

## Q3 in Review

# Q3 in Review: IPR Restraints Tighten as SEP Venues Spar over Interim Licenses

US NPE litigation increased by 10% in the third quarter of 2025, when such plaintiffs added 530 defendants to patent campaigns. NPE filings are up by 23% for the year to date.

The third quarter also brought additional changes to the Patent Trial and Appeal Board (PTAB), which saw a series of rulings from former Acting USPTO Director Coke Morgan Stewart that continued to expand the use of discretionary denials in America Invents Act (AIA) reviews. Early indications are that this approach may continue under new USPTO Director John A. Squires, who was confirmed as Q3 drew to an end.

Over the last three months, the Unified Patent Court (UPC) further cemented its position as a key European patent venue, following a decision earlier in the year that extended its reach outside the EU. Q3 also saw a series of significant developments related to standard essential patent (SEP) litigation, including recent pushback from the UPC and a top German court against UK rulings forcing SEP owners to offer interim licenses in disputes over fair, reasonable, and nondiscriminatory (FRAND) rates.

The third quarter was a busy month on the IP policy front as well, with the *Wall Street Journal* reporting in August the rumored consideration by the US Commerce Department of a value-based patent fee system. Also during August, Commerce Secretary Howard Lutnick notified Harvard of a plan for march-in on the university's patents under the Bayh-Dole Act.

Finally, RPX continues to monitor disclosure of third-party litigation funders in ongoing patent campaigns; it also conducts extensive review of public documents for evidence of funding relationships. During Q3, roughly a dozen plaintiffs tied to litigation funders started new patent campaigns. RPX also flagged multiple notable disclosures made during the quarter that shed light on funding sources.

- [Litigation Update: NPE Filings Increase by 10% in Third Quarter](#)
- [Venue Update: East Texas Stays on Top in Q3 Amid Notable Verdict Activity](#)
- [Market Sector Update: Established Monetizers, Funded Plaintiffs, and Inventor-Controlled NPEs Target E-Commerce and Software in Q3](#)
- [PTAB Update: Expansive Discretionary Denial Practices Appear Likely to Continue](#)
- [UPC Update: Court Issues First Injunctions Covering Non-UPC Countries](#)
- [FRAND Update: UPC and German Court Push Back Against UK SEP Caselaw](#)
- [US Policy Update: Rumored Value-Based Patent Fee, John Squires Confirmed as USPTO Director](#)
- [Patent Market Update: New TPLF Disclosures and Campaigns, OpCo Patents on the Move](#)

## Litigation Update: NPE Filings Increase by 10% in Third Quarter

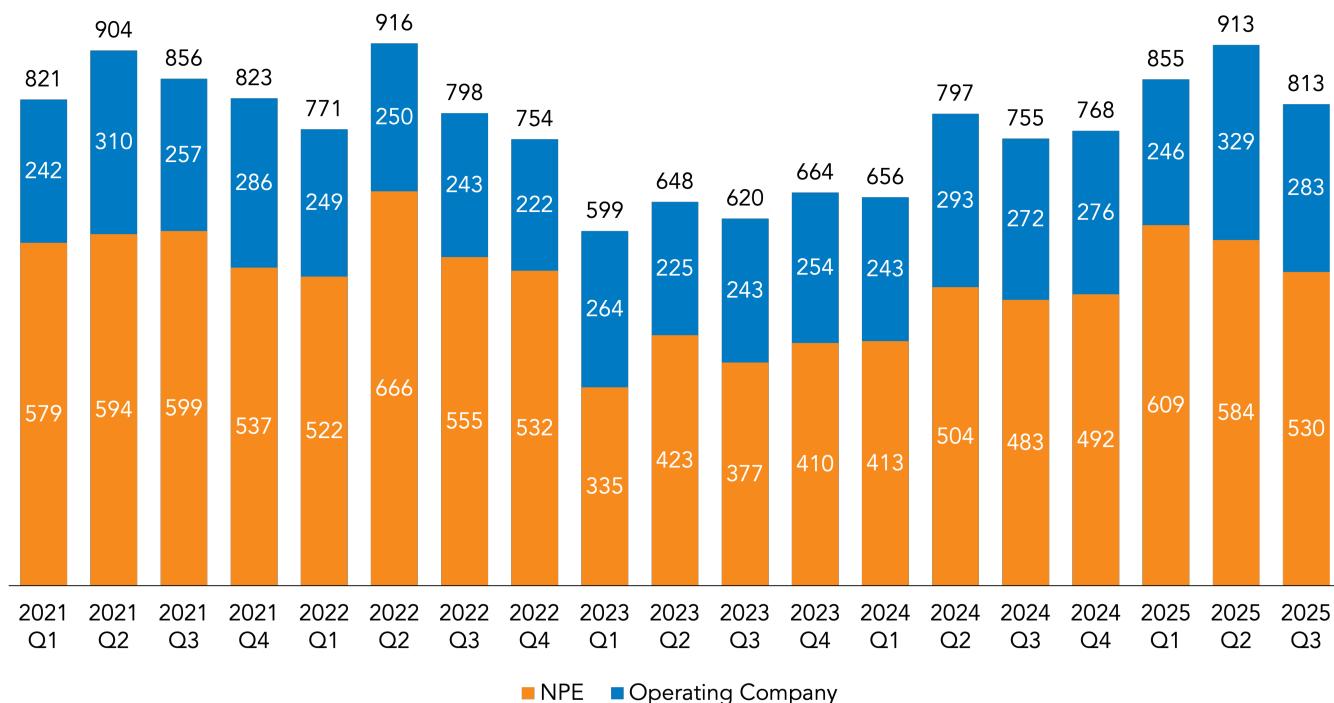
NPEs added 530 defendants to patent litigation campaigns in Q3 2025, a 10% increase from the third quarter last year. Q3 NPE filings were 9% less than in Q2 2025 but exceeded the trailing Q3 average for 2022-2024 by 12%. So far this year, NPE filings are up by 23%, as also noted above.

Operating company plaintiffs added 283 defendants this past quarter, or 4% more than in Q3 2024. Litigation by operating companies was down by 14% compared to the second quarter but was up by 12% compared to the trailing Q3 2022-2024 average. In Q1-Q3, operating company litigation went up by 6%.

Defendants Added	Change Compared to:			
	Q3 2025	Q3 2024	Q3 2022-2024 Average	Q2 2025
NPE	530	10%	12%	-9%
Operating Company	283	4%	12%	-14%
Total	813	8%	12%	-11%

Overall, patent plaintiffs added 813 defendants in the third quarter of 2025, or 8% more than in Q3 2024 and 11% less than Q2 2025, also beating the trailing average by 12%. Filings are up by 17% in Q1-Q3.

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



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.

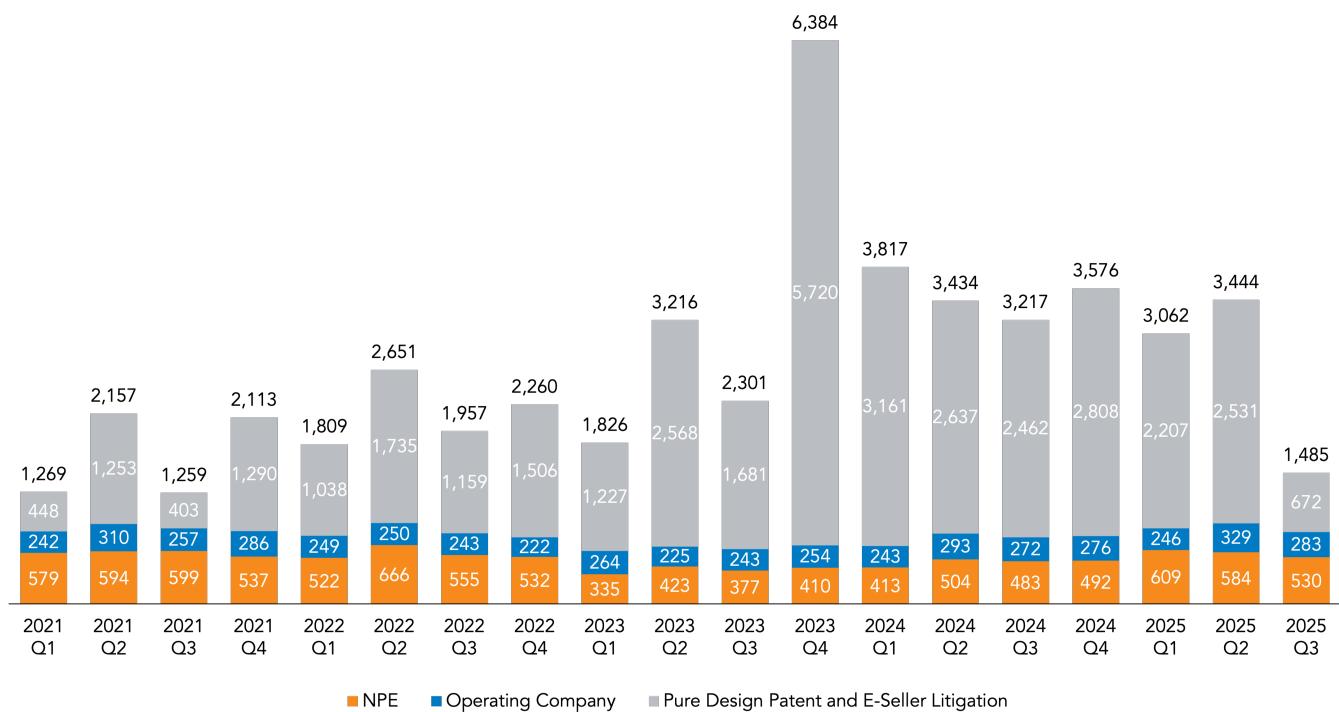
This category of litigation is shown in grey below to illustrate its magnitude. As shown by the rightmost bar, e-seller litigation in Q3 2025 accounted for 672 defendants added, or 45% of all litigation during

