

# Report: Patterns in Media Coverage of Patent Disputes

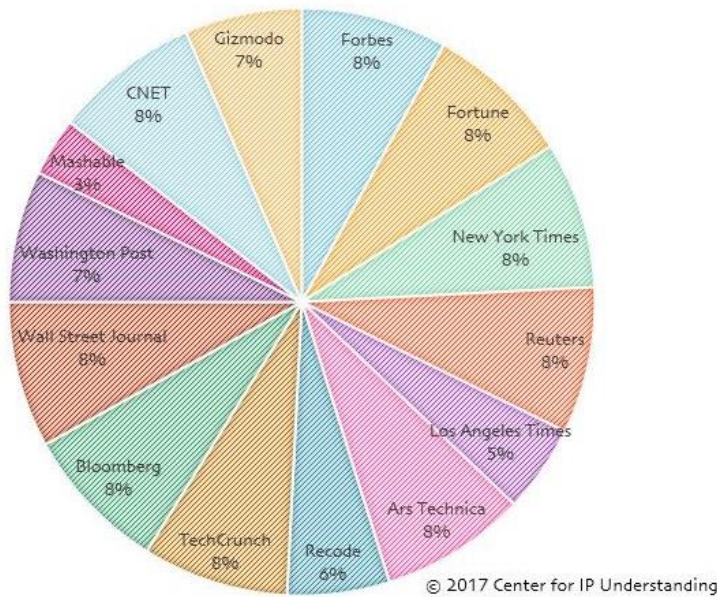
The Center for Intellectual Property Understanding, New York

## Introduction

Trends in recent media coverage of patent disputes suggest that subjective or incomplete content may be fostering a narrow view of patents and holders. A survey of 127 articles mentioning patent infringement and published in business, technology and general consumer publications during 2016 revealed that almost half of the articles are either op-ed or trend pieces. These articles are more focused on crafting a narrative rather than reporting on a specific patent case or development.

This subjectivity in news coverage tends to correlate with specific narratives, such as the “patent troll” narrative. Patent infringement news coverage is more apt to report on highly recognizable companies and cases than it is on the amount of damages in verdicts or any actual technology. Surprisingly, the most heavily covered patent case during 2016 involved design patents, while utility patents were involved in more than 90 percent of patent litigation and yield larger damages. Additionally, there is at least one instance of a news story which has been egregiously misreported by multiple journalists.

## SOURCES OF ARTICLES INCLUDED IN THE SURVEY



The purpose of this informal study, sponsored by the Center for Intellectual Property Understanding, an independent non-profit, is to provide a sense of how patent disputes are being covered in the media, the accuracy of these reports, and how they may differ depending on the types of publications in which they appear.

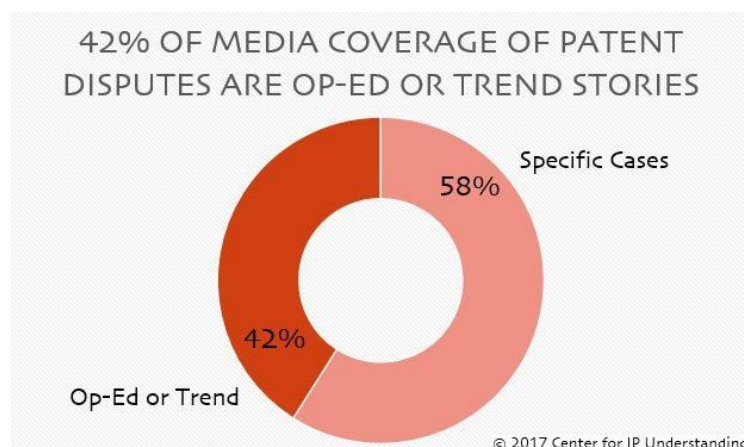
## Key Findings

- Technology publications are more likely to editorialize than business or general news publications
- 42% of media coverage are advocacy pieces written by authors promoting a political or business agenda
- 57% of case coverage of patent infringement in technology publications provide a single POV, plaintiff or defendant
- 42.5% of patent infringement coverage in the sample features either Apple or Samsung
- IT law suit media coverage was eight times greater than pharmaceutical coverage
- 88.2% of the articles that use the term “patent troll” fall under the heading of highly subjective
- Some articles covering a government study that used the term patent troll, despite the study’s explicit finding that it was prejudicial
- Tech publications provided twice as many mentions of the term troll as either business or general publications

