

Women at the ITC in 2023: What This Year's Data Shows

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For the second year in a row, we pulled and analyzed data on the number of women who appeared in International Trade Commission (ITC) investigations. This year's data confirms what we saw last year: that women are underrepresented at the ITC. While [research shows](#) women make up about 50% of the [population](#), 50% of [associates](#), and 39% of the [profession](#) generally, they only made up 27% of the ITC advocates in both 2022 and 2023. The difference in years of experience between male and female advocates is even starker, with men having on average nearly 7 more years of experience than women. This year's statistics are examined in detail below and compared to what we found in our [article](#) published last year.

The ITC is an independent, quasi-judicial agency empowered to adjudicate unfair trade practices, including patent infringement. The ITC's primary remedy is exclusion of infringing products at the border, meaning a company found to infringe cannot bring its products into the United States to be sold to customers. This powerful remedy makes the ITC a popular venue for patent owners and pushes companies accused of infringing to hire only the most experienced ITC practitioners.

In 2023, patent owners filed 36 complaints in the ITC under 19 U.S.C. § 1337. To run our statistics, we used the same process as last year. We first 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, from which we determined their years of experience based on law school graduation year. We recorded each attorney's apparent gender, number of years of experience, and partner or other equivalent titles. For the purposes of this article, we have used our best judgment to determine the preferred gender of each attorney who appeared in an ITC Investigation last year based on bio pronoun use.

Approximately 1,019 attorneys appeared in the 36 Section 337 Investigations. Some 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, although as discussed, we also ran analysis on unique attorneys. For most of the few attorneys whose law firm bios we could not find, we filled in the information using public sources like LinkedIn profiles. For the few that we could not find either a law firm or public data indicating level of experience, 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 (2 women and 15 men), the impact on the data is minimal. There were two attorneys without any internet presence to indicate gender or experience, who we excluded from the data entirely.

Of the 1,019 attorneys who appeared in Section 337 Investigations in 2023, 276, or approximately 27%, are women. This percentage is nearly identical to last year's data at 27.4%. The fact that 2023 saw fewer ITC filings at 36 filings compared to 2022 at 67 filings should be considered. Regardless, the percentage of women appearances in patent-related Investigations remains below the national average for women attorneys generally in 2023. The American Bar Association [reports](#) that in 2023, 39% of lawyers are women.

We received a surprising amount of backlash to last year's article. Our comparison of women at the ITC to women in the profession generally was one of the most common gripes. Commenters argued that ITC lawyers should not be compared to the profession generally because women make up a smaller percentage of lawyers in patent law than in other practice areas. While true, it does nothing to address the issue. That women are also under-represented in other types of patent law does not mean that they are adequately represented in the ITC. Rather, such an argument only underscores that the problem is larger than the ITC, impacting patent law as a whole as well as the profession at large.

As we did last year, we also examined the average years of experience for women and men who appeared in patent-related Investigations in 2023. The chart below illustrates that the skew in levels of experience that we saw in 2022 continued in 2023.

For 2023, the average number of years that men have practiced is 17, compared to approximately 10.5 years for women. Interestingly, this is a one-year increase in average experience level for both men and women from 2022 to 2023, hopefully demonstrating a trend that younger female attorneys stayed in their ITC practice from last year to this year. The chart above, however, shows that 1 to 3 years of experience remains the greatest population for women by far, while the level of experience for men remains more constant. We saw the same general trend [last year](#).

We also compiled the number of male and female partners or equivalent title and compared that to the number of

male and female associates or equivalent. Overall, partners made up a bigger percentage of the total number of attorneys in 2023 (57%) compared to 2022 (50%). The proportion of female partners increased by 9% and the proportion of male partners increased by 7% over 2022. As shown in the pie chart below, however, only about 11% of the total attorney appearances in 2023 are female partners, while 46% are male partners, meaning women partners make up only 20% of all partners who have appeared in Section 337 investigations. This is lower than [the national average percent of women partners at law firms](#), 27.8% non-equity and 23.7% equity.

Given the ITC's strict confidentiality policies, it would have been difficult to accurately tabulate the number of women with speaking roles at ITC hearings. The levels of experience discussed above, however, indicate a likelihood that men make up a disproportionate share of the number of attorneys arguing and taking witnesses as well. This is understandable, as clients put pressure on law firms to make sure only experienced attorneys have speaking roles. This underscores the importance of keeping women in an ITC practice beyond their third year or even their eighth, where our data shows two drop offs in the number of women.

The gender disparity is further emphasized in the number of women who are designated lead counsel. Of the 112 attorneys entering an appearance as lead counsel, only 13 were women or 12%. This is about the same as last year, 264 women as lead attorneys or 11%. [In a 2020 survey of over 100 intellectual property trials](#), 24% of lead attorneys were women, double the representation at the ITC.

Again, in response to comments we received about comparing the data to the profession as a whole rather than patent law, it is informative to look at the percent of women in patent law in the public-sector jobs. Women and men present oral argument on behalf of the government before the Federal Circuit at almost equal proportions (48.4% and 51.6%, respectively). Paul R. Gugliuzza & Rachel Rebouche, [Gender Inequality in Patent Litigation](#), 100 N.C. L. Rev. 1683, 1712. Similarly, men and women are better represented at the ITC in Staff Attorney (OUII) positions. In 2023, women comprised 55% of all ITC Staff Attorneys. Even comparing advanced staff roles (director and supervisory attorneys), 50% are held by women. ITC Staff Attorneys on average have 20.2 years of experience, 10 years more than the average private-sector advocate. Women are also better represented in judge positions. 30% of the PTAB's judges, 34% of the Federal Courts of Appeals, and nearly half of the Federal Circuit's active judges are women. [Id.](#) at 1692, 1707, 1727. At the ITC, three of the six ALJs are women, yet the bar appearing before them is predominately men.

The 2023 data discussed above shows little to no difference over the data from last year, except for the extra one year of experience seen across women at the ITC on average. The authors hope this is a trend that will continue in coming years, demonstrating that women are sticking with their ITC practice. We will run the numbers next year and let you know.

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