

The Changing Faces of the International Trade Commission: Getting to Know the New Administrative Law Judges

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October 16, 2023, 1:54 PM

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The International Trade Commission (ITC) looks a little different these days. Prior stalwart Administrative Law Judges (ALJs) have moved on. Some new names and faces have taken on the gavel. As a result, the makeup of the court is changing.

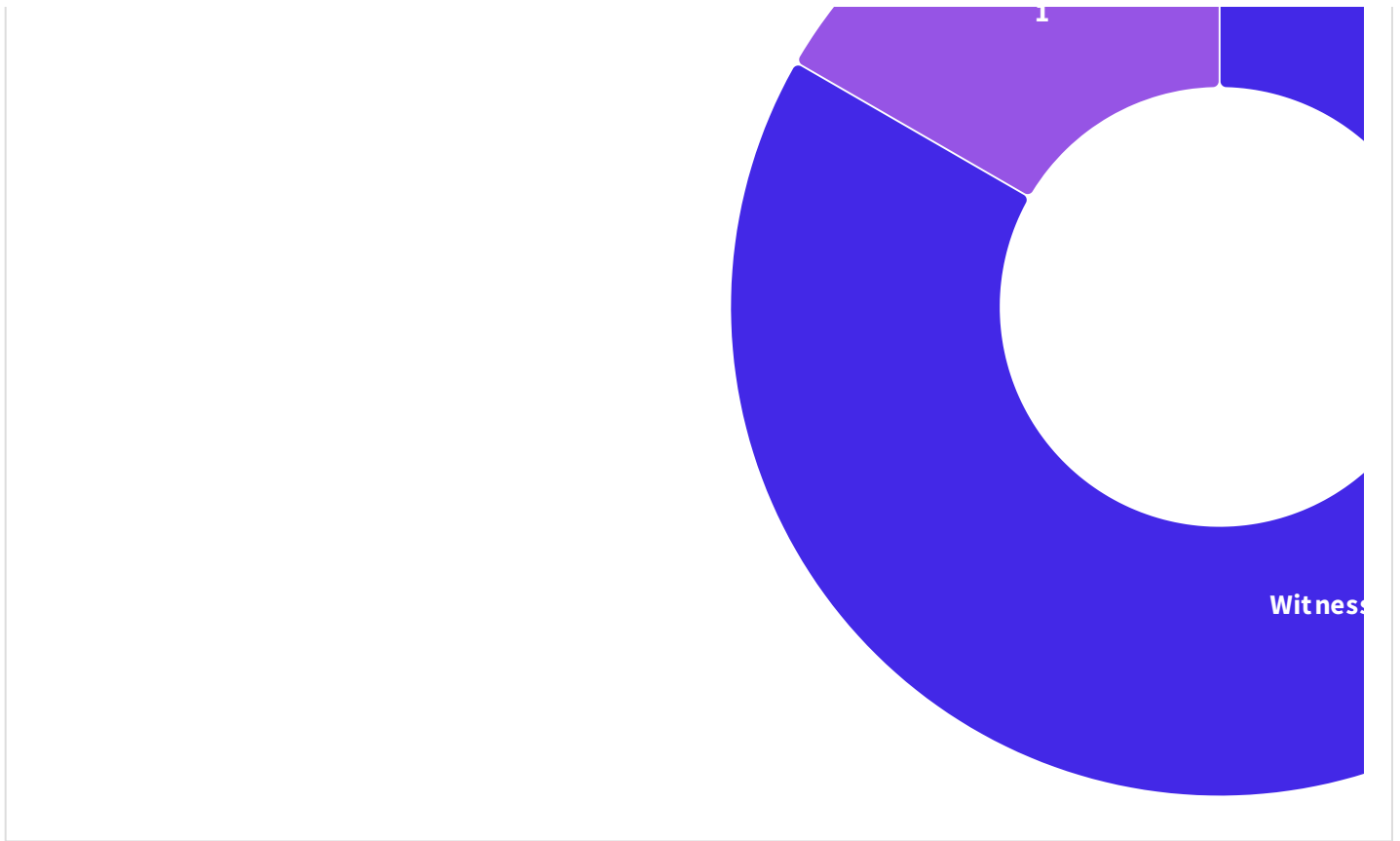
For instance, trials are getting livelier, at least on direct examination. For years, the ITC was known for its direct witness statements. That is, in lieu of live testimony, the ALJs commonly issued ground rules that required the use of written questions and answers sworn under oath. The first substantive “live” testimony was therefore cross-examination, which generally accounted for the bulk of all live testimony. Experts and fact witnesses had their views challenged immediately, without much opportunity to explain their opinions to the ALJ.

This is no longer the case. Nearly every ALJ has now opted for live direct testimony. ALJ Moore is the only judge who uses direct witness statements.



