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Shifting Tides in Patent Litigation: Key Developments for 2026 and Beyond

Practical Insights on Changes in PTAB Practice and Patent Venue

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Patent litigation is shifting across multiple fronts. From dramatic changes at the Patent Trial and Appeal Board (PTAB) to evolving venue dynamics in key Texas federal courts, these developments will affect both patent owners and challengers. This article offers practical insights for businesses navigating this evolving terrain.

A Sea Change at the PTAB

Suddenly, *inter partes* reviews (IPRs) are far less predictable and dependable for patent challengers. According to PTAB Statistics published by the United States Patent and Trademark Office (USPTO), IPR institution rates fell from nearly 70% to under 40% over the past two fiscal years (Figure 1). The shift stems from USPTO policies making it less likely that an IPR will be instituted, including the rescission of the *Fintiv* memo,¹ the implementation of several new discretionary factors, including so-called settled expectations,² and, perhaps most impactfully, the reclamation of institution-authority to the Director.³

¹ See <https://www.uspto.gov/about-us/news-updates/uspto-rescinds-memorandum-addressing-discretionary-denial-procedures> (last accessed Aug. 24, 2026).

² See <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management> (last accessed Aug. 24, 2026).

³ See https://www.uspto.gov/sites/default/files/documents/open-letter-and-memo_20251017.pdf (last accessed Aug. 31, 2026).

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Figure 1

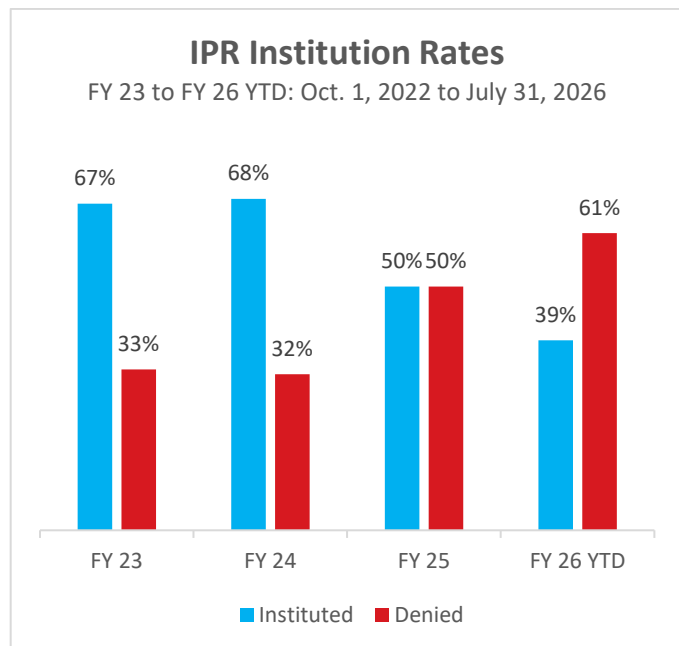
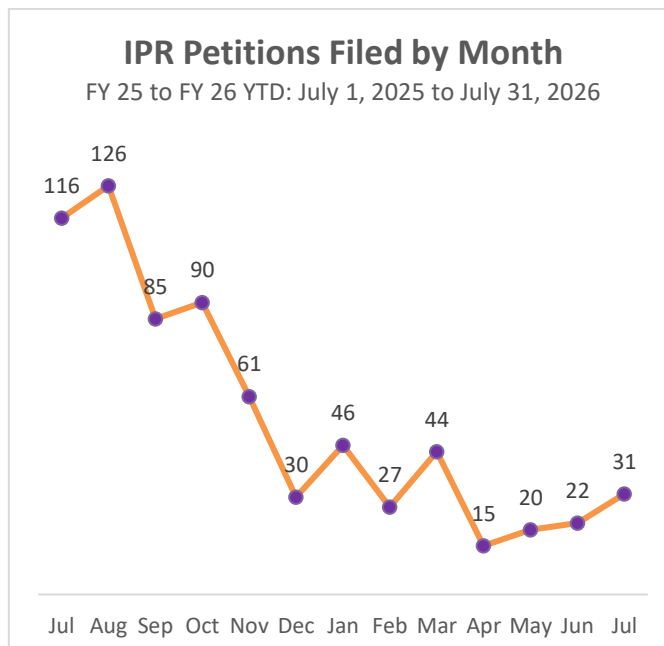


