

Who – What – Where? Trademark and Copyright Venue in 2020 and Beyond

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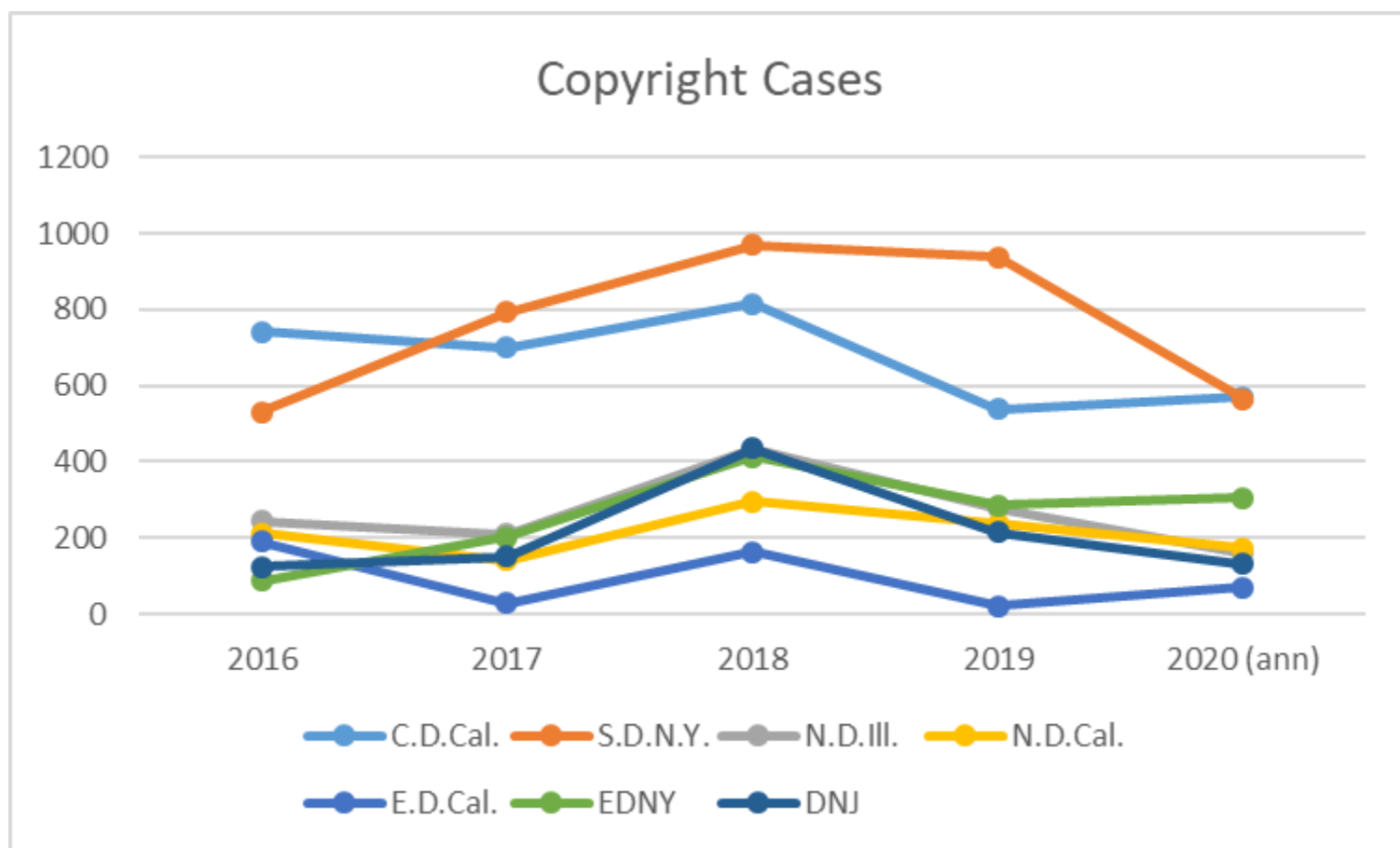


In recent years, commentators have discussed patent venue *ad nasuam* in the run-up to and following the Supreme Court's 2017 decision in *TC Heartland*. In a nutshell: after *TC Heartland* restricted the circumstances under which venue can be found proper for patent cases, plaintiffs brought fewer cases in the Eastern District of Texas. (Before *TC Heartland*, the Eastern District of Texas achieved a measure of notoriety as the preferred

forum for patent plaintiffs.) Not as few as might have been expected, however, as the Eastern District of Texas strained to hold onto jurisdiction by, for example, ruling that the presence of a computer server means a defendant can be “found” in the jurisdiction. The Federal Circuit, however, rejected that view. As expected, the District of Delaware has seen a huge influx of cases, while the California districts have seen fewer than expected. The most noteworthy recent development is the rise of the Western District of Texas, which is now seeing large new numbers of patent filings.