## Abstract

The four patent cases covered most extensively during 2016 involved either Apple or Samsung, a clear indication that most media coverage of patent infringement cases was focused on the mobile smartphone sector. To be more specific, the news coverage of patent infringement stories during 2016 was dominated by *Samsung Electronics Co. v. Apple*, the \$399 million design patent case between Apple and Samsung in front of the U.S. Supreme Court, which was the main focus of 15.74 percent of all articles surveyed. No other patent case before the Supreme Court was the focus of at least five articles in the survey. Overall, Apple and Samsung dominated patent infringement news coverage. Apple was a focus of 37% of articles surveyed, and Samsung was a focus of 27 stories, or 22.83% of articles surveyed.

General news publications typically provided more balanced coverage of both sides of a patent infringement case. 100% of the articles from *The Wall Street Journal* sought comment from both sides of a case (plaintiff and defendant), whether those parties declined to participate or not. At least 50% of the articles from *Reuters*, *The New York Times* and *CNET* also showed evidence that writers attempted to contact both sides in a case. The survey found an equal number of articles presenting either the plaintiff or the defendant, not both. Patent infringement coverage at some publications is either written primarily



by guest contributors or news wire services, which is evidence that those publications do not devote much of their own news reporting resources to patent infringement coverage.

There are two instances of egregious misreporting in stories focused on the Federal Trade Commission's study on patent assertion entities (PAEs), [Patent Assertion Entity Activity: An FTC Study](#), and that misreporting surrounds the use of the term "patent troll." Overall, 14.4% of the articles surveyed mentioned patent trolls. Among them, 58.8 percent appear in the op-ed or trend articles which are about patent infringement, but not necessarily about a single patent infringement case. In articles which focus on a specific patent infringement case, patent trolls are more often discussed when the defendant's side of the story is the only viewpoint presented. 33.3% stories which only presented the defendant's side in a case mention patent trolls, in contrast to zero of 15 stories which represented the plaintiff's side, and only 4.5% stories, two of 44 stories, which represented both sides of a patent infringement case.

## Findings

A survey of 127 articles about patent infringement published during 2016 from a total of 15 major business news, technology news, and general news publications suggest that significant differences exist in how the various media approach covering patent disputes and how those stories are presented to readers. First, there is the scope of coverage seen within a single article. Some of the articles surveyed from *Gizmodo* or *TechCrunch*, for example, are short posts on a story topic which was first reported through a different news publication; in those cases, an article usually consists of a few paragraphs restating the story from the original article with a link back to that article. On the other end is the style of coverage which is more prevalent in *The Wall Street Journal* or *Bloomberg* where a reader is much more likely to see more than one writer contributing to a single story, quotes from sources which represent both sides of an infringement case, quotes from third-party industry insiders and additional analysis drawn together from reports related to the article's main story, often linking to additional articles which have been published by the same publication or a different one.

Not every article in the survey is about a specific court case involving allegations of patent infringement, although many are. 58.3% of the articles covered in the survey focus on a particular court case in which a plaintiff party is asserting patent rights against a defendant party. The vast majority of the remaining 41.7% of the articles in the survey are effectively trend or op-ed pieces about the topic of patent infringement. This represents a high degree of subjectivity as these articles are more concerned with creating a narrative or providing a commentary rather than reporting a news story.