Figure 2



Consequently, IPRs lost some potency as a default patent-challenge tool, and patent challengers have turned sharply away from IPRs. Monthly IPR filings have plummeted, dropping as much as 88% (Figure 2).⁴

Ex Parte Reexamination Fills the Void

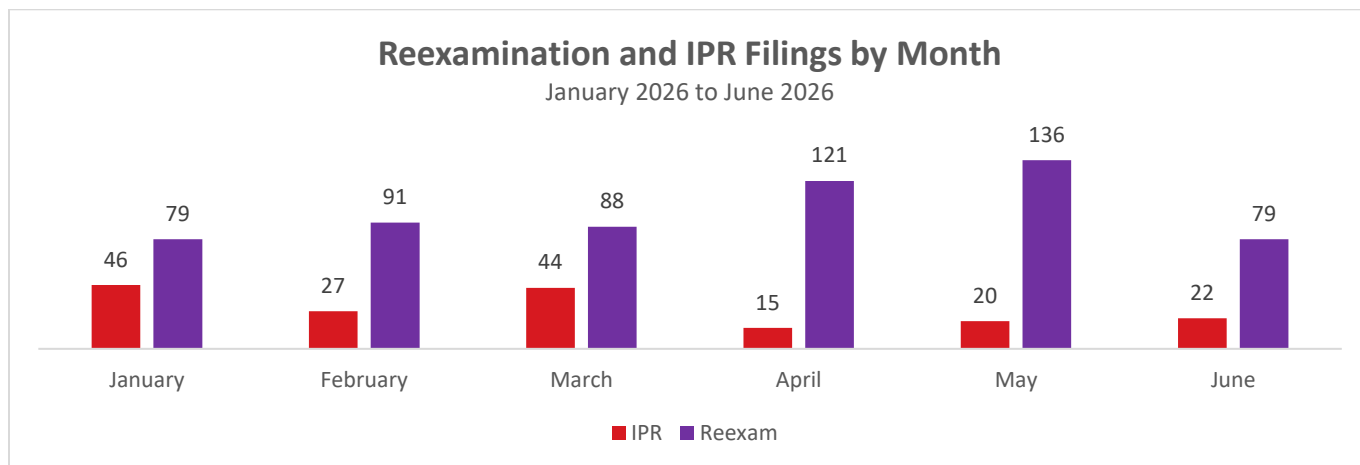
As the PTAB has become increasingly hostile to IPR petitioners, *ex parte* reexamination has surged as an alternative validity-challenge mechanism. As shown in Figure 3, reexamination filings have exceeded IPR filings in every month of 2026.⁵ The gap peaked in May 2026, when reexam filings reached 136 compared to only 20 IPR filings.

⁴ <https://www.uspto.gov/patents/ptab/statistics> (last accessed Aug. 24, 2026).

⁵ See <https://www.unifiedpatents.com/insights/2026/7/9/patent-dispute-report-first-half-2026> (last accessed Aug. 24, 2026).

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Figure 3



Comparing filing trends from a year ago underscores this inversion: *ex parte* reexaminations accounted for three quarters of all post-grant filings in the first half of this year (Figure 4)—an almost exact inversion from the same period of 2025 (Figure 5), when IPRs held a nearly identical share.⁶

