

USPTO and Litigation Statistics for 2016

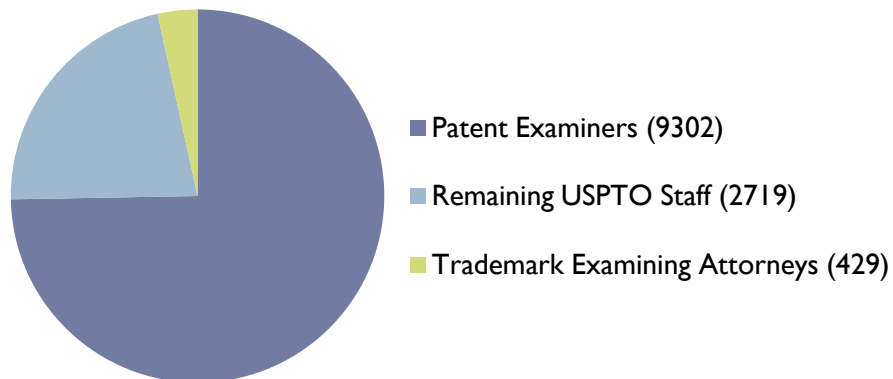
March 2016

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USPTO Internal Matters

- ▶ October 1, 2013: USPTO adjusted examiner count system to address growing RCE backlog.
 - ▶ Previously, 1.75 credits were available for first RCE; 1.5 for second and subsequent RCEs.
 - ▶ Now, examiners receive 2.0 counts for 4th and all subsequent RCEs in which a first OA is done in 1st quarter of fiscal year, and 2.0 counts for the 5th and all subsequent RCEs in which a first OA is done in each of the 2nd, 3rd and 4th quarters.
 - ▶ Also, examiners with higher RCE inventories will have more limited inventories of regular new applications until the RCE inventories are reduced below predetermined thresholds.
- ▶ USPTO workforce at the end of FY 2014

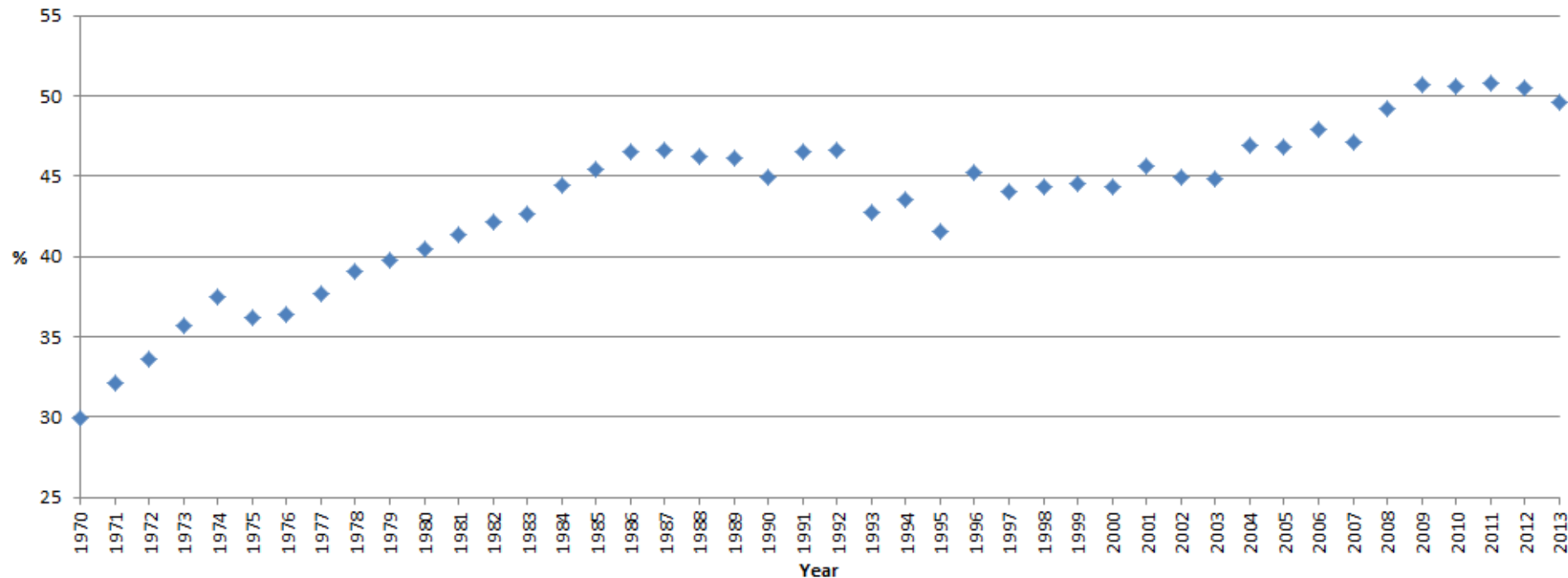


Impact of Apple

- ▶ Apple has filed more lawsuits than other market share leaders.
- ▶ Apple began asserting its design patents related to its smartphone in 2011 and prior to these lawsuits, design patent suits were very rare.
- ▶ Patent infringement litigation saw substantial increase after Apple's broad patent litigation filed in 2011.
- ▶ Apple's position may be spurring litigation throughout the market and maybe motivating competitors to acquire additional patents to help with defensive position.

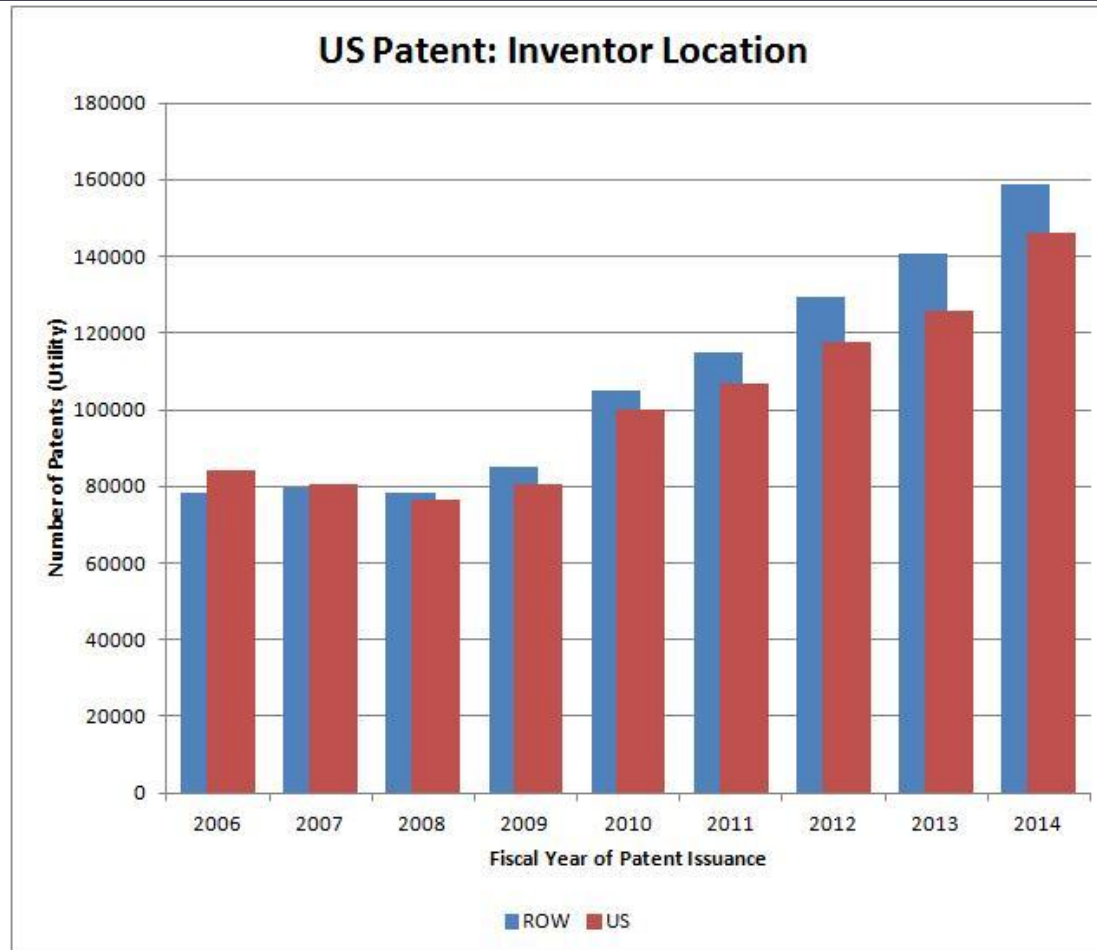
Statistics: Patent Ownership

Percentage of US Utility Patents of Foreign Origin



Created from USPTO statistics

Statistics: Patent Ownership



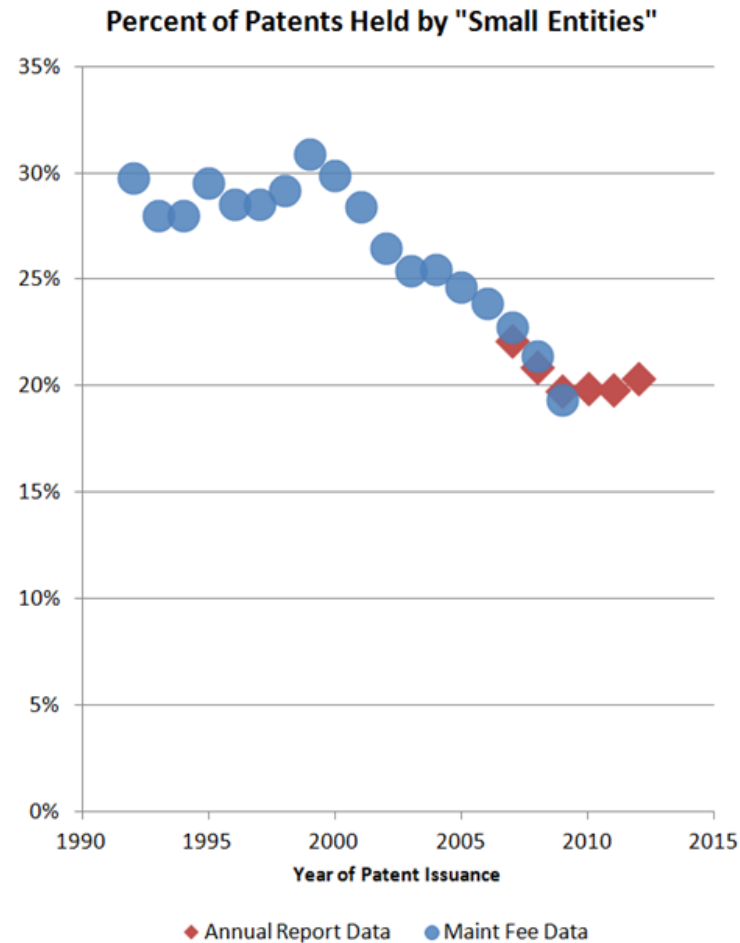
From Patently-O Blog

Statistics: Patent Ownership

Country of First Named Inventor	FY2014 Patent Count	
Japan	54975	18%
Germany	16730	5%
Korea	16280	5%
Taiwan	11303	4%
China	7694	3%
Canada	7218	2%
France	6812	2%
UK	6700	2%
Israel	3453	1%
India	3005	1%
Sweden	2754	1%

From Patently-O Blog

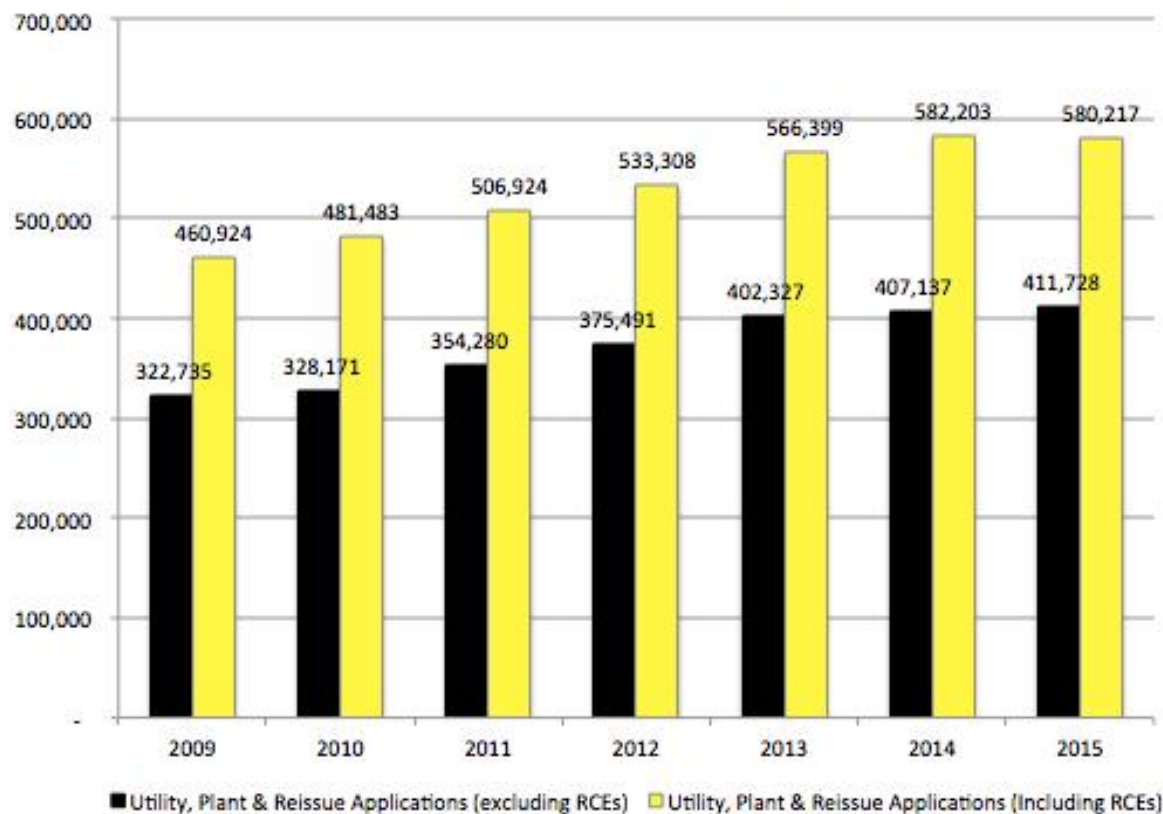
Statistics: Patent Ownership



From Patently-O Blog

Statistics: Applications Received

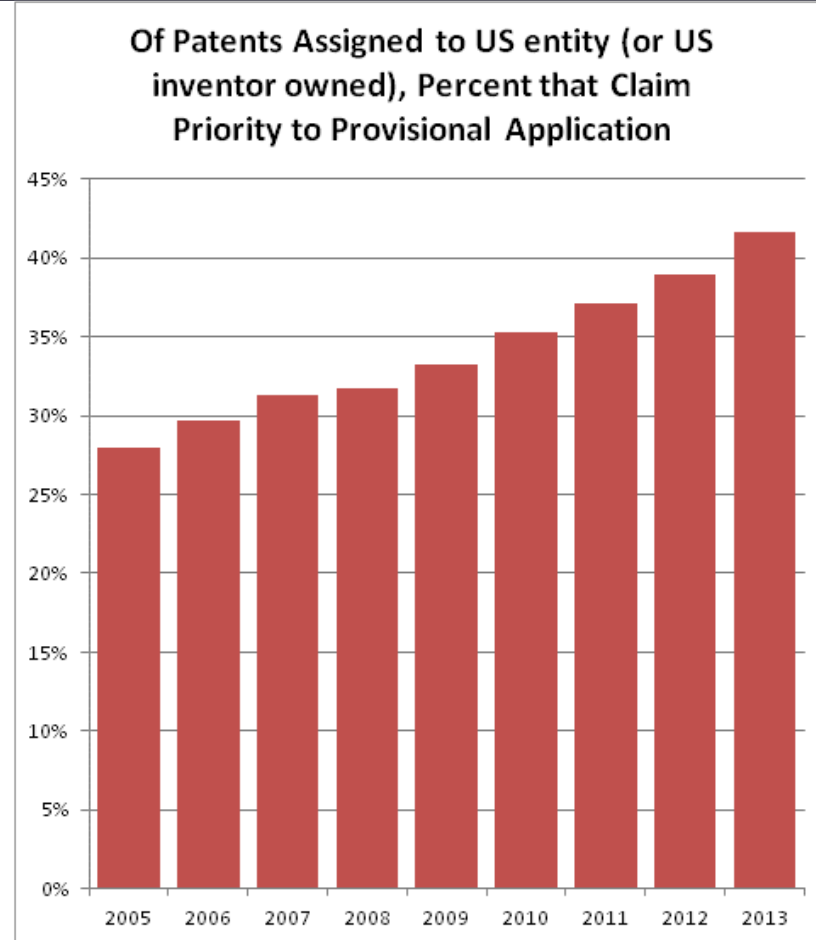
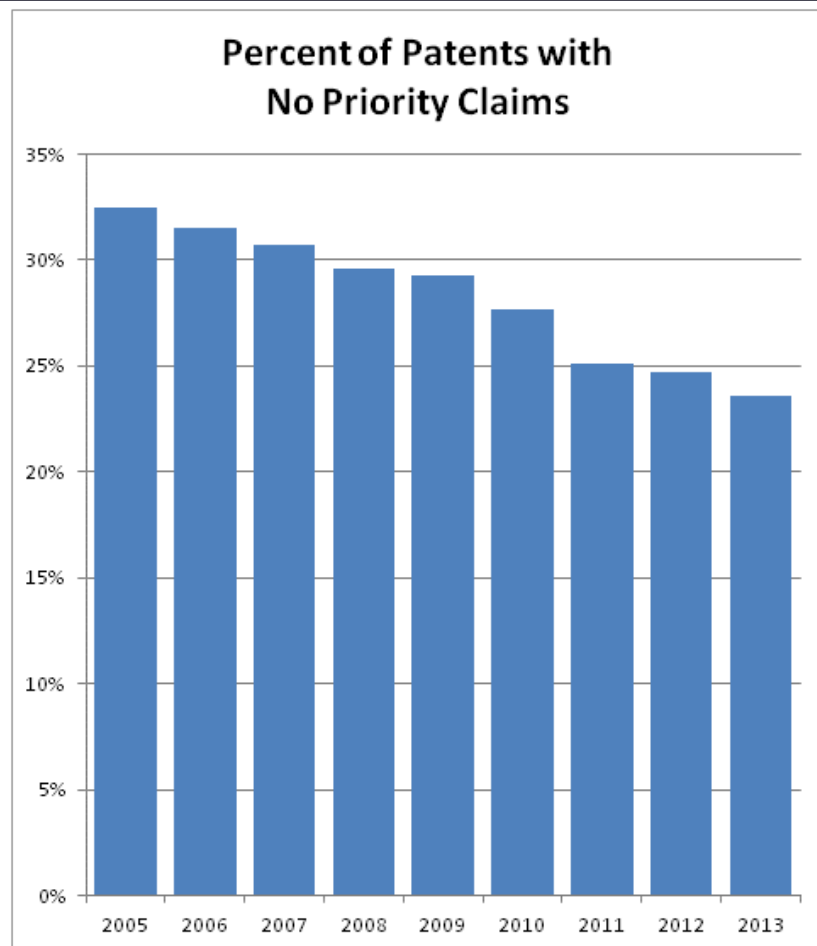
Utility, Plant and Reissue Patent Applications Filed per Fiscal Year (2009-2015)



Graph from PatentlyO.com Data Source: www.uspto.gov/dashboards/

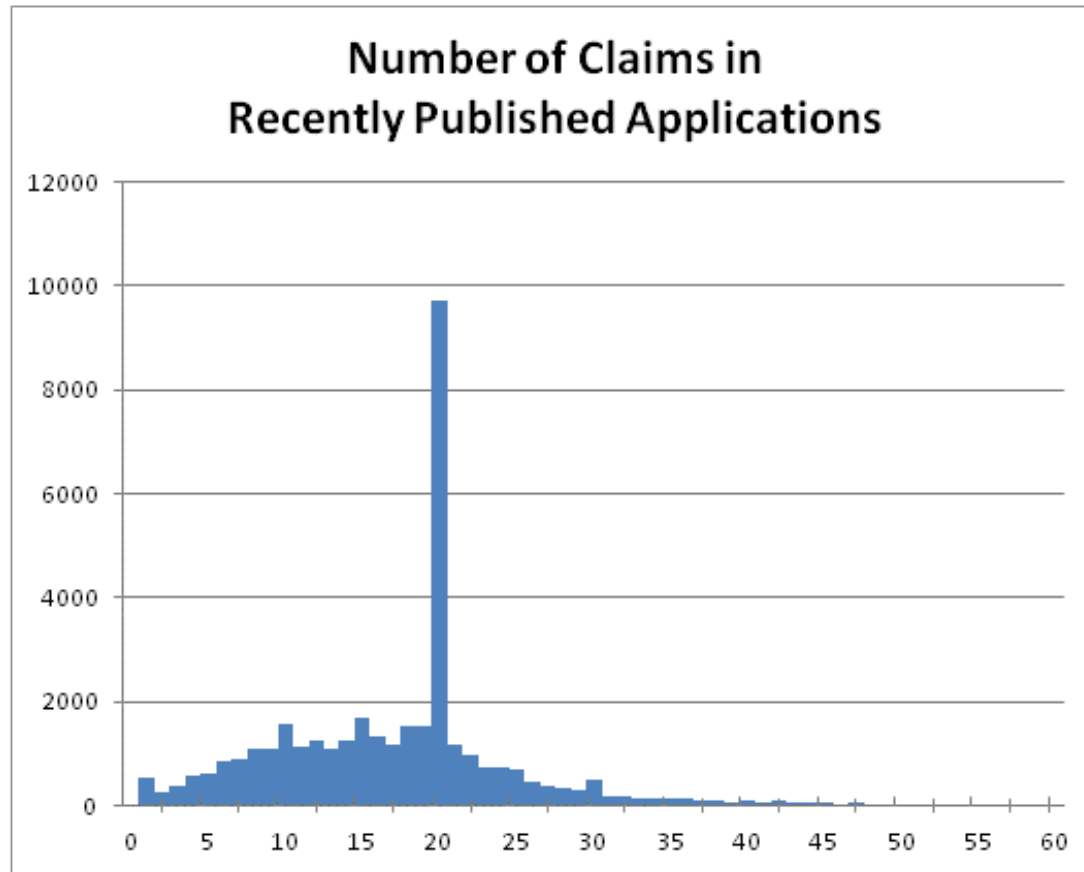
From Patently-O Blog

Statistics: Priority



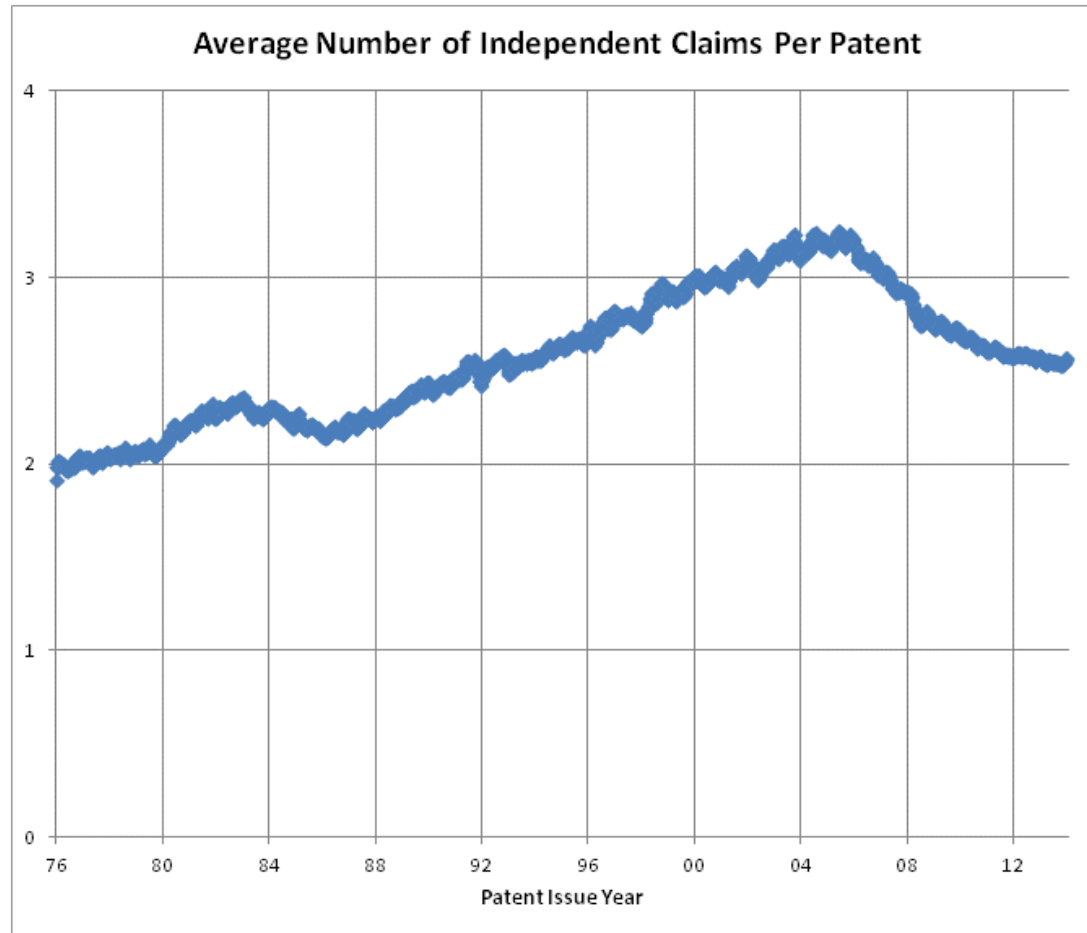
From Patently-O Blog

Statistics: Number of Claims



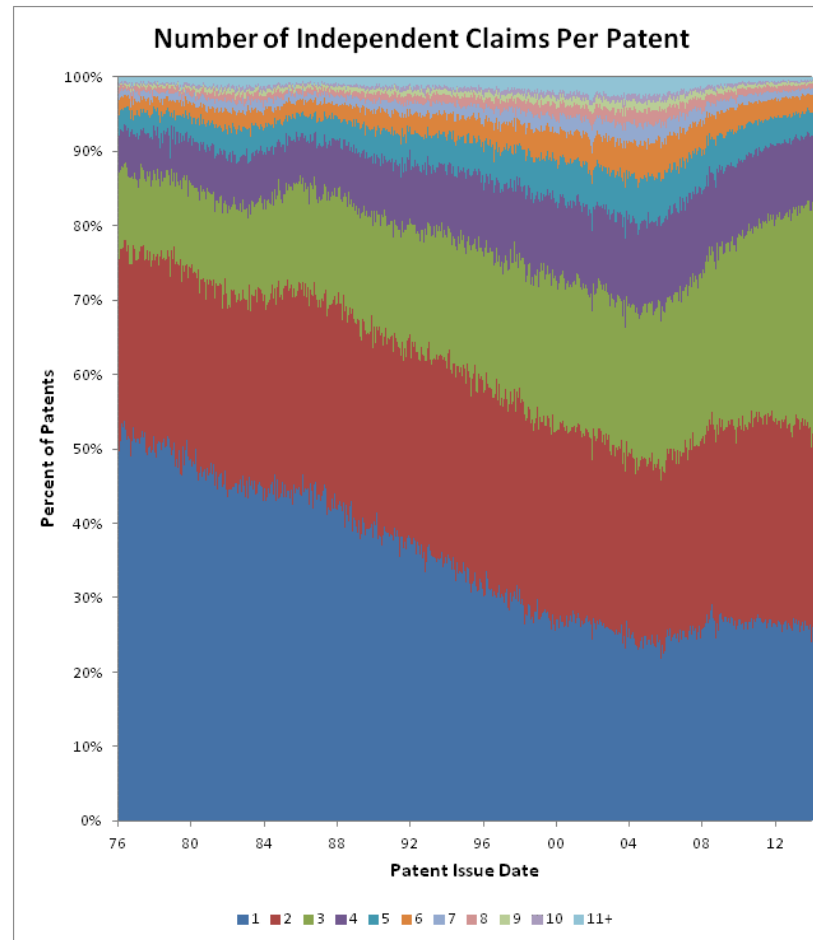
From Patently-O Blog
("recently published" = between April 20 and May 18, 2014)