the quarter—a much smaller number than in recent quarters past. While the number for Q3 remains subject to the caveat about defendants potentially having multiple online storefronts noted above, the decrease could also be related to efforts by some judges to apply stricter procedural rules to e-seller cases. In the Northern District of Illinois, by far the top venue for such litigation, District Judge John F. Kness issued an August 8, 2025 order that decried the “deluge of Schedule A cases” (referring to the sealed “Schedule A” complaint attachments that name defendants in e-seller cases) in his and other districts, arguing that these cases work “only by stretching applicable procedural rules past their breaking point”. Judge Kness determined that because these cases routinely award preliminary injunctive relief without adversarial proceedings, involve widespread sealing, and rely upon improper mass joinder of defendants, the relief sought should be obtained “by other means”.

The District of New Jersey appears to be following Judge Kness’s lead. On September 25, Chief Judge Renée Marie Bumb issued an order requiring plaintiffs in e-seller cases to “plausibly plead allegations of personal jurisdiction”, including “some evidence of each defendant’s contacts with the forums” (emphasis in original)—stating that “[t]he law is well-settled that simply being an online seller on Amazon isn’t enough”. The order also limits each e-seller complaint to a “single defendant or group of defendants acting under the same operator”.

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

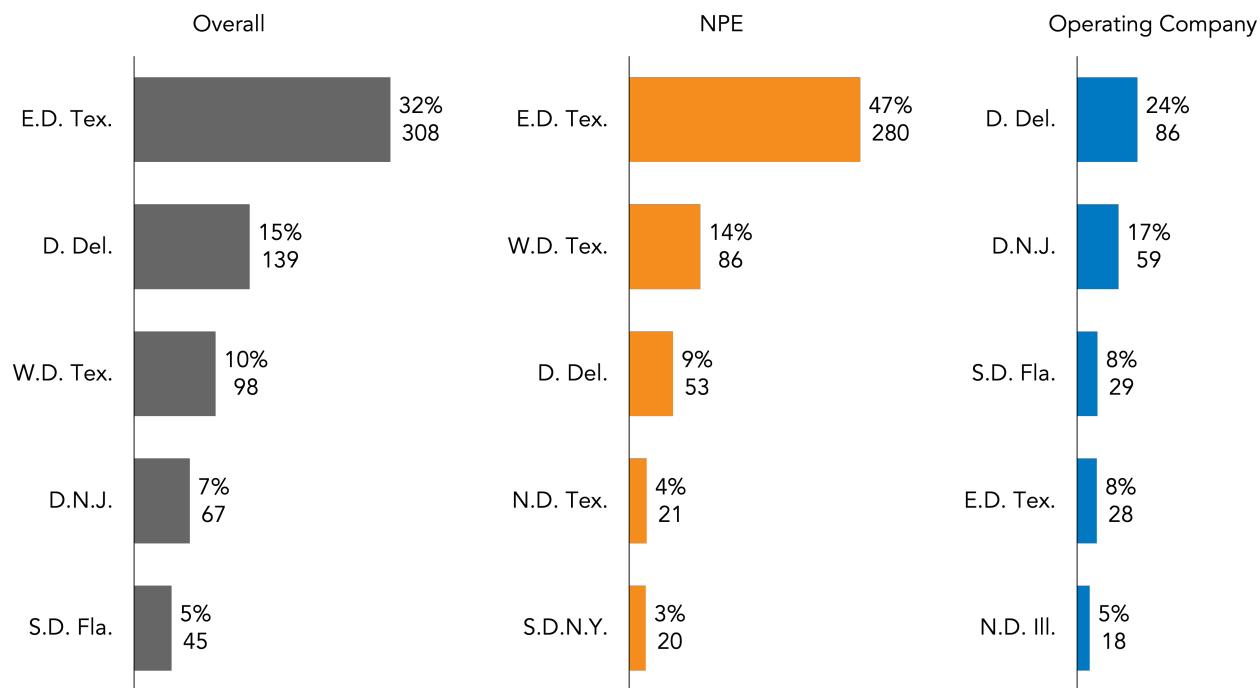
### All Patent Litigation Including Design Patent and E-Seller Litigation (Defendants Added)



## Venue Update: East Texas Stays on Top in Q3 Amid Notable Verdict Activity

The Eastern District of Texas was the top patent district for overall litigation (i.e., with no filter for plaintiff type) and NPE litigation in Q3 2025, also holding the number-four spot for operating company litigation. In second for overall litigation was the District of Delaware, which also held third place for NPE litigation but was the most popular district for operating company litigation. Meanwhile, the Western District of Texas trailed behind Delaware in third place for overall litigation and was in second for NPE litigation, failing to break the top five for operating company filings.

### Top Patent Litigation Districts in Q3 2025 (Defendants Added and Percentage of Total)

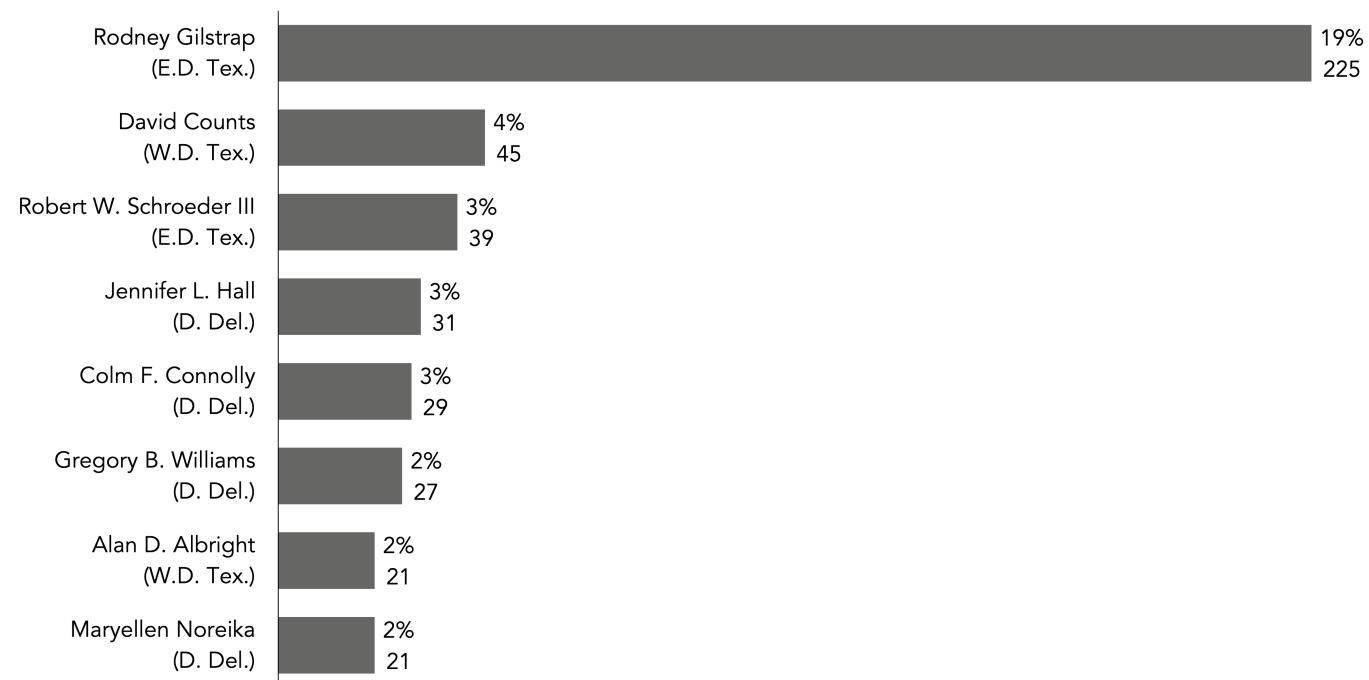


The Eastern District, long a patent hotspot, saw the two largest patent damage awards of the third quarter—a jury awarding \$175M to [Headwater Research LLC](#) in July and another awarding \$78.5M to [Anonymous Media Research Holdings LLC](#) in September. The latter is notable in part because of the [starkly different results](#) between that case and another parallel Anonymous Media suit that was transferred from the Western District of Texas to the Northern District of California. While the East Texas case saw District Judge Rodney Gilstrap deny a motion to stay pending the outcome of certain *inter partes* review (IPR) proceedings, issue a claim construction order, and grant summary judgment of no invalidity under *Alice* prior to the verdict, the California case was stayed pending IPR, with District Judge Vince Chhabria invalidating the asserted patents under *Alice*—eleven days after the conflicting ruling by Judge Gilstrap.

