

2016 Second Quarter IP Litigation Trends

Patent litigation

District Court

In the second quarter of 2016, plaintiffs filed 1,282 patent cases. This total represents an increase over Q1 (958 cases) of 33%, but remains below the 2015 average of 1456 cases per quarter.

Looking at the second quarter more closely (Fig. 2), more than 450 cases were filed in both April and June, while May saw only 370 cases. Patent litigation levels appear to have stabilized after the spike-and-trough pattern (seen in November 2015 through February 2016) caused by the [rule change on Form 18](#).

The Eastern District of Texas saw an uptick in its proportion of total new filings to 37% in the second quarter of 2016 against the first quarter (30%). In 2015, for comparison, the district had 43% of the patent cases filed.

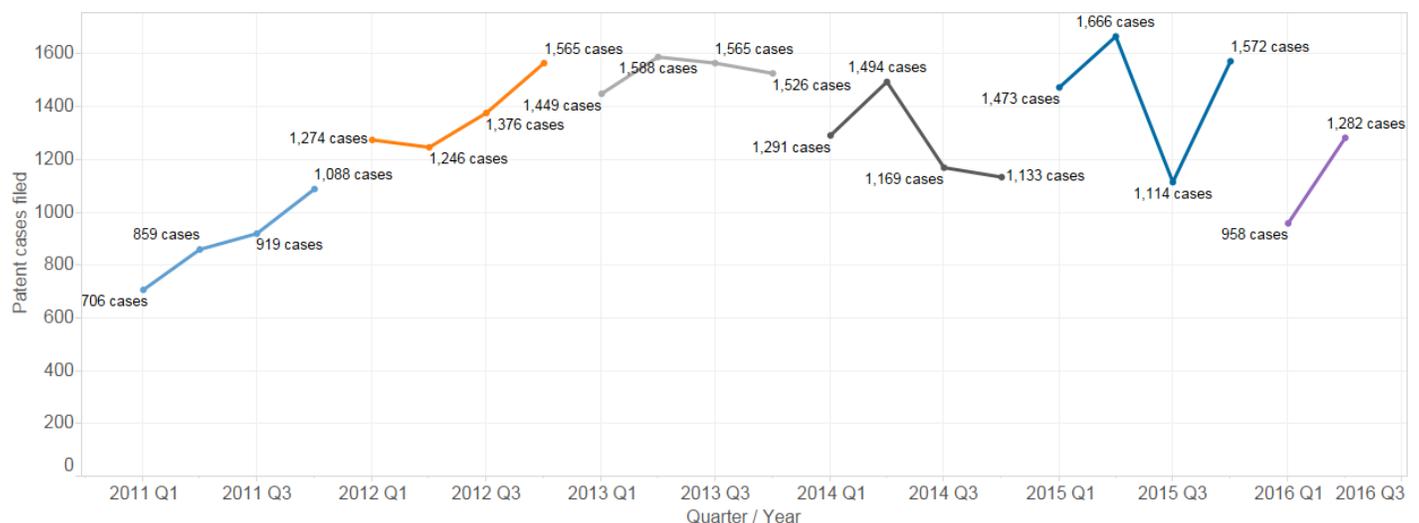


Fig. 1: Patent cases filed, 2012 – 2016 Q2, by quarter

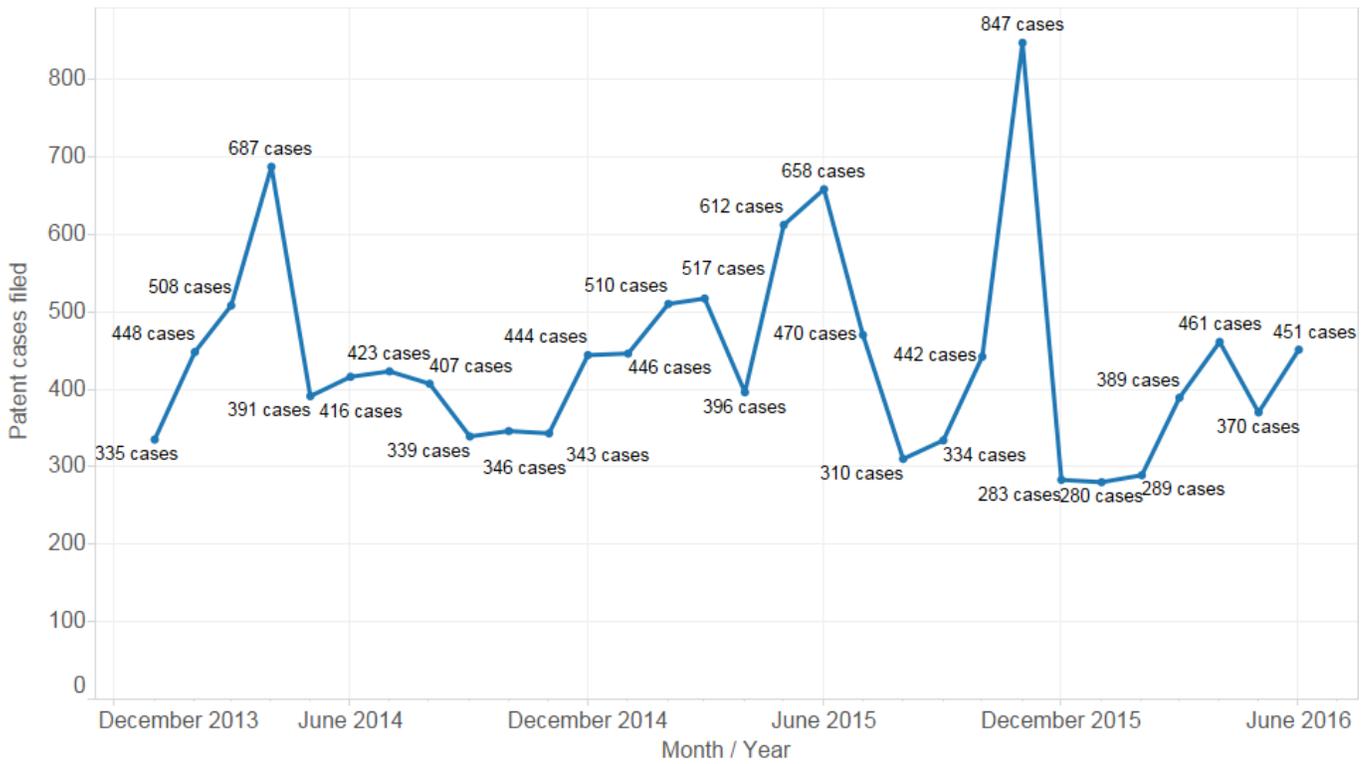


Fig. 2: Patent cases filed, 2014 – 2016 Q2, by month