Statistics: Number of Claims



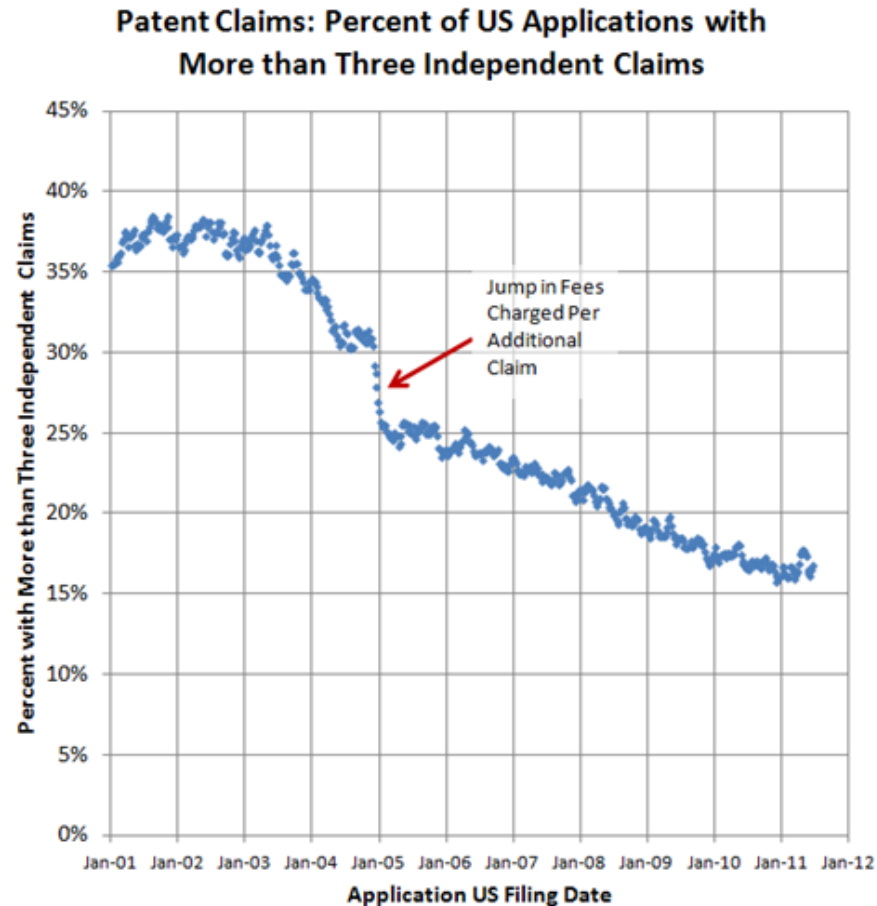
From Patently-O Blog

Statistics: Number of Claims



From Patently-O Blog

Statistics: Number of Claims



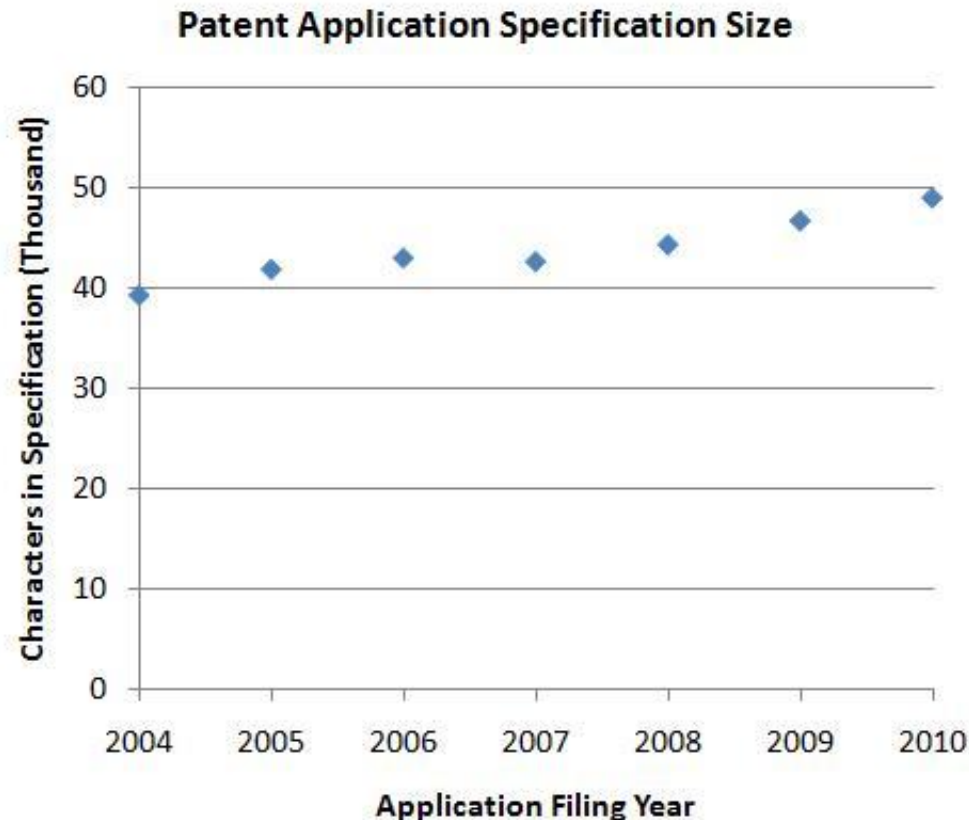
From Patently-O Blog

Statistics: Number of Claims

- ▶ The largest US patent issuing in 2013, in terms of claims, was No. 8,401,902 (“Method for using computers to facilitate and control the creating of a plurality of functions”; an advertising distribution system) with a colossal 404 claims.
- ▶ Second place: No. 8,404,693 (“Substituted piperidine compounds and methods of their use”; a variety of painkiller neutralizer), with 372.
- ▶ Third place: No. 8,437,669 (“Electrophotographic image forming apparatus, developing apparatus, and coupling member”; a type of toner cartridge), with 322.
- ▶ 12 patents had over 200 claims.

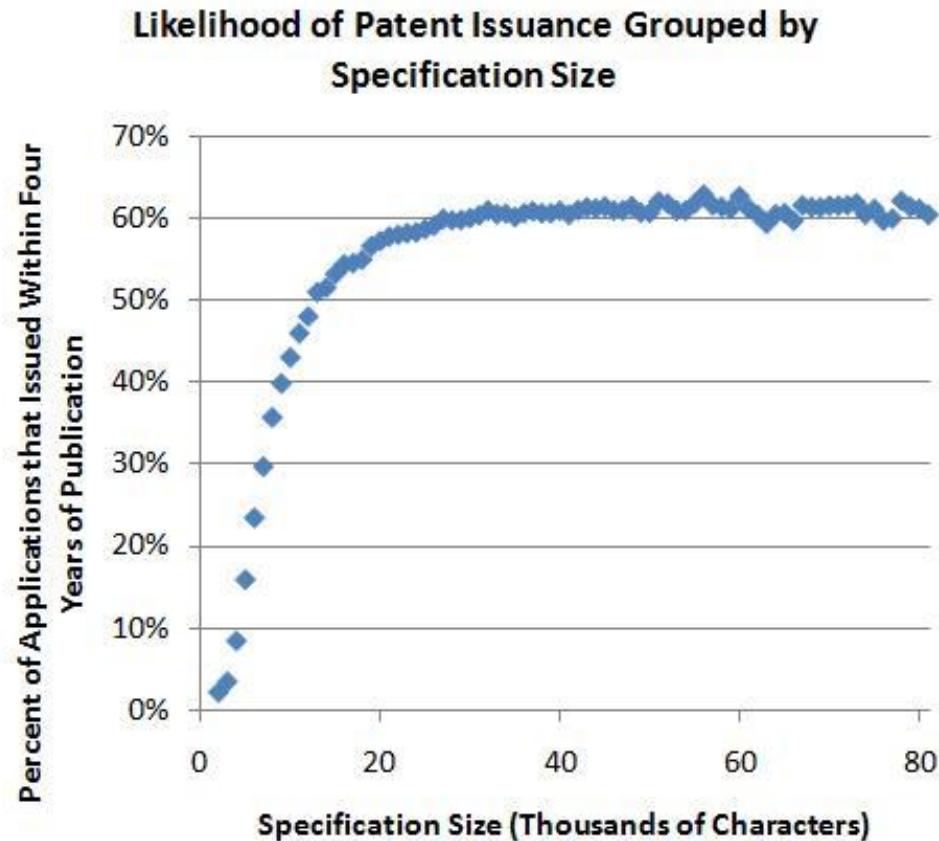
Statistics: Specification Size/Success

Slight increase in size over the years:



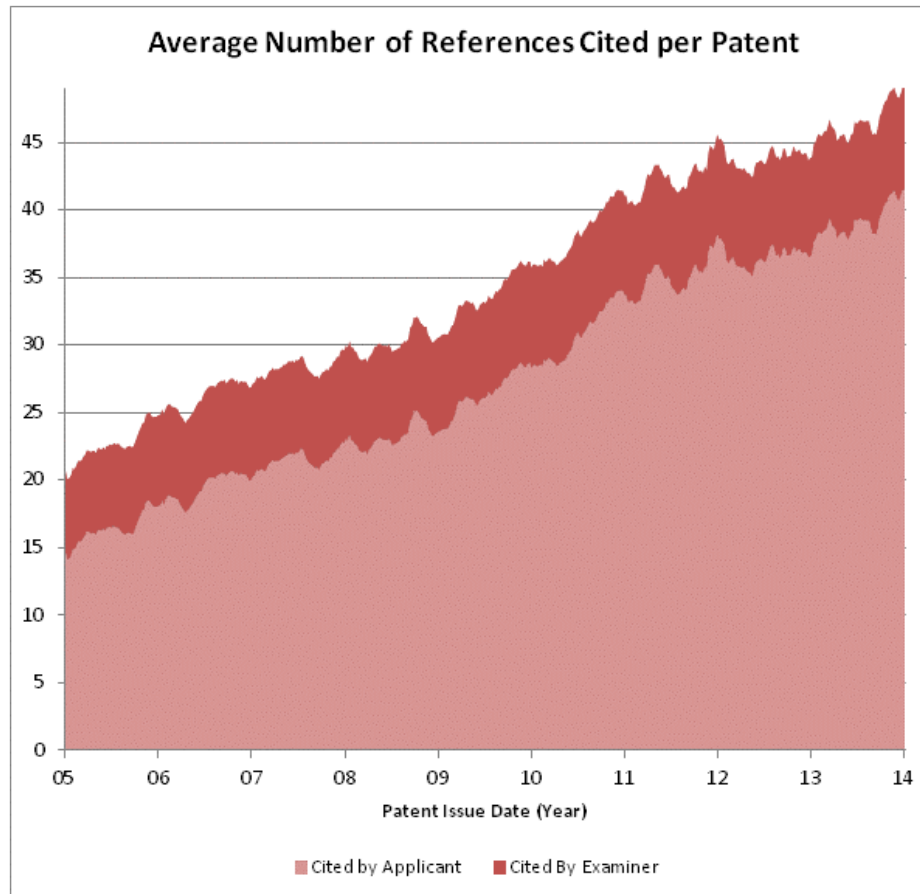
From Patently-O Blog

Statistics: Specification Size/Success



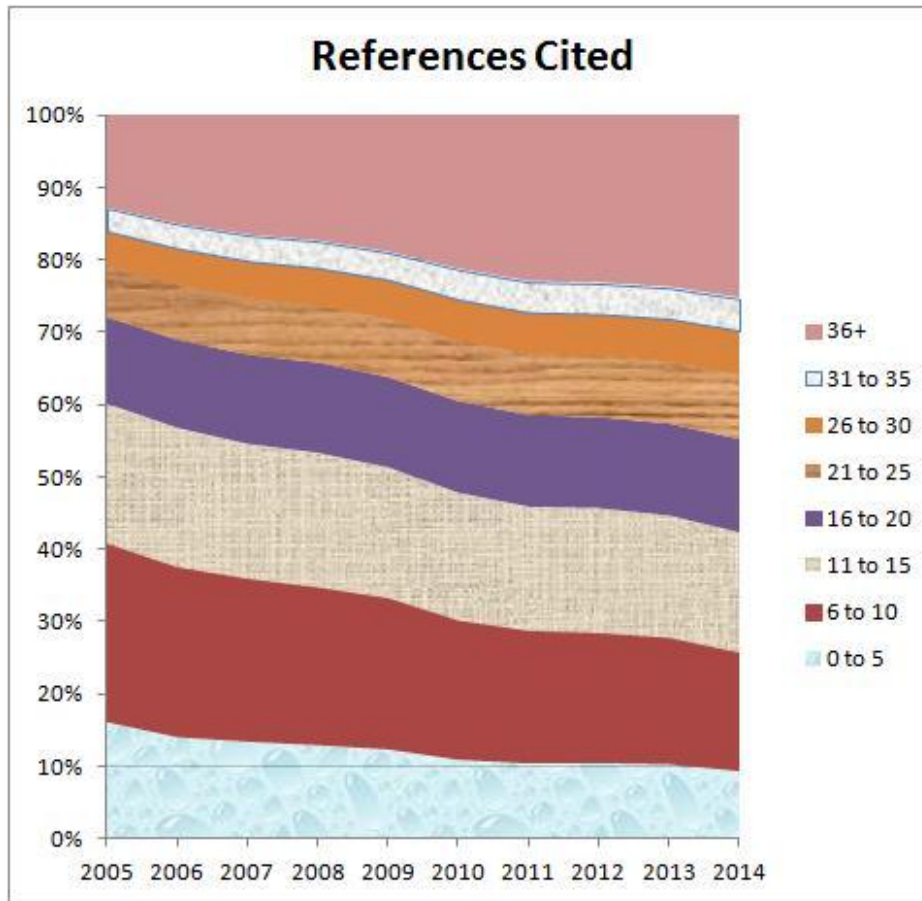
From Patently-O Blog

Statistics: References



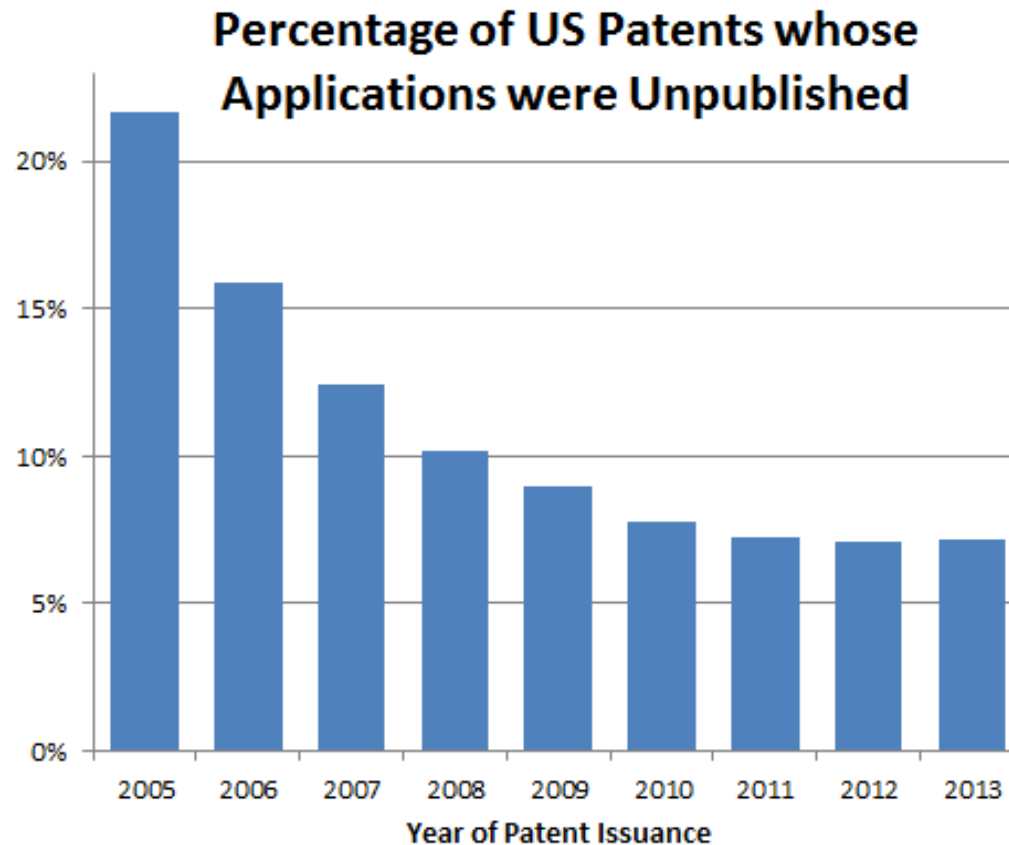
From Patently-O Blog

Statistics: References



From Patently-O Blog

Statistics: Application Publication



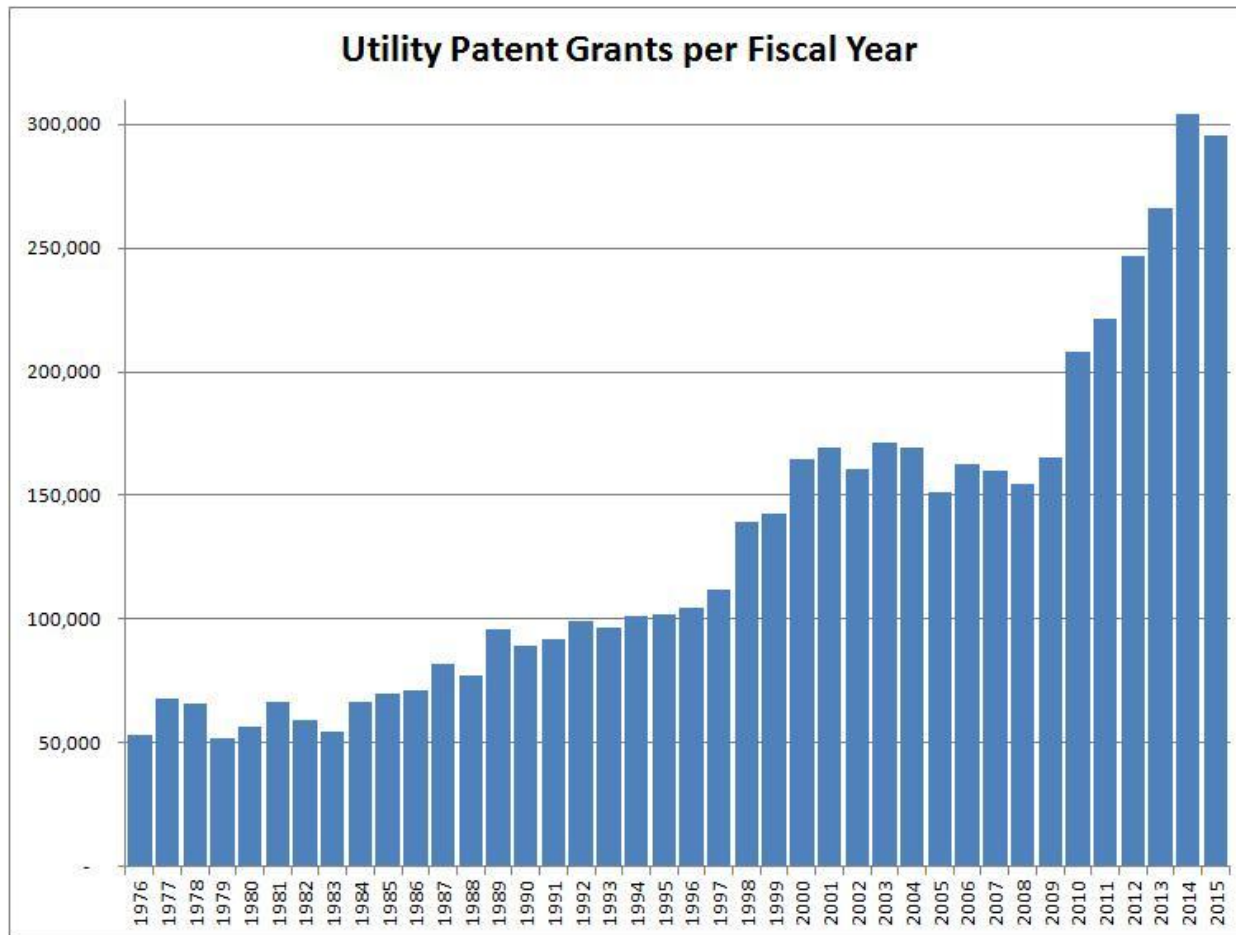
From Patently-O Blog

Statistics: Issuance

- ▶ US utility patents issued by year (new record set every year since 2008):
 - ▶ 157,772 in 2008.
 - ▶ 167,349 in 2009. (David Kappos took over August 13, 2009.)
 - ▶ 207,915 in 2010.
 - ▶ 221,350 in 2011.
 - ▶ 246,464 in 2012.
 - ▶ 265,979 in 2013.
 - ▶ 303,931 in 2014.

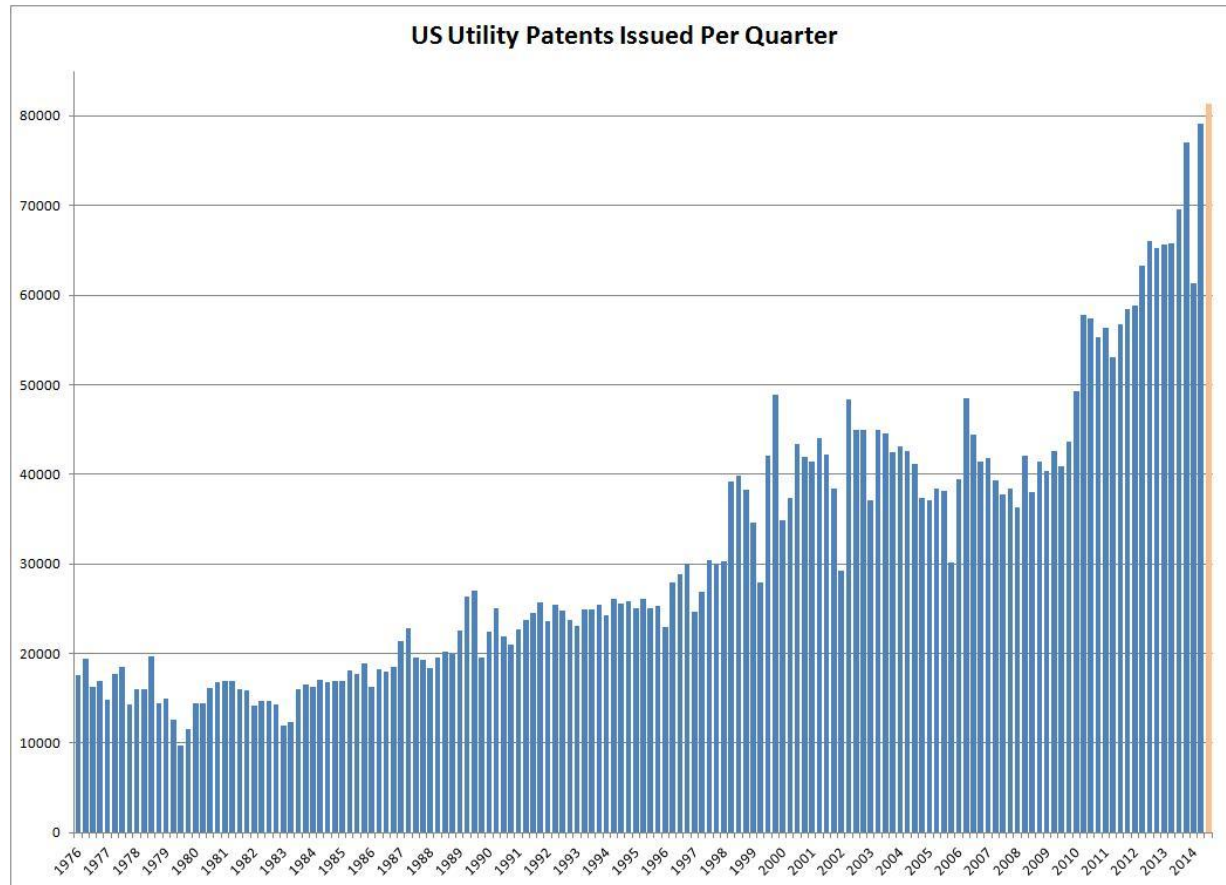
- ▶ For most issued patents in a week, the top 20 weeks have *all* been in 2014. FY2014 broke 300,000 patents; calendar year 2014 did the same.