The third quarter was also notable for posttrial activity that led to the fall of two other large damage awards. In September, the Federal Circuit [overturned](#) a \$166.3M verdict issued in January 2023 for inventor-controlled [Finesse Wireless, LLC](#) against AT&T, finding that it had been based on flawed testimony from the plaintiff's infringement expert—including some the court found to be “contradictory”, “confusing”, and “unclear”—and thus could not stand. Also in September, District Judge Robert W. Schroeder, III [toppled](#) a \$112M verdict returned against Samsung in May 2025 in litigation from Maxell, granting judgment as a matter of law of noninfringement for all three tried patents and for invalidity as to two of those patents.

Judge Gilstrap, who passed the Eastern District's chief judgeship to Judge Amos L. Mazzant in March 2025, once again oversaw the most patent litigation in the nation last quarter.

## Top District Judges in Q3 2025 (Defendants Added and Percentage of Total)



In second place was Western District of Texas Judge David Counts, who rose in the rankings after adopting a similar case management order to District Judge Alan D. Albright—once the nation’s top patent judge but tied for seventh place with Delaware District Judge Maryellen Noreika in Q3. Judge Albright, a former patent litigator, came to oversee the bulk of the nation’s patent litigation after openly seeking to attract such cases to his courtroom—enabled by a filing loophole that let plaintiffs target a specific division, thus guaranteeing that anyone filing in Waco would get Judge Albright (Waco’s only district judge). A 2022 order targeted that concentration, ordering that all Waco patent cases be randomly assigned among a larger group of judges, including Judge Albright. His patent caseload has slimmed dramatically as a result.

While Judge Counts also presides in a single-judge division (Midland-Odessa), his patent docket is not subject to a similar case reassignment order, thus enabling plaintiffs to target his courtroom in the same manner they once could for Judge Albright—and, by all accounts, they have done so.

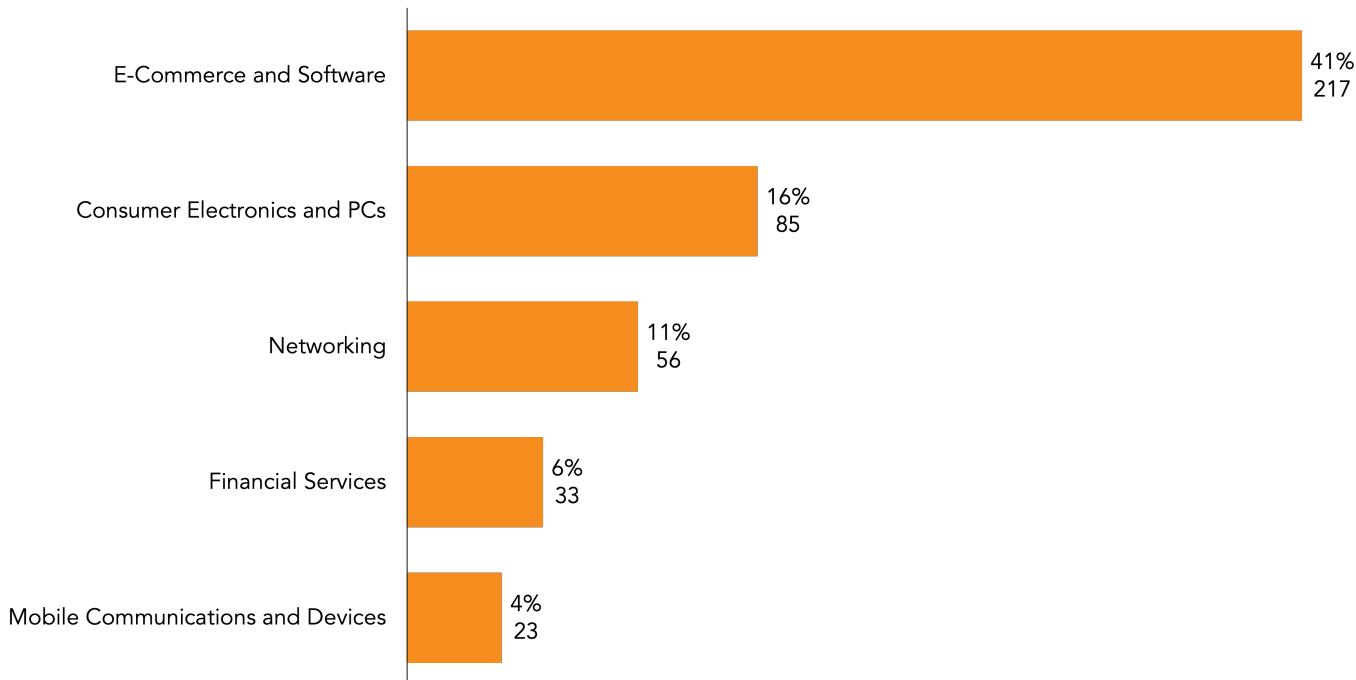
Earlier this year, Judge Albright announced that he would move from the Waco Division to the Austin Division. While he has stated that he would do so while still managing Waco’s docket until his replacement is confirmed, he has increasingly been hearing patent cases in Austin, where he has continued to follow a familiar approach to motions to transfer for convenience. Under that approach, the filing of such motions in Judge Albright’s courtroom triggers a new, distinct phase of patent litigation, the “convenience transfer phase”—one that involves a period of venue-related discovery and subsequent briefing. In one Austin case, Judge Albright vacated in July a recommendation by Magistrate Judge Mark Lane that a case be transferred to the Northern District of California because the court had not ordered venue discovery, subsequently rejecting a motion for reconsideration—holding that now that the suit was before him (Judge Albright), such discovery must now occur to enable a suitably “fulsome record”.

More on Judge Albright’s approach, including with respect to the various transfer factors, can be found [here](#).

## Market Sector Update: Established Monetizers, Funded Plaintiffs, and Inventor-Controlled NPEs Target E-Commerce and Software in Q3

The top market sector for NPE litigation in Q3 2025 was E-Commerce and Software, accounting for 41% of the defendants added to patent litigation campaigns during the quarter. Consumer Electronics and PCs saw the second highest amount of NPE litigation in Q3, followed by Networking, Financial Services, and Mobile Communications and Devices.

### Top NPE Market Sectors in Q3 2025 (Defendants Added)



Among the NPEs that filed E-Commerce and Software litigation this past quarter were several linked to established monetization firms. One was [Fortuna IP, LLC](#), a [Dominion Harbor Enterprises, LLC](#) plaintiff that in mid-September [launched a new campaign](#) targeting casino gaming machines that support certain rewards programs. In early August, [Equitable IP Corporation](#) also [kicked off a campaign](#) over branded contactless consumer credit cards through plaintiff [Induction Devices LLC](#). Additionally, several NPEs associated with Dynamic IP Deals, LLC (d/b/a DynalIP) and affiliated entity [Pueblo Nuevo LLC](#) filed suits in this sector in Q3: Throughout September, [MISSED CALL, LLC](#) added a [trio of cases](#) to its ongoing campaign, tagging communication platforms that notify users of missed calls; in late August, [Random Chat LLC](#) filed [another complaint](#) over customer support chat services; and throughout July, [Wolverine Barcode IP LLC](#) also continued to [file cases](#) against providers of mobile apps with QR code support. Moreover, in mid-July, Texas monetization firm [Empire IP LLC](#) added another case to its campaign [targeting augmented reality features](#) for viewing virtual items within a physical room. Additionally, [Artificial Intelligence Industry Association, Inc.](#) (AIIA), which describes itself as having a membership-based “cooperative” licensing model, [filed its first infringement cases](#) throughout August and September—alleging infringement through a variety of products that allegedly use synthetic image generation for machine learning, among other functionality.