Figure 4

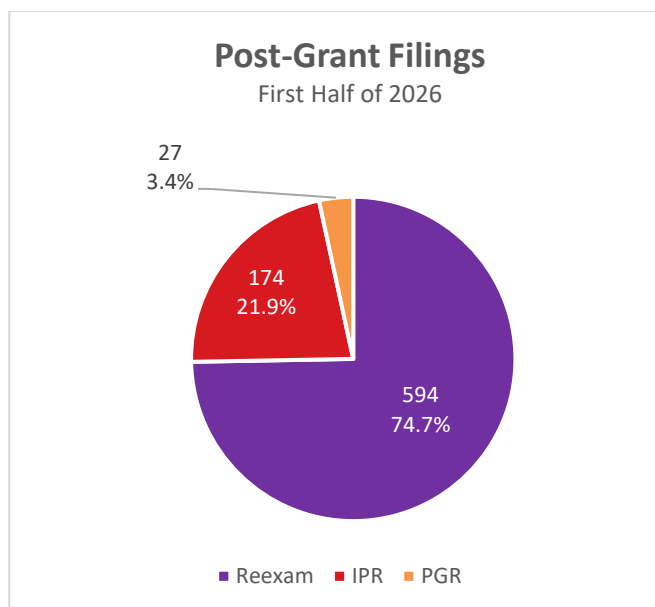
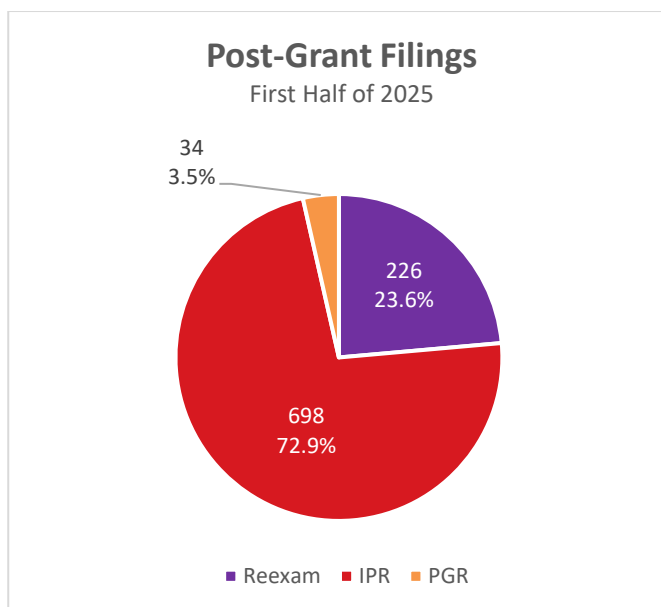


Figure 5



⁶ *Id.*

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Unlike an IPR, *ex parte* reexamination has no filing deadline, carries lower costs, is not subject to *Fintiv*-style discretionary gatekeeping, and does not trigger statutory estoppel against the requester. And, historically, the USPTO granted reexam requests at relatively high rates. However, despite the high percentage of requests granted, reexams are historically viewed as less effective than IPRs because reexams are non-adversarial after filing—the requester cannot participate in the proceedings after the initial request is submitted. Instead, the patent owner and examiner conduct the substantive reexam proceedings, during which amendments to the challenged claims are common.

Further, in April 2026, USPTO Director Squires implemented a rule change that makes reexams even less attractive for challengers.⁷ Now, patent owners may respond to a reexam request before the USPTO decides whether to grant it. By introducing patent owner input at the pre-decision stage, the rule is likely to bring reexam acceptance rates down and dilute one of the viewed advantages of reexams.

A Patent Venue Story: East, West, East (Texas)

In patent litigation, deciding where a case will be adjudicated remains both a strategic lever and a hotly contested issue. This year marks another chapter in the ongoing venue story—one largely told through the lens of the Texas District Courts.

Prior to 2017, a plaintiff generally could file a patent case in any U.S. District Court where a defendant was subject to personal jurisdiction. In this “Plaintiff’s Choice Era,” the Eastern District of Texas (EDTX) became the epicenter of patent litigation. The Supreme Court’s 2017 decision in *TC Heartland LLC v. Kraft Foods Group Brands LLC* curtailed this flexibility.⁸ It held that venue is proper only where a defendant (a) resides (*e.g.*, is incorporated) or (b) has committed acts of infringement and has a regular and established place of business.⁹

What followed was the “WDTX Era,” in which the Waco Division of the Western District of Texas (WDTX) introduced patent-specific local rules and compressed timelines that attracted plaintiffs in droves. Patent litigation in WDTX surged from less than 100 new cases in 2017 to roughly 1,000 in 2021, handily surpassing EDTX.¹⁰ However, in July 2022, the WDTX Chief Judge issued a standing order, which required random assignment of new patent cases filed in Waco across all WDTX judges, effectively ending the Waco Division’s concentration of the docket.¹¹ WDTX filings dropped sharply thereafter.¹²

⁷ <https://www.uspto.gov/sites/default/files/documents/og-preorder-srq-apr2026.pdf> (last accessed Aug. 24, 2026).

