

VENUE SELECTION IN PATENT CASES:  
WHERE TO OBTAIN PRELIMINARY INJUNCTIVE RELIEF

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A plaintiff interested in filing suit for patent infringement usually has a number of available venues in which it can file a complaint.<sup>1</sup> In this regard, knowledgeable clients seeking preliminary injunctive relief typically ask the same types of questions.

- How fast we can get to a preliminary-injunction hearing?
- When will the Court rule on the motion?
- Where should we file suit?
- What are the odds that the Court will grant the injunction?

This article analyzes the tendencies of each district court in the United States, which published decision(s) granting or denying motions for preliminary injunctions within the past five years.

Track Record of Granting or Denying Preliminary-Injunction Motions

Our research identified a total of 109 opinions granting or denying preliminary-injunction motions in patent infringement cases, which were published from August 1, 1996 through July 31, 2001. As illustrated below, some district courts are more far more likely than others to issue preliminary injunctions.

<b>U.S. District Court</b>	<b>Motions Granted</b>	<b>Motions Denied</b>	<b>Percentage of Motions Granted</b>
Arizona	1	0	100%
Central District of California	4	3	57%
Northern District of California	2	4	33%

<b>U.S. District Court</b>	<b>Motions Granted</b>	<b>Motions Denied</b>	<b>Percentage of Motions Granted</b>
Southern District of California	1	3	25%
Connecticut	2	1	67%
Delaware	0	6	0%
Southern District of Florida	1	2	33%
Northern District of Illinois	4	7	36%
Southern District of Indiana	2	1	67%
Northern District of Iowa	0	1	0%
Kansas	0	1	0%
Eastern District of Louisiana	0	1	0%
Maryland	1	0	100%
Massachusetts	1	8	11%
Minnesota	1	5	17%
Northern District of Mississippi	0	1	0%
Southern District of Mississippi	0	1	0%
New Hampshire	0	2	0%
Nevada	1	0	100%
New Jersey	2	7	22%
Eastern District of New York	1	0	100%
Northern District of New York	0	3	0%
Southern District of New York	3	6	33%
Western District of New York	0	1	0%
Oregon	2	0	100%
Eastern District of Pennsylvania	0	4	0%
Middle District of Pennsylvania	1	0	100%
Western District of Pennsylvania	0	2	0%
Northern District of Texas	2	0	100%
Southern District of Texas	1	1	50%
Western District of Texas	0	1	0%
Utah	1	0	100%
Eastern District of Virginia	0	2	0%
Western District of Washington	1	0	100%

Of course, the percentage of preliminary-injunction motions granted by a particular district court will not be an accurate predictor as to the likelihood of success of any future motion. This is because of a number of factors including, but not limited to:

- (1) differing facts for each case,

- (2) a different judge and different counsel in each case,
- (3) relatively few published decisions, and
- (4) changes in the law over the past few years including, most notably, *Markman v. Westview Instruments*<sup>2</sup> and *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*<sup>3</sup>

Nonetheless, experienced litigators should, at a minimum, consider the past tendencies of judges in the district before seeking preliminary injunctive relief.

For example, these popular district courts appear to be statistically averse towards preliminary relief.

- Northern District of California (denied 4 out of 6—66% denial rate)
- Southern District of California (denied 3 out of 4—75% denial rate)
- Delaware (denied 6 out of 6—100% denial rate)
- Southern District of Florida (denied 2 out of 3—66% denial rate)
- Massachusetts (denied 10 out of 11—89% denial rate)
- Minnesota (denied 5 out of 6—83% denial rate)
- New Hampshire (denied 2 out of 2—100% denial rate)
- New Jersey (denied 7 out of 9—78% denial rate)
- Northern District of New York (denied 3 out of 3—100% denial rate)
- Southern District of New York (denied 6 out of 9—66% denial rate)
- Eastern District of Pennsylvania (denied 4 out of 4—100% denial rate)
- Western District of Pennsylvania (denied 2 out of 2—100% denial rate)
- Eastern District of Virginia (denied 2 out of 2—100% denial rate)

Although preliminary injunctions are an extraordinary remedy, it is nonetheless noteworthy that these courts have only granted a handful of these motions within the past five years.