There is heavy use of guest contributing writers covering patent infringement stories, suggesting that some publications do not have staff writers who focus on patents, intellectual property or litigation. When guest writers are the authors, there is a greater tendency for the contribution to be a commentary piece or to focus on an infringement trend. For example, 80% of the patent infringement articles published by *Forbes* and surveyed in this report are written by guest contributors who are connected to patents through ownership or client relationships. They include lawyers and executives of patent-related business. Only 10% of the *Forbes* articles surveyed was about a specific patent infringement case, although that article was provided by a guest contributing writer. When outsiders contributed stories on patent infringement,

they tend to support a position related to their patent work. For example, one *Forbes* article titled *Intrapreneurs And Patents: Lessons Learned* is by contributor Mary Juetten, the CEO of the IP strategy software platform Traklight. It is not surprising that this writer would then encourage innovators to obtain patents. Patent dispute coverage from guest writers shows a high degree of subjectivity and a strong point of view based on the writer's position within the patent system. This may make for good reading, but it does not necessarily portray an objective view of the subject matter. For other publications, news wire services contributed a great deal of their patent infringement coverage. Our survey of *Fortune's* patent infringement articles showed that 70% of the patent infringement stories surveyed from that publication were contributed by Reuters.

While business and tech publications provided ample coverage of patent infringement stories for the survey, general news publications tended not to cover patent infringement stories that often. Three of the general news publications we surveyed (*Huffington Post*, *The Washington Post* and *Mashable*) each had less than 10 patent infringement stories published in 2016. When searching for patent dispute or patent litigation articles, some general news publications return more results, but this survey looked specifically for the term patent infringement in news stories. Two tech publications, *Gizmodo* and *Recode*, also published fewer than 10 patent infringement articles in 2016. When using other search terms like patent lawsuit or patent dispute, the number of search results returned are slightly different but returned either a higher or lower number of searches without one term emerging as the most commonly used term among all publications, and there is a lot of overlap in articles returned for any of those three terms. Each of the business publications (see Methodology below) had run at least 10 patent infringement articles.

Compared to business and tech publications, however, general news outlets did a much better job of presenting viewpoints from both sides of a patent infringement case. *The Wall Street Journal*, a business publication which also reports on wider general news topics, at least reached out for comment to both sides of a patent infringement case in all of their articles. These include instances where both the plaintiff and defendant were at least quoted from a statement, a court filing, oral arguments or could not be reached for comment.

Other publications with at least five such articles representing both viewpoints in a case include two general news publications (*Reuters*, *The New York Times*) and one tech publications (*CNET*). The most subjective coverage, in which only the viewpoint of either the plaintiff or the defendant is presented, occurred in tech publications like *Ars Technica* and *Gizmodo*. Of the five *Ars Technica* articles focused on patent infringement cases, two presented the defendant's side, two presented the plaintiff's side and one presented both sides. In three *Gizmodo* patent infringement case articles, two presented the defendant's side and one presented the plaintiff's side. Overall, 57% tech publication articles (16 of 28) which are focused on specific patent infringement cases present one side of the case, either the plaintiff or the defendant.