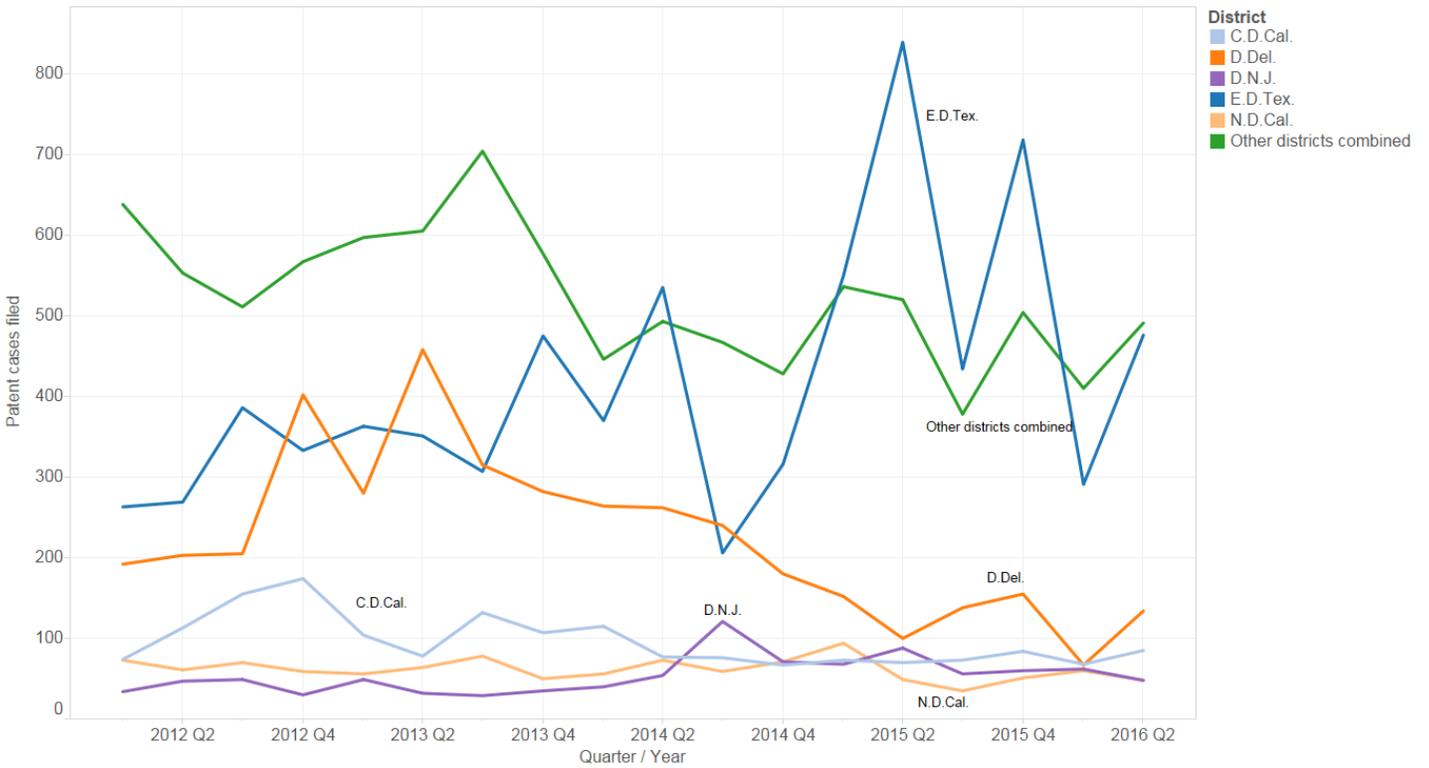


Fig. 3: Top districts by patent cases filed, 2012 – 2016 Q2

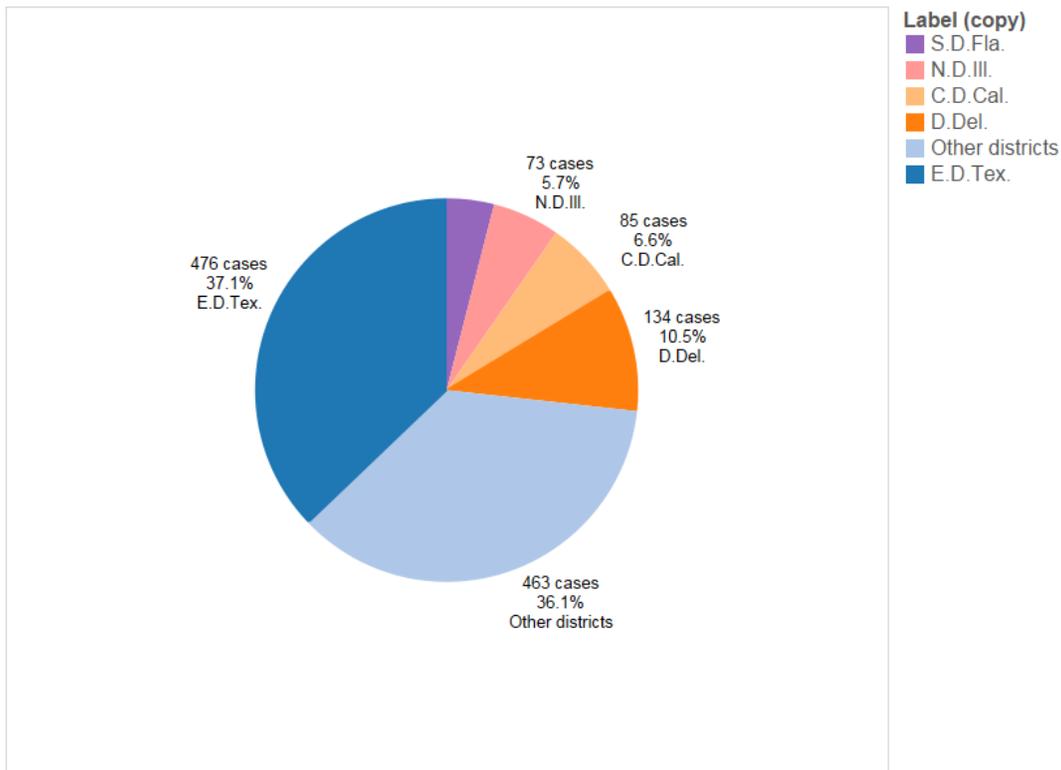


Fig. 4: Top districts by patent cases filed, 2016 Q2

The Patent Trial and Appeal Board

Covered Business Method (CBM) reviews have remained steady, but the number of Inter Partes Review (IPR) petitions at PTAB has recovered from a low first quarter (335) petitions to 416 petitions in the second quarter of 2016 – a number more consistent with the last 2 years of activity.