Statistics: Issuance



From Patently-O Blog
(fiscal years)

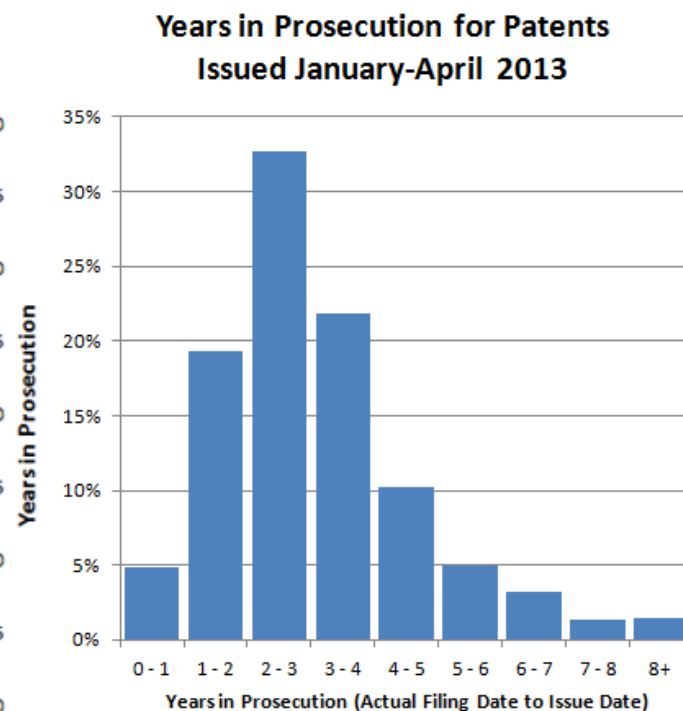
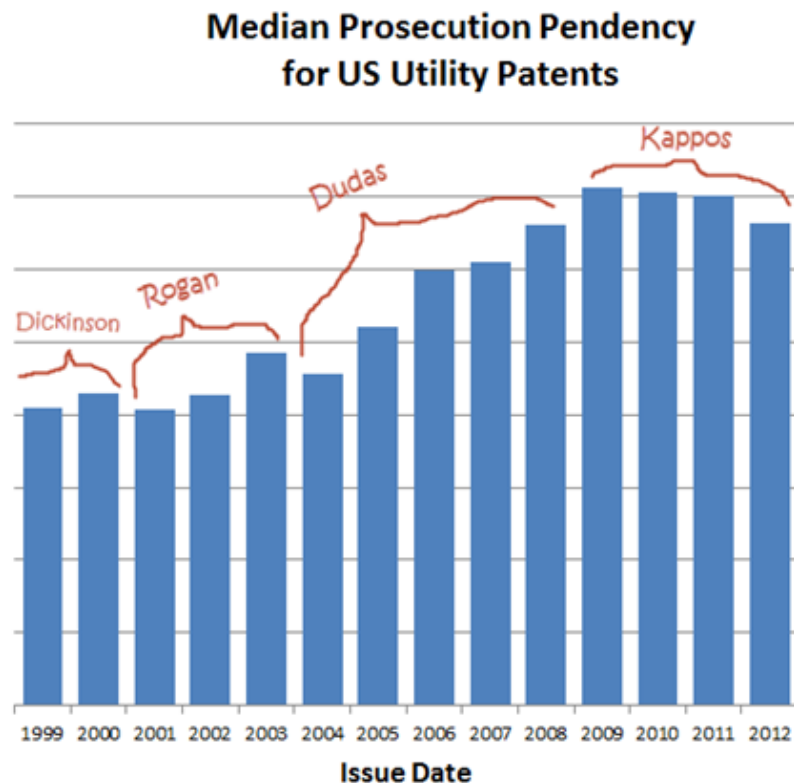
Statistics: Issuance



From Patently-O Blog

Statistics: Issuance

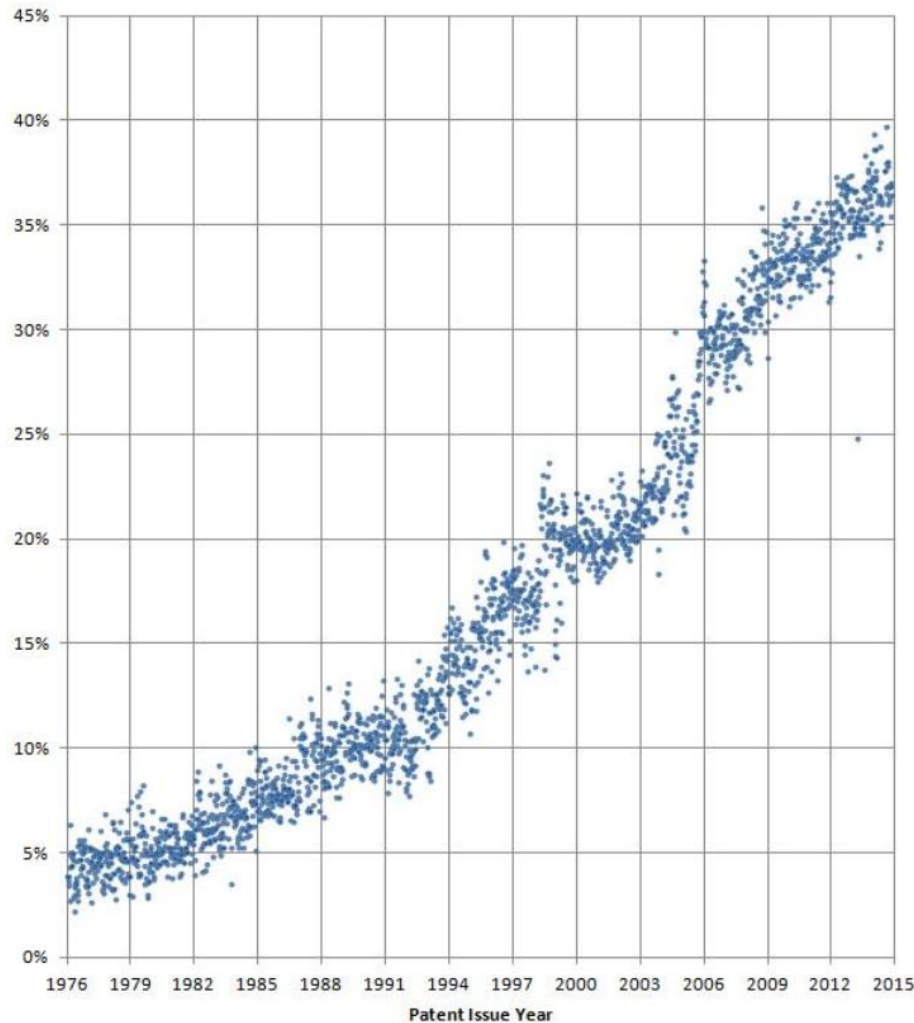
Possible Cause: Decreasing Pendency



From Patently-O Blog

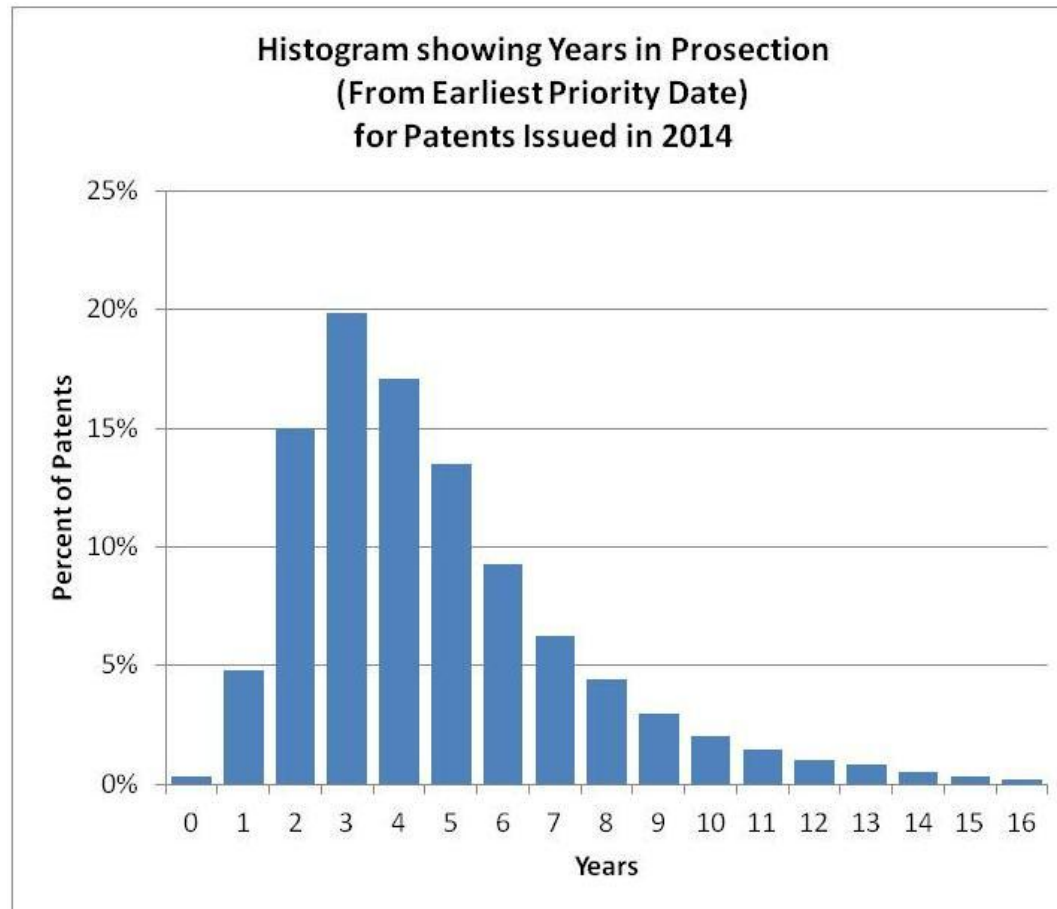
Statistics: Issued Computer Patents

% of Patents that are Computer Patents



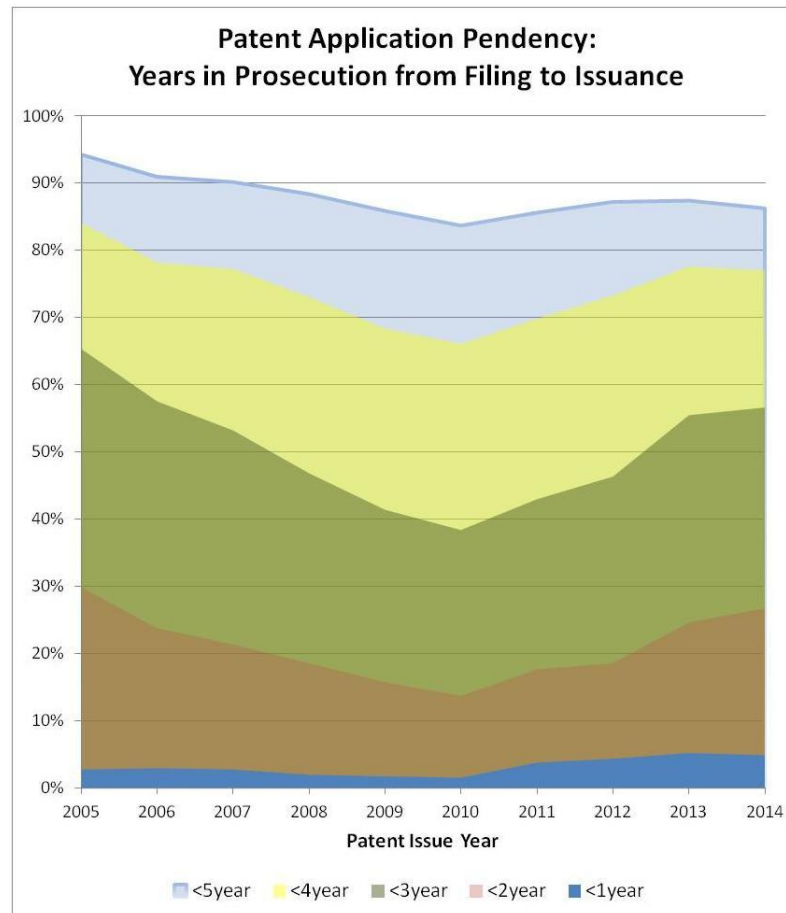
“Computer patents” meaning any patent with an independent claim containing at least one of the following terms: computer, processor, software, machine-readable, information, memory, data, virtual, or storage-media

Statistics: Pendency



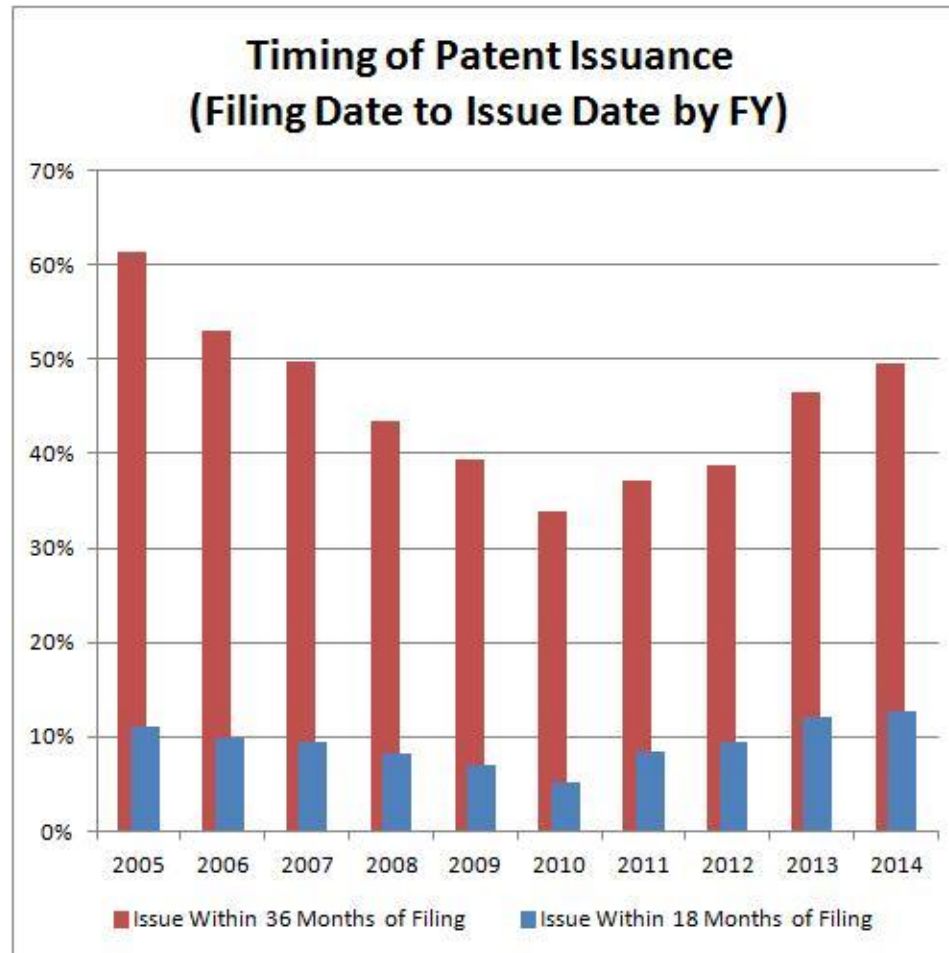
From Patently-O Blog

Statistics: Pendency



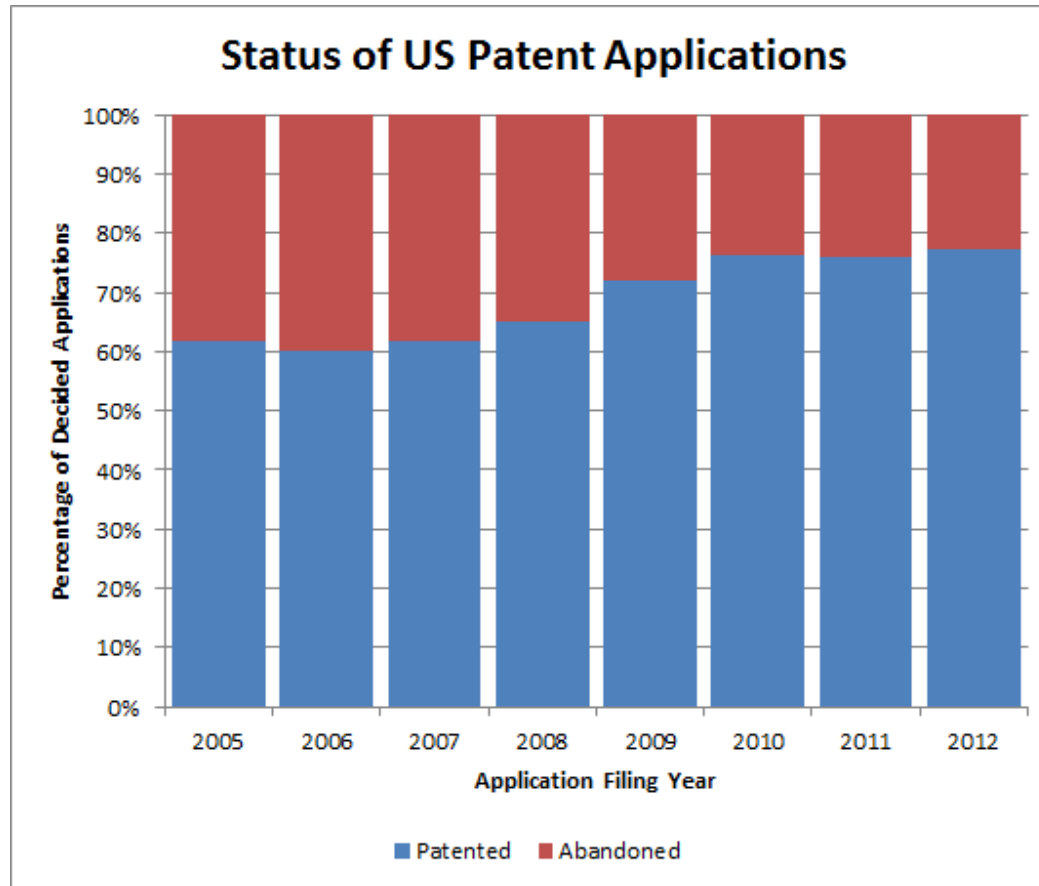
From Patently-O Blog

Statistics: Pendency



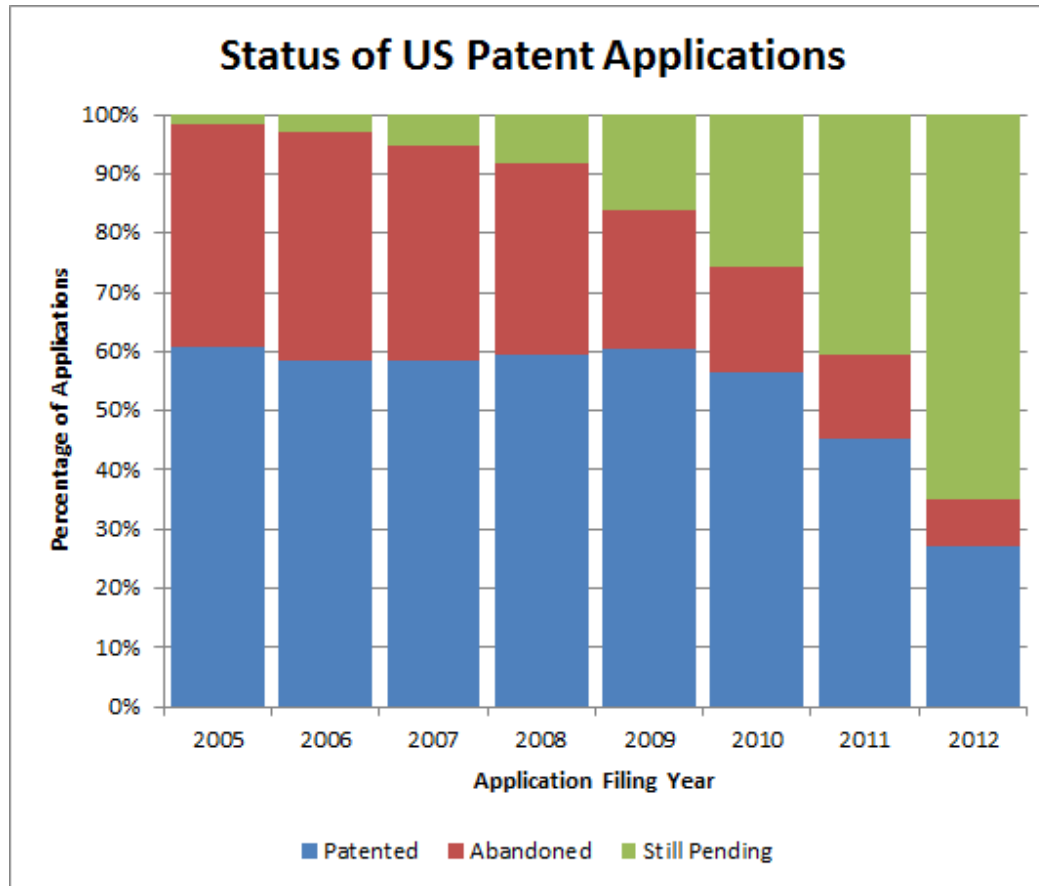
From Patently-O Blog

Statistics: Grant Rate



From Patently-O Blog
(data as of October 2014)

Statistics: Grant Rate



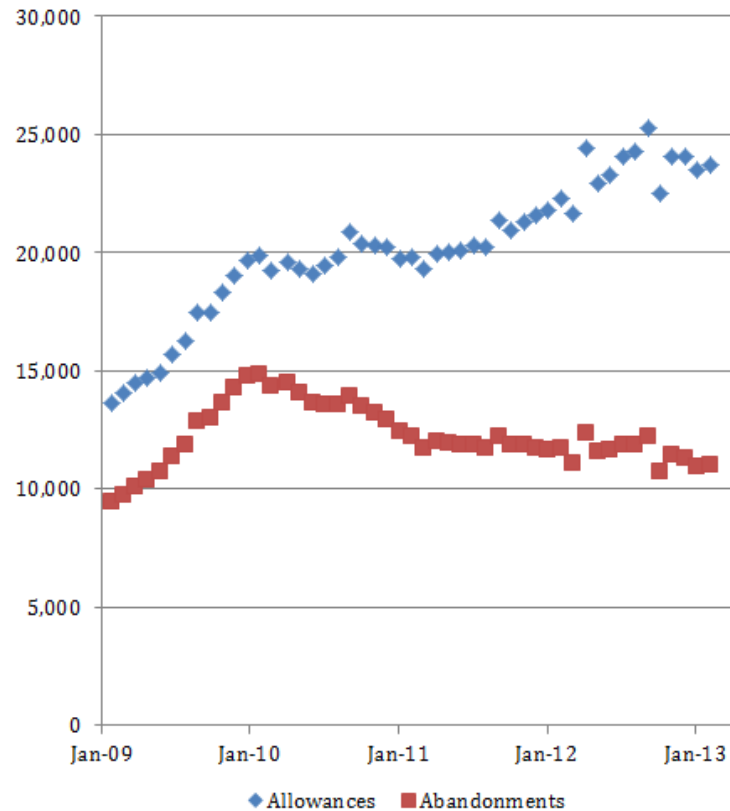
From Patently-O Blog
(data as of October 2014)

Statistics: Grant Rate

- ▶ **Top five technology areas by grant rate (for applications filed from 2004 to 2010):**
 - ▶ 2800b: Electrical Circuits and Systems (80%).
 - ▶ 2800a: Semiconductors/Memory (76%)
 - ▶ 2800c: Printing/Measuring and Testing (74%)
 - ▶ 2800d: Optics (72%)
 - ▶ 2610: Digital and General Communications (67%)
- ▶ **Bottom five technology areas by grant rate.**
 - ▶ 1610: Organic Compounds (23%)
 - ▶ 1794: Food, Miscellaneous Articles, Stock Material (32%)
 - ▶ 3620: Electronic Commerce (36%)
 - ▶ 1630: Molecular Biology, Bioinformatics, etc. (38%)
 - ▶ 1650: Fermentation, Microbiology, etc. (40%)
- ▶ **Top five technology areas by applications *still pending*:**
 - ▶ 3620: Electronic Commerce (24%)
 - ▶ 2430: Cryptography and Security (19%)
 - ▶ 1610: Organic Compounds (18%)
 - ▶ 3700I: Refrigeration, Vaporization, etc. (18%)
 - ▶ 2440: Computer Networks (16%)