### **Lack of Balance Among Sources**

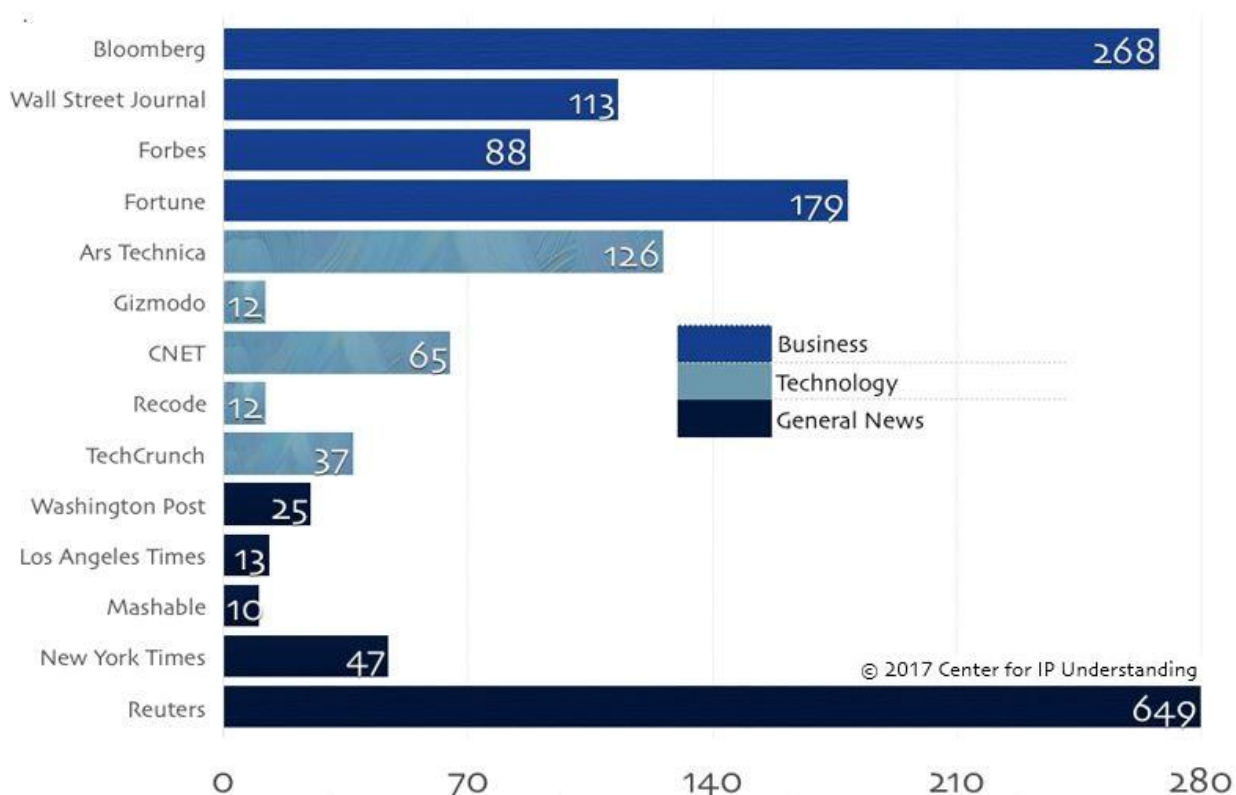
A comparison of how the three publication categories presented viewpoints in patent infringement case stories also yields insights into the veracity of their coverage. The four business publications and six general news publications surveyed each had at least 15 stories which presented the viewpoints of both parties in a patent infringement case. Both publication genres had less than five articles focused on the

defendant's side only and less than five articles focused on the plaintiff's side only. The six tech publications surveyed had only 12 articles presenting the viewpoints of both parties in a case, eight articles presenting the defendant's side only and eight articles presenting the plaintiff's side only.

Apple appears in 37% of all patent infringement coverage surveyed. In second place is Samsung, which is mentioned in 21.25% of coverage surveyed. Together, the two companies were a focus in 42.5 percent of the coverage surveyed in this study.

Much of this is due to the fact that the most heavily covered story among publications in the survey was the design patent case which Apple and Samsung battled all the way to the Supreme Court, which the Court decided last December; a total of 15.7% of all the articles in the survey covered this story. The fact that 15.7% of patent infringement coverage is focused on a design patent case seems to be an unusually high percentage in light of data found in Lex Machina's [Design Patent Litigation Update](#), published October 26th, 2016, which indicated that design patent cases make up less than 10 percent of patent infringement cases. Other companies seem to only be covered in relation to either Apple or Samsung. For example, Chinese telecom company Huawei is featured in seven stories, all of which discussed patent infringement activity between that company and Samsung. Finnish telecom firm Nokia also shows up in seven stories, all of which focus on patent infringement activity against Apple.