Also joining the fray were at least two plaintiffs with litigation funding: In late August, plaintiff [Vusura Technology LLC](#) [began a new campaign](#) over contact center systems, litigation that public records reveal is backed by a funder linked to several other plaintiffs. Furthermore, plaintiff [SitNet LLC](#) brought its [second complaint](#) in July with the backing of a prominent litigation funder, targeting social media emergency response and advertising functionality.

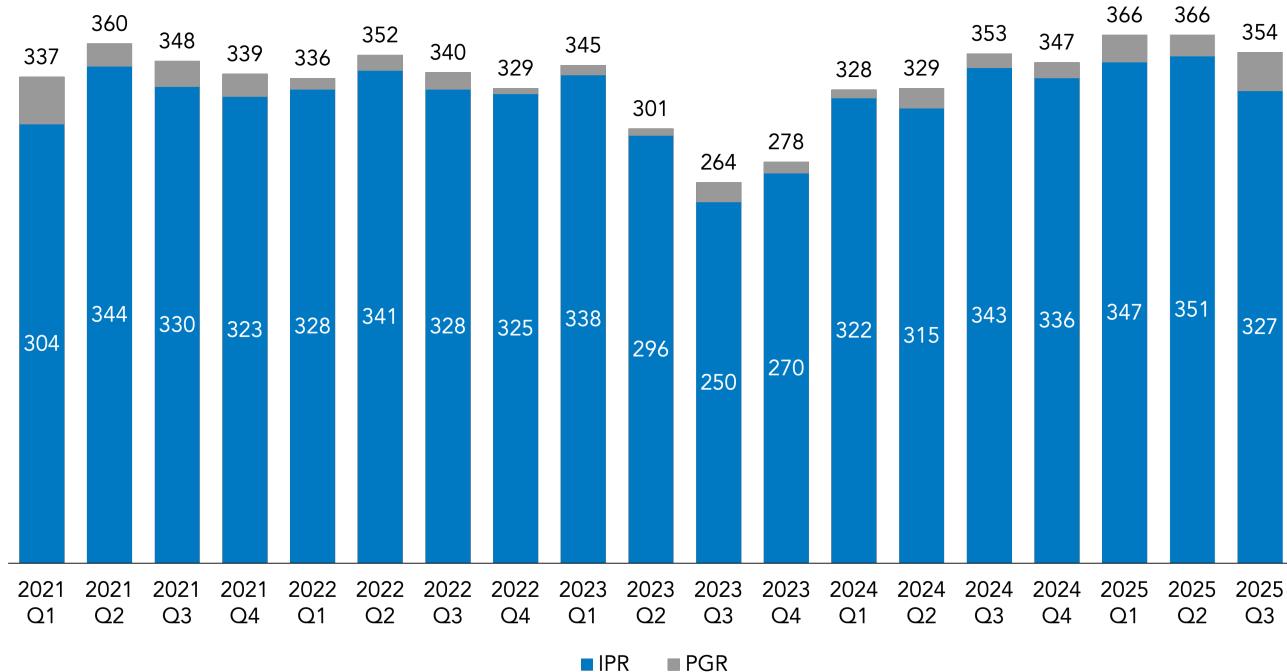
Additionally focusing on E-Commerce and Software litigation this past quarter were a variety of plaintiffs associated with notable individuals active in the patent assertion space. In particular, one patent monetization professional who appears to be linked to a growing number of NPE plaintiffs was apparently behind several plaintiffs hitting the sector in Q3: [ContactWave LLC](#), which in late September filed a [new wave of cases](#) in its ongoing campaign targeting various e-commerce platforms and related advertising services; [CheckWizard LLC](#), which in late August filed a [second round](#) in its campaign targeting mobile check depositing within banking apps; and [Querytron LLC](#), which in late July brought a [wave of complaints](#) over various business-to-business e-commerce platforms.

A variety of inventor-controlled NPEs hit the E-Commerce and Software space in the third quarter as well—including [EasyWeb Innovations, LLC](#), which in mid-September [filed a case](#) over certain social media authentication functionality, asserting the newest-issued patent from a family previously gutted by Alice. Also targeting a social media platform was Florida plaintiff [Search & Share Technologies LLC](#), which in early September [began](#) its first campaign over functionality related to content search and ranking. [ToutVirtual, Inc.](#), also in early September, [initiated a campaign](#) over cloud computing technology and related management software. In late August, inventor-controlled [Yopima LLC](#) added a [new round of cases](#) against delivery and/or rideshare mobile apps with device location tracking functionality. Additionally in August, inventor-controlled [H.S. Treasure Contacts Ltd](#) filed a pair of complaints (see [here](#) and [here](#)) over mobile apps with features for sending app download links to prospective users; while [Joto, Inc.](#) filed its [first litigation](#), with e-commerce platform features for recommending items for sale or events, as well as for providing targeted advertising, at issue.

## PTAB Update: Expansive Discretionary Denial Practices Appear Likely to Continue

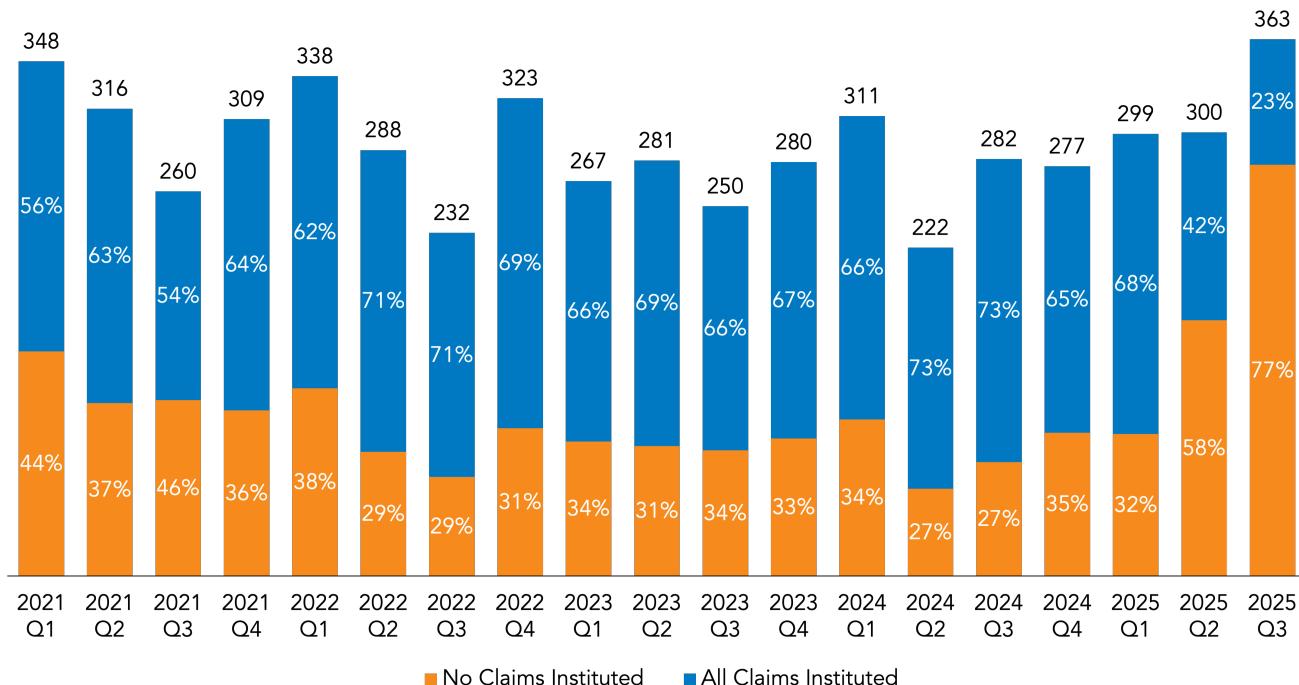
The Patent Trial and Appeal Board (PTAB) saw 354 petitions for America Invents Act (AIA) review in the third quarter of 2025, including 327 petitions for *inter partes* review (IPR) and 27 petitions for post-grant review (PGR). Filings were essentially flat compared to Q3 2024, which saw 353 petitions filed; and were 3% lower than Q2, during which 366 petitions were filed.

### AIA Review Petitions Filed



The PTAB instituted trial in just 23% of the AIA review petitions addressed in Q3, a significant drop from that same quarter last year (during which the institution rate was 73%) and from Q2 2025 (42%)—which itself was down substantially compared to Q1 (68%).