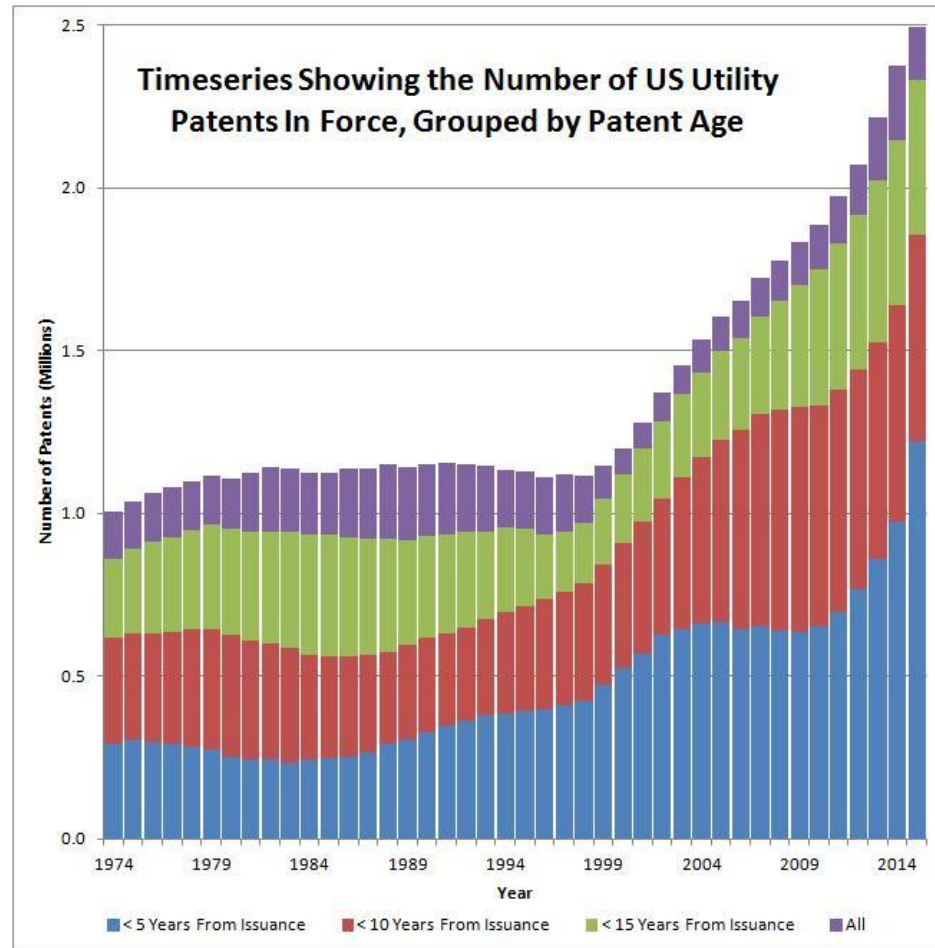
Statistics: Grant Rate

UPR Disposals: Allowances and Abandonments



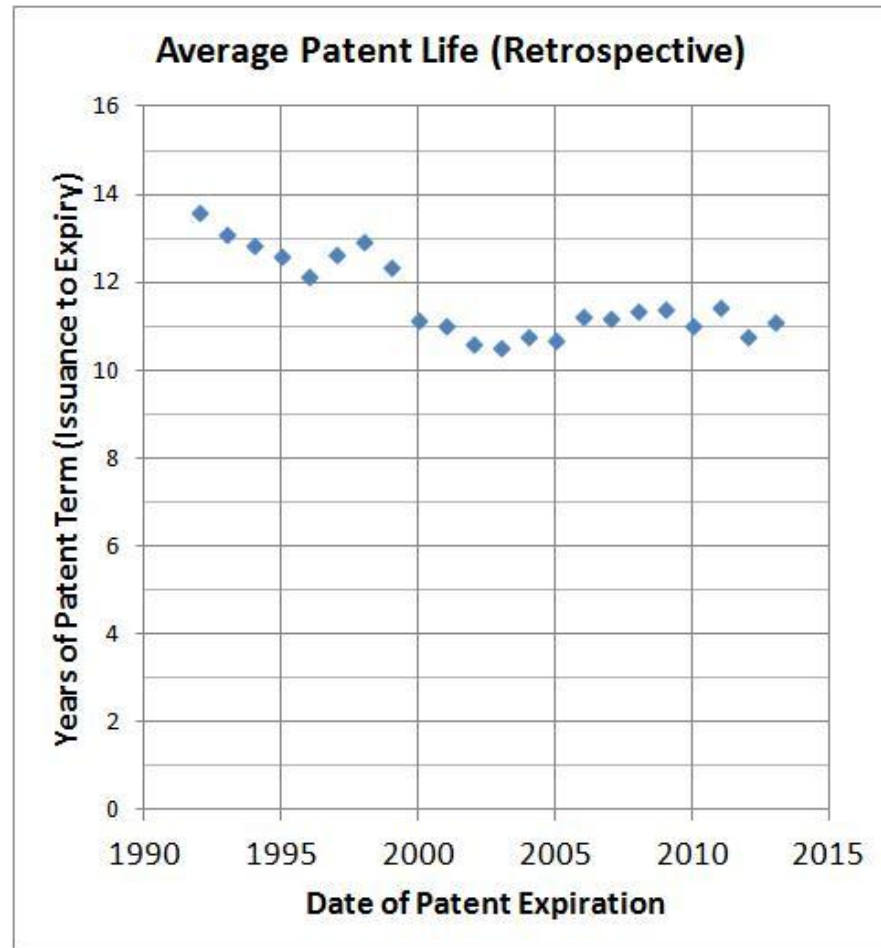
From Patently-O Blog

Statistics: Patent Life



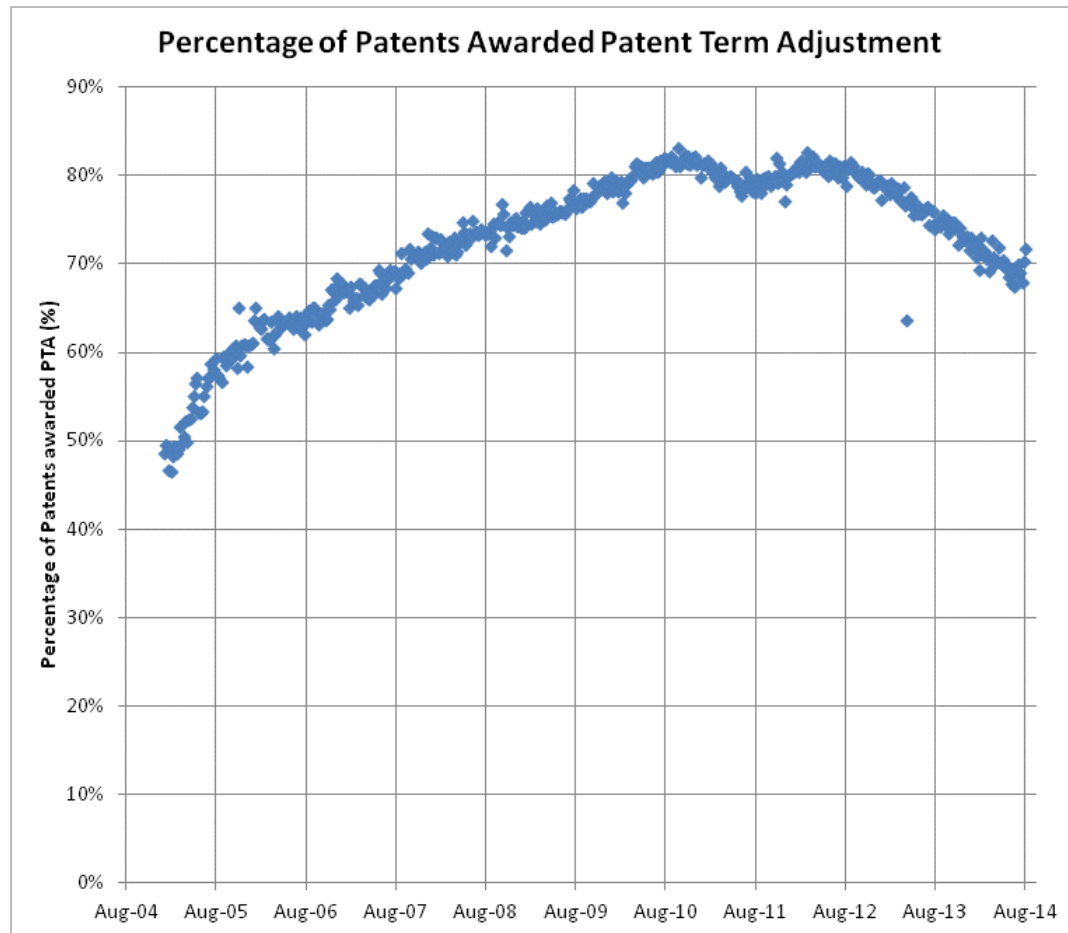
From Patently-O Blog

Statistics: Patent Life



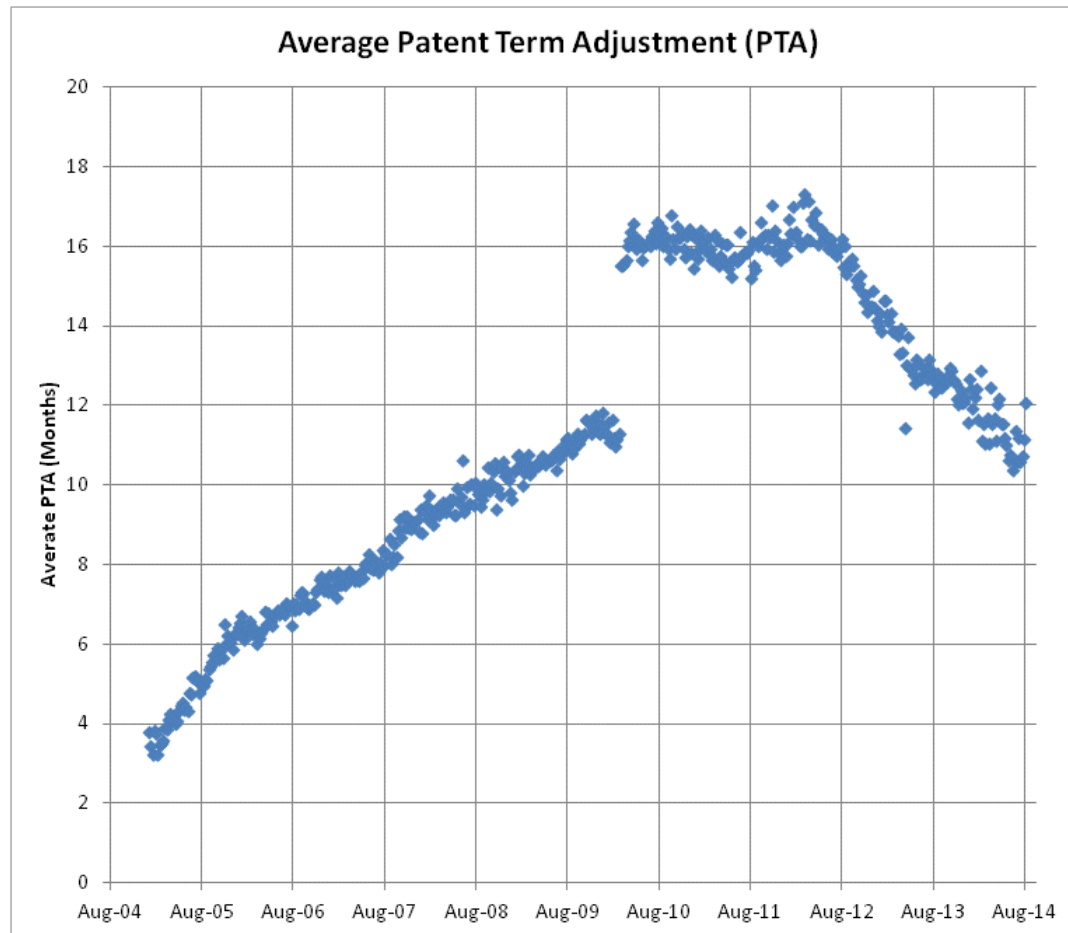
From Patently-O Blog

Statistics: Patent Life



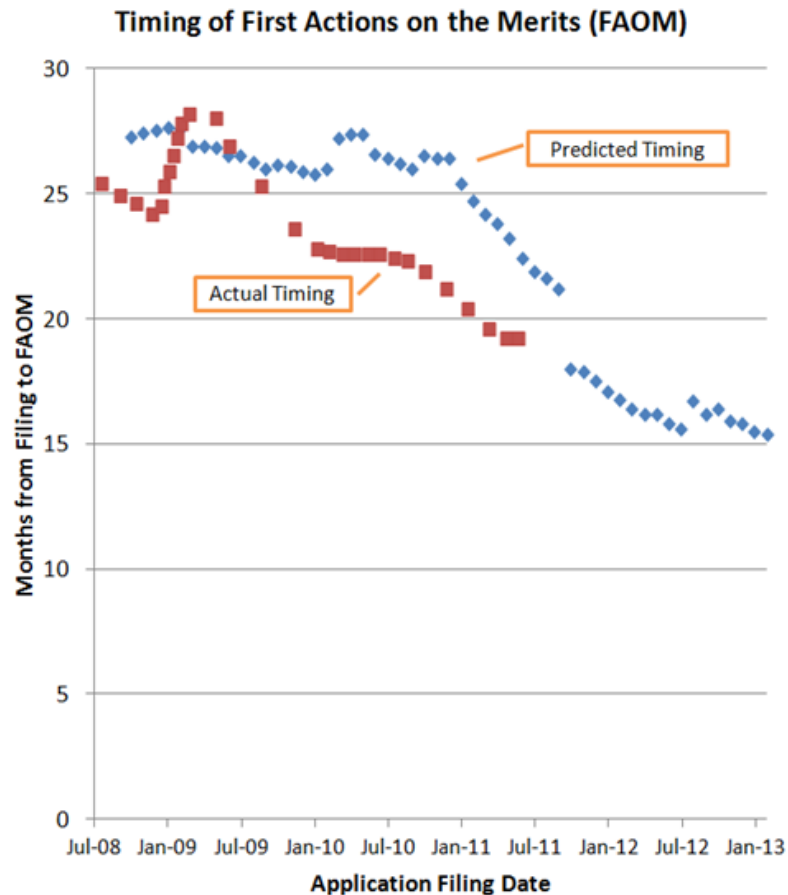
From Patently-O Blog

Statistics: Patent Life



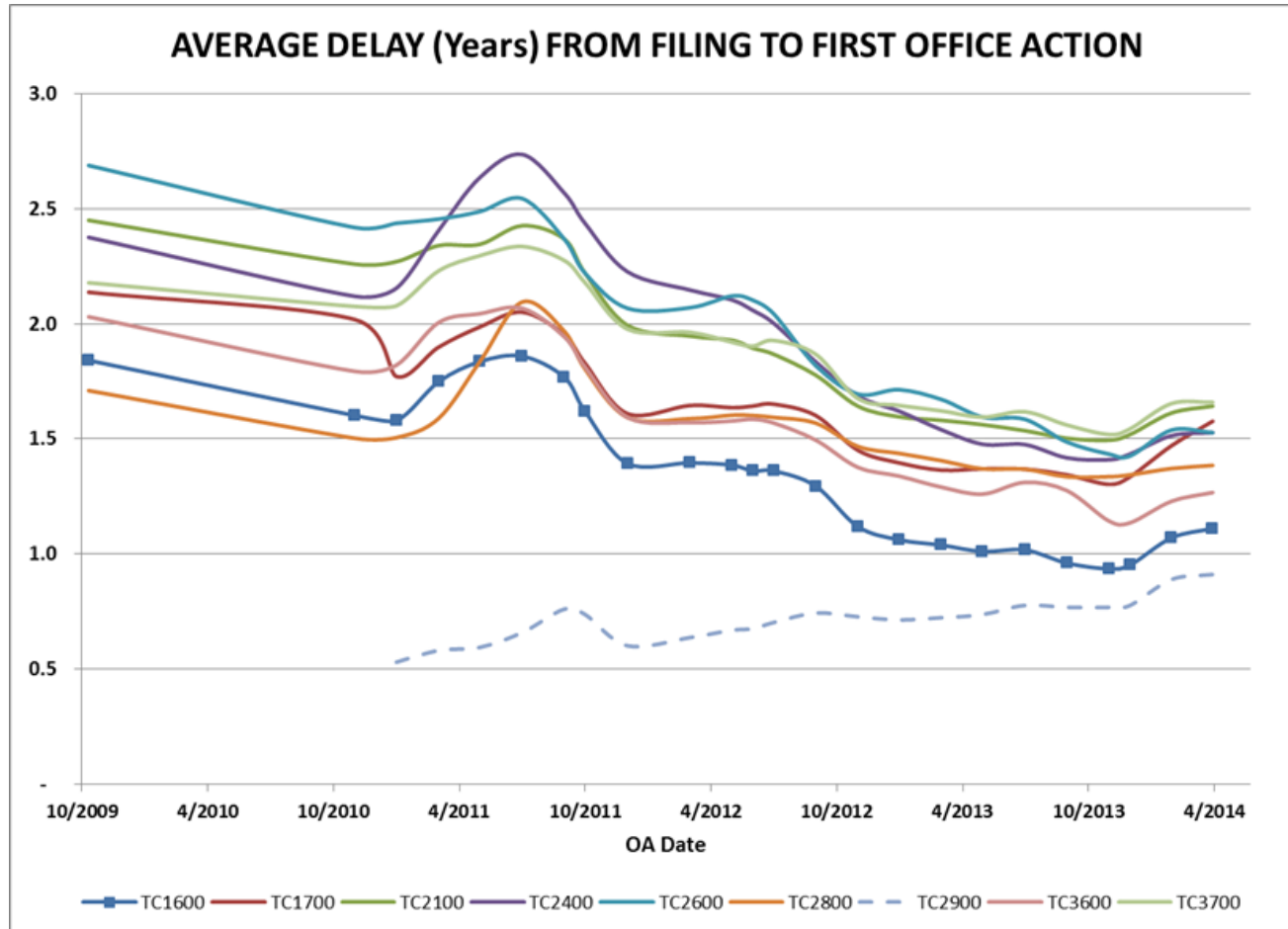
From Patently-O Blog

Statistics: First Action on the Merits



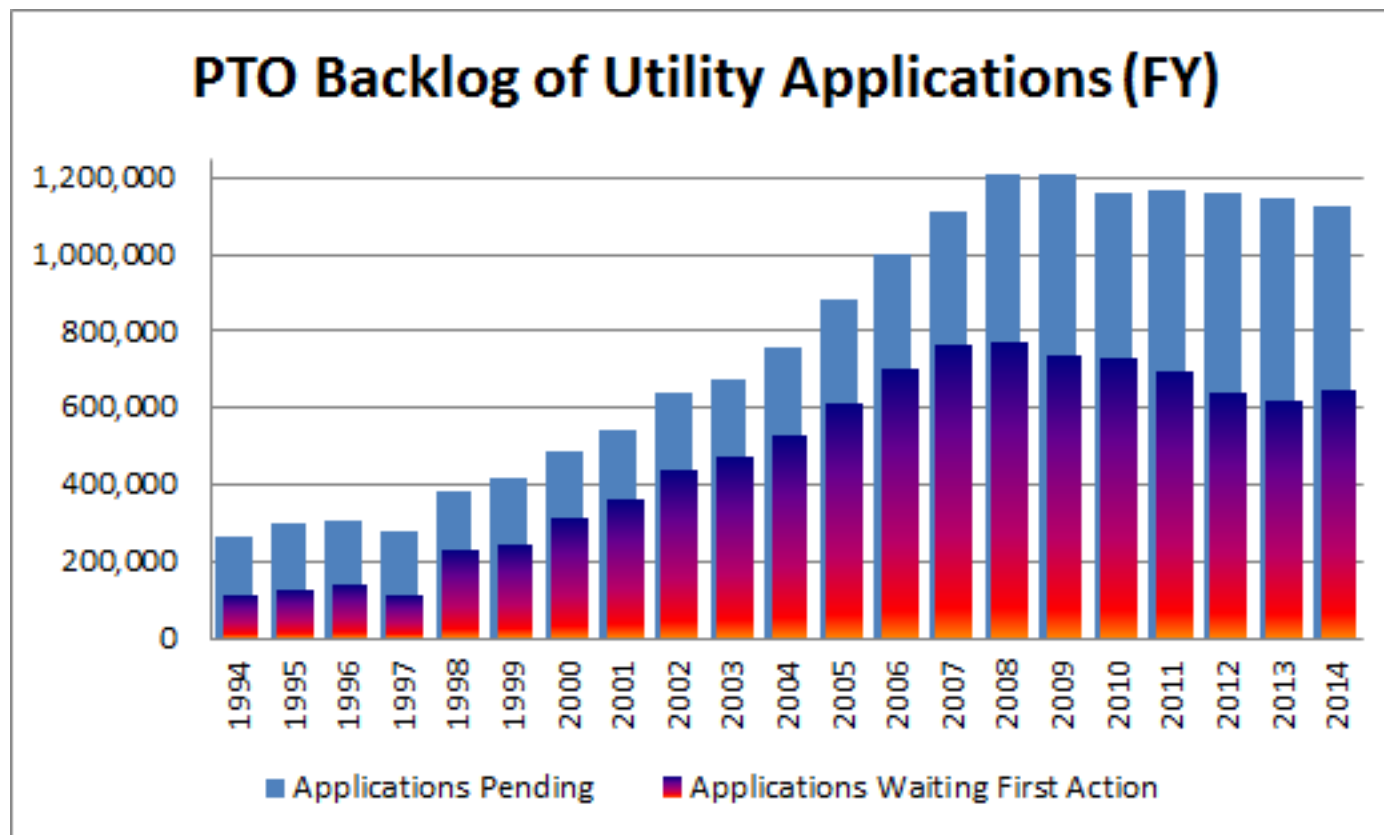
From Patently-O Blog

Statistics: First Action on the Merits



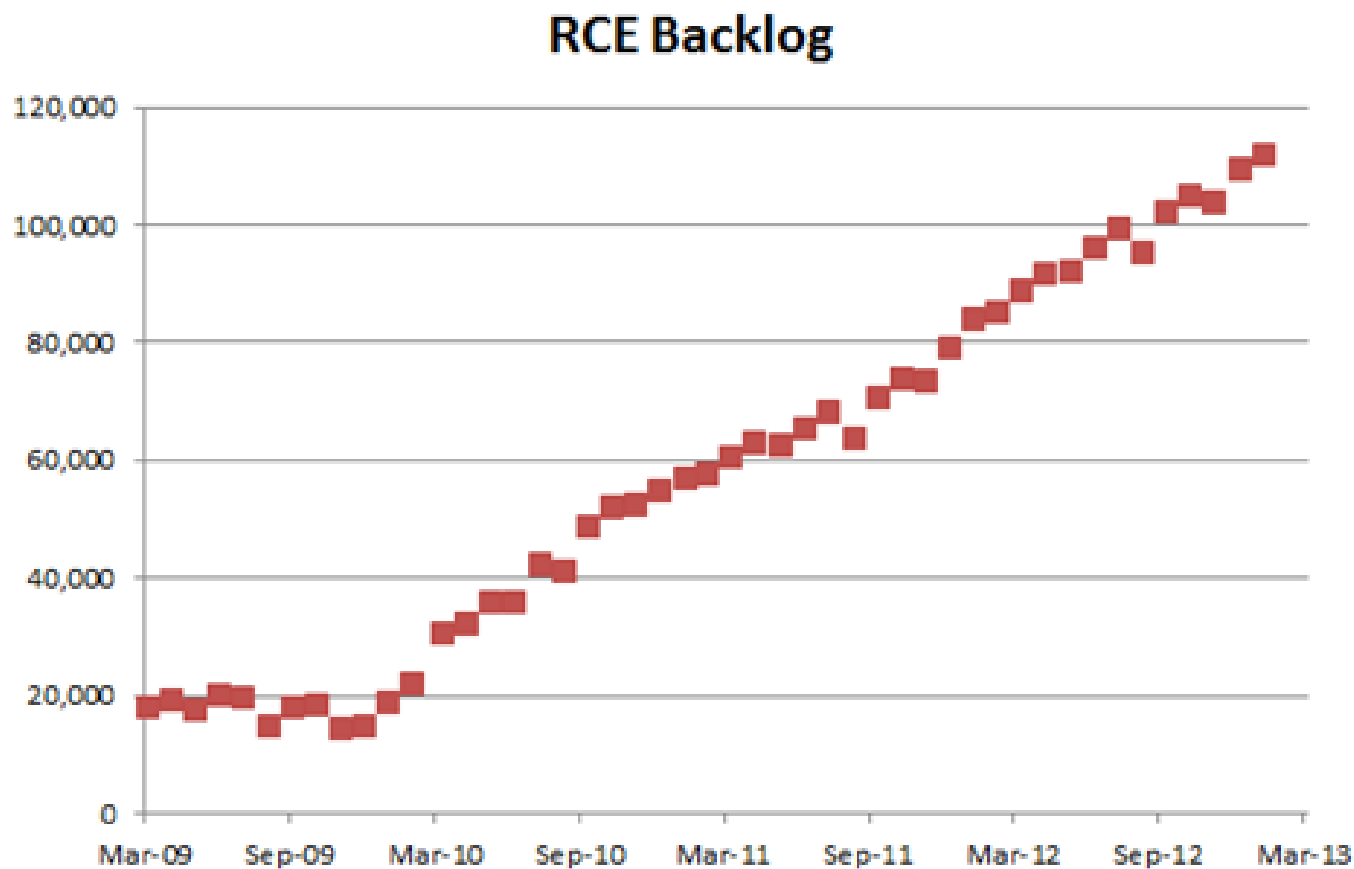
From Patently-O Blog

Statistics: Backlog (Utility Applications)



From Patently-O Blog

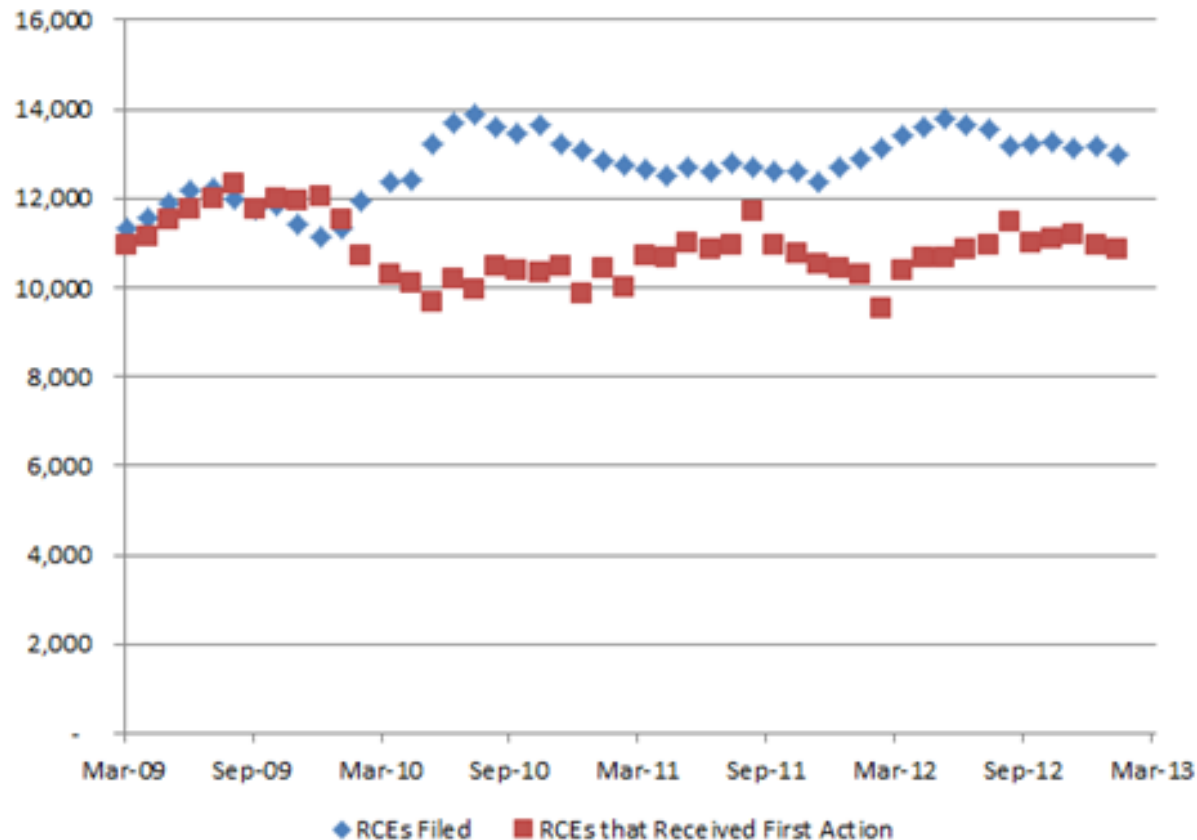
Statistics: Backlog (RCE)



From Patently-O Blog

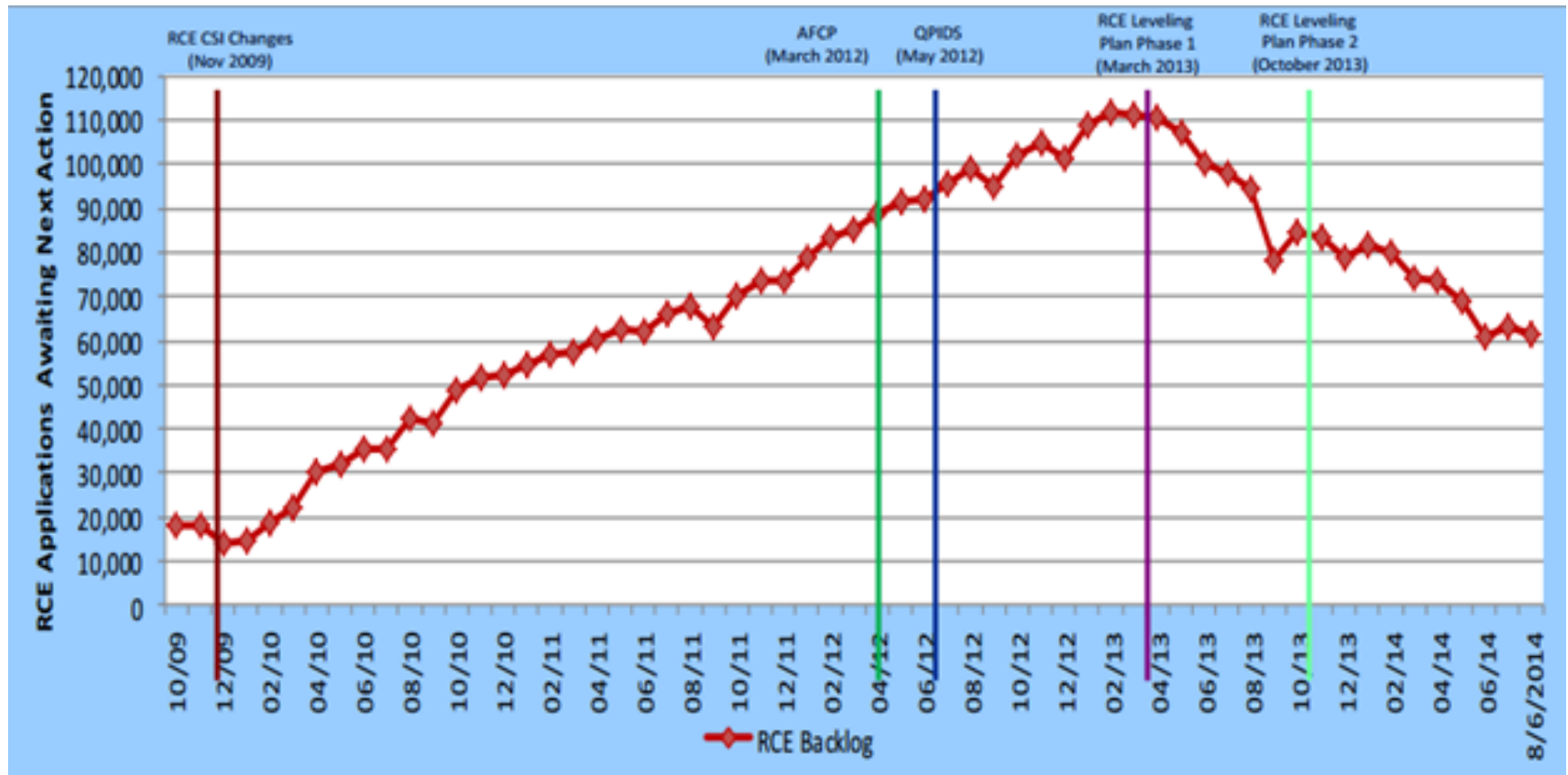
Statistics: Backlog (RCE)

