



Fish & Richa...

News, cases, companies, firr

Try our [Advanced Search](#) for more refined results



Close News, cases, companies, firr
Search

- [Fish & Richardson](#)
 - [My Account](#)
 - [Emails & Alerts](#)
 - [Newsletter Signup](#)

- Products
- [Lexis®](#)
- [Law360 Pulse](#)
- [Law360 Employment Authority](#)
- [Law360 Tax Authority](#)
- [Law360 In-Depth](#)
- [Law360 UK](#)
- [Law360 Updates](#)
- [Law360 Podcasts](#)
- Beta Tools
- [Track docs](#)
- [Track attorneys](#)
- [Track judges](#)
- [Adv. Search & Platform Tools](#)
- [Browse all sections](#)
- [Banking](#)
- [Bankruptcy](#)
- [Class Action](#)
- [Competition](#)
- [Employment](#)
- [Energy](#)
- [Expert Analysis](#)
- [Insurance](#)
- [Intellectual Property](#)
- [Product Liability](#)
- [Securities](#)
- [Rankings](#)
- [Regional Powerhouses](#)
- [Law360's MVPs](#)
- [Glass Ceiling Report](#)
- [Law360 400](#)
- [Diversity Snapshot](#)
- [Practice Groups of the Year](#)
- [Rising Stars](#)
- [Titans of the Plaintiffs Bar](#)
- Site Menu
- [Join the Law360 team](#)
- [Search legal jobs](#)
- [Learn more about Law360](#)
- [Read testimonials](#)
- [Contact Law360](#)
- [Sign up for our newsletters](#)
- [Site Map](#)
- [Help](#)

- [Search Law360](#)
- [Search News Only](#)
- [Search Cases Only](#)
- [Search PTAB Only](#)
- [Search TTAB Only](#)

Advanced Search

[Intellectual Property](#), [Securities](#), [Bankruptcy](#), [Competition](#), [Employment](#), [White Collar](#), [Legal Industry](#), [Access To Justice](#), [Law360 UK](#), [Pulse](#) || [See all sections](#)

2021 Discretionary Denials Have Passed 100, But Are Slowing

By [Dani Kass](#)

Share us on: By [Dani Kass](#)

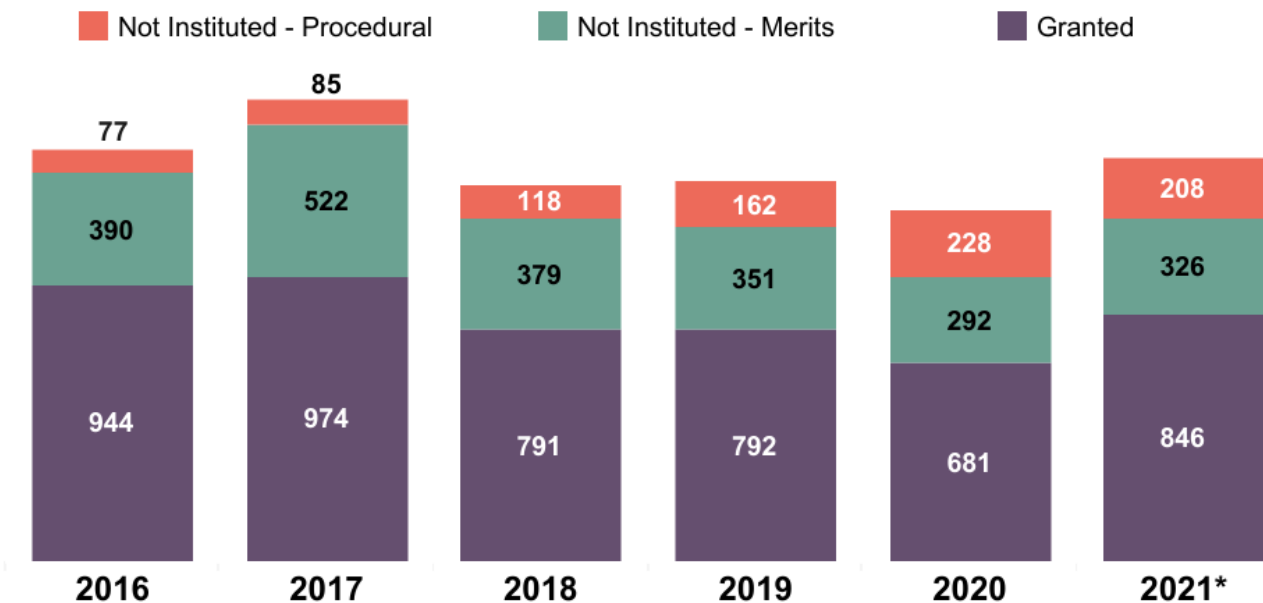
Law360 (July 15, 2021, 7:47 PM EDT) -- The Patent Trial and Appeal Board turned away 104 petitions for discretionary reasons in the first half of 2021, but more than 70% of those were in the first quarter of the year, according to new [Unified Patents](#) data.

Between January and March 2021, the PTAB rejected 74 petitions on procedural grounds, compared to 30 in the following three months, Unified Patents said July 6. Despite the dip, the group — which supports the PTAB invalidating weak patents — projected that number will double over the rest of the year, ending around 208 denials.

"As projected, discretionary denials are on pace to be just slightly lower in 2021 than in 2020 overall," the organization said.