### AIA Review Institution Rates\*



The downward trend in institution rates is largely the result of changes to the PTAB’s discretionary denial practices that were implemented over the course of this year by Deputy Director Coke Morgan Stewart, who served as acting USPTO director until the September 18 confirmation of new USPTO Director John Squires.

Key among those changes was the February 2025 withdrawal of June 2022 guidance issued by former Director Kathi Vidal that had limited discretionary denials based on parallel litigation under the NHK-Fintiv rule in several respects, leading to a drop in discretionary denials. The following month, Stewart assumed a more direct role in addressing discretionary denials—establishing a revamped, two-stage process for AIA review institution under which the director first decides requests for discretionary denial before a panel then considers the merits of a petition. Under that process, the director makes that discretionary denial assessment based on an expanded set of factors—including some based on various PTAB precedents, including *Fintiv*; *General Plastics*, which lays out factors under which multiple petitions from the same petitioner can be discretionarily denied; and *Advanced Bionics*, which covers discretionary denials where the USPTO has previously considered the asserted prior art or arguments. The new process also allows the director to issue such denials based on the PTAB’s workload, including its ability to hit the statutory deadlines for AIA review trials.

#### **– “Settled Expectations” Factor Applied More Broadly in Q3**

Stewart has since used that authority to issue a series of rulings that have markedly expanded the use of discretionary denials. Perhaps the most significant, and most hotly debated, has been a line of decisions that deny institution based on the “[s]ettled expectations of the parties, such as the length of time the claims have been in force” (another one of the factors established under the March memorandum detailing the new institution process). Beginning with her early June [decision](#) in *iRhythm Technologies v. Welch Allyn*, Stewart has made it clear that she will deny institution solely on the basis of such “settled expectations” for patents that have been in force for longer periods of time.

Stewart has held that there is no bright-line rule for exactly how long patents must be in force. However, the age of the patents subjected to denial on this basis has been steadily ticking downward, most recently including rejections of IPRs against patents issued as recently as three years ago (see, e.g., the August 22 ruling in *Samsung v. GenghisComm*, [IPR2025-00788](#), issued by Acting Deputy Chief Administrative Patent Judge Kalyan K. Deshpande, to whom Stewart (while still acting director) delegated her discretionary authority over institution for circumstances where she has a conflict.)

Stewart has also ruled that subsequent acquirers of older patents can still benefit from “settled expectations”, even when they obtained the challenged patents much more recently than the issuance date. For example, Stewart found that there were “strong settled expectations” for a 17-year-old patent even though current owner [Valtrus Innovations Limited](#) acquired it in 2021, also doing so in an IPR against [Polaris PowerLED Technologies, LLC](#) for nine- to 12-year-old patents acquired in 2021 and 2022 despite the petitioner having stipulated to broader estoppel (a so-called *Sotera* stipulation, discussed further below) and the fact that the parallel infringement litigation had been stayed.

On the other hand, Stewart has additionally held that a petitioner’s assertion of settled expectations, based on the patents’ lack of prior litigation and an evaluation by the petitioner that purportedly found no infringement, did not overcome a patent owner’s “strong settled expectations” for the challenged patents (ten and 17 years old).

#### **– Time to Trial Considerations**

Also notable are decisions denying review based on the proximity of the PTAB’s final written decision deadline and the scheduled trial date in parallel litigation—a factor that Stewart has increasingly invoked since the withdrawal of Vidal’s guidance, which had limited such rulings.

In some of her Q3 decisions based on this factor, Stewart has weighed trial timing and other factors relating to parallel litigation status over settled expectations.

For instance, in late August, Stewart instituted two petitions ([IPR2025-00785](#), [IPR2025-00786](#)) against older patents (here, patents that issued 14 and 18 years ago, and are respectively held by two different [Intellectual Ventures LLC](#) entities), where those patents also had pending reexaminations, because the two parallel district court cases respectively had a trial scheduled after the PTAB's final written decision deadline and had not yet scheduled a trial.

That said, in other rulings "settled expectations" have won the day. For example, in another case, Stewart denied review where a trial would likely occur after the Board's final decision deadline because the patent had been in force for seven years (*OnePlus v. Pantech*, [IPR2025-00637](#)).

#### **– IPR Estoppel in the Spotlight after Federal Circuit's *Ingenico* Decision**

Also significant has been Stewart's approach to discretionary denial issues related to IPR estoppel, which prevents PTAB petitioners from later asserting in district court invalidity "ground[s]" that they "raised or reasonably could have raised" in their earlier IPR. In May 2025, the Federal Circuit's *Ingenico v. IOENGINE* decision resolved a longstanding district court split over whether IPR estoppel applies for certain grounds based on system prior art, where a product is used to show that the claimed technology was in public use before a patent's priority date. The court held that grounds based on system art are not subject to estoppel, even where the prior art references used as evidence of the system's public use were cited for other prior art invalidity grounds in an IPR (anticipation or obviousness), because public use is not an available invalidity theory in an IPR. The *Ingenico* decision, which the full Federal Circuit declined to review on September 25, has led to a broader debate over the proper bounds of the IPR estoppel standard.

Among the issues raised in that debate was the decision's potential impact on stipulated estoppel in PTAB proceedings, under which petitioners agree not to assert invalidity grounds that they raised or reasonably could have raised at the PTAB in a parallel district court case—i.e., by stipulating to a broader form of estoppel in order to minimize the risk of overlapping invalidity issues, in order to avoid discretionary denial under the *NHK-Fintiv* rule. Some stakeholders predicted that this practice, known as so-called *Sotera* stipulations, could change as a result of both *Ingenico* and the withdrawal of the *Vidal* guidance, which had previously treated these stipulations as a safe harbor from *Fintiv*—with petitioners possibly required to issue broader stipulations as a result.

That now appears to be happening. For instance, in late August, Stewart vacated the prior institution decision in an IPR ([IPR2025-00188](#)) against [WSOU Investments, LLC](#) in which petitioner Cisco had offered a *Sotera* stipulation, in part citing the fact that the petitioner's stipulation did not encompass all possible grounds beyond those that can be raised in an IPR. Stewart further noted that the defendant had, in a parallel district court case, raised invalidity arguments combining the prior art from this proceeding with system art.

#### **– Rule Requiring More Expansive Final Decisions Could Trigger Workload-Related IPR Denials**

The director may also deny institution based on concerns over the PTAB's workload, as noted above—a concern that has been especially top-of-mind given staffing reductions impacting the Board as a result of broader cost-saving measures being implemented across the federal government by the Trump Administration. Another change implemented by the USPTO in the third quarter could further impact the Board's workload—potentially justifying further discretionary denials.

That change relates to the rules governing which claims the PTAB must address in final written decisions. While the PTAB has long been required to institute trial as to all claims challenged in a petition if the petitioner has shown a reasonable likelihood of success for at least one claim (as established in the US Supreme Court's 2018 opinion in *SAS Institute v. Iancu*), there had not previously

been a similar rule that applied at the final written decision stage. This essentially gave an offramp that allowed PTAB panels to issue such final decisions that focused on dispositive issues. However, a July 29, 2025 [memorandum](#) issued by PTAB Chief Administrative Patent Judge (APJ) Scott Boalick appears to have eliminated that offramp: Barring “extraordinary circumstances”, the memo provides that for all AIA reviews in which an oral hearing has not taken place, all PTAB panels “will address all grounds raised in the petition in their final written decisions”.

- **USPTO Under Squires: Discretionary Denial Status Quo but Support for Section 101 Changes**

The confirmation of Director Squires has naturally raised the question of whether the USPTO will continue with its more expansive approach toward discretionary denials, now that former Acting Director Stewart has returned to her role as Deputy Director. However, on September 25, Squires delegated his authority over IPR institution back to Stewart—suggesting that USPTO will maintain its current course on this issue, at least for now.

While the discretionary denial status quo may persist for the time being, one early indicator of change under Squires came in a closely scrutinized decision that revisited a Section 101 rejection for a machine learning application from DeepMind Technologies, a Google subsidiary. In *Ex Parte Desjardins*, an Appeals Review Panel—convened *sua sponte* prior to Squires’s confirmation, but ultimately comprised of Squires, Acting Commissioner for Patents Valencia Martin Wallace, and Vice Chief Administrative Patent Judge Michael W. Kim—determined that the original PTAB panel that affirmed the rejection erred by concluding that the challenged claims are directed to an abstract idea, in particular a mathematical formula, without the addition of an inventive concept.

Squires, writing for the panel, determined that the claims were instead directed to an “improvement to how the machine learning model itself operates, and not, for example, the identified mathematical calculation”. More broadly, he argued that his case “highlights what is at stake” as a result of the “confusing nature” of Section 101 caselaw, asserting that “[c]ategorically excluding AI innovations from patent protection in the United States jeopardizes America’s leadership in this critical emerging technology”.