RCEs Filed vs. RCEs Responded to



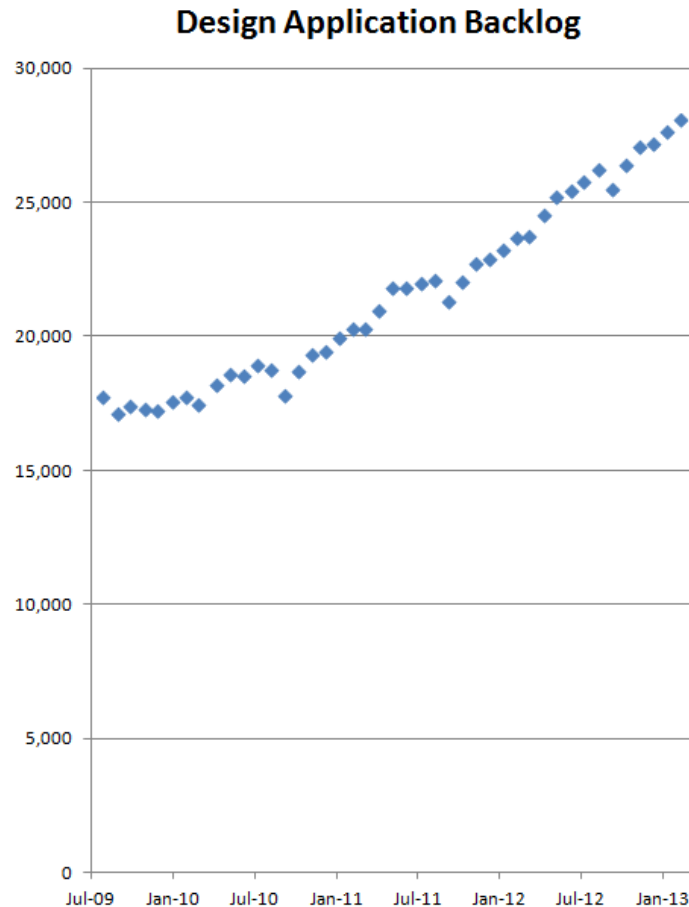
From Patently-O Blog

Statistics: Backlog (RCE)



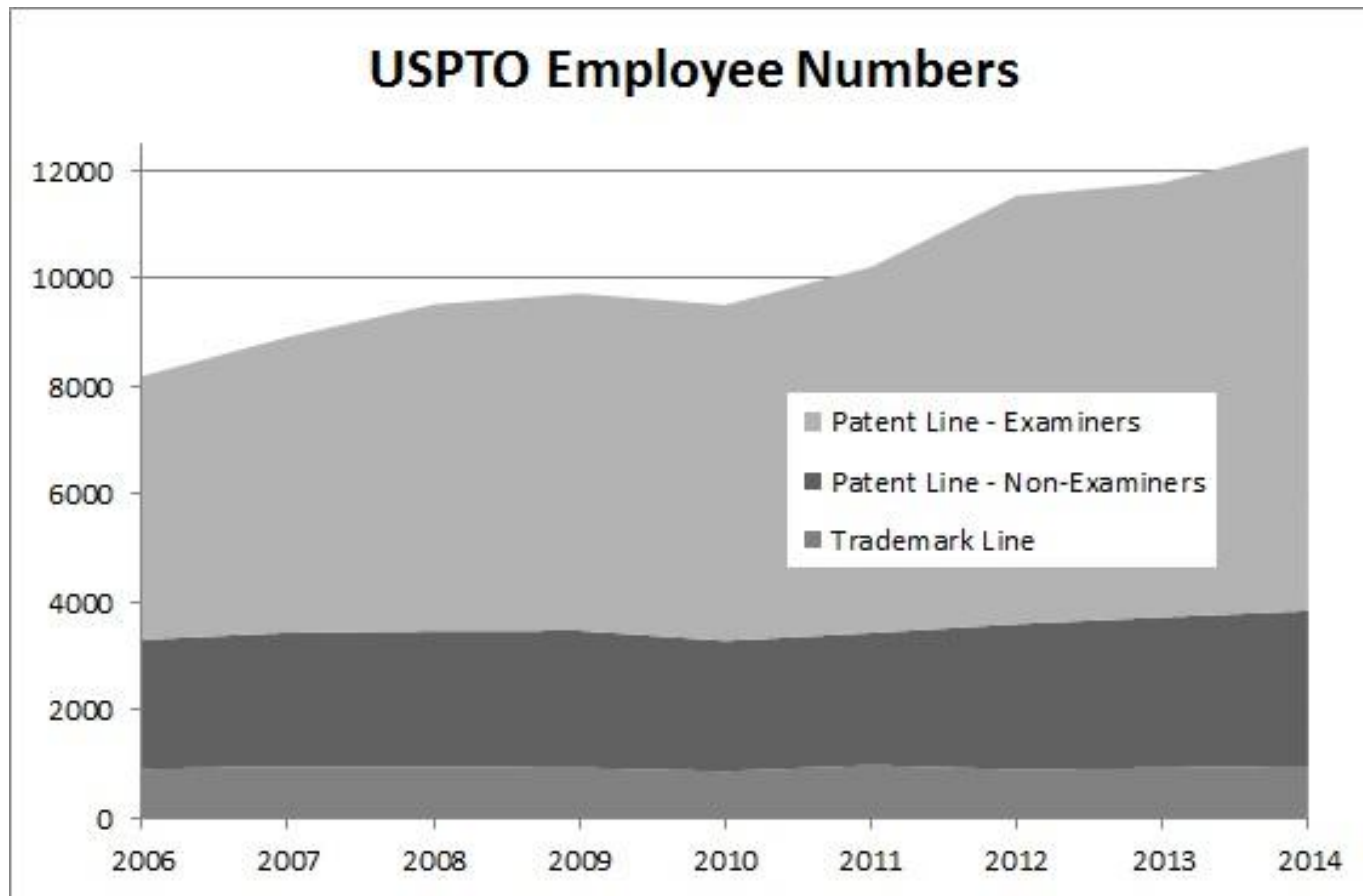
From Patently-O Blog

Statistics: Backlog (Design Applications)



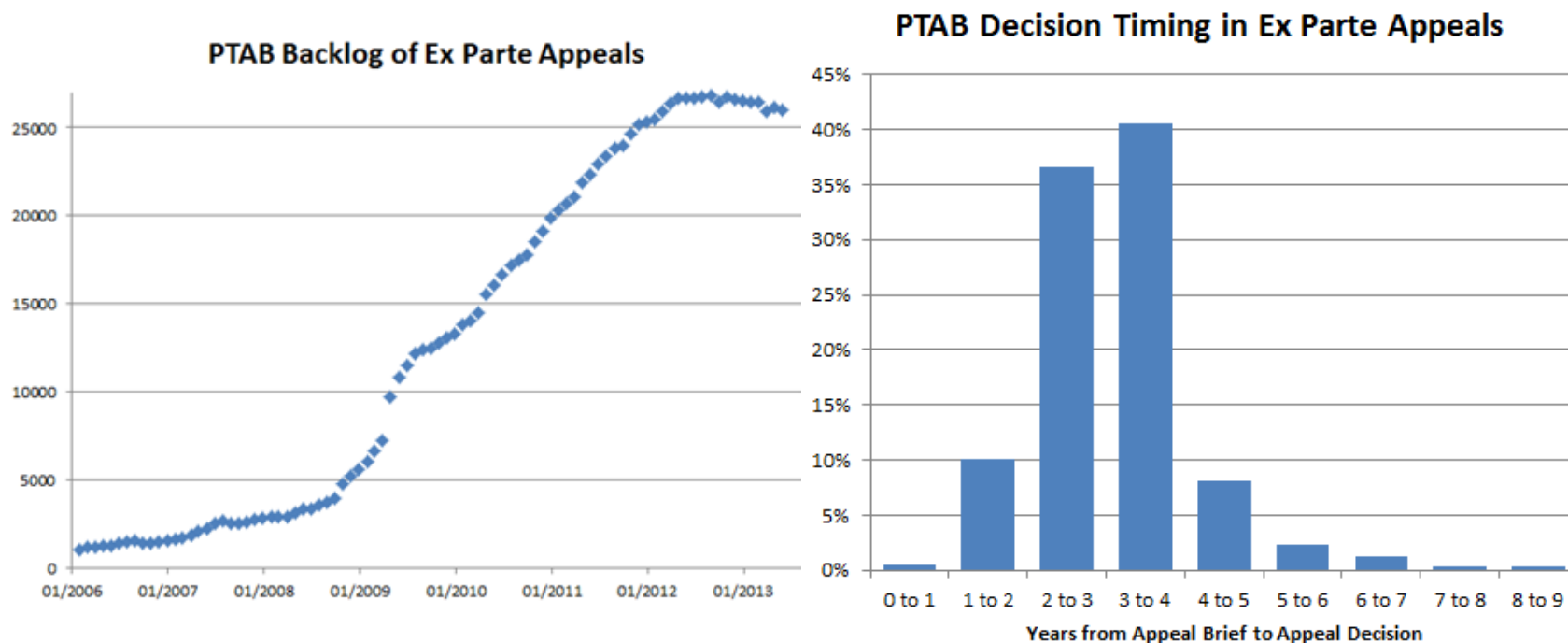
From Patently-O Blog

Statistics: Backlog Response (Increased Employment)



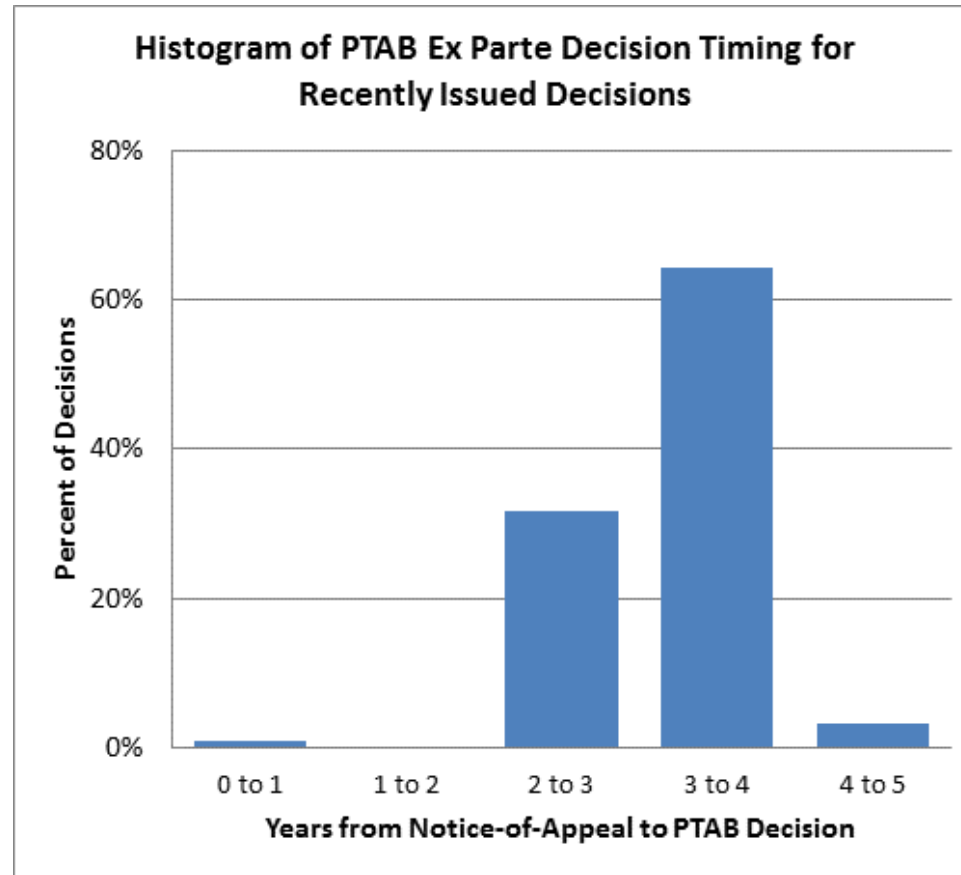
From Patently-O Blog

Statistics: Backlog (BPAI/PTAB)



From Patently-O Blog
(data as of May 2013)

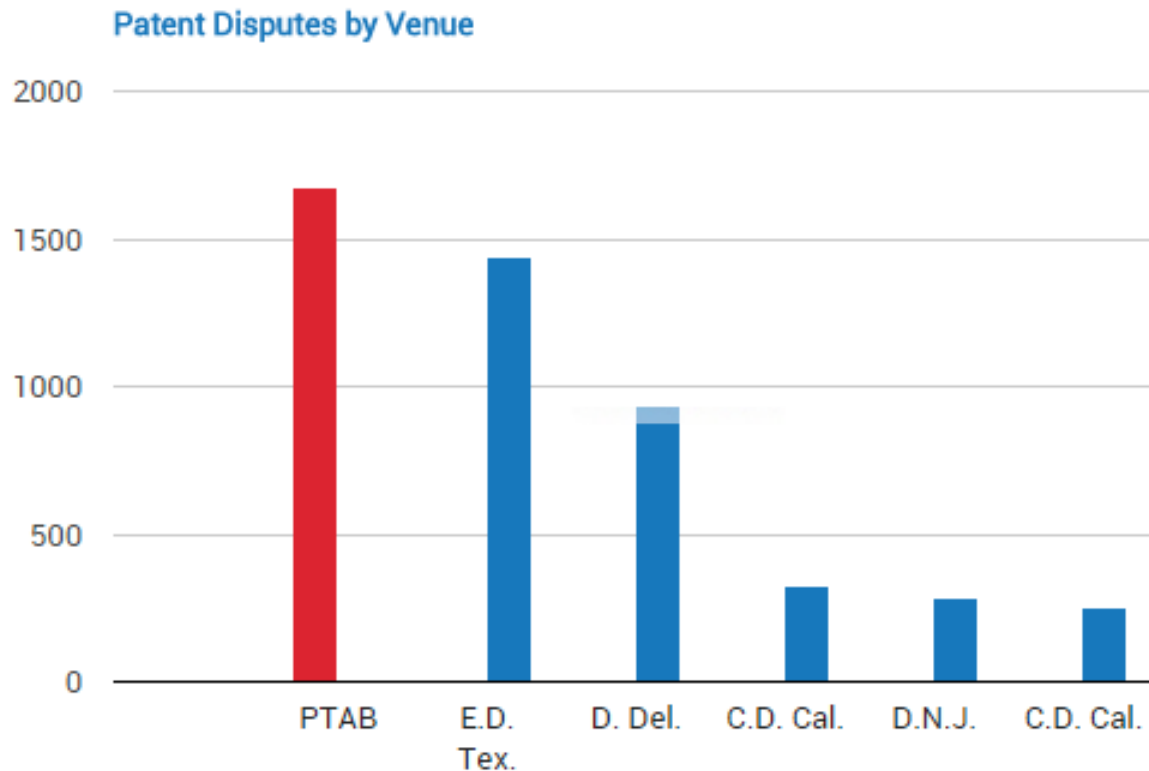
Statistics: Backlog (BPAI/PTAB)



From Patently-O Blog
(data as of August 2014)
Backlog is now over 25,000 cases

Statistics: BPAI/PTAB

In 2014, the PTAB became the top venue for patent disputes.



From UnifiedPatents.com

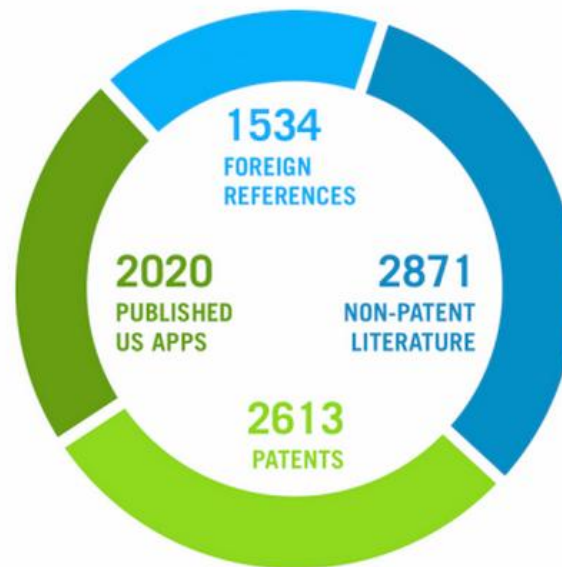
Statistics: BPAI/PTAB

Preissuance Submissions:

