

## 7 KEY TAKEAWAYS

# Recent Trends in ITC Practice

2021 has been a year of changes internationally and the International Trade Commission (ITC) has not remained untouched. In a presentation last month members of [Kilpatrick Townsend's](#) ITC litigation group discussed recent trends in ITC practice and filings.

Key takeaways from the presentation include:

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Case filings are up, possibly due in part to “*Fintiv*” denials of Inter Partes Review (IPR) institutions based on the existence of a corresponding ITC investigation.

Cases asserting causes of actions other than patent or trademark infringement—such as trade secret misappropriation, deceptive advertising, or antitrust violations—are steadily increasing, particularly trade secrets misappropriation. In addition, the causes of actions used as bases for complaints is increasing with never-before-asserted causes of actions being alleged.

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Cases involving products in the life sciences and automotive industries are increasing.

Fewer cases asserting large numbers of patents (8+) are being brought; the majority of cases assert 4 patents or less.

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After decreasing for a number of years, filings by non-practicing entities are increasing, perhaps because the ITC, unlike most district courts, has not stayed its investigations pending IPRs.

More ITC cases are going to trial than in earlier years with the result being that in 2020 over 60% of cases went to trial.

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However, this does not mean that IP-rights holders are losing more frequently. In fact, the opposite is happening—at the ITC complainants are winning more often than before, with more than 60% of cases decided in favor of the complainant.

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