advance, as well as a German decision that found certain terms of that pool non-FRAND for reasons not related to licensing rates.

Meanwhile, on June 27, the Anti-Monopoly Division of China's State Administration for Market Regulation (SAMR) [announced](#) that on that same day, it had formally "reminded" patent pool Avanci about "monopoly risks in the licensing process of essential patents for automotive wireless communication standards". The SAMR advised Avanci to identify and address any such issues in a "Reminder and Urging Letter", which is the first of four steps in the "Three Letters and One Notice" soft enforcement system for ensuring compliance with anti-monopoly laws as established in late 2023. Per that announcement, the head of the Anti-Monopoly Division met with Avanci leadership and delivered the "Reminder and Urging Letter" in person. This [appears to be](#) the first time that a patent pool has received this type of scrutiny.

Avanci has since posted a Chinese-language [response](#) on its official WeChat channel, stating that it was "pleased to have had the opportunity to actively communicate with [SAMR]" about its automotive licensing programs. The pool framed that communication as having provided "valuable guidance on [its] joint licensing" that was "[s]imilar to [what] antitrust regulators in other countries and regions around the world" have provided. Avanci stated that it "will continue to comply with the antitrust laws and related laws and regulations in China and other jurisdictions around the world".

In characterizing the value of its programs to patent owners as well as Chinese implementers, Avanci stated that it "look[s] forward to continuing dialogue and discussions with Chinese automakers". To date, the pool has not yet licensed any Chinese automakers.

Time will tell whether the SAMR's Avanci inquiry ends with a similar result to the pool's engagement with the US Department of Justice's Antitrust Division, which at Avanci's request reviewed its licensing programs and in 2020 issued a favorable Business Review Letter in which the Antitrust Division stated that it would not raise a challenge to those programs.

– *UPC: Local Divisions Split on SEP Transparency and NPE Securities*

The launch of the Unified Patent Court (UPC) last June marked a new era in European patent litigation, enabling patent owners to enforce their patents in a single European Union (EU) venue with jurisdiction spanning 17 member states. As the UPC passes its first anniversary, the court has played an increasingly prominent role in multijurisdictional patent campaigns—including SEP litigation and FRAND licensing disputes.

As some of the court's first FRAND litigation moves forward, the court began to address some unanswered questions on SEP issues in Q2—in the process, revealing an apparent split between two of the court's most popular local divisions in Germany, those in Mannheim and Munich, over the proper approach to licensing transparency.

In early April, the Munich Local Division adopted a relatively expansive approach to the production of relevant license agreements as related to determining a FRAND rate, granting defendant Oppo's request to compel plaintiff Panasonic to produce all agreements covering patents declared essential to 4G standards with respect to mobile devices.

However, in mid-May, the Mannheim Local Division reached a different result—explicitly declining to follow the Munich Local Division's decision—with respect to a similarly wide-ranging motion to compel from Oppo, denying a request to order the production of 3G or 4G license agreements. The court did so based on an overarching interpretation of EU antitrust law, explaining that under *Huawei v. ZTE*, a patent owner is obligated to provide a willing implementer with a written FRAND license offer that specifies the manner in which it was calculated. Under this aspect of *Huawei*, the court held, requiring a patent owner to produce all 3G and 4G licenses would be “inappropriate” if the implementer were found to be unwilling—a determination that had not yet been made in this case. Moreover, the court ruled that under *Huawei*, a SEP owner may justify an offer's FRAND-ness, to satisfy its duty of transparency, by pointing to an existing licensing program, which it found Panasonic had done by submitting a pair of comparable licenses. Making this showing through a subset of the relevant agreements, the court additionally determined, was also consistent with *Huawei*, which provides that parties to a SEP negotiation must follow “recognized commercial practices”. Here, the court found that parties following such practices in a “result-oriented” SEP negotiation would “limit themselves to a manageable number” of agreements to avoid bogging down the proceedings.

Beyond those initial SEP rulings, the court has also begun to fill in the gaps on other issues relevant to NPE litigation. One such issue relates to the court's discretion over whether to require plaintiffs to provide a security to cover the defendant's litigation costs, with local divisions again taking divergent positions.