⁸ 581 U.S. 258, 267 (2017).

⁹ *Id.* at 265.

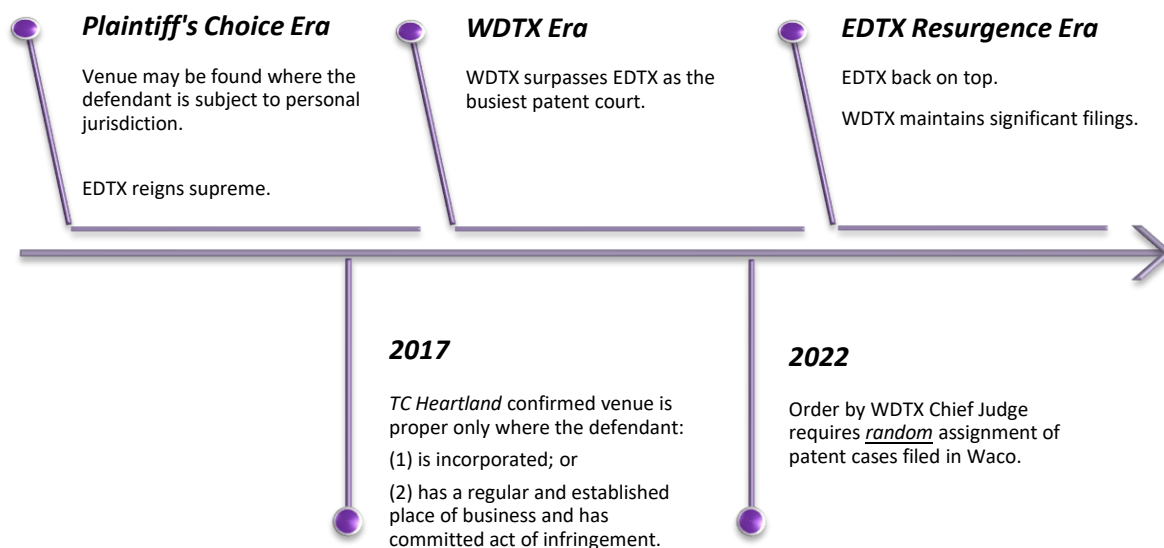
¹⁰ DOCKET NAVIGATOR, Court Profile Analytics for the U.S. District Court for the Western District of Texas (last visited Aug. 25, 2026); DOCKET NAVIGATOR, Court Profile Analytics for the U.S. District Court for the Eastern District of Texas (last visited Aug. 25, 2026).

¹¹ See <https://www.txwd.uscourts.gov/wp-content/uploads/Standing%20Orders/District/Order%20Assigning%20the%20Business%20of%20the%20Court%20as%20it%20Relates%20to%20Patent%20Cases%20072522.pdf> (last accessed Aug. 24, 2026).

¹² DOCKET NAVIGATOR, Court Profile Analytics for the U.S. District Court for the Western District of Texas (last visited Aug. 25, 2026).

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Figure 6



The Eastern District of Texas has since reclaimed dominance in the “EDTX Resurgence Era.” As shown in Figure 7, patent-case filings in EDTX rebounded to approximately 1,247 in 2025,¹³ with the Marshall Division alone handling 1,103 cases.¹⁴ By the first half of 2026, nearly 30% of all patent cases nationwide were filed in EDTX (Figure 8).¹⁵ The EDTX’s compressed early case schedule is known to place a significant burden on defendants, particularly through the requirement of robust invalidity contentions at the outset of a case. Such a frontloaded schedule often requires defendants to bear significant defense costs at the very beginning of a case—a dynamic that can motivate early settlement.

