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Inside Views & News Pertaining to the Nation's Busiest Patent Court

District Court Trial Dates Tend to Slip After PTAB Discretionary Denials

By Scott McKeown on July 24, 2020

Google Exhibit 1047
Google v. Parus



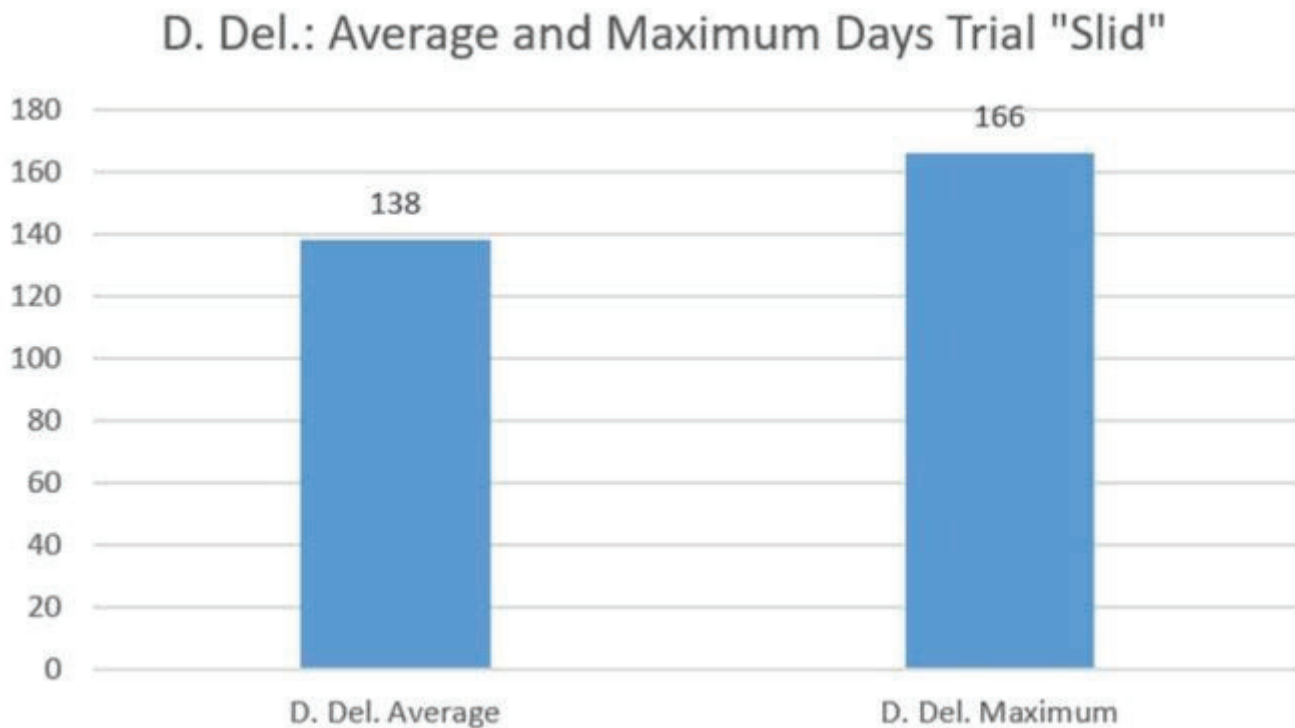
Delaware Cases Slipping 4-6 Months

The practice of denying AIA trial petitions in view of competing district court trial dates has brought **some negative attention to the Patent Trial & Appeal Board (PTAB) over the past few months**. At the same time, patent litigation has increased over the first two quarters of the year by 20%. This surge has been greatly aided by the **exploding popularity of the Western District of Texas (WDTX) with non-practicing entities** — a district that the PTAB is increasingly deferring to in its discretionary denials based upon competing trial dates.