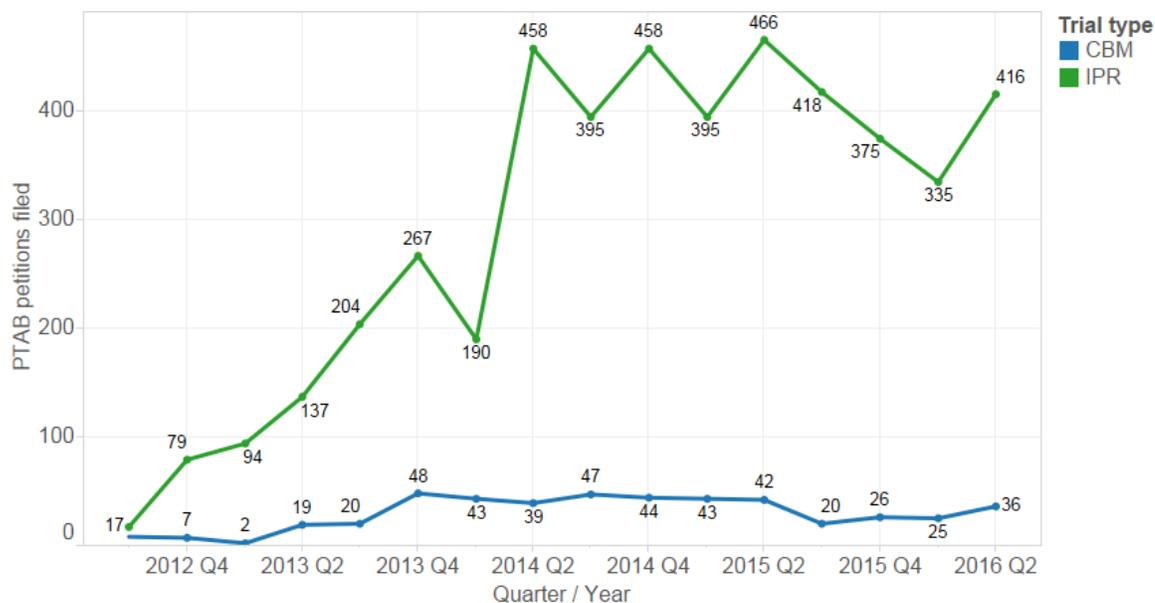


Fig. 5: CBM and IPR petitions, 2012 – 2016 Q2

Trademark Litigation

Trademark litigation filing trends have been more predictable than patent trends (or copyright). The filing of new trademark cases has declined at a very slight rate over the last few years, although the second quarter of 2016 (882 cases) represents a slight increase over the first quarter (807 cases).

For the curious, the spike in trademark case filings seen below in the third quarter of 2014 was driven by a flood of cases filed in the District of Minnesota against the National Football League, generally by former players over usage of their likeness. These cases account for about 461 of the 1,397 cases filed in Q3 2014. Without these cases, Q3 2014 appears otherwise consistent with the quarters surrounding it.