That observation echoes [statements by Squires](#), made during his confirmation process as director, that the Supreme Court adopted an overly restrictive test for patent eligibility in *Alice*—one that may disadvantage US innovation, given the wider patent eligibility standards in China and elsewhere. Given that those statements came in response to questions about his views on certain legislative reform proposals—in part, referring to the now-pending Patent Eligibility Restoration Act ([PERA](#))—it is unsurprising that some (e.g., Professor Dennis Crouch of [Patently-O](#)) have read *Desjardins* as further indicating Squires’s support for Section 101 reform.

On October 9, following a hearing on the PERA, Squires released a [statement](#) that included an even more direct push for a broadened version of Section 101. Recounting the points where his professional experience intersected with the evolving debate over patent eligibility, including his work on an *amicus* brief in the Federal Circuit *Bilski* case, Squires argued that Section 101 must “remain expansive” to fulfill its intended purpose. “The expansiveness of Section 101 is not a flaw; it is a feature”, Squires explained. “It is what allows our system to evolve with science and to channel creativity into the marketplace where it creates jobs, spurs investment, and strengthens the nation”. In particular, he argued that patents are important for national security as well as innovation, and that “robust patent protection” is needed to enable responses to the “new generation of challenges”—including “cybersecurity threats from state actors”, the AI race, the clean energy transition, and boundary-pushing biotechnology.

### – Reexams Jump as Petitioners Face IPR Constraints

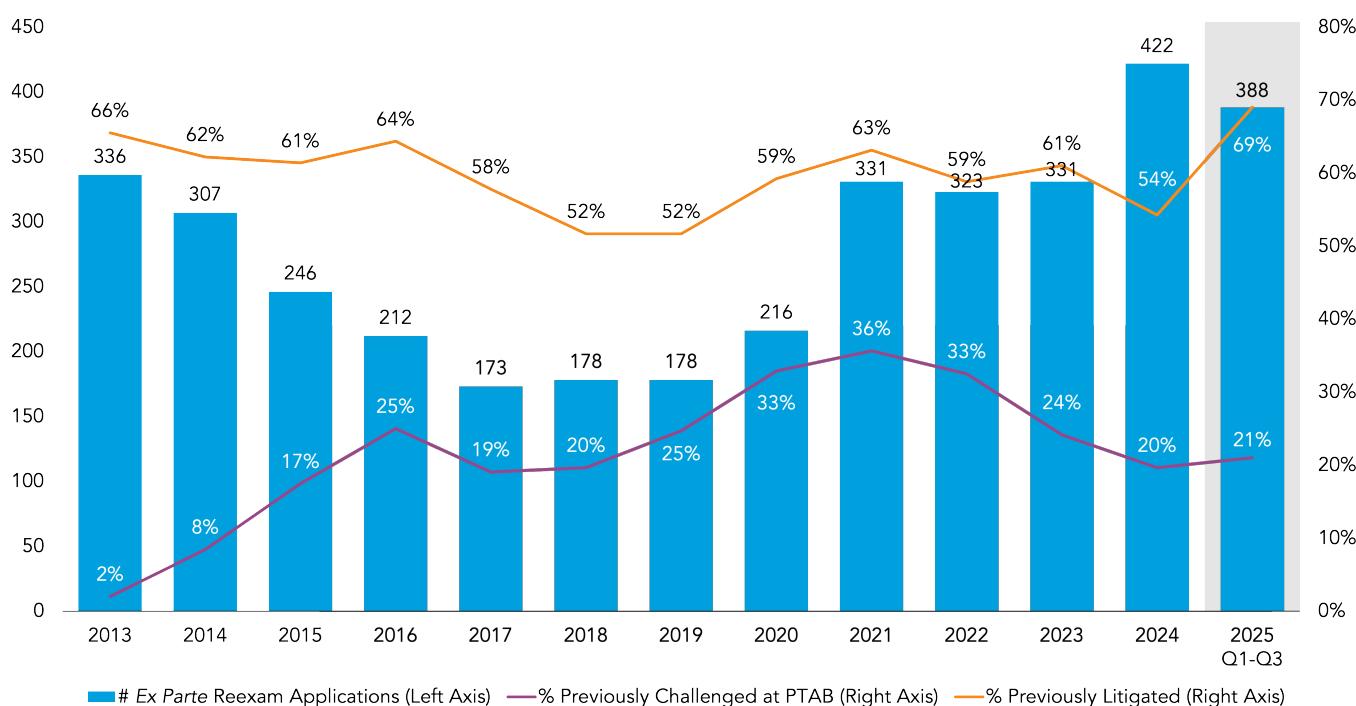
As the USPTO further expands the use of discretionary denials, the resulting constraints on IPR availability have continued to push would-be petitioners toward *ex parte* reexaminations—which, while slower than IPRs, are not subject to discretionary denials to the same extent.

As RPX has previously noted, the popularity of reexams has tended to climb in response to policy shifts bolstering discretionary denials: In 2020, the year that the *Fintiv* decision was designed as precedential, the number of requests for *ex parte* reexam increased by 21%, and then by 53% in 2021. While they held steady at about 330 requests per year in 2022 (the year Vidal issued the just-overturned guidance limiting *NHK-Fintiv*) and 2023, they surged by 27% in 2024 (following a decision by Vidal, in [CommScope v. Dali Wireless](#), that limited the “compelling merits” exception then in effect under the 2022 guidance).

Reexams have climbed even more substantially in 2025: After a relatively flat first quarter, reexams swung back upward by 32% in Q2 compared to the same quarter last year (around when the aforementioned rollbacks to Vidal-era *Fintiv* restrictions took place). The biggest jump came in Q3, when reexams rose by 41%—with the highest number of reexams in any quarter from 2019 onward. Indeed, Q3 2025 saw about the same number of reexam requests as the entire year of 2019. Year-to-date through the third quarter, reexams are up by 24% compared to the same period last year.

Additionally, data indicate that the share of patents with reexam requests that have also been litigated in district court was 69% in Q1-Q3 2025, up from 54% last year. Data also show that defendants have requested IPRs for a decreasing share of those same patents, from a peak of 36% in 2021 to 20% in 2024 overall and 21% in 2025 so far.

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



Note: Data as of October 13, 2025. 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.

## UPC Update: Court Issues First Injunctions Covering Non-UPC Countries

The Unified Patent Court (UPC) has reshaped the European patent enforcement landscape since its launch in June 2023, offering plaintiffs the prospect of sweeping injunctive relief and damages spanning all 18 member states. Now, the court could be set to play an even more important role in the wake of a recent decision that expanded the UPC's jurisdiction even further—a decision that led the court to issue its first injunctions covering infringement outside UPC territories in the third quarter.

That February 2025 decision, issued by the Court of Justice of the European Union (CJEU) in *BSH Hausgeräte v. Electrolux*, significantly increased the UPC's reach by establishing that the UPC (and national courts in EU member states) can exercise long-arm jurisdiction over claims of infringement of non-EU patents. The decision thus allows the UPC and EU national courts to award damages and/or impose injunctions for acts of infringement occurring outside the EU, as long as the defendant is domiciled in one of the 18 countries participating in the UPC (for UPC litigation) or in the EU (for national court litigation). *BSH* also established that the UPC and other member state courts may rule on the validity of patents in non-EU countries that are not subject to special jurisdictional rules, though those validity decisions are merely *inter partes* (i.e., they only impact the parties to the case at hand).

The UPC has since issued two notable decisions applying *BSH* to hear claims of non-EU infringement. On July 18, in *Fujifilm v. Kodak*, the Mannheim Local Division (Mannheim LD) issued the [first-ever UPC injunction covering infringement in the UK](#) (which left the EU following Brexit) through lithographic printing plates used in high-volume commercial printing systems. The court also awarded damages in an amount and form to be determined later.

On August 14, the Hamburg Local Division (Hamburg LD) then took *BSH* a step further in *Dyson v. Dreame*, issuing the UPC's [first-ever injunction covering Spain](#) (an EU nation that did not join the UPC). Not only was this also the first time the UPC had granted provisional measures (i.e., a preliminary injunction) under *BSH*, the *Dyson* decision, and a companion ruling, are further notable for endorsing the concept of an "anchor defendant"—where the UPC has jurisdiction over acts of non-UPC infringement from an entity not based in a UPC country as long as another codefendant from the same "company group" is based in a UPC territory.