Specifically, in late April, the Munich Local Division [denied](#) three defendants' request to order a US-based NPE, [Network System Technologies LLC](#), to provide a security for their expected litigation costs due to concerns that the plaintiff's financial position (its lack of physical assets and allegedly “limited funds”), combined with its location outside the EU, would make a subsequent cost order unrecoverable. The court found that the NPE's “light organization” is appropriate for its business of patent monetization and that the defendants had provided no evidence showing a risk of outright insolvency, noting that its patents could be seized if necessary. Additionally, the court held that the defendant's location could not be relevant because it may not discriminate against non-EU defendants, remarking that in any event, it saw no reason why it would be any more difficult to enforce a UPC judgment or cost order in the US than it would for those from any other non-US court.

However, the Paris Local Division reached a very different conclusion in late May in litigation from another US NPE, [ICPillar LLC](#). While the court again found that the plaintiff's US location did not justify a security, it found that there was sufficient risk that ICPillar could not cover the defendant's costs due to its limited source of income (derived only from patent assertion) and the lack of public records of its financial situation. The court additionally held that ICPillar's evidence of insurance covering its potential liability was insufficient to avoid a security because this type of insurance is designed to benefit the

plaintiff, not the potential rights of the defendants, and because the policy's actual terms had not been disclosed. The court then ordered ICPillar to provide a €400K guarantee from a bank licensed in the EU—rejecting its request to allow a guarantee from a bank licensed to operate in the US (though noting that there were banks licensed in both the EU and the US that would be permissible).

As the court moves forward with its first batch of SEP suits, stakeholders have closely watched these and other rulings by the UPC on a variety of other issues impacting cases throughout the course of litigation, including the court's approach to preliminary injunctions—and its openness to requests for such relief for NPEs. See [here](#) for more on those rulings.

Patent Market Update: Significant Verdict and New Filings in Funded Campaigns; Notable Deals Revealed

– ***\$847M Damages Award Returned in Funded Campaign***

In late June, an Eastern District of Texas jury [returned](#) a verdict in favor of [General Access Solutions, Ltd.](#) (f/k/a Access Solutions, Ltd.) (GAS), awarding \$583M in damages for the infringement of a first patent-in-suit; \$264M, for infringement of a second. Chief Judge Rodney Gilstrap presided over the trial, in a case that GAS filed against Verizon (Verizon Wireless) back in October 2022—just a couple of months after GAS secured, according to public records, litigation funding.

The jury completed a [form](#) finding infringement of both patents and a failure to prove invalidity of certain claims of the two patents-in-suit due to lack of written description or enablement, as well as assigning the damages figures noted to each patent. GAS's campaign has been active since May 2016, when it sued Sprint (now part of Deutsche Telekom). An April 2023 case against Deutsche Telekom's T-Mobile remains active before Judge Gilstrap. The parties there are submitting claim construction briefing. RPX members can access coverage of this trial and GAS's campaign [here](#).

– ***New Funded Litigation Campaigns***

RPX subject matter experts spend considerable time collecting and reviewing public records to identify relationships between patent holders and specific third-party funders. This systematic review has resulted in a robust, living database offering RPX members an unparalleled view into the litigation funding space.

Through this process, RPX has flagged several litigation campaigns initiated during Q2 that can be tied to prominent litigation finance firms and/or a private equity firm with a litigation finance desk.

RPX members can access a round-up of those new, funded patent litigation campaigns [here](#), with coverage also available in our members-exclusive webinar that accompanies this quarterly report.

– ***Notable Patent Transactions Made Public in Q2***

RPX also flagged several patent transactions during Q2 that were deemed notable in light of the involvement of operating company portfolios and/or assignees with a history of litigating patents—some with the backing of third-party litigation funders. An entry point into those noteworthy assignments is available to RPX members [here](#).

Additional RPX Patent Market Intelligence

For further analysis and up-to-date information on patent litigation and market trends, visit [RPX Insight](#).