9,038 have been filed as of February 27, 2015

BREAKDOWN OF DOCUMENTS SUBMITTED

SEPTEMBER 16, 2012 — FEBRUARY 27, 2015

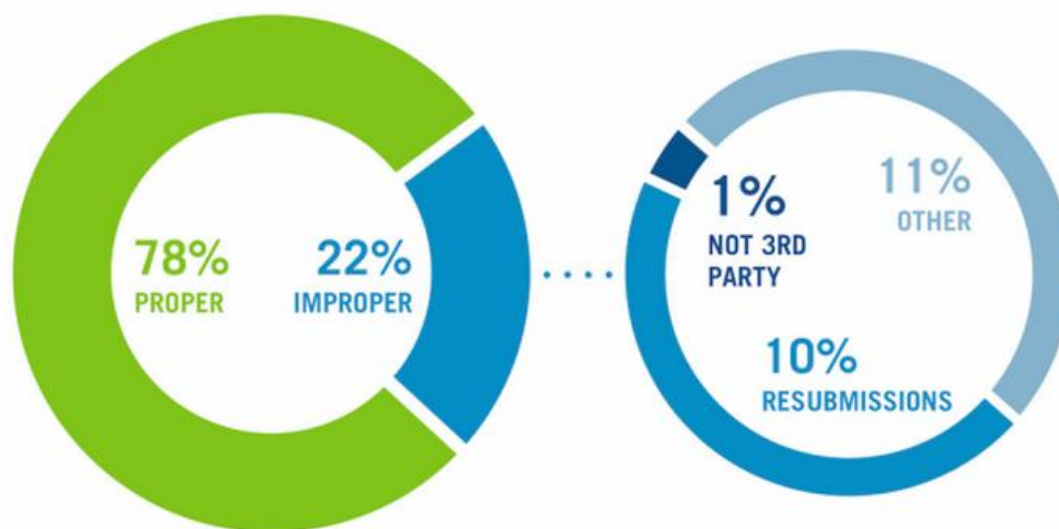


From USPTO.gov

Statistics: BPAI/PTAB

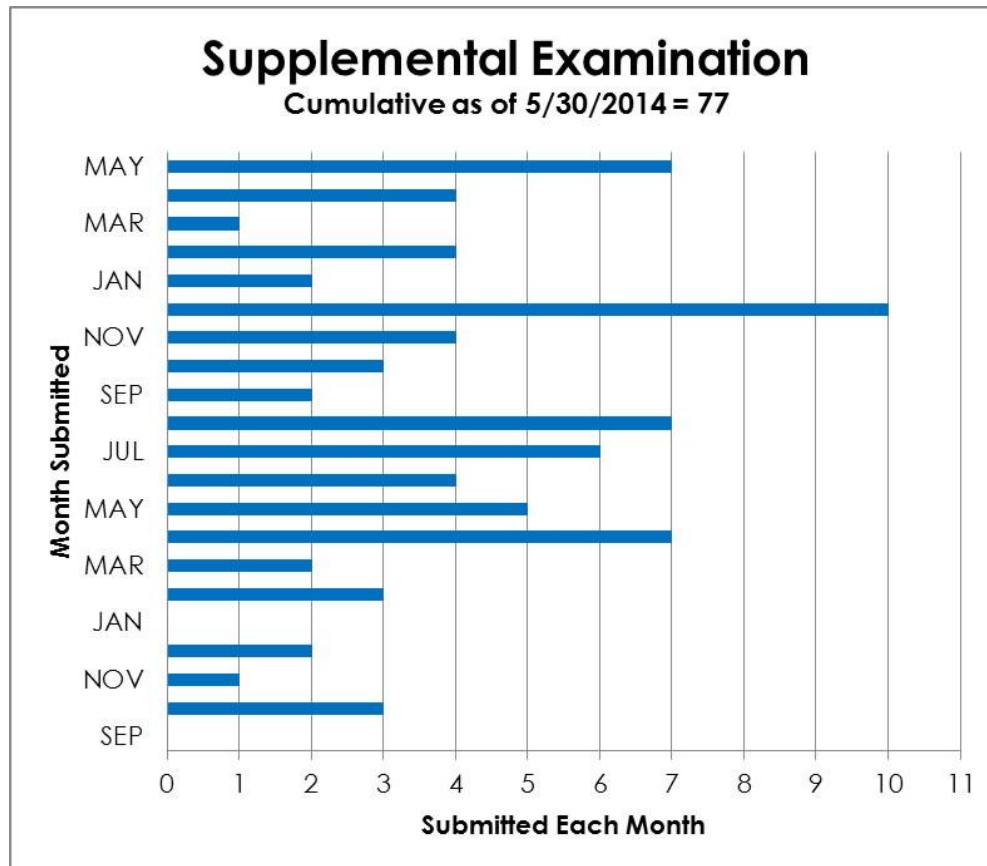
Preissuance Submissions: Compliance

BREAKDOWN OF SUBMISSION COMPLIANCE
SEPTEMBER 16, 2012 — FEBRUARY 27, 2015



From USPTO.gov

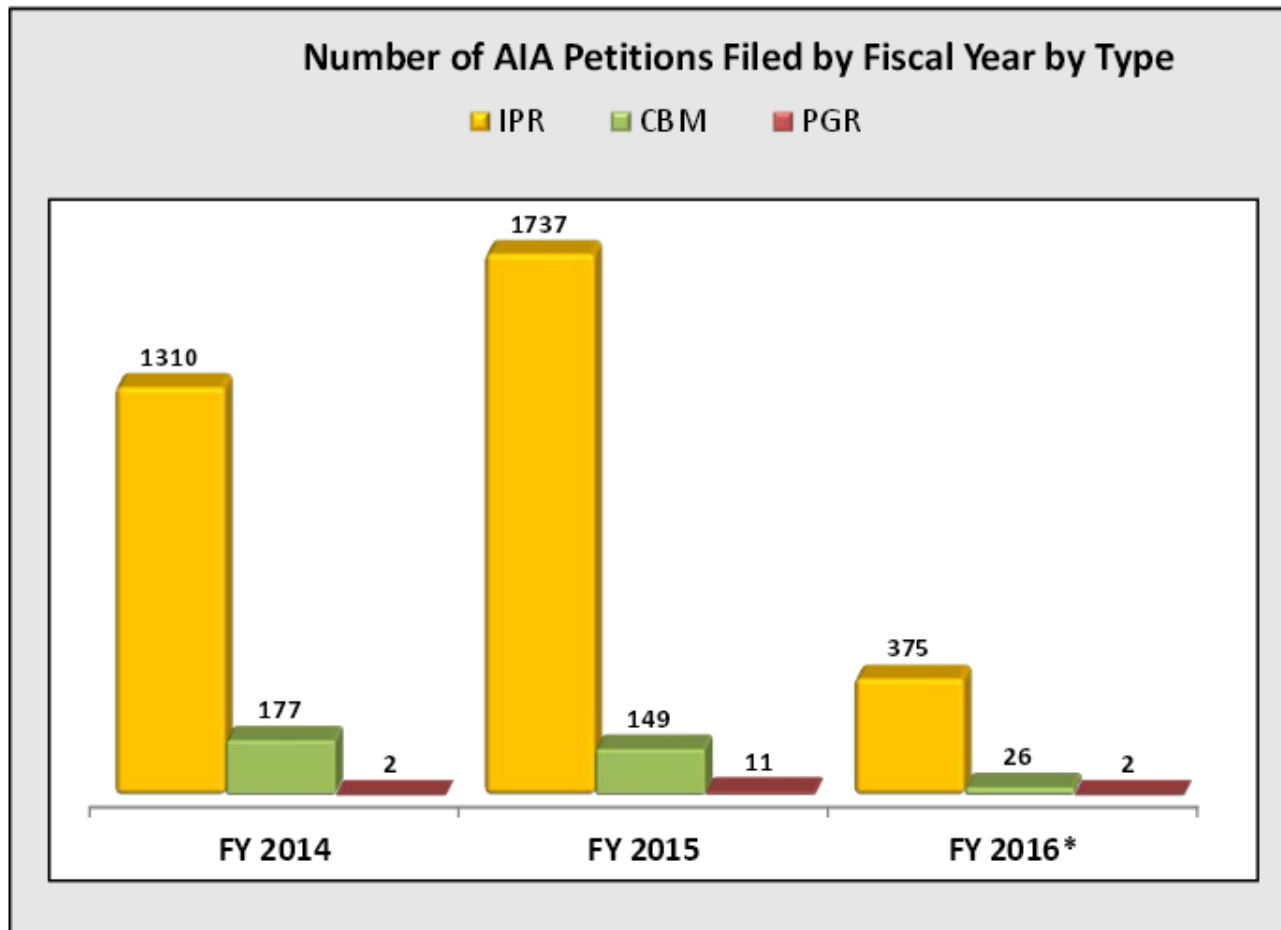
Statistics: BPAI/PTAB



From Patently-O Blog

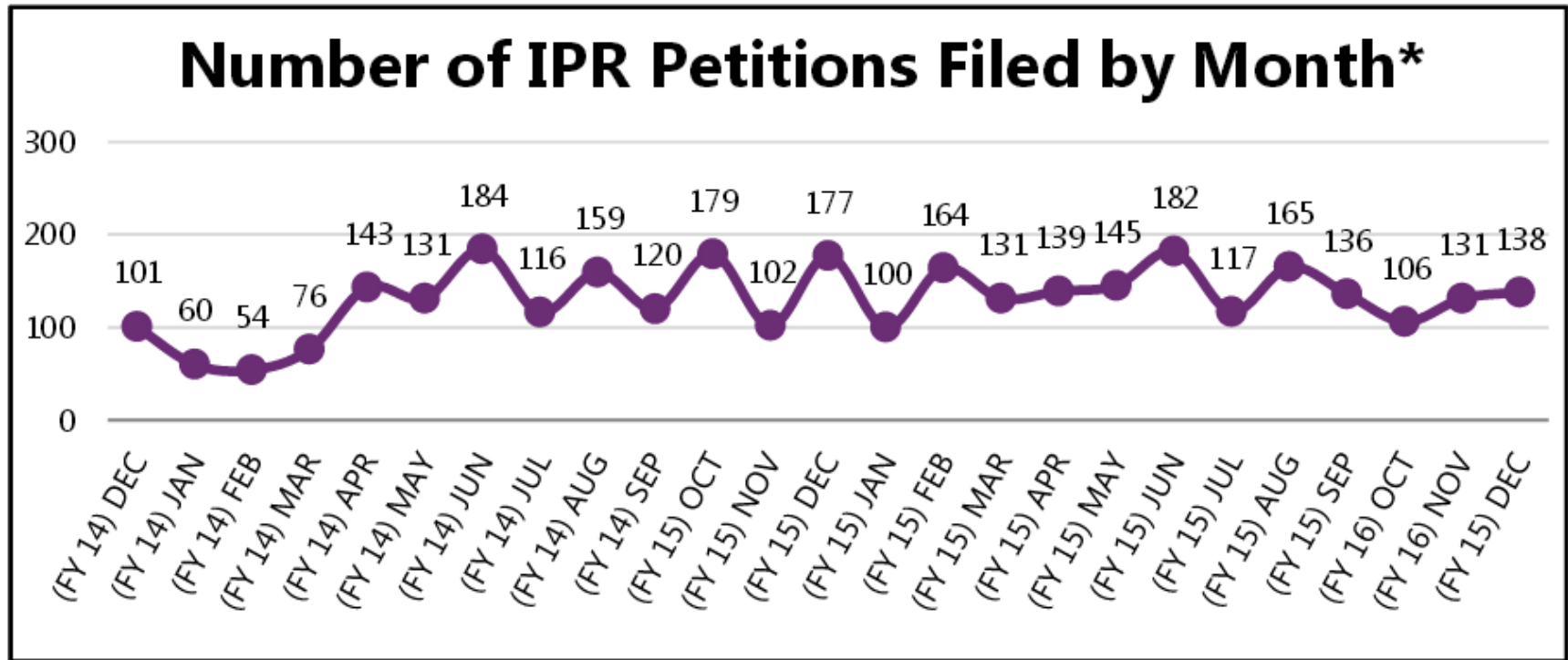
Statistics: BPAI/PTAB

Petitions to Initiate Post-Grant Proceedings



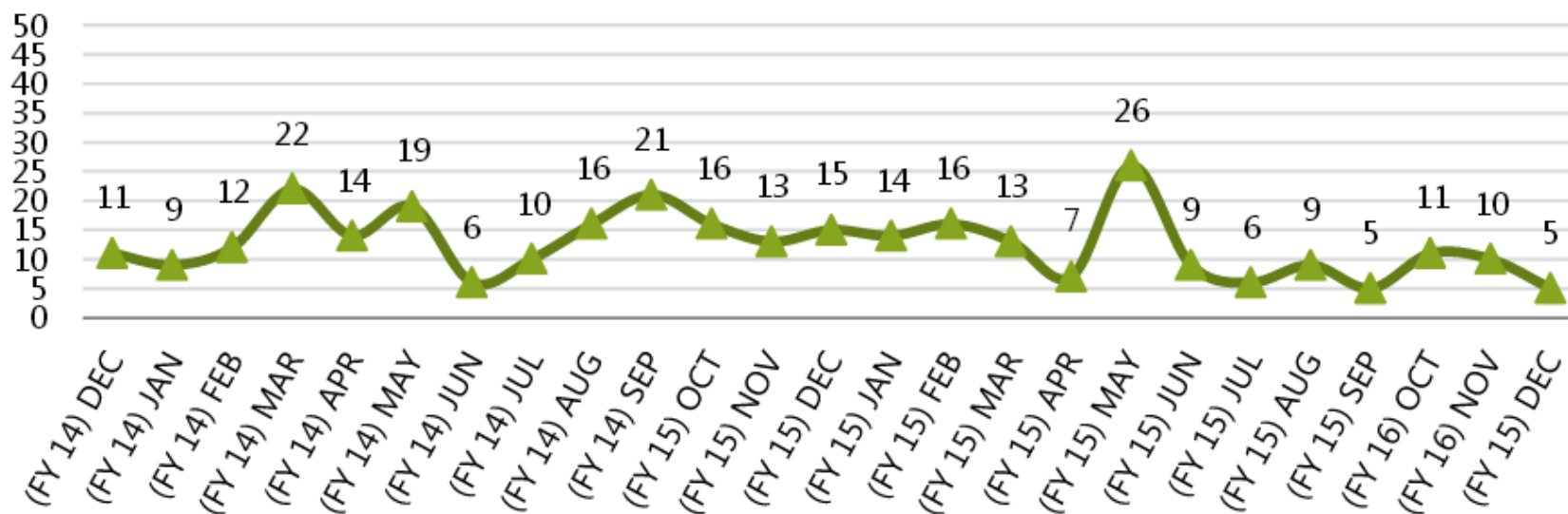
From USPTO.gov

Statistics: BPAI/PTAB

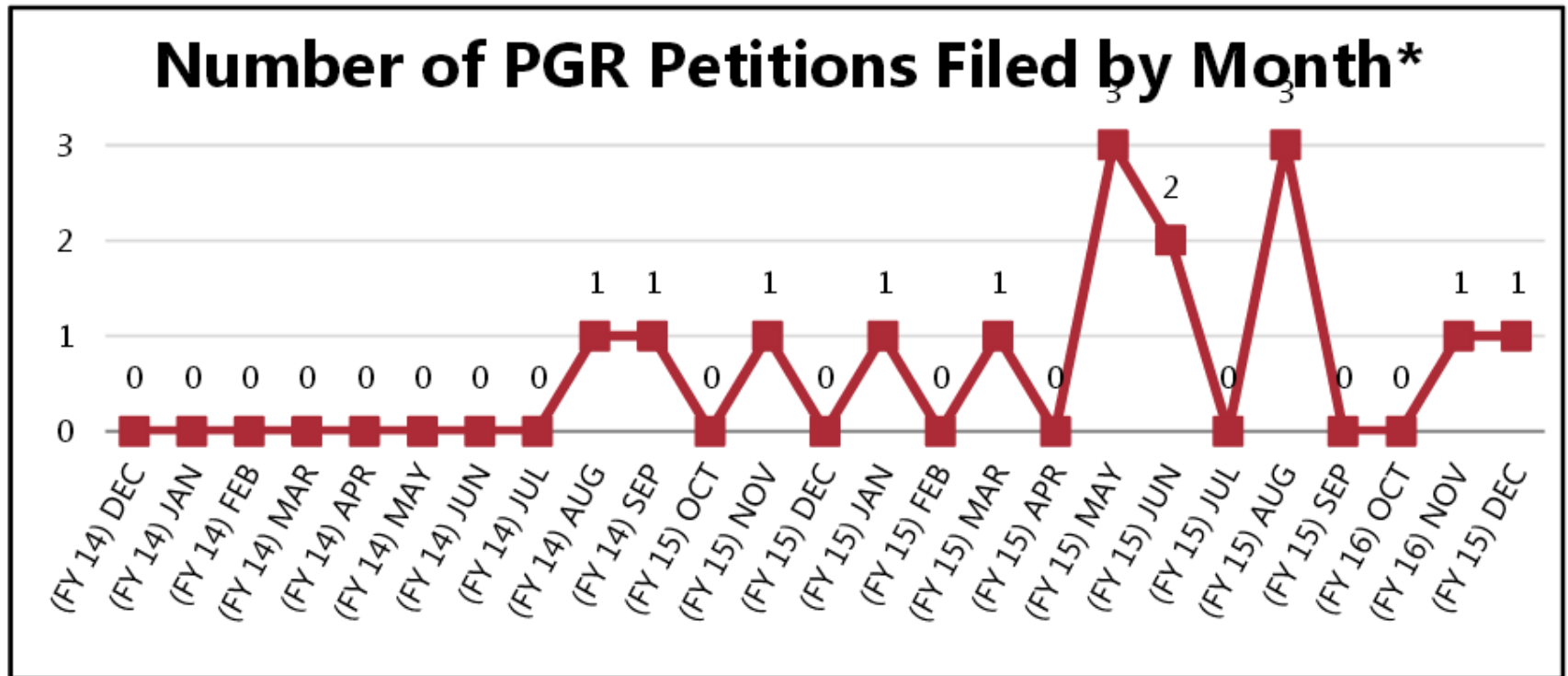


Statistics: BPAI/PTAB

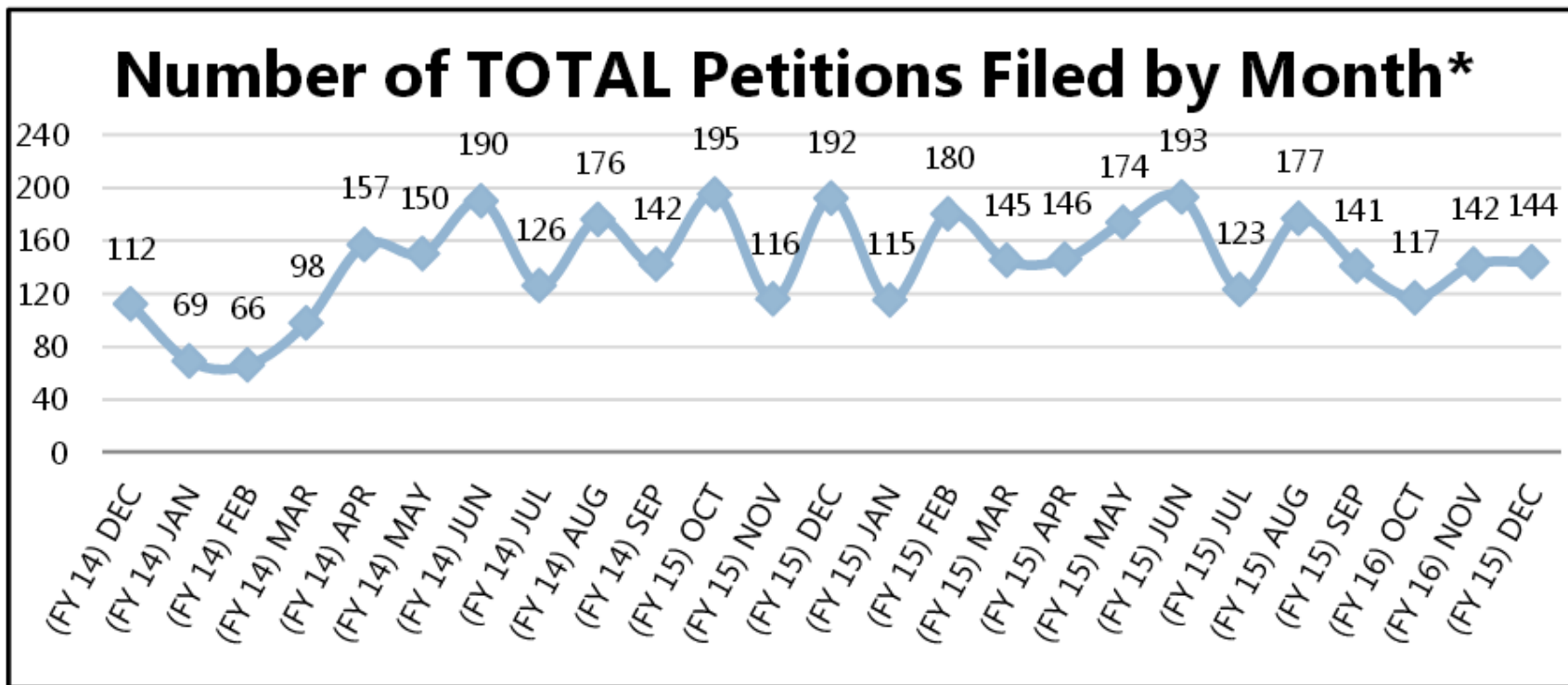
Number of CBM Petitions Filed by Month*



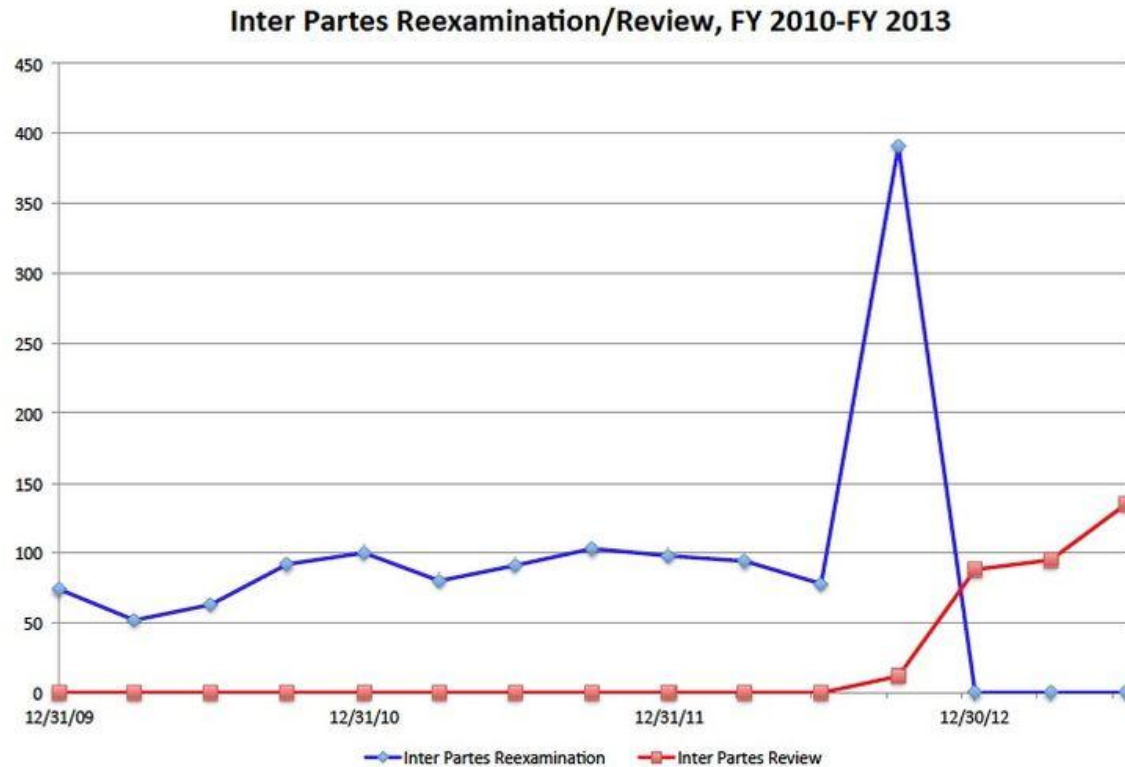
Statistics: BPAI/PTAB



Statistics: BPAI/PTAB



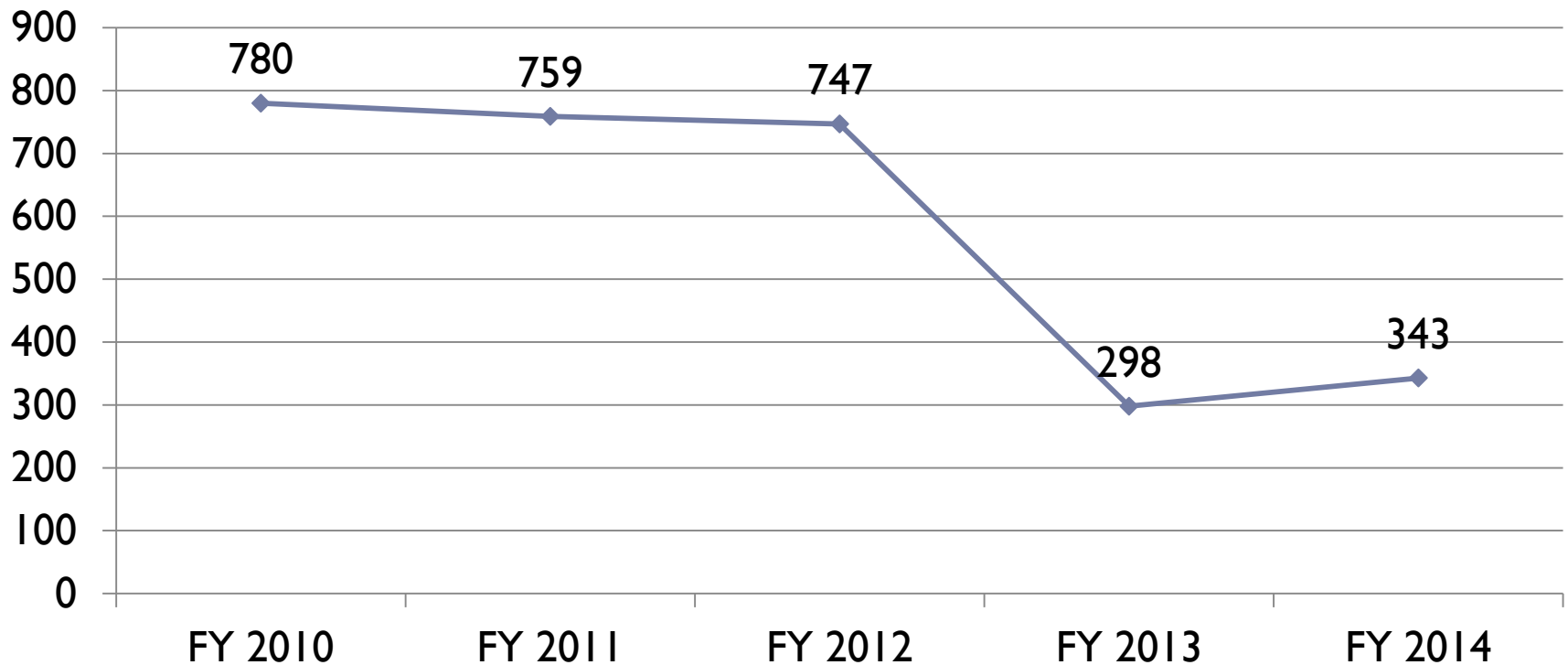
Statistics: BPAI/PTAB



From Patently-O Blog

Statistics: BPAI/PTAB

Total Ex Parte Reexamination Requests Filed

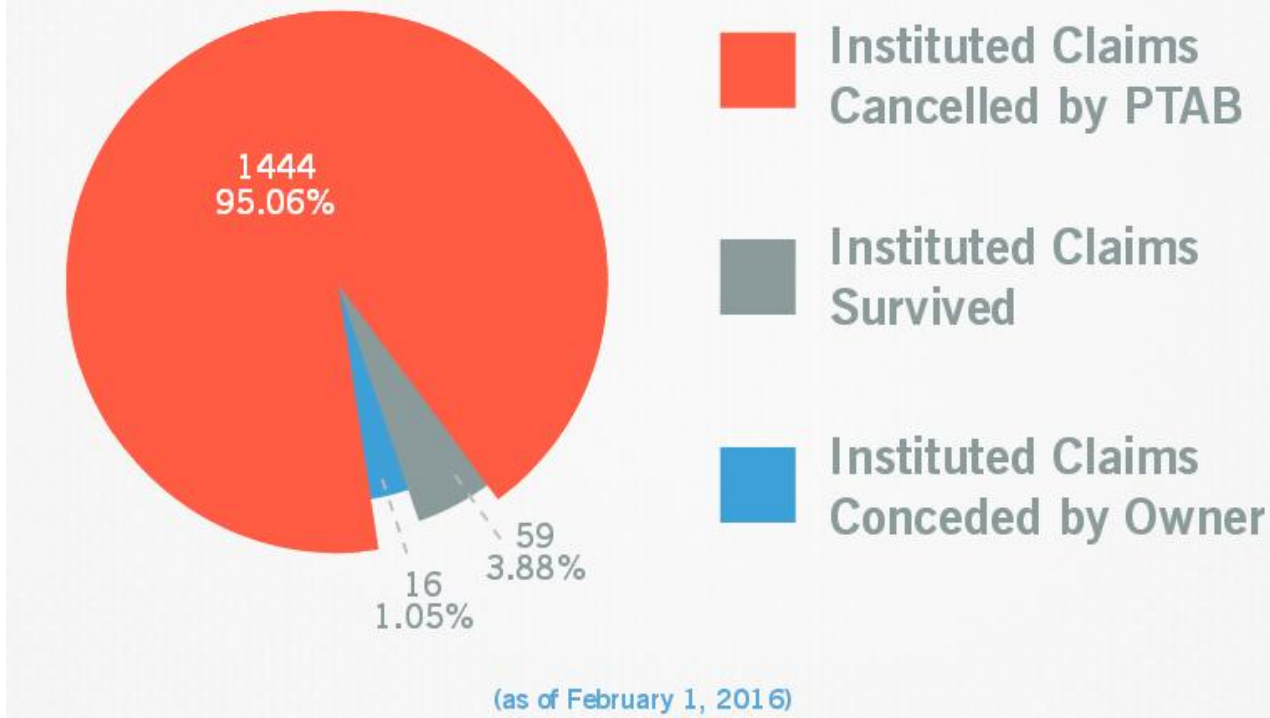


From USPTO.gov

Statistics: BPAI/PTAB

Post-Grant Review: Covered Business Methods

CBM Results by Claim

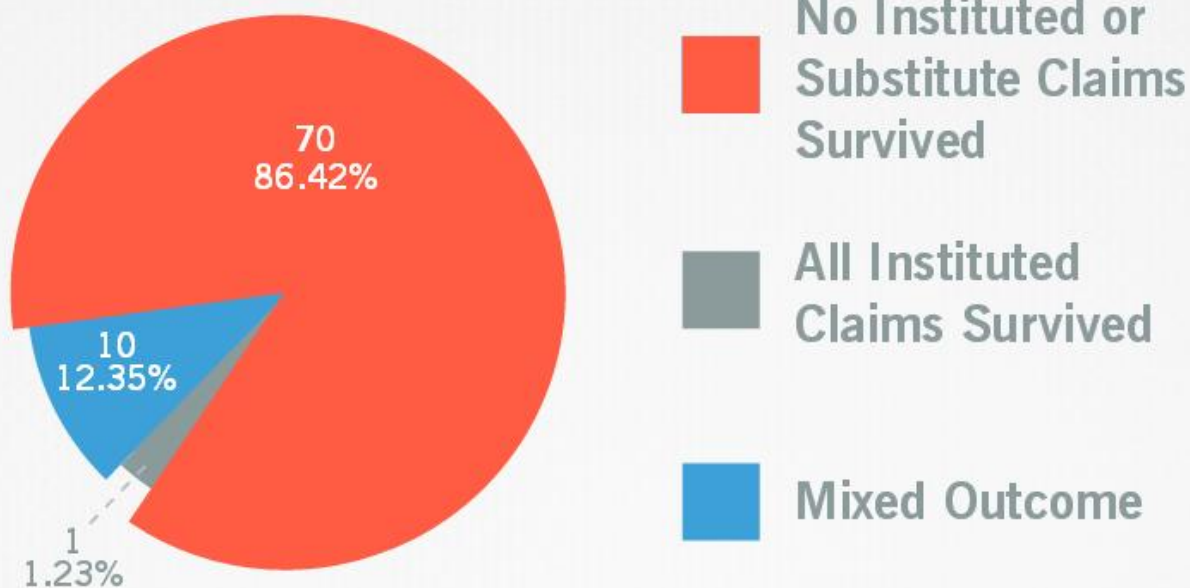


From AIABlog.com

Statistics: BPAI/PTAB

Post-Grant Review: Covered Business Methods

CBM Results by Case

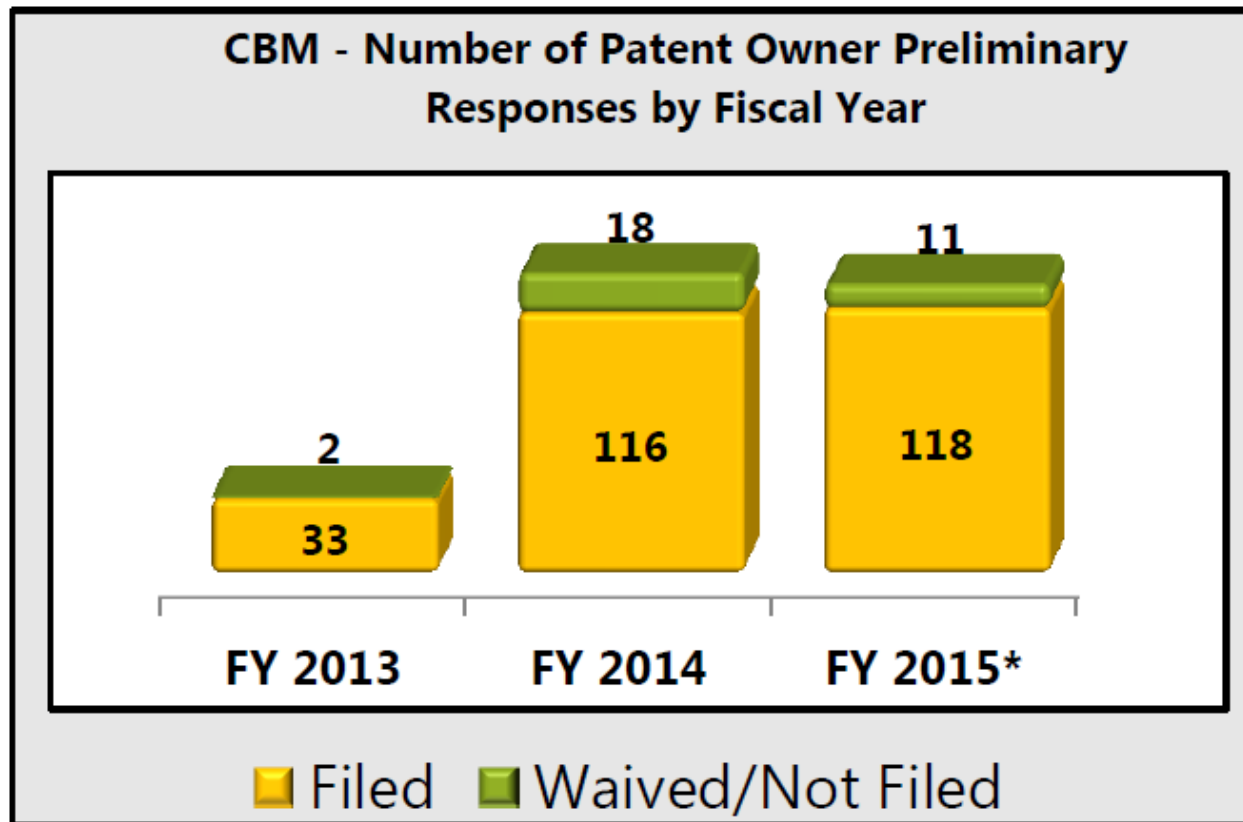


(as of February 1, 2016)

From AIABlog.com

Statistics: BPAI/PTAB

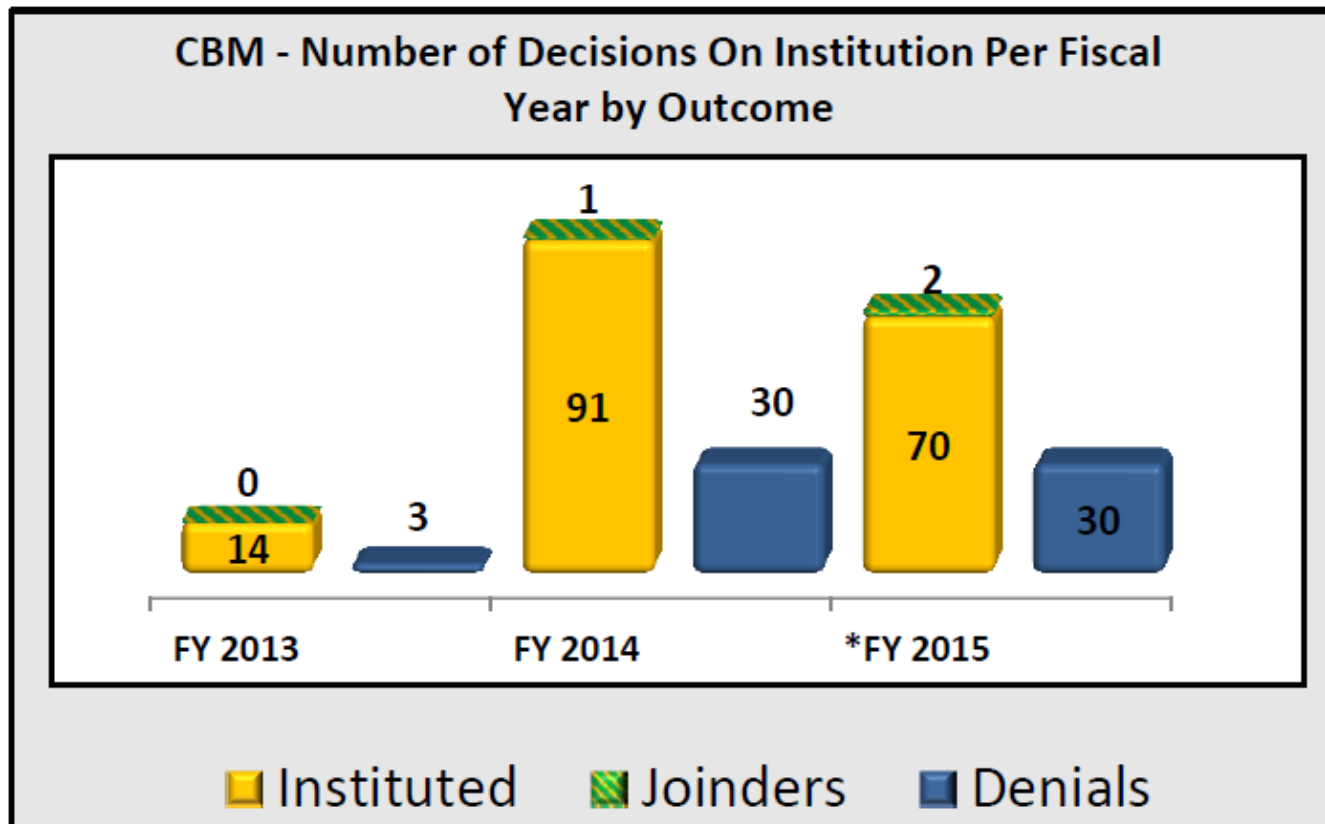
Post-Grant Review: Covered Business Methods