### - UPC Data and Notable Q3 Infringement Cases

The UPC began publishing monthly statistics on its caseload in March 2024, also releasing its first annual report with additional information, including data on case outcomes, in February 2025. However, the court temporarily paused the release of official case data following its last update in July 2025, covering data through June, to allow the court to complete its transition to a new Case Management System (CMS). That new system, developed in partnership with the European Patent Office (EPO), offers a more streamlined and flexible system than the court's original CMS, which was workflow-based and widely seen as cumbersome and overly complex.

The new CMS fully launched on September 23, 2025, following a more limited release on July 8. Although the UPC has not yet resumed publishing caseload updates, the court has indicated that once they resume (which is set to occur after the CMS becomes "fully operational"), those updates will use "an improved statistical reporting format".

In the meantime, available filing data for Q3 reveal UPC complaints in several multi-jurisdictional patent disputes, including those waged by some familiar plaintiffs. In September, [DivX, LLC](#)—a plaintiff linked to [Fortress Investment Group LLC](#)—brought its video streaming campaign to the UPC, filing a complaint against Netflix in the Munich Local Division (Munich LD). The move followed some mixed outcomes for DivX in its litigation against the same defendant in German national courts, where the plaintiff won two injunctions in 2022 in the Mannheim Regional Court only to see one of its patents invalidated—a ruling that was [reportedly](#) affirmed by the Federal Patent Court in September.

Additionally, [ParTec AG](#), a publicly traded German plaintiff controlled by the same individual behind notable German NPE [IPCom GmbH & Co KG](#), continued to file at the UPC alongside coplaintiff and “licensing agent” [BF exaQC AG](#) after doing so for the first time in October 2024: In August 2025, the two entities brought their third UPC complaint against NVIDIA over an AI processor patent in the Munich LD, following a still-ongoing Eastern District of Texas suit that the same plaintiffs brought against Microsoft in June 2024.

Also bringing its first UPC litigation was German research institution Fraunhofer, starting with a pair of June complaints against HMD in the Hamburg LD, each asserting a different audio codec patent. Fraunhofer then brought a July complaint against Huawei in the Munich LD over an optical mouse patent, with a September complaint against Lenovo in the Munich LD asserting a third audio codec patent.

Certain US assertion entities also brought new UPC litigation in Q3. [AX Wireless, LLC](#), a US plaintiff controlled by Korean monetization firm [Ideahub, Inc.](#), filed complaints in the Munich LD against Xiaomi in July and August 2025, each asserting a different wireless communications patent—apparently marking the NPE’s first cases brought outside the US, where it began litigating in 2022. Another US plaintiff, Illinois-based [Ueran Technology LLC](#), also sued Xiaomi last quarter, filing two mid-July complaints in the Munich LD, each asserting a different wireless communication patent originating with Huawei. The plaintiff—which, notably, does not appear to have filed any other litigation in the US or elsewhere—is controlled by two individuals with leadership roles at global insurance firm VALE Insurance Partners. One of those individuals has also been associated with several US NPEs over the years, including as the manager for plaintiffs [Emergency Alerts Innovations LLC](#) and [Ironworks Patents LLC](#).

## FRAND Update: UPC and German Court Push Back Against UK SEP Caselaw

The third quarter of 2025 saw an escalating series of fights over injunctions and jurisdiction between some of the world's top venues for standard essential patent (SEP) litigation, as well as some notable shifts on SEP policy in some of those same venues.

### German Court and UPC Issue First-Ever Anti-Interim-License Injunctions in SEP Dispute

One of the most significant developments this past quarter came in response to caselaw from the UK, where courts have asserted an increasingly central role in disputes over fair, reasonable, and nondiscriminatory (FRAND) licensing. This began in 2020, when the UK Supreme Court held in *Unwired Planet v. Huawei* that UK courts may set the terms of global FRAND licenses. That decision, plus a number of license rulings perceived as relatively favorable for implementers, have made the UK a popular destination for such parties to seek FRAND determinations.

The UK Court of Appeal upped the ante further in late 2024 and early 2025, issuing a series of decisions holding that a SEP licensor must offer an interim license to an accused infringer that applies until a UK court sets the final terms of a FRAND license—and that the SEP owner will be deemed unwilling if it fails to offer such a license. This prompted a [response](#) from Germany's Munich I Regional Court, which in July issued guidance arguing that the UK approach threatened the jurisdiction of other European courts—and warning that injunctions could result if parties seek interim licenses.

That came to pass in the final days of the third quarter, when that Munich court issued the [first-ever "anti-interim-license injunction"](#) (AILI) in response to a request from [InterDigital, Inc.](#), barring Amazon from seeking an interim license or a declaration that InterDigital had breached its FRAND obligations by declining to grant one. The court held that the request for an interim license from the UK court would constitute an "infringement of the property-like legal position of the patent holder[]" by preventing InterDigital from "fully and successfully" litigating its patents in German courts. This same reasoning "applies equally" to the implementer's request for a declaration on InterDigital's resulting FRAND compliance, the court found—explaining that as a result, the patent owner would be "effectively faced with the choice of whether to accept a restriction of their rights under German patents or UK patents".

Soon after, the Mannheim Local Division (Mannheim LD) of the Unified Patent Court (UPC) issued a similar, parallel AILI, in the process detailing its own rejection of the UK approach. The Mannheim LD found that the true purpose of the UK's interim license rulings was to "deter the SEP proprietor from initiating or continuing any other parallel pending litigation that also concerns SEPs, at least to some extent". Additionally, the Mannheim LD dismissed arguments from the UK Court of Appeal that this approach was not "jurisdictional imperialism", but instead served to prevent duplicative litigation and ease the corresponding burden on foreign courts. The Mannheim LD found this view was "not tenable" and argued that "judicial intervention" should not prevent parties from choosing where they wish to file—and thus from choosing "which costs they wish to incur in conducting litigation".

Notably, the German and UPC AILI decisions were issued on an *ex parte* basis (without a hearing for the opposing party).

More on these rulings can be found [here](#).

### European Commission Prevails in WTO Challenge Targeting Chinese Anti-Suit Injunctions

Another notable Q3 development concerned a different aspect of the broader jurisdictional battle over SEP disputes: anti-suit injunctions (ASIs), which bar an opposing party from seeking or enforcing SEP injunctions in a foreign court. It is not unheard of for parties to request ASIs in disputes with competing FRAND cases in different countries, and for the other party hit with an ASI request to seek an anti-anti-suit injunction (AASI) from the other court (and so on).

In 2022, the European Commission (EC) challenged Chinese courts' practice of issuing ASIs in an action filed with the World Trade Organization (WTO)—arguing that the practice violates certain provisions of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement by unduly restricting EU patent owners' ability to properly enforce their SEPs and thereby creating "barriers to legitimate trade", further objecting to the heavy fines imposed by Chinese courts for violations of their ASIs.

While a WTO panel ruled against that aspect of the EC's TRIPS case in February 2025 (rejecting claims that the ASI policy violated TRIPS, but agreeing with the EC on related transparency claims), an arbitration panel issued an appellate decision in the EC's favor in late July. That arbitration ruling determined that TRIPS members may not "frustrat[e] the functioning of systems" for IP protection and enforcement in other member states, and that China's ASI policy does so in violation of TRIPS by limiting patent owners' ability to enforce their patents and obtain licenses for them in other states. The decision gave China 90 days to comply. On August 20, the WTO disclosed that China had informed its Dispute Settlement Body that the country "intended to implement the Award in this dispute in a manner that respects its WTO obligations".

While the WTO arbitration ruling binds only China, some stakeholders predict that the decision could have an impact on other countries as well. For example, Clifford Chance partner Miquel Montaña stated in an [analysis](#) for *Kluwer Patent Blog* that the decision "may prevent courts of other WTO member states (e.g., Germany, the UK, the USA, etc.) from ordering similar anti-suit injunctions". Chance also remarked that an imbalance could result between Chinese and European courts given both this outcome and the CJEU's decision on long-arm jurisdiction in *BSH*, which (as mentioned above) established that EU member state courts and the UPC can hear infringement claims over non-EU patents. However, further WTO actions could be required before other WTO member states are bound by a similar outcome, as suggested in part by an [analysis](#) by Professor Thomas F. Cotter of the University of Minnesota Law School.

## Top Jurisdictions Diverge on SEP Policy Approach

Other notable developments last quarter came in the arena of SEP policy.

- UK Government Seeks Feedback on Potential SEP Reforms

On July 15, the UK government launched a consultation to seek the public's feedback on potential SEP policy initiatives designed to address certain identified concerns, including a lack of transparency and "asymmetry" between patent owners and implementers with regard to pricing information; a lack of transparency into essentiality, and related difficulties in ascertaining essentiality without litigation; and concerns over the cost of litigation. The consultation states that based on those issues, its objectives are to "help implementers, especially [small- and medium-sized enterprises (SMEs)], navigate and better understand the SEPs ecosystem and [FRAND] licensing"; to improve transparency on pricing and essentiality; and find ways to improve efficiency in dispute resolution, "including arbitration and mediation".