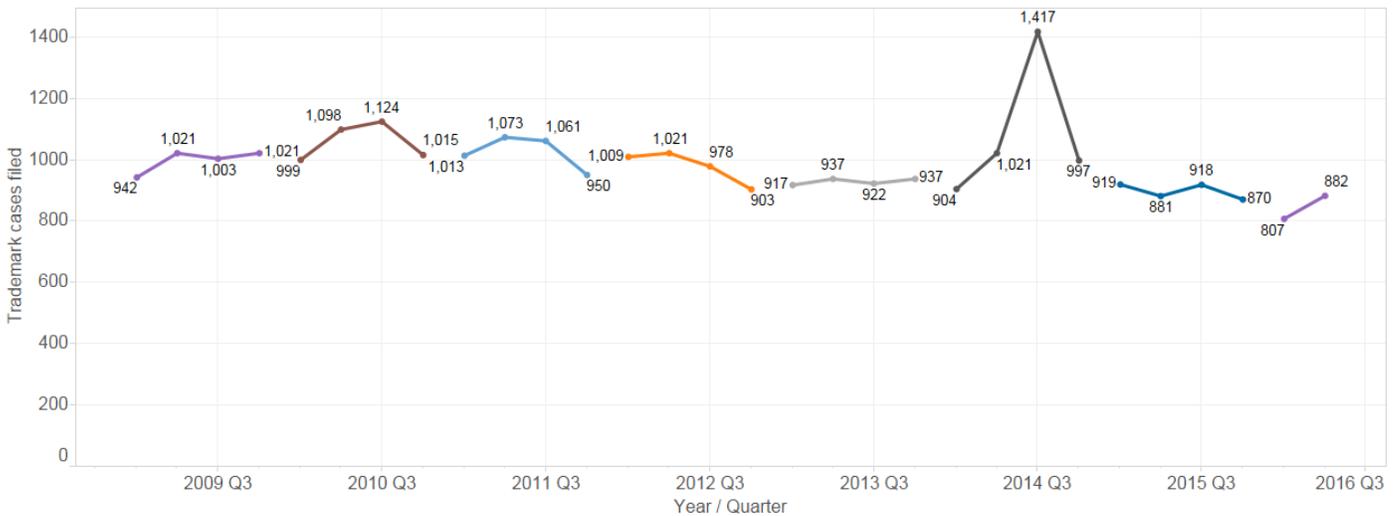


Fig. 6: Trademark cases filed, 2009 – 2016 Q2, by quarter

Copyright Litigation

Lex Machina divides copyright litigation in the U.S. district courts into two subtypes: file sharing cases (those having John Doe or anonymous defendants and accusations based on file sharing technology such as BitTorrent), and all of the other, more traditional cases. As explained in Lex Machina’s [Copyright Litigation Report](#), these cases follow very different dynamics.

In the second quarter of 2016, the drop off in the number of new filesharing cases sharply accelerated, decreasing more than 50% over the first quarter (517 cases to 249 cases in Q2). This suggests that file sharing litigation, which had represented the majority of copyright litigation from Q4 2014 through Q4 2015, may have been a short-lived trend.

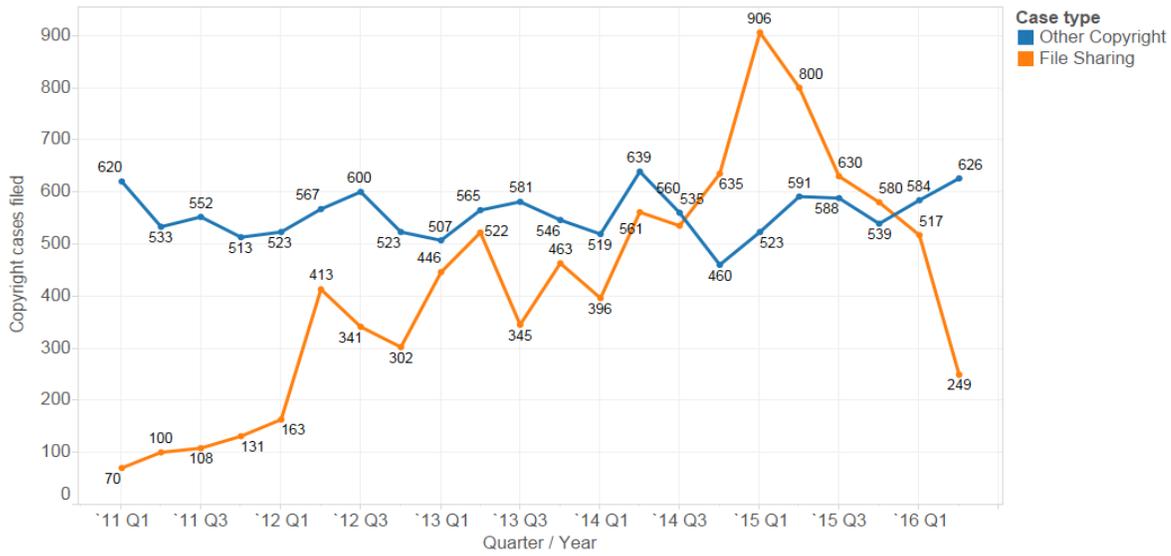


Fig. 7: Copyright cases filed, 2011 – 2016 Q2, by quarter