From USPTO.gov

Statistics: BPAI/PTAB

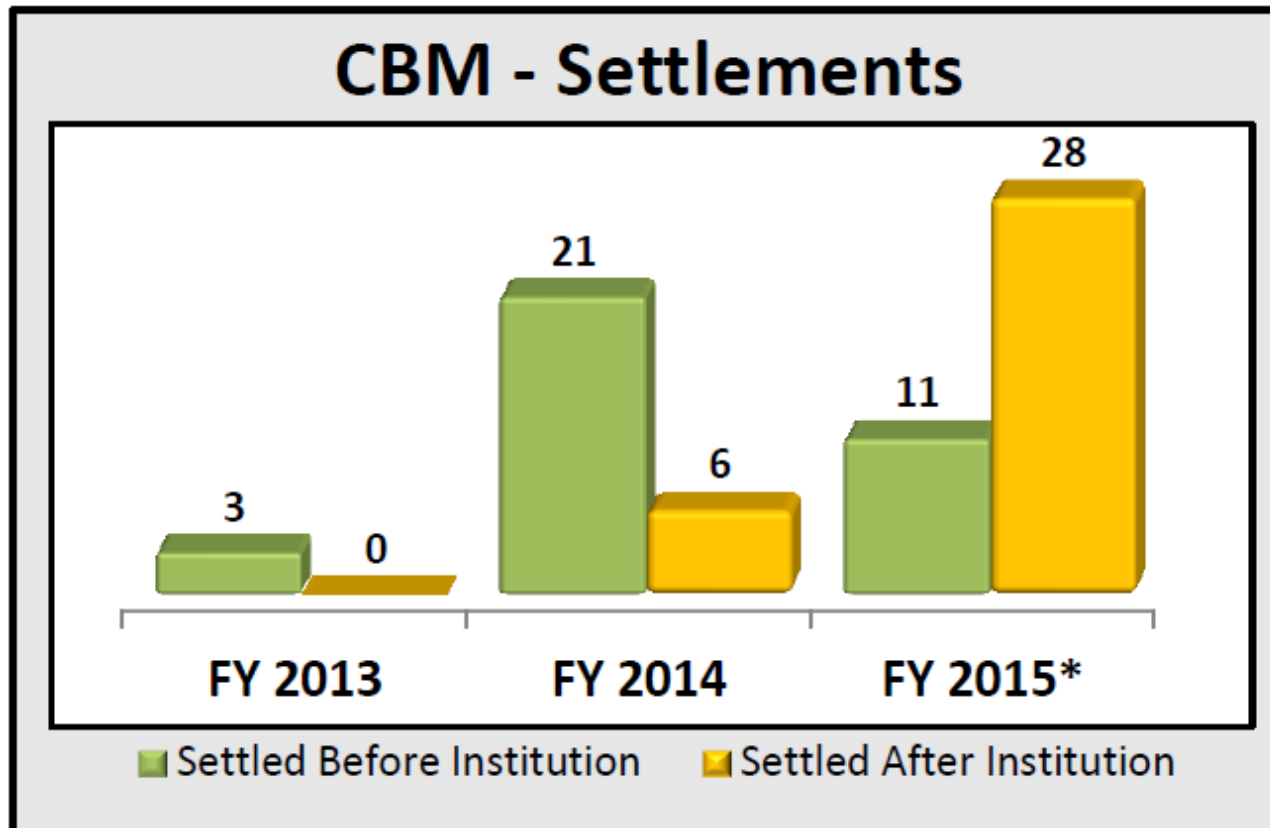
Post-Grant Review: Covered Business Methods



From USPTO.gov

Statistics: BPAI/PTAB

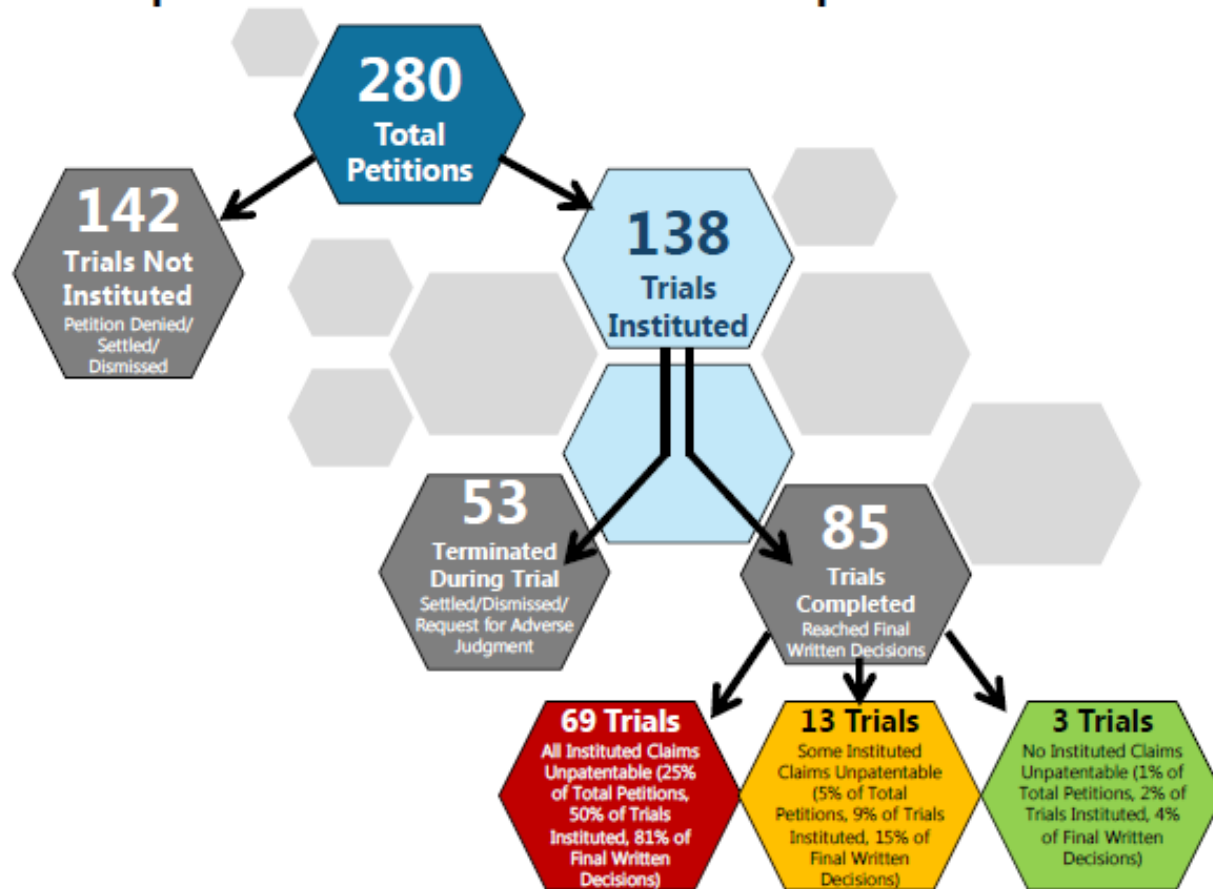
Post-Grant Review: Covered Business Methods



From USPTO.gov

Statistics: BPAI/PTAB

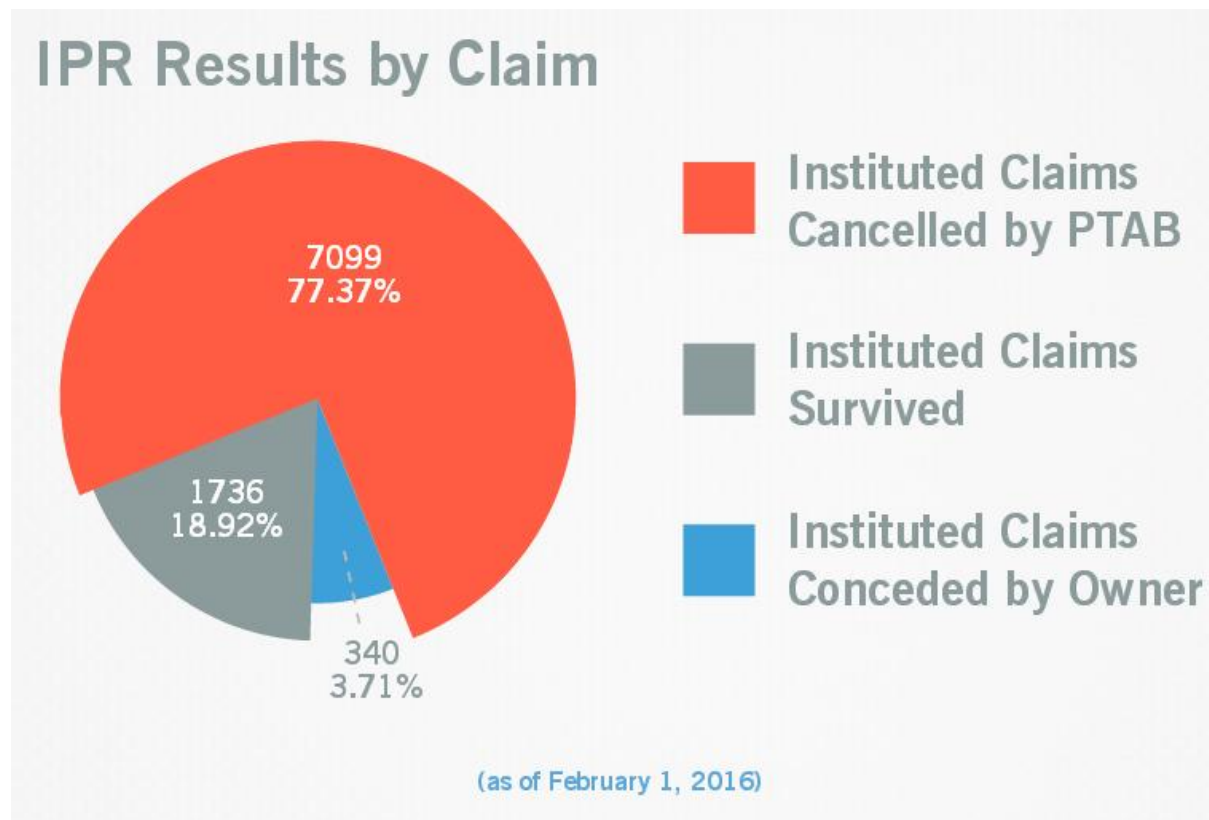
Post-Grant Review: Covered Business Methods Disposition of CBM Petitions Completed to Date*



From USPTO.gov
Current as of 12/31/2015

Statistics: BPAI/PTAB

Post-Grant Review: Inter Partes Review

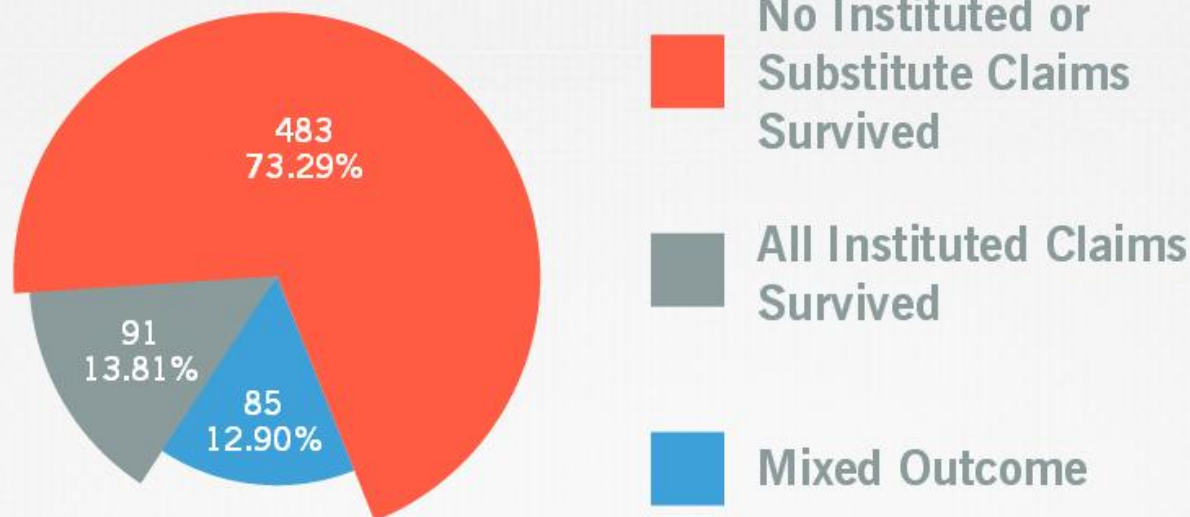


From AIABlog.com

Statistics: BPAI/PTAB

Post-Grant Review: Inter Partes Review

IPR Results by Case



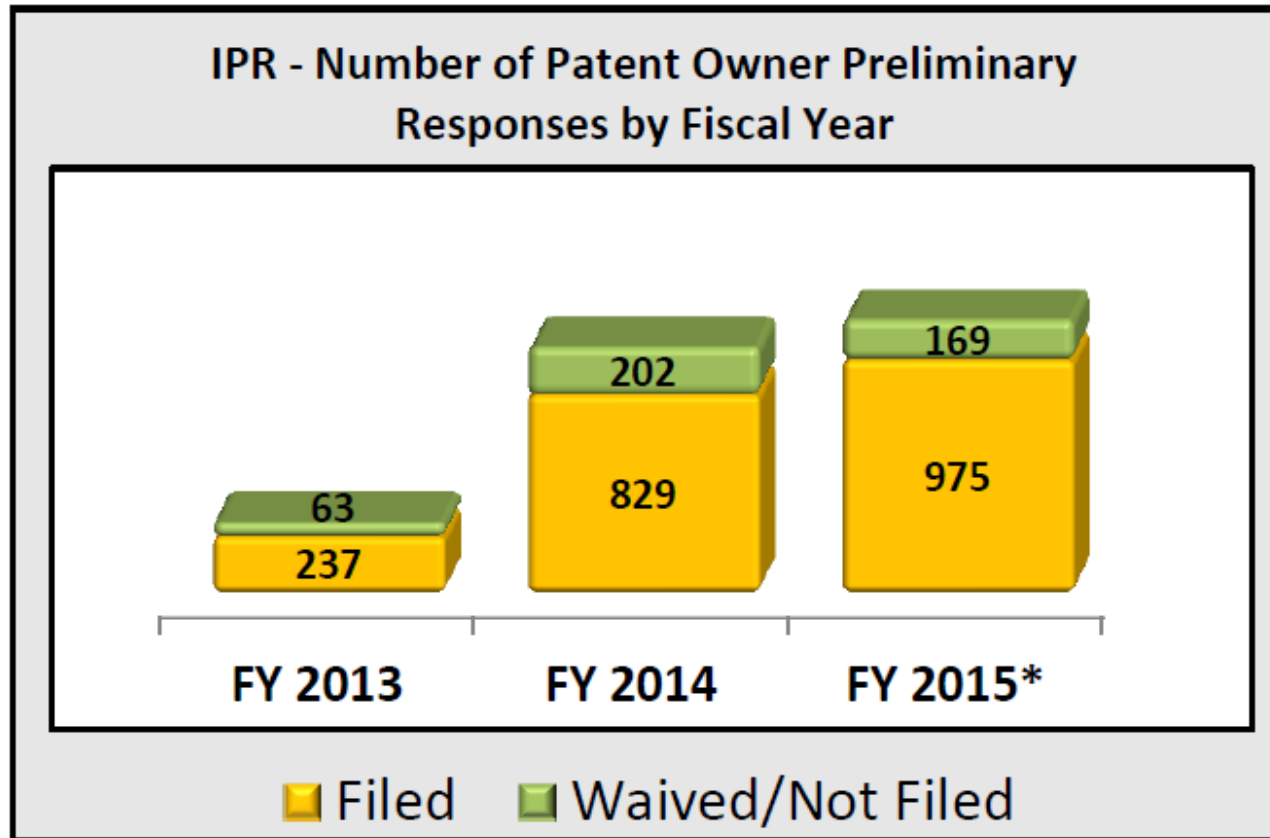
(as of February 1, 2016)

From AIABlog.com

Statistics: BPAI/PTAB

Post-Grant Review: Inter Partes Review

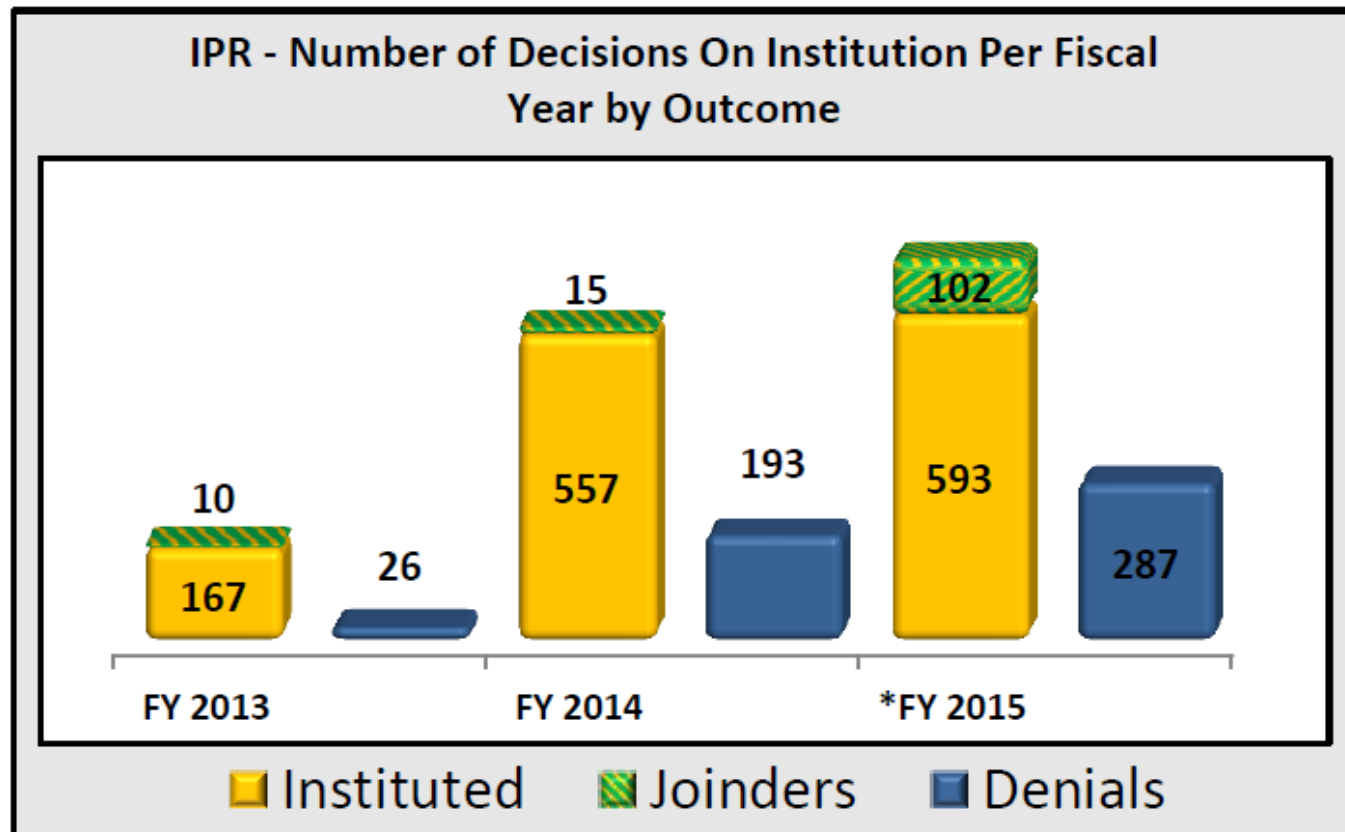
IPR - Number of Patent Owner Preliminary Responses by Fiscal Year



From USPTO.gov

Statistics: BPAI/PTAB

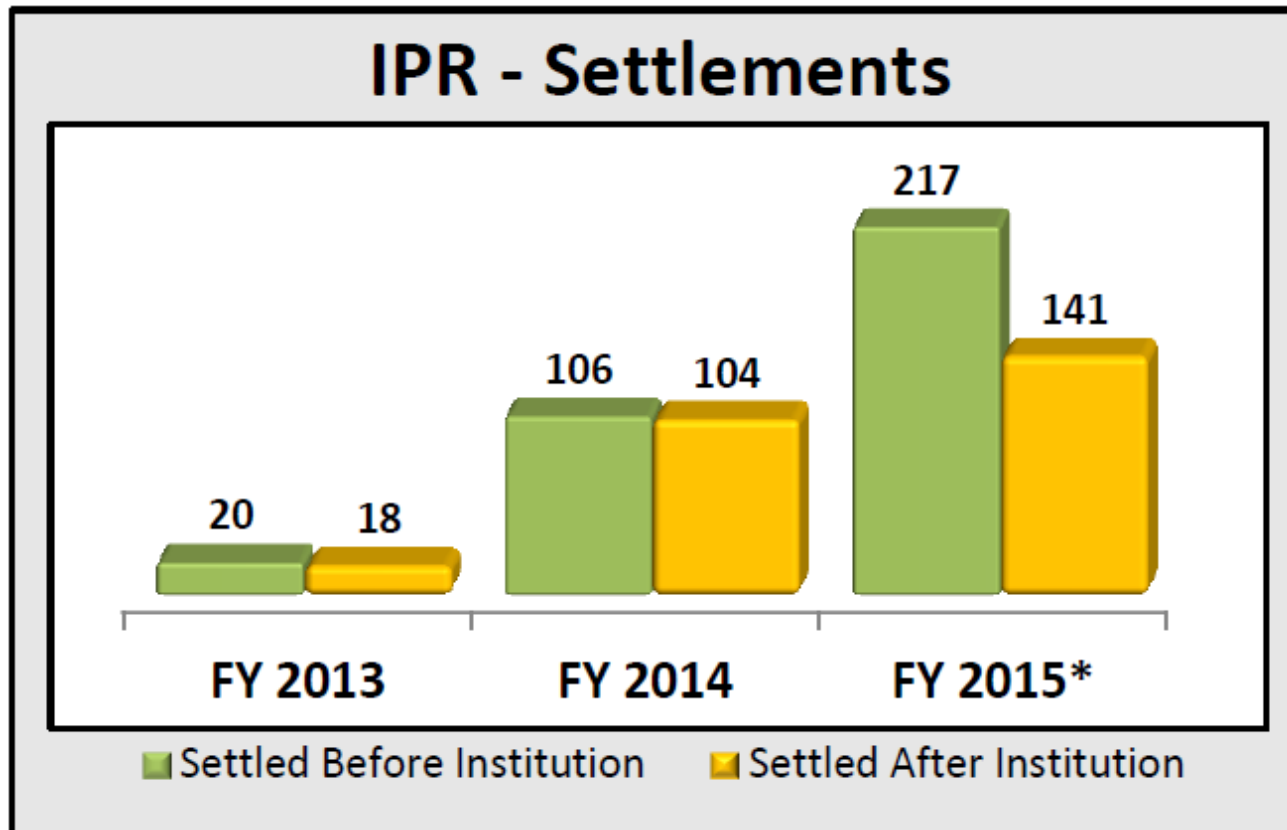
Post-Grant Review: Inter Partes Review



From USPTO.gov

Statistics: BPAI/PTAB

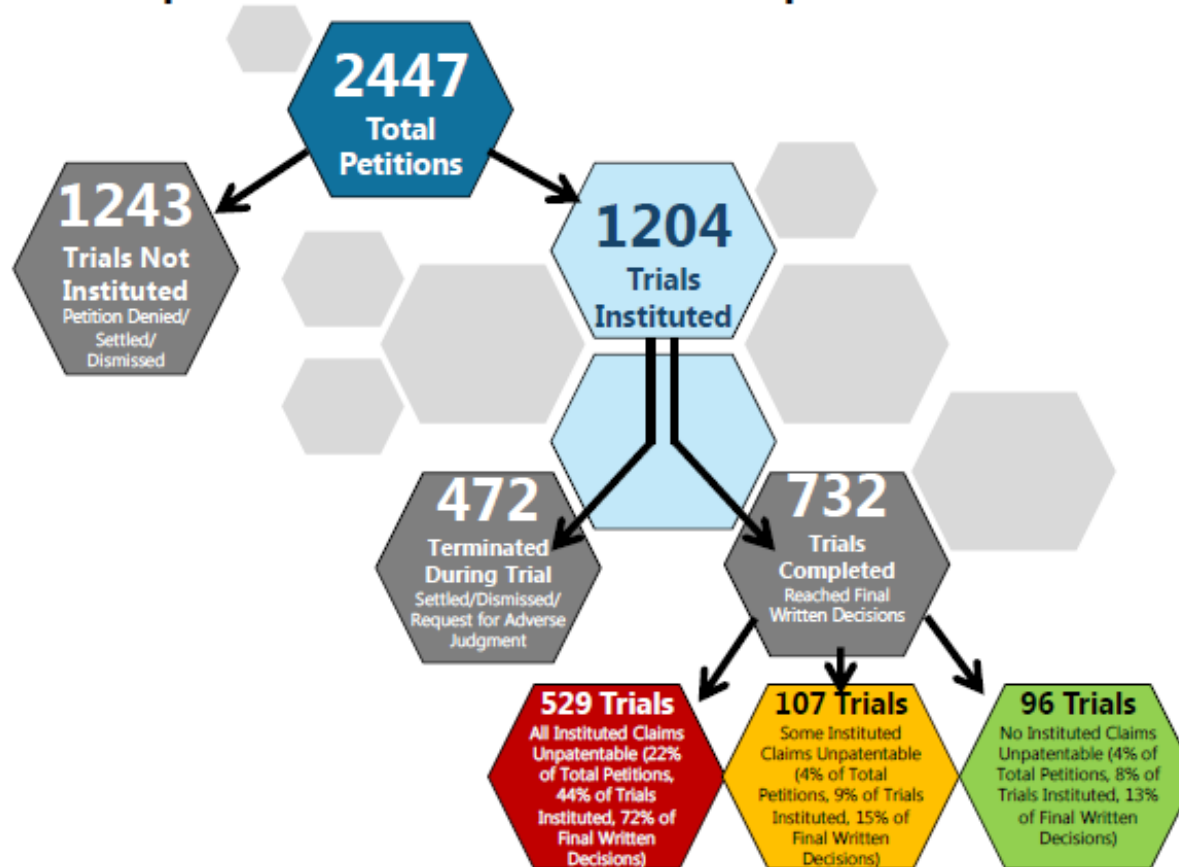
Post-Grant Review: Inter Partes Review



From USPTO.gov

Statistics: BPAI/PTAB

Post-Grant Review: Inter Partes Review Disposition of IPR Petitions Completed to Date*