Among the most notable proposals detailed in support of those objectives would be the addition of a Rate Determination Track (RDT) at the Intellectual Property Enterprise Court (IPEC), a specialist court that typically hears smaller, less complex IP cases. The RDT would only be available in "cases where infringement, validity and essentiality are not in dispute" and "would provide a binding rate determination on request of either the licensor or licensee". The consultation also asks whether patent owners should be required or incentivized to disclose certain information related to standards for their patents, in order to establish a SEP database to be run by the UK IP Office (UKIPO); and asks whether, if commercial services used to assess essentiality are inadequate, the UKIPO should run such a service. Additionally, the consultation asks whether to create SEP-specific pre-action protocols (rules governing the steps that parties in a dispute must take before filing litigation), such as rules requiring early disclosure of information on pricing and essentiality; and seeks information on remedies in SEP

litigation, including the public's views on allegations that injunctions are being used to "extract excessive licence rates". The public feedback period ended on October 7.

- *European Commission Confirms Withdrawal of Proposed SEP Regulation*

That UK consultation follows the European Commission's withdrawal of a sweeping, and controversial, framework for SEP licensing and dispute resolution in the EU. That proposal sought to address concerns broadly similar to those raised in the UK consultation, including some related to transparency with respect to patent ownership, essentiality, and licensing rates, and concerns over existing dispute resolution mechanisms. The legislation sought to address those concerns through three overarching proposals: It would have created a public register in which patent owners would have to register patents they believe to be essential before they could assert them in litigation; a system requiring nonbinding essentiality checks of an annually selected subset of those patents; and a new, out-of-court process for determining FRAND licensing terms that patent owners would have to complete before asserting relevant patents in court, though again with nonbinding results.

While that legislation appeared to be gaining momentum in early 2024 despite pushback from SEP owners and other stakeholders, the Commission took the unexpected step of withdrawing the proposal entirely in February 2025, following shifts in the political landscape in Europe and beyond that tended to favor deregulation. Stakeholders had six months to oppose the withdrawal, but the Commission stated on July 31 that "having considered their views", it would nevertheless not revisit its decision to withdraw the proposal.

- *US Officials Give Clarity into SEP Policy Approach*

As Q3 came to a close, stakeholders also got a preview of the second Trump Administration's approach to SEP policy, which has shifted significantly between administrations over the years. In 2019, the first Trump Administration withdrew a 2013 policy statement that focused more on patent owner hold-up, replacing it with another that argued that injunctions should be available in SEP disputes. However, in 2021, the Biden Administration—in particular, the US Department of Justice (DOJ), the National Institute of Standards and Technology (NIST), and the USPTO—decided to withdraw the 2019 policy statement without replacing it, shifting to a case-by-case approach to antitrust enforcement for SEP disputes.

On September 19, Deputy Assistant Attorney General Dina Kallay of the Antitrust Division detailed some of the current administration's views in a [speech](#) at a dinner held by antitrust publication *Concurrences*. Kallay's speech partly endorsed some of the viewpoints and policies from the first Trump term under Assistant Attorney General Makan Delrahim: In part, she argued that under the 2013 policy there had been "a skewed focus on hold-up . . . under which a patent holder leverages a technology's inclusion in a standard to demand supracompetitive royalties", indicating that this approach had been supported by large tech companies. Kalley also endorsed Delrahim's view that implementer hold-out (which is not defined here by Kalley, but under which as a general matter a potential licensee declines to take a license to a SEP, forcing the patent holder to turn to litigation) "poses a more serious threat to innovation than innovator hold-up". However, Kalley also indicated support for the shift to a case-by-case approach that was adopted by the Antitrust Division during the Biden Administration under Assistant Attorney General Jonathan Kanter, stating that this "is indeed the right approach".

Kalley also laid out her views on issues at the intersection of patent and antitrust law that can arise as a result of the standard-setting process. In particular, Kalley highlighted certain scenarios where the Antitrust Division is concerned about the "breakdown of the FRAND-assured standards development ecosystem": Circumstances where standards are implemented without requiring FRAND assurances (i.e., a commitment from patent owners that they will license patents included in a standard on FRAND terms) or those where there are "negative" FRAND assurances; i.e., where patent owners submitting patents to a standard do so while stating that they do *not* agree to be bound by a standards development organization's patent policy, akin to what occurred after the Institute of Electrical and

Electronics Engineers (IEEE) adopted a property rights (IPR) policy in 2015 that largely bars the owners of patents declared under that policy from seeking injunctive relief.

Kalley also indicated that the Antitrust Division has concerns over potential antitrust concerns stemming from “proprietary standards development consortia policies [that] are not F/RAND-based”, such as industry consortia that agree to offer royalty-free licenses. Kalley then proceeded to recount the statement of interest that the DOJ filed in a dispute related to the refusal of one patent owner—[Radian Memory Systems LLC](#)—to join an industry consortium requiring that owners grant a royalty-free license. That statement, for which the underlying case has since been dismissed, is notable for endorsing the view that [NPEs should be able to win injunctive relief](#).

On October 6, the US government provided further insight into its views on SEP matters in another brief, this one filed by the DOJ in an antitrust lawsuit brought by Disney against InterDigital. In that case, Disney has argued in part that InterDigital has unlawfully wielded monopoly power over video streaming codec technology, and that it used that power to seek supra-FRAND licensing rates. The DOJ argues that a SEP owner charging higher rates is not enough to establish antitrust liability and contends that “[t]here should thus be no presumption of market power simply because a patent has been incorporated into a standard”. “To hold otherwise could reduce the incentives for patent holders to participate in procompetitive standards-development activity, chill innovation, and deter protected petitioning activity”, the DOJ continued—further asserting that InterDigital’s litigation efforts are exempt from antitrust liability under the *Noerr-Pennington* doctrine, based on the First Amendment right to petition the government for redress of grievances.

Meanwhile, Chris Hannon, Acting Principal Counsel and Director for Patent Policy at USPTO, [reportedly](#) also endorsed a case-by-case enforcement approach on September 19 at the WIPO Symposium on Standard Essential Patents. As recounted by *IAM*, Hannon additionally “made clear that certain regulatory proposals, such as rate-setting tribunals or essentiality checking services”—i.e., such as those currently being weighed in the UK—“are ‘inconceivable to the USPTO’ due to statutory limitations”.

## US Policy Update: Rumored Value-Based Patent Fee, John Squires Confirmed as USPTO Director

Citing anonymous sources, *The Wall Street Journal* [reported](#) in August that Commerce Department officials are actively discussing a proposal to impose a new fee on patent holders based on the value of their patents. No details about the proposal have been made public to date, but according to the *Journal*, the plan being considered by Commerce Secretary Howard Lutnick involves charging patent holders a fee that would amount to "1% to 5% of their overall patent value". RPX coverage is available [here](#).

Also in August, Lutnick informed Harvard, via a letter that was [shared on X](#), that the Department of Commerce is initiating march-in on the university's federally underwritten patents under the Bayh-Dole Act. Lutnick said in an [interview](#) with Axios last month that he believes the US government should get a cut of revenue derived from university patents developed via federally funded research—and that Harvard and the University of California system are his initial targets for such efforts.

Finally, in September, the Senate voted *en bloc* to confirm 48 White House nominees for non-cabinet positions, including John A. Squires as Director of the USPTO. RPX has aggregated public comments and responses made by Squires on subjects including IP monetization, litigation finance, patent reform efforts, and the future of the USPTO, available to RPX members [here](#).

## Patent Market Update: New TPLF Disclosures and Campaigns, OpCo Patents on the Move

Through frequent and systematic review of public documents, including court, corporate, and regulatory filings, RPX subject matter experts have identified hundreds of relationships between patent holders and specific third-party litigation funders.

RPX flagged multiple notable disclosures of funding during Q3 (e.g., [here](#)), as well as roughly a dozen patent campaigns launched during the quarter by plaintiffs tied, by public records, to third-party litigation funders. RPX members can access a round-up of that activity [here](#).

### – Movement of OpCo Patents

Also during Q3, a number of divestments of operating company patents were made public by the USPTO, with assignors including Meta and Siemens (see [here](#)), and Wistron ([here](#)). RPX also noted the continued [spread](#) of former Cypress Semiconductor patents.

---

## Additional RPX Patent Market Intelligence

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

---

\* This analysis was updated on January 12, 2026 to account for technical issues with the underlying logic.