Historical Latency Periods

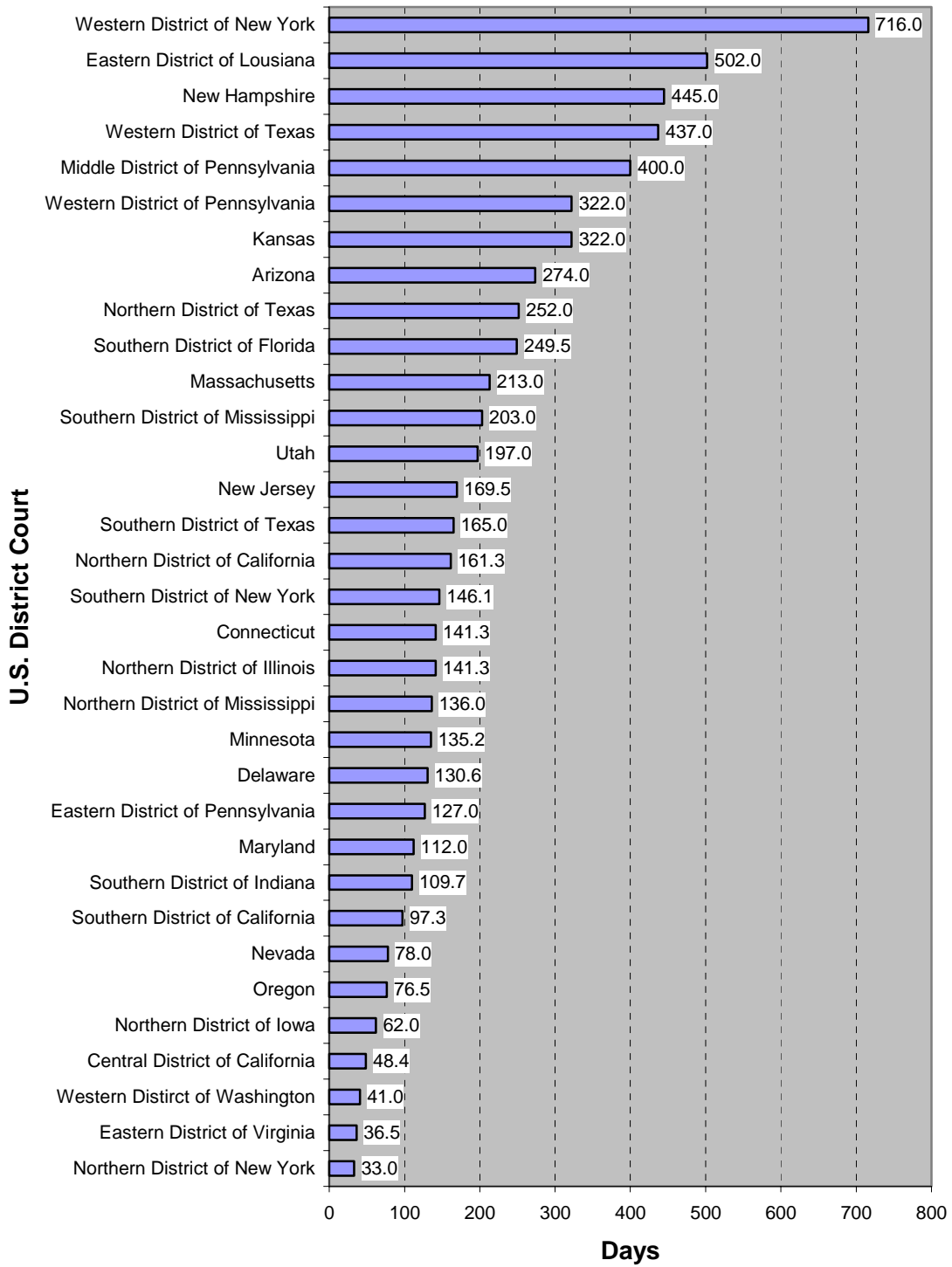
In addition to a particular court’s disposition towards granting or denying preliminary relief, counsel should be cognizant of the historical latency period between: (a) filing of the motion and hearing of the motion, and (b) hearing of the motion and decision on the motion by the court. As summarized below, some district courts take, on average, substantially more time than others to get to a hearing and rule on these motions.<sup>4</sup>