¹³ DOCKET NAVIGATOR, Court Profile Analytics for the U.S. District Court for the Eastern District of Texas (last visited Aug. 25, 2026).

¹⁴ DOCKET NAVIGATOR, Court Profile Analytics for the U.S. District Court for the Eastern District of Texas, Marshall Division (last visited Aug. 25, 2026).

¹⁵ See <https://www.unifiedpatents.com/insights/2026/7/9/patent-dispute-report-first-half-2026> (last accessed Aug. 24, 2026).

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Figure 7

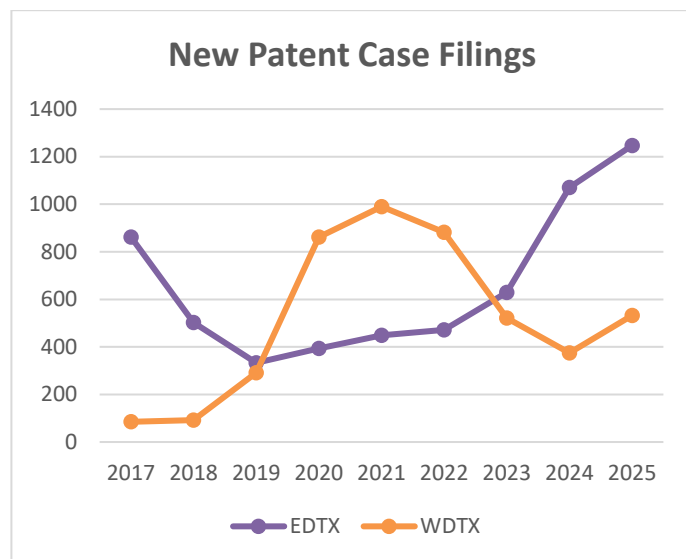
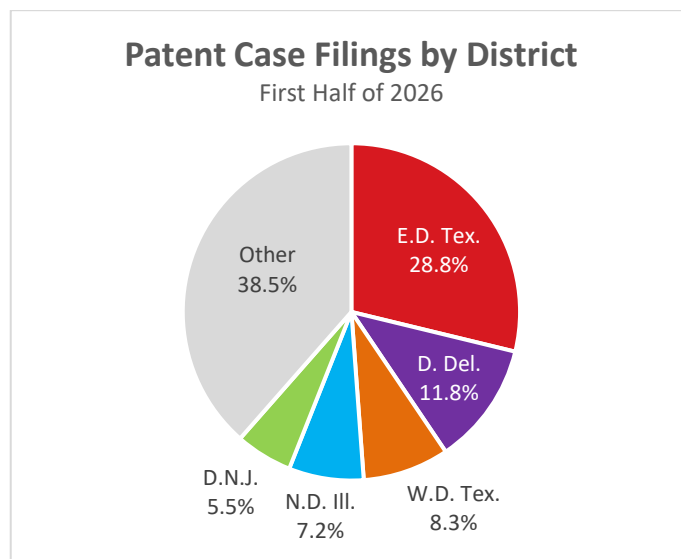


Figure 8



Practical Takeaways

Given these developments, stakeholders should consider the following:

- **Evaluate *ex parte* reexamination as a primary or supplemental validity challenge strategy.** Given the currently restrictive IPR environment, reexam offers an alternative path to challenge patent validity.
- **Budget for front-loaded costs in EDTX.** Defendants facing litigation in EDTX, and particularly in the Marshall Division, should prepare for compressed schedules and evaluate opportunities for early resolution given the significant early case expenditures.
- **Monitor Texas venue developments.** The continued resurgence of EDTX will likely shape litigation and budgetary strategies for both patent plaintiffs and defendants in a variety of industries.
- **Track evolving PTAB discretionary denial policies.** Appellate challenges to the current regime are pending, and the landscape could shift again. Companies should also remain alert to developments that may reopen the IPR pathway or further constrain it.

For questions about how these developments may affect your legal strategy, please contact the RSHC Intellectual Property Team.

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