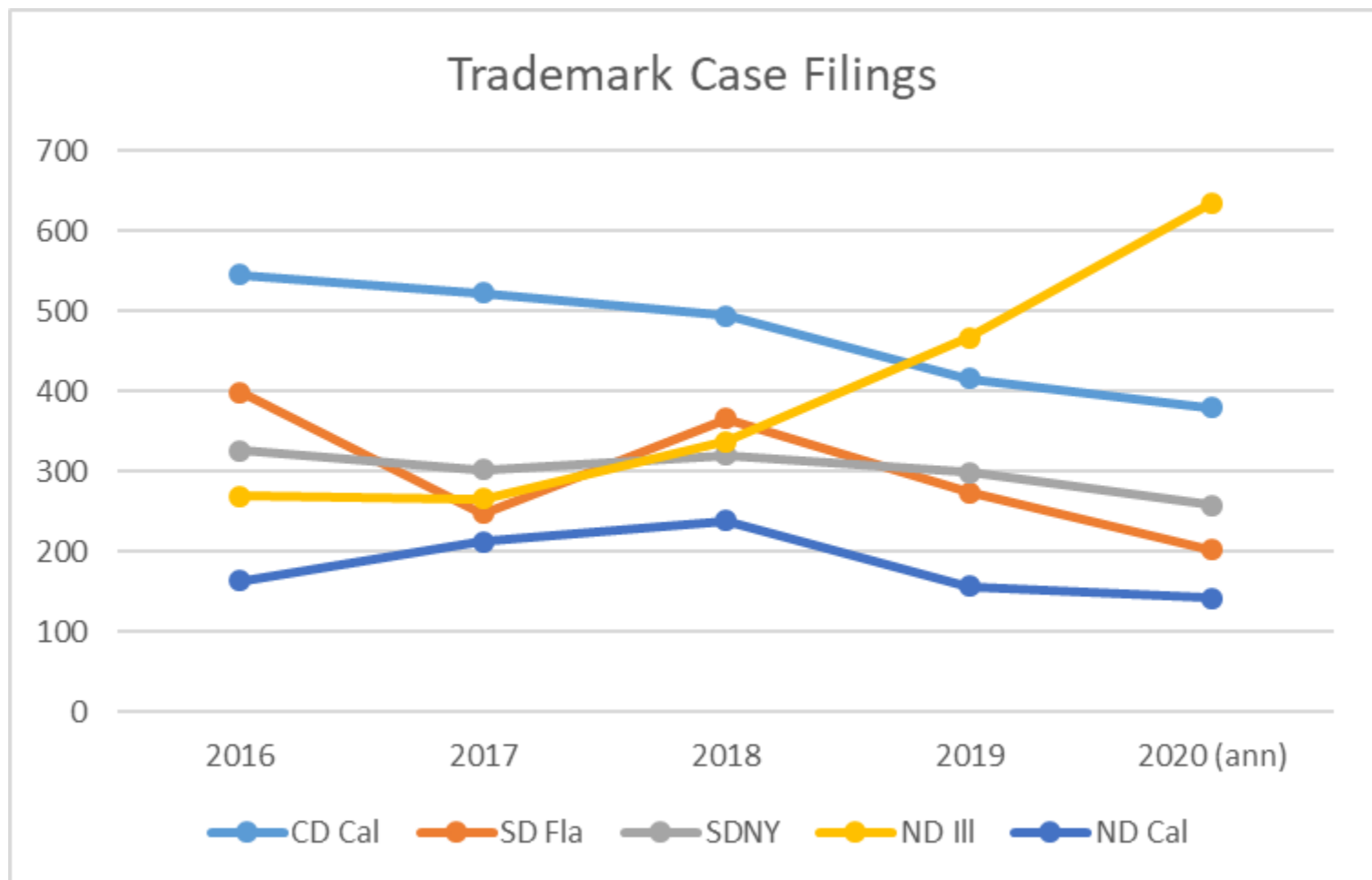
But what is happening on the copyright and trademark front? Although there is no equivalent to *TC Heartland* on which we can hang any conclusions about forum shopping, there are some notable trends highlighted below.

On the copyright side, the biggest shift in 2020 is a notable decrease in cases filed in the Southern District of New York in 2020. The Southern District of New York is currently annualizing to have 40% fewer *copyright* cases in 2020 than in 2019, bringing it roughly back to its 2016 level. Has the apparent bubble of large cases there burst? The chart below, showing cases filed in each calendar year, illustrates the camel hump of cases that appears to be tapering off.



On the trademark side, the biggest change is the steep rise in cases filed in the Northern District of Illinois. The Illinois 2020 filings are on pace to be more than double the number

filed in that district in 2017, and for the first time far outnumber the filings in the Central District of California. By contrast, the other top four jurisdictions—the Central District of California, Northern District of California, Southern District of Florida, and Southern District of New York—are seeing a decline in cases filed.



The irony is that the most popular jurisdictions for copyright and trademark cases are also among the busiest districts, with the largest number of judicial vacancies and cases per judge. For example, the District of New Jersey has six judicial vacancies—two of which have been empty for over five years—and weighted caseloads of over 1,000 filings per judgeship. The Central District of California has seven judicial vacancies, and nearly 700 cases per judgeship. Will litigants begin selecting judicial districts that have a lower caseload, or will they opt to stay with the tried-and-true jurisdictions? Only time will tell. And in this year, more than any other, we know that our vision is not 20-20.