

# Understanding the Realities of Modern Patent Litigation

By

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## ABSTRACT

Sixteen years ago, two of us published the first detailed empirical look at patent litigation. That study provided a wealth of valuable information about patent validity litigation, including the discovery that nearly half of all patents litigated to judgment were held invalid. But it was also limited in various respects. The study was based only on patent validity decisions that finally resolved the case on the merits, and only on those that had been reported in published decisions. The latter limitation meant that most of the decisions were appellate. Importantly, the cases serving as the study's data sources are now on average more than twenty years old.

In this paper we update and expand the earlier study with a new hand-coded data set. We evaluate all substantive decisions rendered by any court in every patent case filed in 2008 and 2009 – decisions made between 2009 and 2013. We consider not just patent validity but also infringement and unenforceability. Moreover, we relate the outcomes of those cases to a host of variables, including variables related to the parties, the patents, and the court in which the case was litigated. The result is a comprehensive picture of the outcomes of modern patent litigation, one that confirms conventional wisdom in some respects but upends it in others. In particular, we find a surprising amount of continuity in the basic outcomes of patent lawsuits over the past twenty years, despite rather dramatic changes in who brings patent suits during that time.