

Debbie McComas, Eugene Goryunov in Law360: Increasing Fed. Circ. IPR Appeals are Shaping Patent Law

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PRACTICES Patents, Appellate

Appeals to the U.S. Court of Appeals for the Federal Circuit from the U.S. Patent and Trademark Office (USPTO) have increased exponentially over the last few years while the number of appeals from district court cases has declined, as demonstrated by a statistical comparison of historical data (2017-2019) with data from the current session (Oct. 2, 2019, through the present).

This marks a significant shift from even four years earlier, when the Federal Circuit disposed of 614 appeals from district courts compared to 233 appeals from the USPTO.

The apparent cause for the shift should come as no surprise. The validity of a patent is now frequently challenged in the USPTO through an inter partes review (IPR) proceeding which, much of the time, puts corresponding district court patent infringement lawsuits on hold. The relatively large volume of appeals of IPR final written decisions is the natural consequence of the number of IPRs.

More unexpected, however, is the impact this shift is having on the development of patent law. From the level of deference applied by the court in its articulation of legal principles to different burdens of proof and claim construction standards, the court's recent jurisprudence is currently focused on the application of the patent law from within the agency context more than ever before.

Excerpted from *Law360*. To read the full article, click [here](#).