### Total Search Results for "Patent Infringement" in 2016



All three of these stories (Samsung/Apple design patent case, Huawei/Samsung patent infringement, Nokia/Apple patent infringement) involve smartphone tech. The mainstream media outlets examined appear to be interested in resurrecting the smartphone patent war storyline instead of presenting the many hundreds of other patent infringements that are filed in U.S. district courts annually. To be fair, this may have as much to do with reader preferences than writer bias or an inability to make more mundane but timely stories relevant.

Another patent case which was covered multiple times by articles in the survey was the litigation between pharmaceutical firms Merck and Gilead over hepatitis C virus treatments (*Gilead Sciences, Inc. v. Merck & Co, Inc.*), which came up in five articles within the survey. The patent case between Apple and VirnetX over Internet security technology also shows up in five articles. Apple is one of the largest companies in the world and is often sued for patent infringement. However, the impression that its cases are the only ones deserving of coverage can be misleading.

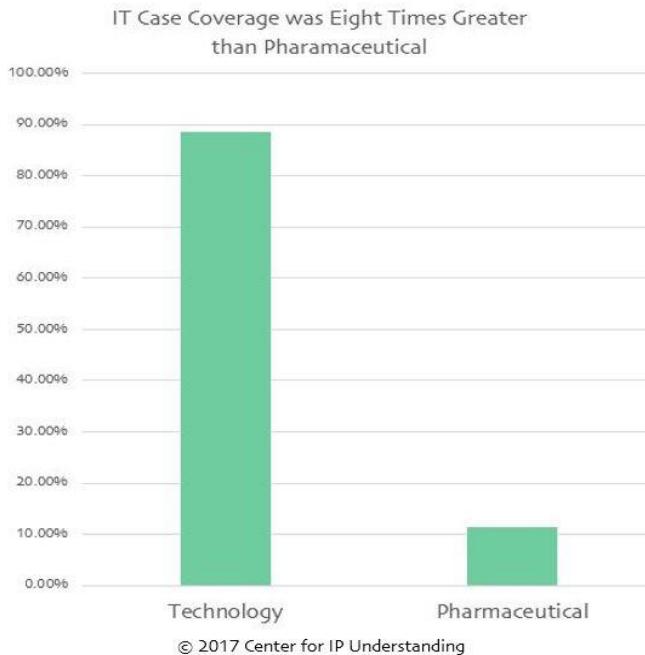
Overall, the narrow focus in media coverage of patent disputes suggests that patent infringement coverage skews towards consumer tech companies despite the amount damages involved. The \$2.54 billion verdict in the Merck/Gilead case was much greater than the \$399 million in damages at stake in the Apple/Samsung case, yet Apple/Samsung spawned considerably more coverage. From the media coverage analyzed, the editorial focus in most patent infringement coverage centers upon large consumer tech companies regardless of any actual damages involved or the relative importance of the case.

### **Patent Troll Narrative**

The “patent troll” narrative does pop up regularly in patent infringement coverage, although the term is not overwhelmingly prevalent in the articles surveyed. However, the way patent trolls are sometimes reported in coverage is evidence of questionable journalistic integrity in some reporters. This is most prevalent in stories covering the [FTC study on patent assertion entities](#) which was alluded to earlier. On the subject of patent trolls, the FTC's study very clearly states that: “In the Commission’s view, a label like ‘patent troll’ is unhelpful because it invites pre-judgment about the societal impact of patent assertion activity without an understanding of the underlying business model that fuels such activity.” Thus, the use of the term “patent troll” is unhelpful and prejudicial and FTC takes no official stand on patent trolls. Moreover, Judge Lucy Koh in the U.S. District Court for the Northern District of California has stated that use of the term is prejudicial and barred Apple from using that term in a case in June 2014.