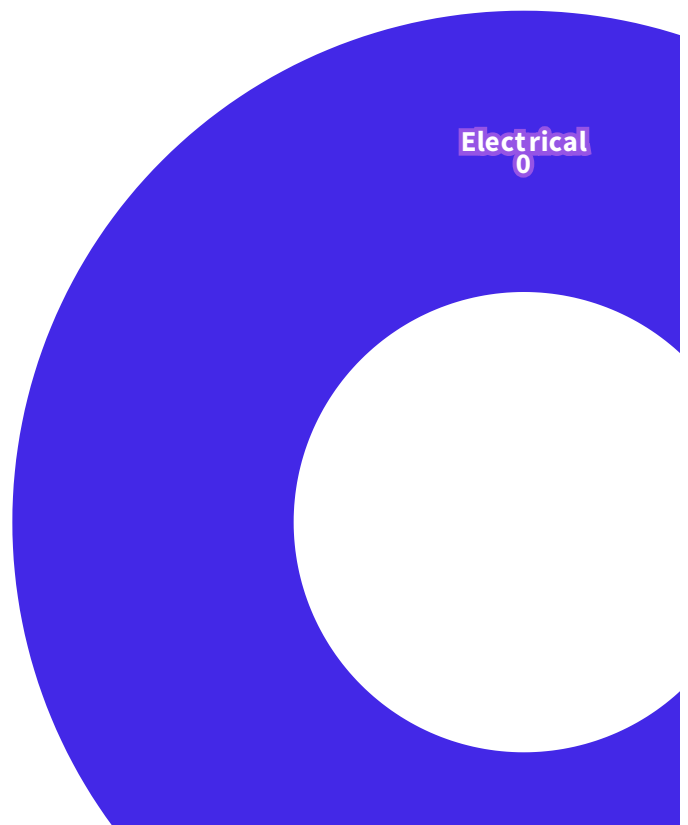
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The bench is also getting more technical, at least as far as educational background. Make no mistake, prior ALJs have long been highly technical and capable. However, it is clear that the court is increasingly valuing technical degrees in its appointment of new ALJs. Unlike ever before, the ALJs represent a wide range of technical educational backgrounds.

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At this point, half the bench was appointed two or fewer years ago. With these recent changes, it is worth taking the time to get to know the judges, including possible trends to follow.

ALJ Monica Bhattacharyya was appointed in 2021.

ALJ Bhattacharyya holds a J.D. from Yale Law School, a master of arts degree in politics from Princeton University, and a bachelor of arts degree in biochemistry, magna cum laude, from Harvard-Radcliffe College. She was appointed to the bench after working as an investigative attorney in the USITC's Office of Unfair Imports (OUII) since 2012. Before that, ALJ Bhattacharyya worked for more than 12 years in private practice, including as a partner at Kasowitz Benson Torres LLP.

A trend to follow with ALJ Bhattacharyya is the granting of motions for summary determination (MSD) on non-infringement.

ALJ Bhattacharyya appears to be granting motions for summary determination (MSDs) at a similar rate to other ALJs at around 30%. However, focusing specifically on MSD for non-infringement tells a different story. On that issue, successful summary determination is particularly rare. CALJ Cheney and ALJ Elliot, for example, have never granted a MSD on non-infringement despite their many years on the bench. By contrast, ALJ Bhattacharyya has now granted 50%, after issuing two recent, substantive early disposition rulings.

ALJ Bryan Moore was appointed in May, 2022.

ALJ Moore holds a J.D. from Georgetown University Law Center and a bachelor of science degree in electrical engineering from Stanford. He came to the ITC after serving as an Administrative Patent Judge (APJ) since 2012. ALJ Moore also worked as an investigative attorney at OUII. Before that, ALJ Moore began his career in private practice as an attorney at Fish & Neave and Hunton & Williams.

A trend to follow with ALJ Moore is the denial of MSDs.

While the ALJs have historically disfavored overuse of summary determination, ALJ Moore may be in a league of his own. To date, ALJ Moore has never granted an opposed MSD. In fact, he has only granted-in-part one undisputed motion. While his sample size is still small, after thirteen denials it is beginning to look like a trend.

ALJ Doris Johnson Hines was appointed in February, 2023.

ALJ Johnson Hines holds a J.D. from George Washington University Law School and a bachelor of science degree in electrical engineering from Rensselaer Polytechnic Institute.

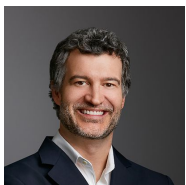
She came to the bench after a career as a partner at Finnegan Henderson, having joined the firm in 1990. Before that, ALJ Johnson Hines worked as a patent examiner at the USPTO.

A trend to follow with ALJ Johnson Hines is becoming an ALJ from private practice.

While many ALJs have worked at private practice at some point in their career, virtually all of them have been appointed from another area of the government. Many had been ALJs in other departments. Some were appointed directly from OUII. ALJ Johnson Hines instead has had a long and prosperous career as a partner at Finnegan. Time will tell whether her appointment will remain unique in that regard or we will eventually see other prominent attorneys in private practice become a new face of the court.



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