

Even With Pandemic, Patent Suit Filings Held Steady In 2021

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Blake Coblentz was quoted in *Law360* discussing the impact the COVID-19 pandemic has had on patent filings. There were 4,063 patent cases filed in U.S. district courts last year, only 61 more than in 2020, which had seen a slight uptick from the year before, according to a new report from Lex Machina. Those minor increases, which coincided with the pandemic, reversed a trend where the number of patent suits had fallen each year between 2015 and 2019. One type of patent dispute that appears to be on the wane is litigation over abbreviated new drug applications for generic drugs. Last year, 253 such cases were filed — the lowest number since 2012 and a continuation of a decline seen each year since 2017, when 410 ANDA cases were filed. Part of that has to do with regulations about when ANDAs can be filed, the action that spurs patent suits. Filings are tied to the U.S. Food and Drug Administration's approval of new chemical entities, which can only be challenged with ANDAs after five years. In addition to the lower number of FDA approvals, some pharmaceutical companies shut facilities down during the pandemic, which may have contributed to the decline in ANDA litigation, said Blake. With those two factors no longer an issue, "I think the numbers are going to start going up again," he said. High-tech companies topped Lex Machina's list of those hit with the most patent suits from 2019 to 2021, led by Samsung, Google, Apple, Microsoft and Amazon, which are predominantly targeted by suits from patent licensing companies, like those on the list of frequent filers. Both of those lists illustrate that lawsuits by so-called nonpracticing entities are a major part of the overall patent landscape and show that "NPEs are not going away," he said. For companies that are primarily in the business of litigation rather than making products, the coronavirus had a minimal effect, he said, so "that's probably a good reason why you saw that the numbers stayed steady through the years of the pandemic and continue to do so."

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