Despite the FTC'S and the Northern District of California's protestations, Dong Ngo of *CNET* writes a story dated October 26, 2016, titled *FTC to patent trolls: Stop wasting our time*, which starts with the lead, "The US Federal Trade Commission wants to control the patent trolls." Given the fact that the FTC's study includes its patent troll stance within the first section of the first chapter of the PAE study, it raises doubts over whether Mr. Ngo and other writers had even read the study before reporting on it, or simply chose to disregard what are among the main findings. The *CNET* article cited here is only one of a few examples of this questionable reporting of the FTC's PAE study, although only two such articles are in this study. Other writers, however, provided more critical coverage, even if they still floundered on the “patent troll” distinction. A *Forbes* article written by guest contributor Jessica Karmasek, for example, raises questions

about the FTC's methodology. However, she then notes that only some PAEs are referred to as patent trolls, so it appears obvious that this writer either didn't read what the FTC study said about patent trolls or chose to ignore it.



Of the 127 articles included in the survey, the term “patent troll” is mentioned in 13.4%, or 17 articles. Ten of those articles covered the topic of patent infringement without alluding to a specific case, which means that the topic is more likely to come up in patent infringement trend or op-ed articles. When the term was used in articles focusing on a specific case, it was much more likely to appear in articles which only represented the defendant’s viewpoint of the case; five of the 15 case articles presenting a defendant’s viewpoint only mention the term patent troll. Of the 44 patent infringement case articles presenting both the plaintiff and the defendant viewpoints, the term patent troll is mentioned in two articles, so desire for balance appears to be a factor in employing the term less. Of the 15 articles presenting only the plaintiff’s side of the case, the term patent troll is not mentioned at all. It is far more likely to see patent trolls discussed in trend, op-ed or commentary articles, as well as articles which present the viewpoint of a *defendant* in a case.

Mentions of patent trolls in patent infringement coverage were more frequent in tech publications than they were in business or general news publications. The five tech publications examined rendered nine articles mentioning patent trolls, accounting for 20 percent of the tech publication articles surveyed, while the six general news publications and four business news publications each rendered four articles mentioning patent trolls (see graph). Seeing as tech publications are publishing more than twice as many articles mentioning patent trolls as general news or business news publications, it appears that tech publications are more focused on the patent troll narrative.

## Methodology

To survey the landscape of news coverage available online covering patent infringement, an important and somewhat controversial topic, we searched for the term “patent infringement” (minus quotes) in Google search across 15 publications including six publications focused on **General News** (*Reuters*, *New York Times*, *Los Angeles Times*, *Washington Post*, *Huffington Post* and *Mashable*), five publications focused on **Technology News** (*CNET*, *Recode*, *Gizmodo*, *Ars Technica* and *TechCrunch*) and four publications focused on **Business News** (*Wall Street Journal*, *Bloomberg*, *Fortune*, and *Forbes*).

We narrowed our search of online news content by using a search query operator which allows us to identify results within a specific site domain (e.g.: site:[forbes.com](http://forbes.com), site:[fortune.com](http://fortune.com), etc.). We tallied the total number of patent infringement results pages for each publication and then set a custom range of time to filter search results which were published between January 1st, 2016 and December 31st, 2016.

Although not every search result is necessarily a patent infringement story, the numbers themselves indicate which publications focus more heavily upon patent infringement as a topic than other publications (see graphics). We selected up to 10 articles related to patent infringement from the results for each publication returned by Google to include in this media study. We started from the first search result and selected articles in order of their appearance in the search results, only skipping through results which were obviously not patent infringement stories (i.e.: a story about a trademark infringement case which mentions the U.S. Patent and Trademark Office).

June 12, 2017

---

This report was prepared for the Center for Intellectual Property Understanding (CIPU) by Steven Brachmann. CIPU is an independent, non-profit organization devoted to increasing IP awareness and its impact on peoples' lives. [www.understandingip.org](http://www.understandingip.org)