

A Study on the Representation of Women at the International Trade Commission

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The International Trade Commission (ITC) is a popular venue for pursuing claims of patent infringement. Its fast procedural schedules and stringent remedies, including blocking infringing products at the United States border, make it attractive to patent holders. Attorneys who practice at the ITC often specialize in that forum. The primary objective of this article is to explore how the percentage of women ITC practitioners compared to that of men in 2022, as well as to examine the difference in experience levels with respect to women ITC practitioners and male ITC practitioners.

In 2022, 67 patent-related complaints were filed in the ITC. To conduct our statistical analysis, we identified the names of all attorneys who entered appearances and/or entered protective order undertakings. We entered each name into a spreadsheet, then searched each attorney to find their law firm bios indicating their corresponding years of experience based on law school graduation year and current title. We recorded each attorney's gender, number of years of experience, and title, such as partner/principle, counsel, associate, or other identifier.

[1]Recognizing the importance of representation of gender nonconforming attorneys at the ITC, for the purposes of this article, we have used our best judgment to determine the preferred gender of each attorney who has appeared in an ITC Investigation last year.

Based on our data, approximately 2,344 attorneys appeared on the 67 Investigations. We note in some instances, attorneys appeared as counsel in more than one Investigation. In those instances, we counted appearances in different Investigations separately. In other words, some attorneys are counted multiple times if they appeared in multiple Investigations. We also could not find law firm bios for some attorneys, indicating that they may have left after the Investigation was filed. For many of those attorneys, we filled in the information using LinkedIn profiles. For the few attorneys that we could not find either a law firm or LinkedIn profile, we included them in the gender data, but excluded them from our calculations of experience level. Given that there are relatively few attorneys whose level of experience we could not find (four women and 17 men), the impact on the data is minimal.

Of the 2,344 attorneys who appeared in patent-related Investigations, 640, or approximately 27.4%, are women. This is below the national average for women attorneys generally. The American Bar Association [reports](#) that in 2022, 38% of lawyers are women. This is higher than the percentage of women who have U.S. Patent and Trademark Office registration numbers, [which is 22%](#). But, given that women make up more than 50% of the classes graduating from U.S. law schools and 51% of U.S. summer associate classes, the ITC bar still has a long way to go to reach even representation.

Based on our data, we also examined the average years of experience for women and men. For 2022, the average number of years that men have practiced is just above 15 years, compared to just over 9.5 years for women. While an average difference of 5.5 years of experience is large, extracting the data shows an even greater disparity. The median number of years of experience for men is 14, while the median number of years of experience for women is just 7 years. Similarly, the mode or most common number of years of experience for men who appeared in ITC Investigations is 15 years, while the mode for women is just 2 years. With our estimated number of years of experience added into the data set, the average number of years of experience for women is 9.7, the median and mode stay the same. For the men, when we include estimated years of experience, the average is 15.3 years, the median and mode stay the same.

The charts below illustrate the skew in level of experience between men and women. There is a relatively even distribution of years of experience for men, with peaks at the first-year associate level and 30+ years of experience level. For women, the clear peak is at the first and second-year associate level, followed by a continuous drop as the number of years out of law school rises.

Lastly, we noted the number of women and men who appeared in 2022 ITC Investigations as partners or other equivalent titles. Approximately 31% of the women who have appeared are partners, while approximately 56% of the men are partners. Comparing the percentage of women partners to the total number of attorneys who have appeared and to the number of male partners again illustrates a disparity. Just 8% of the attorneys that appeared in 2022 Investigations are women partners, compared to about 26.8% women partners in private practice at large. Of the total number of attorneys who appeared in 2022 patent-related Investigations, just over 8% are women partners, while just under 40% are male partners.

Taken together, these statistics demonstrate a trend seen throughout the legal industry: the percentage of women tends to drop as the years out of law school increases. The cause of the relatively lower number of women at the ITC is unclear. The ABA [recently published a study](#) seeking to identify the underlying issues in the legal profession at large. The study found the chief factors influencing women to leave the profession included “real or perceived pay disparities, feelings of isolation, and obvious or more subtle displays of gender bias.” The ITC’s fast pace, unforgiving deadlines, and existing gender gap may exacerbate these issues, leading women away from practicing at the ITC.

Further, data on the number of women with speaking roles at ITC trials is unavailable because transcripts are generally sealed. But the fewer years of experience of women versus men is likely a good approximation for a gender disparity at evidentiary hearings because less-experienced attorneys generally have a smaller role at trial. Fewer speaking roles for women at ITC hearings is also consistent with [a larger industry trend](#) in court rooms. The ITC’s [NEXT Advocate program](#) may be helpful in increasing the number of women with speaking roles. That program encourages Administrative Law Judges to include incentives in their ground rules to convince firms and their clients to give speaking roles to less-experienced attorneys. For example, the program suggests that ALJs “entertain[] requests for oral argument on summary judgment motions or other matters if a substantive portion of such oral argument is presented by a less-experienced attorney.” The extension of that program to give speaking roles to women may also be beneficial in reducing the disparity between the number of men and women advocates.

Brittany Reeves, a 3L at University of New Hampshire Franklin Pierce School of Law, also co-authored this article. Special thanks to Courtney Keaton who played an integral role in compiling the data.

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