<b>U.S. District Court</b>	<b>Average No. Days from Filing to Hearing</b>	<b>Average No. Days from Hearing to Decision</b>
Arizona	113.0	161.0
Central District of California	28.9	19.6
Northern District of California	132.7	28.7
Southern District of California	28.0	69.3
Connecticut	93.0	48.3
Delaware	63.4	67.2
Southern District of Florida	123.5	126.0
Northern District of Illinois	63.0	77.8
Southern District of Indiana	58.7	51.0
Northern District of Iowa	55.0	7.0
Kansas	63.0	259.0
Maryland	68.0	44.0
Massachusetts	147.3	38.4
Minnesota	57.7	77.5
Northern District of Mississippi	98.0	38.0
Southern District of Mississippi	131.0	72.0
New Hampshire	73.0	662.0
New Jersey	80.8	88.8
Northern District of New York	14.0	19.0
Southern District of New York	112.0	34.1

<b>U.S. District Court</b>	<b>Average No. Days from Filing to Hearing</b>	<b>Average No. Days from Hearing to Decision</b>
Oregon	59.0	17.5
Eastern District of Pennsylvania	64.8	62.3
Middle District of Pennsylvania	92.0	308.0
Western District of Pennsylvania	204.5	78.0
Northern District of Texas	247.0	16.0
Southern District of Texas	55.0	110.0
Western District of Texas	12.0	425.0
Utah	90.0	107.0
Eastern District of Virginia	22.0	14.5
Western District of Washington	26.0	15.0

Absent an injunction, a plaintiff seeking preliminary relief will most likely suffer irreparable harm. Therefore, it logically follows that the longer it takes for the court to hear and rule on the motion, the more harm the plaintiff will presumably suffer. Consequently, getting to a hearing and receiving a decision as soon as possible is critical for some clients.

## Average Latency Between Filing of Motion and Decision



Thus, historically, the most expeditious courts for these motions are:

- Northern District of New York (33.0 days),
- Eastern District of Virginia (36.5 days),
- Western District of Washington (41.0 days),
- Central District of California (48.4 days),
- Northern District of Iowa (62.0 days), and
- Oregon (76.5 days).

Conversely, a plaintiff might be able to get to trial in some districts before obtaining a ruling on a preliminary-injunction motion in:

- Kansas (322.0 days),
- Western District of Pennsylvania (322.0 days),
- Middle District of Pennsylvania (400.0 days),
- Western District of Texas (437.0 days),
- New Hampshire (445.0 days),
- Eastern District of Louisiana (502.0 days), or
- Western District of New York (716.0 days).

### Conclusion

In sum, there are many variables that counsel should consider before selecting a venue in a patent case—this is especially true when the plaintiff plans to seek preliminary-injunctive relief. How fast will you get to a preliminary-injunction hearing and how long will it take the Court to rule on the motion? It will depend on where you file. Rulings within sixty days are possible. What are your odds of obtaining preliminary relief? As noted above, your likelihood of prevailing will depend on many factors. However, of the cases filed within the past five years, only

about 32% of the motions were granted. Moreover, some courts appear to rarely, if ever, grant motions for preliminary injunctions. Therefore, a plaintiff's best bet will be to: (1) retain experienced patent litigators, and (2) select an expeditious district court that is not historically averse to granting preliminary relief.<sup>5</sup>

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<sup>1</sup> See 28 U.S.C. §§ 1391 and 1400.

<sup>2</sup> 517 U.S. 370, 116 S. Ct. 1384 (1996).

<sup>3</sup> 239 F.3d 1343 (Fed. Cir. 2001).

<sup>4</sup> The average numbers of days from filing to hearing and from hearing to decision were calculated based on docket information obtained from the PACER system (*i.e.*, Public Access to Court Electronic Records), which can be found at <http://pacer.ilnd.uscourts.gov/>. Note, docket information was not available for all cases in all districts.

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