PTAB Institution Decisions Over Time

The PTAB is increasingly denying petitions for reasons other than merits.



Source: Unified Patents. 2021 is projected based on Q1 and Q2.





Last year, the PTAB denied 292 petitions based on the merits and [228 for procedural reasons](#), while granting 681 petitions, according to Unified Patents. The amount of petitions denied for reasons such as the timing of parallel district court litigation or similarity to other petitions had more than tripled between 2016 and 2020.

A big factor in that was the PTAB's precedential Fintiv ruling, which set out criteria for when the timing of parallel litigation could justify turning away an otherwise meritorious petition. Fintiv was made precedential in May 2020, and it expanded on a previous decision called NHK Spring.

While about a [quarter of all new patent litigation](#) is being filed in the Western District of Texas, about 40% of discretionary denials based on the timing of ongoing litigation involved the Eastern District of Texas, the report says. The Western District had about 23.2% of denials, followed by Delaware, Massachusetts and the Northern District of California.

"The Western District of Texas was projected to see a slight bump in denying petitions using the NHK Spring/Fintiv framework when the patent in question is being disputed in that jurisdiction," the report says. "Now it would seem like there is a slight decrease in the WDTX, whether from lack of filing attempts, or from the speed of settlement there."

It adds that in the seven patent trials Judge Alan Albright in the Western District has overseen, the time to trial has been about 24 months. The judge's desire to get patent cases to trial quickly had been [commonly interwoven](#) with the Fintiv narrative, as patent owners could harness his attempt at getting a fast turnaround to avoid having their patent reviewed by the PTAB.

"That said, the speed of resolution in patent cases across all districts has risen substantially, even as COVID restrictions have begun to lift; the significant backlog is, rather than dissipating, apparently increasing time to resolution across the country," the report says.

Overall, Unified Patents said it expects Fintiv denials to account for 80% of procedural denials in 2021. The precedent is in the process of [being challenged](#) in California federal court by [Apple](#), [Google](#), [Cisco](#), [Intel](#) and Edwards Lifesciences, though, and the next [USPTO](#) director could also alter how it's being implemented.

--Editing by Stephen Berg. Graphic by Jonathan Hayter.

For a reprint of this article, please contact reprints@law360.com.

0 Comments

Sign In To Comment

Related Articles

[PTAB Filings Are Down, Institution Rate Is Up In FY 2021](#)

[Fast Courts, Big Funders Kept Patent Suits Flowing In 2020](#)

[PTAB Discretionary Denials Up 60%, Unified Patents Says](#)

[PTAB Discretionary Denials Harming Patent System, Atty Says](#)

[A Proposed Alternative To PTAB Discretionary Denial Factors](#)

Here's What You Missed

[Trump Adviser Accused Of Unregistered Lobbying](#)

[Girardi Investigations Fizzled Amid Watchdog's 'Mistakes'](#)

[GOP Reps. Can't Sue Pelosi Over Proxy Voting, DC Circ. Says](#)

[Husch Blackwell Moves Into New England With 11-Atty Firm](#)

[Examiner Clears Sacklers Of Influencing Purdue's Board](#)

[Legal Services Biz Epiq Can't Dodge Data Breach Suit](#)

[Want To Avoid PTAB Discretionary Denials? Try A Stipulation](#)

[Taylor Swift Says 'Shake It Off' Didn't Copy 'Players,' 'Haters'](#)

[Avenatti To Represent Himself In Calif. Embezzlement Trial](#)

[5th Circ. Won't Revive American Airlines ERISA Case](#)

Useful Tools & Links

- [Add to Briefcase](#)
- [Save to PDF & Print](#)
- [Rights/Reprints](#)
- [Editorial Contacts](#)

Related Sections

- [California](#)
- [Delaware](#)
- [Intellectual Property](#)
- [Massachusetts](#)
- [Texas](#)

Companies

- [Apple Inc.](#)
- [Cisco Systems Inc.](#)
- [Google LLC](#)
- [Intel Corp.](#)
- [Unified Patents Inc.](#)

Government Agencies

- [U.S. Patent and Trademark Office](#)



Check out Law360's podcast, Pro Say, which offers a weekly recap of both the biggest stories and hidden gems from the world of law. [Listen To Our Latest](#)

Top 10 trending in Intellectual Property

- 1 ['History Maker' Cunningham Draws High Praise From IP Attys](#)
- 2 [Novartis' Expert Denies Rival Atty's Plagiarism Claim In IP Trial](#)
- 3 [Albright Won't Let Apple Transfer IP Suit Out Of Texas](#)
- 4 [Tiffany & Co., Costco End Yearslong Trademark Dispute](#)
- 5 [Perkins Coie IP Atty Confirmed As Fed. Circ.'s 1st Black Judge](#)
- 6 [Novartis IP Expert Slams Rival's Royalties Estimate At Trial](#)
- 7 [Patent Suit Against HP Spinoff Settles For \\$68M](#)
- 8 [Ericsson, TCL Settle Wireless Tech Patent Licensing Battle](#)
- 9 [Astros Say Pitch Signs Too Conspicuous To Be Trade Secrets](#)
- 10 [Galderma Gets PTAB To Invalidate Wrinkle Treatment Patent](#)

Hello! I'm Law360's automated support bot.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.