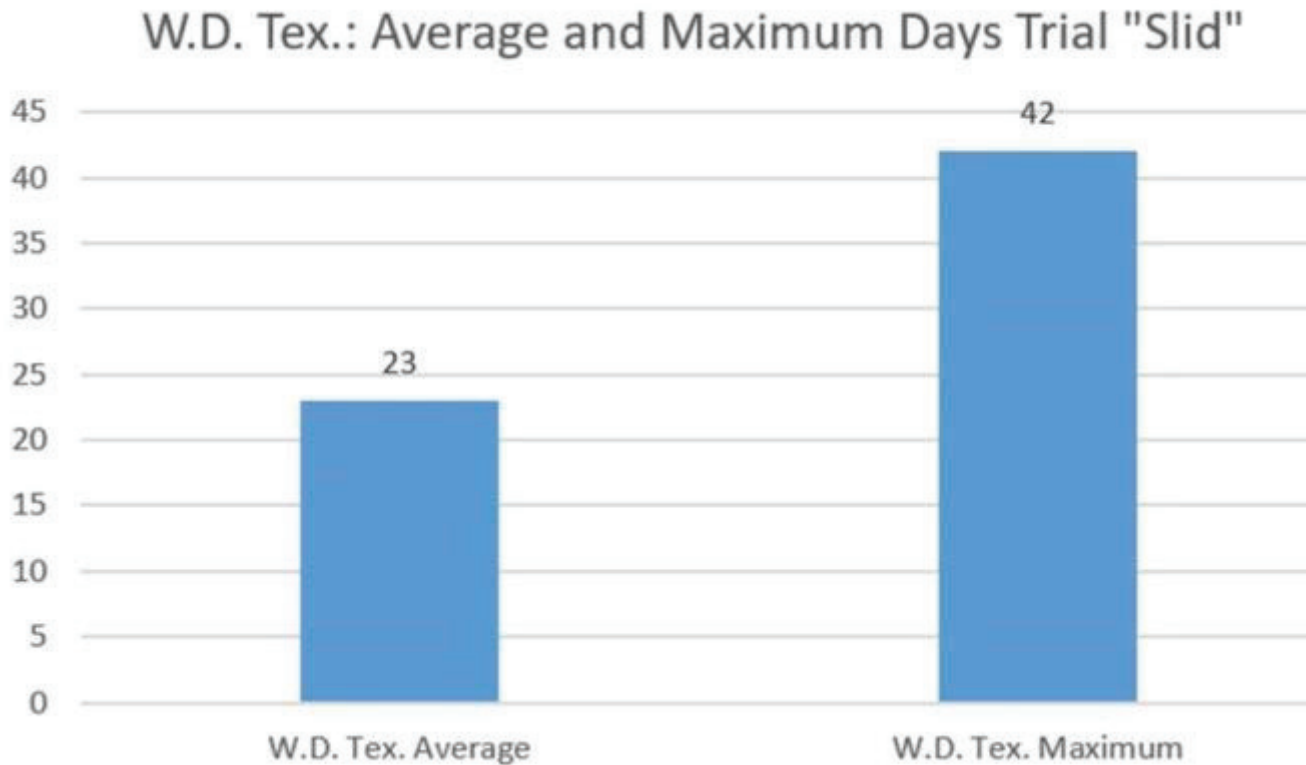
While Patent Owners are quick to point to a looming district court trial date as being set in stone, in reality, these dates are often reset once the PTAB hurdle is cleared.

While still a small data set, cases that are denied by the PTAB based upon a looming trial date have seen significant delays in some districts.

For example, in the patent suit heavy District of Delaware, 100% of the cases denied by the PTAB for an earlier trial date have been rescheduled — anywhere from 4-6 months. This is a significant delay that may militate in favor of institution given the relative speed of an 8-month PTAB trial schedule:



In the WDTX, 70% of trial dates initially relied upon by the PTAB to deny petitions have slid. While WDTX shows a lower average delay, this is likely a due to that court's preference to push out dates on a recurring basis rather than more significant schedule remodels.



Taking all districts into account the average trial delay is 3 months, with a maximum of 7 months. That said, with COVID-19 delaying trials scheduled for the last 4-5 months, delays will certainly increase further as the courts work through their growing backlog.

In the meantime, as one PTAB panel explained it, **the PTAB has been firing on all cylinders.**

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