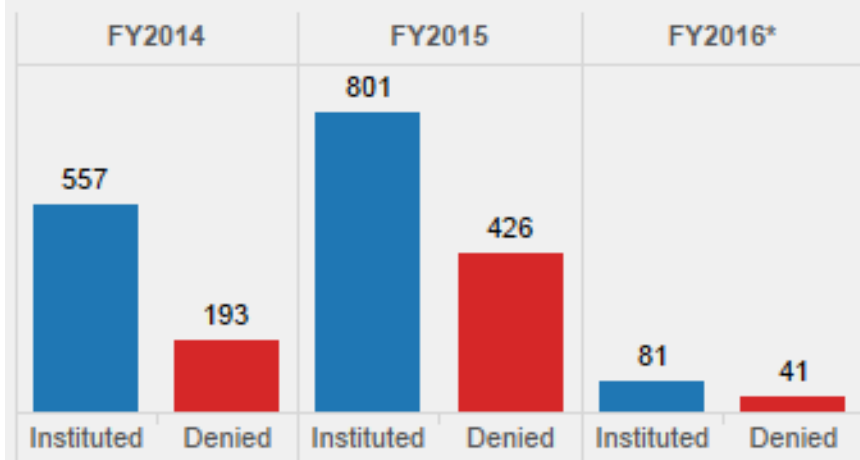
From USPTO.gov
Current as of 12/31/2015

Statistics: BPAI/PTAB

Post-Grant Review: Inter Partes Review

IPR Decisions by Outcome

(joinders not included)



74%

Rate PTAB
instituted inter
partes reviews

65%

Rate PTAB
instituted inter
partes reviews

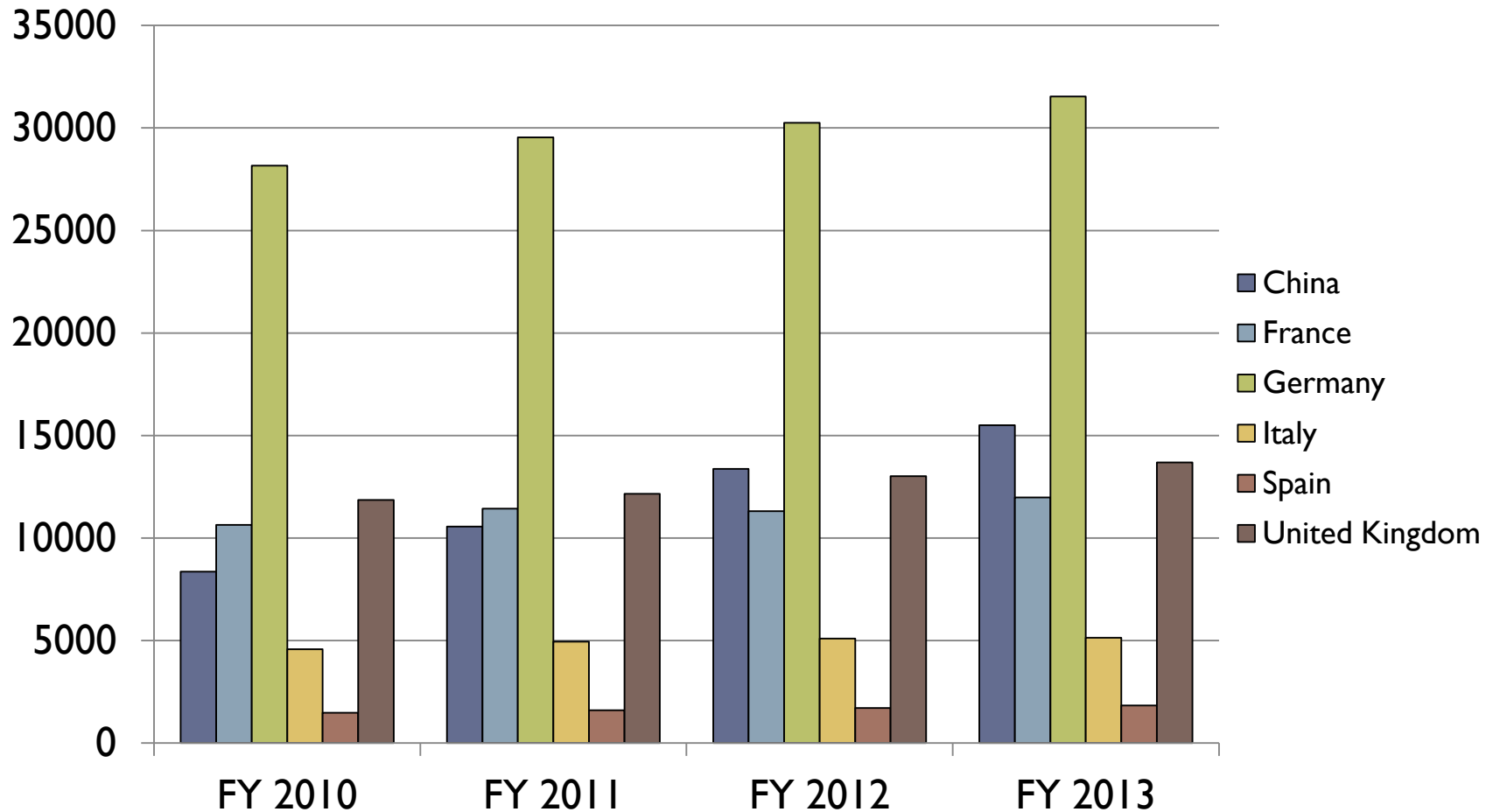
66%

Rate PTAB has
instituted inter
partes reviews

*Data current as of: 10/31/2015

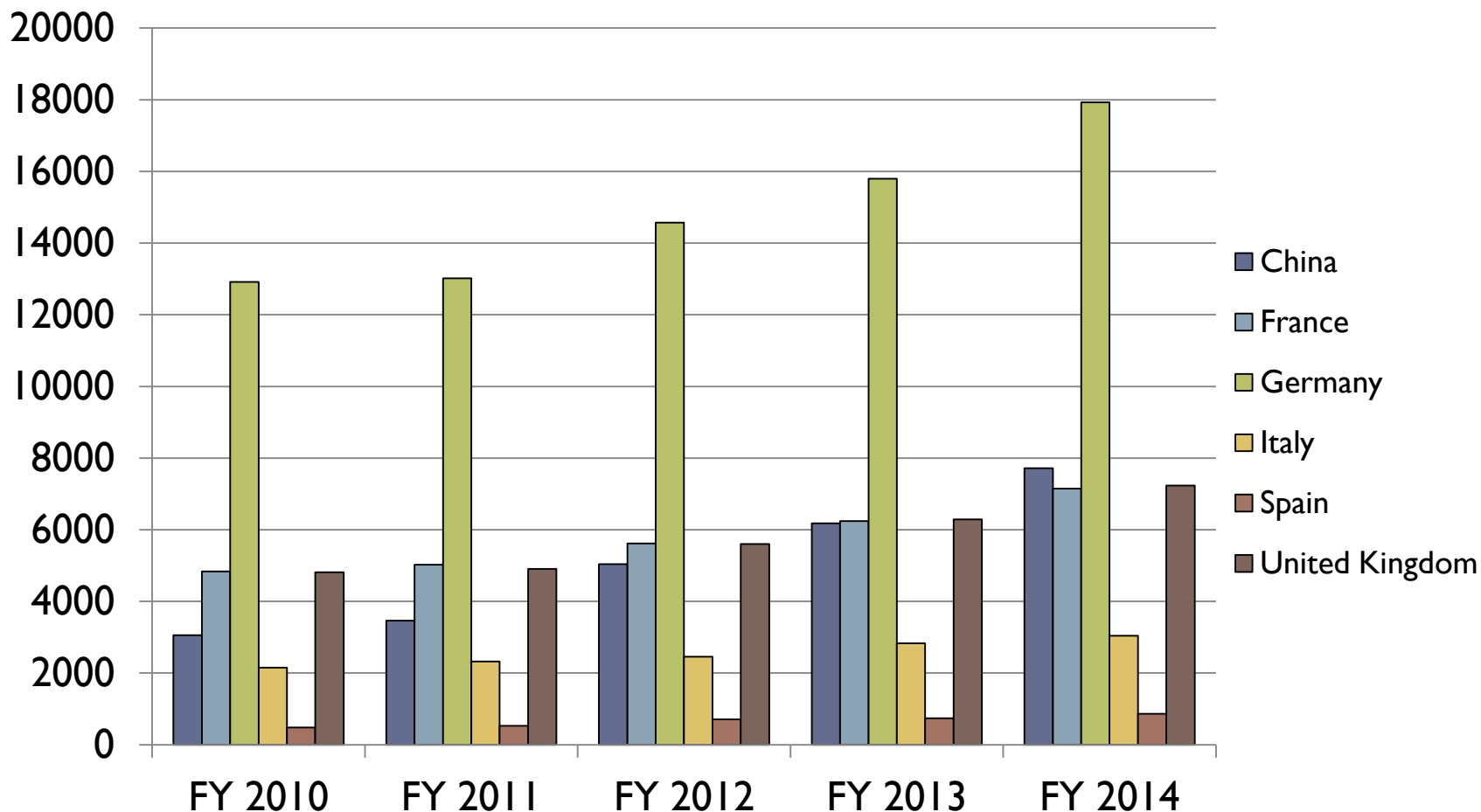
Source: USPTO

Statistics: Patent Applications By Residents of Foreign Countries



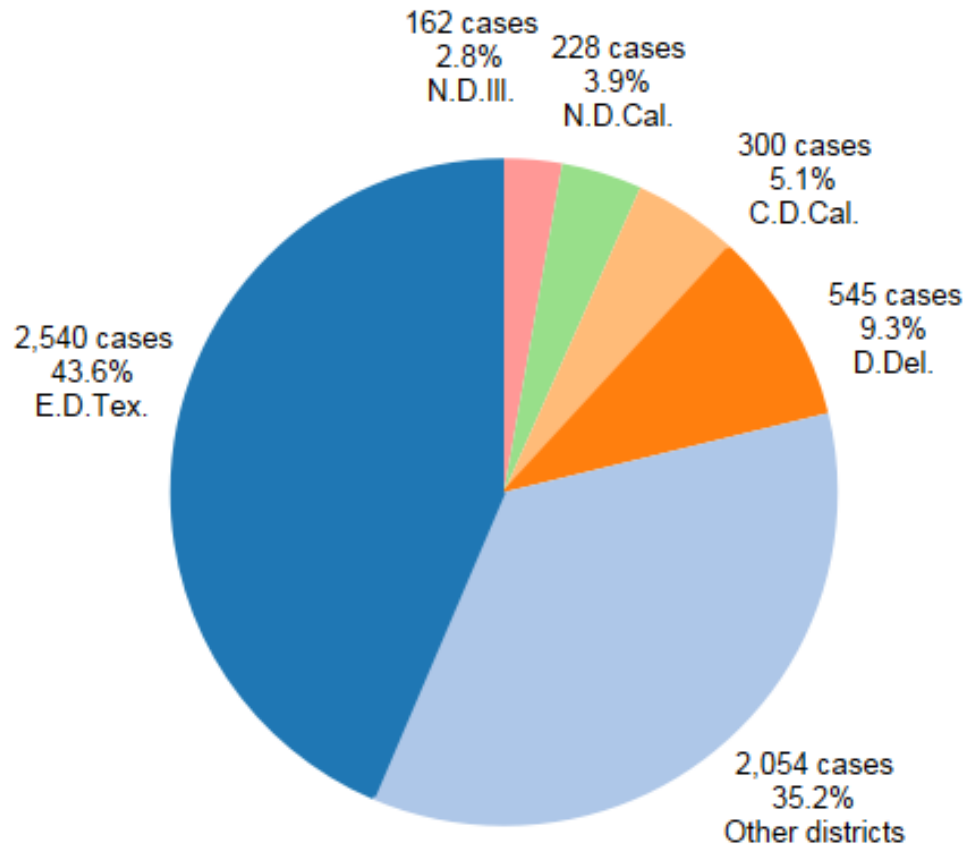
From USPTO.gov

Statistics: Patents Issued to Residents of Foreign Countries



From USPTO.gov

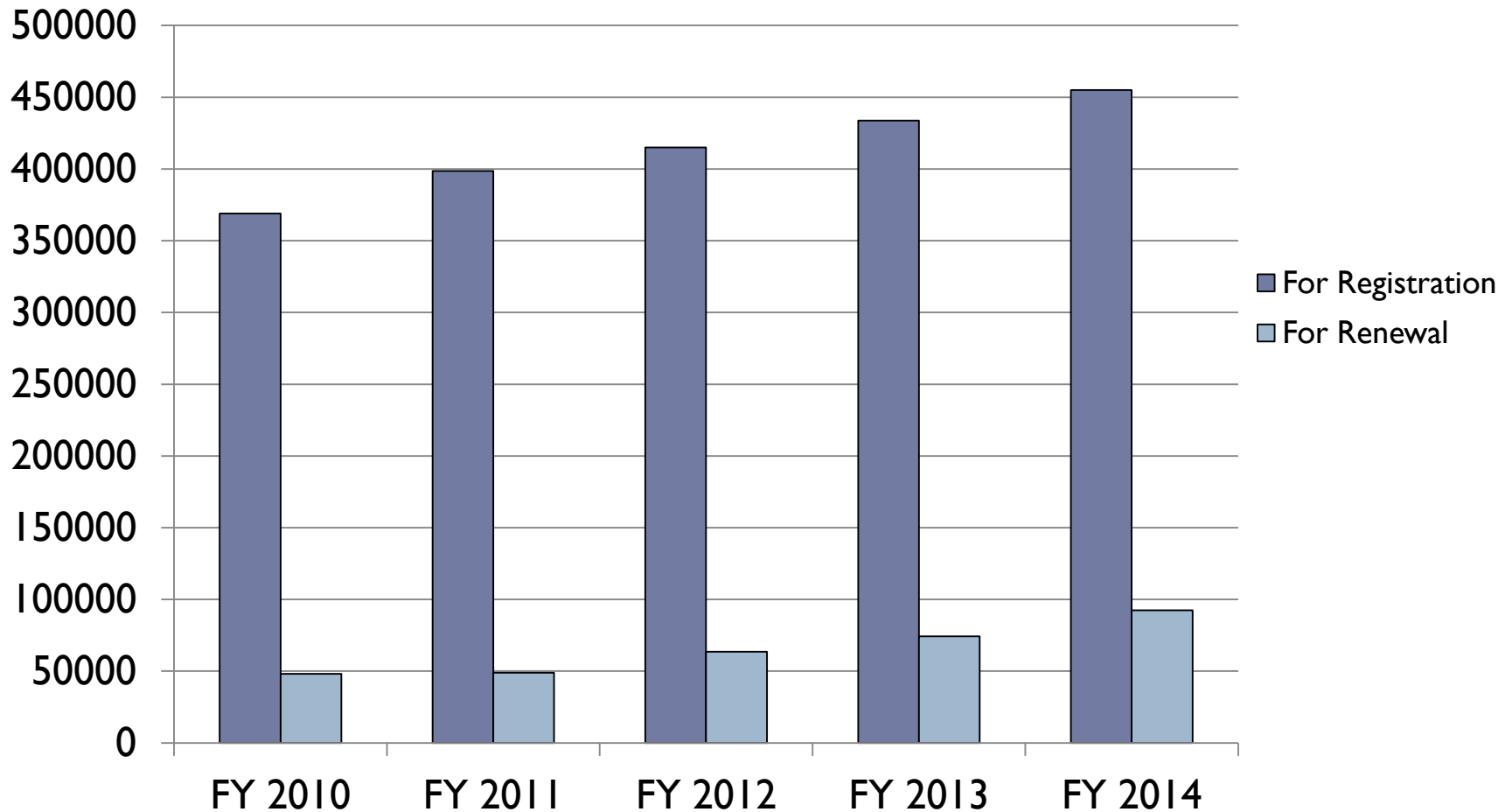
Patent Infringement Suit Venues



From Lex Machina

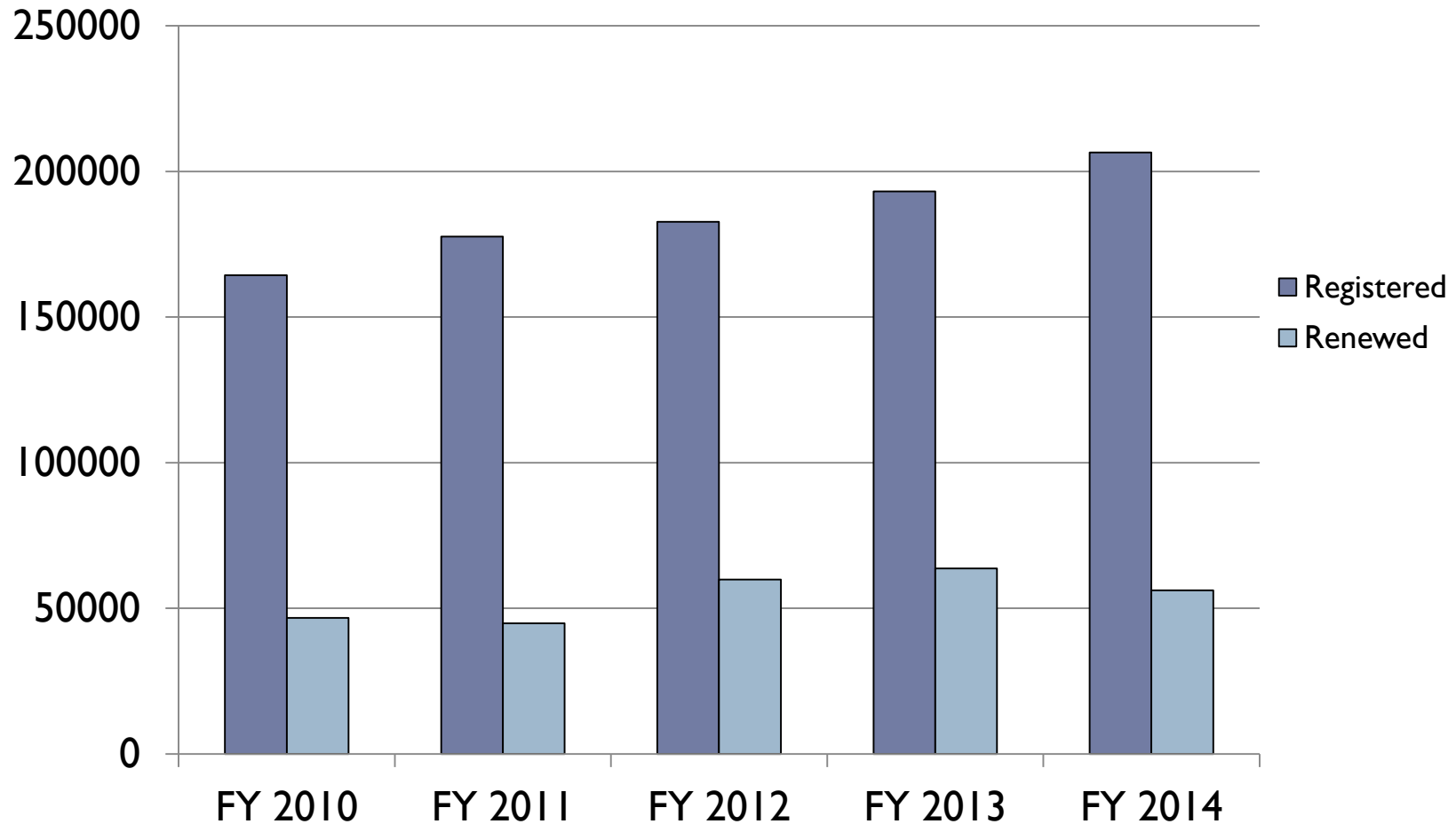
- ▶ The Eastern District of Texas was the most active jurisdiction in 2015 with 2,540 patent case filings.

Statistics: Trademark Applications Filed



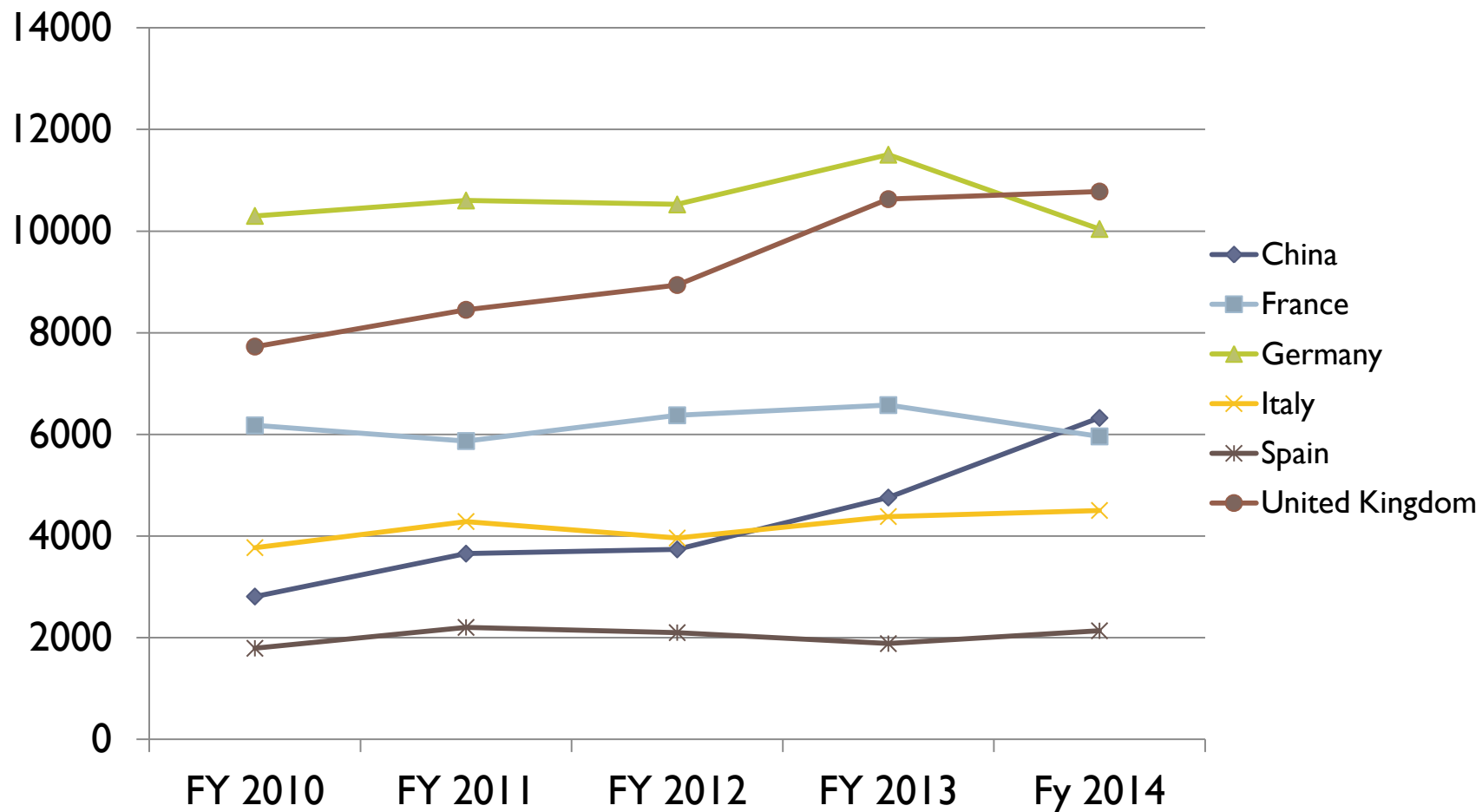
From USPTO.gov

Statistics: Trademark Registrations



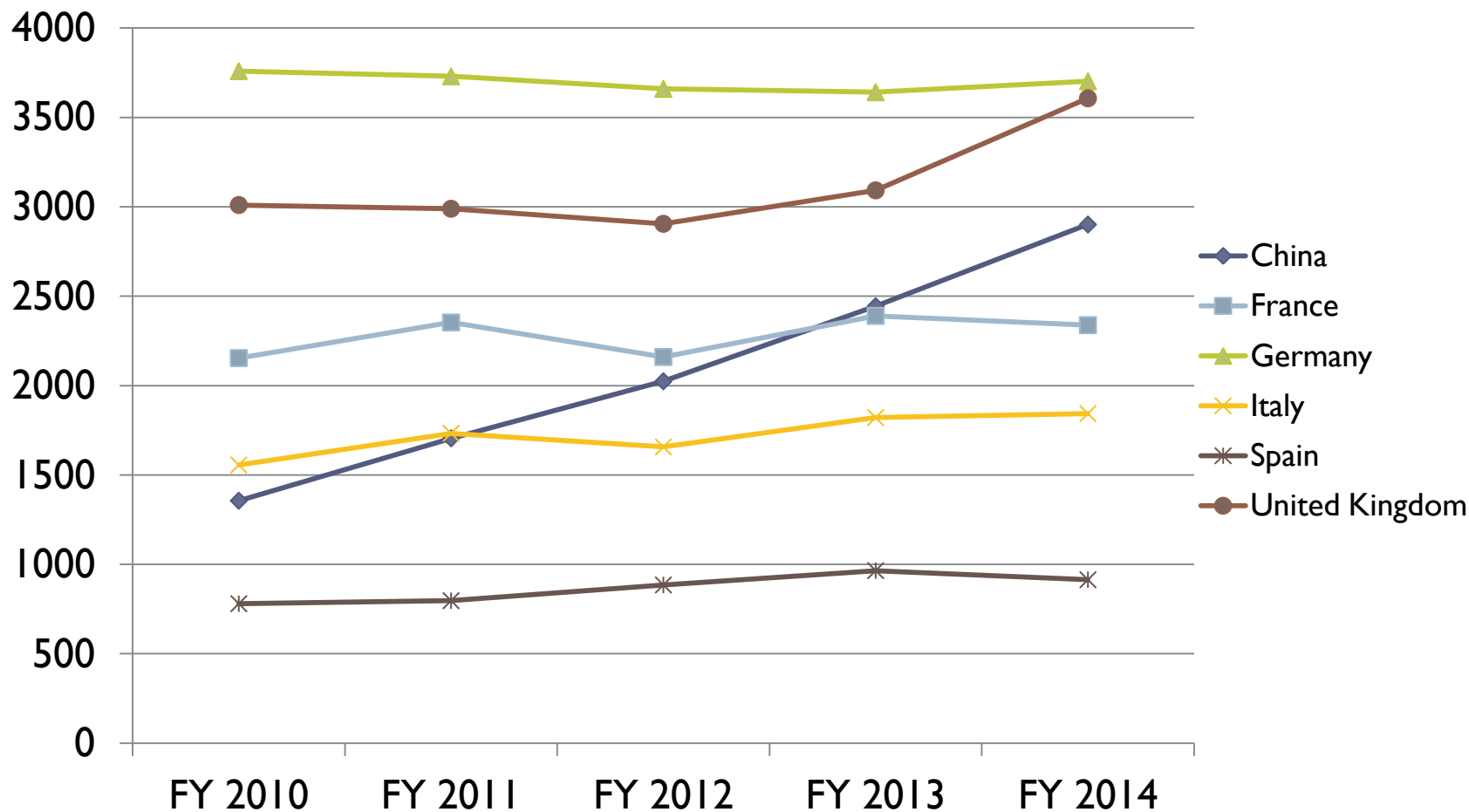
From USPTO.gov

Statistics: Trademark Applications By Residents of Foreign Countries



From USPTO.gov

Statistics: Trademarks Registered to Residents of Foreign Countries



From USPTO.gov

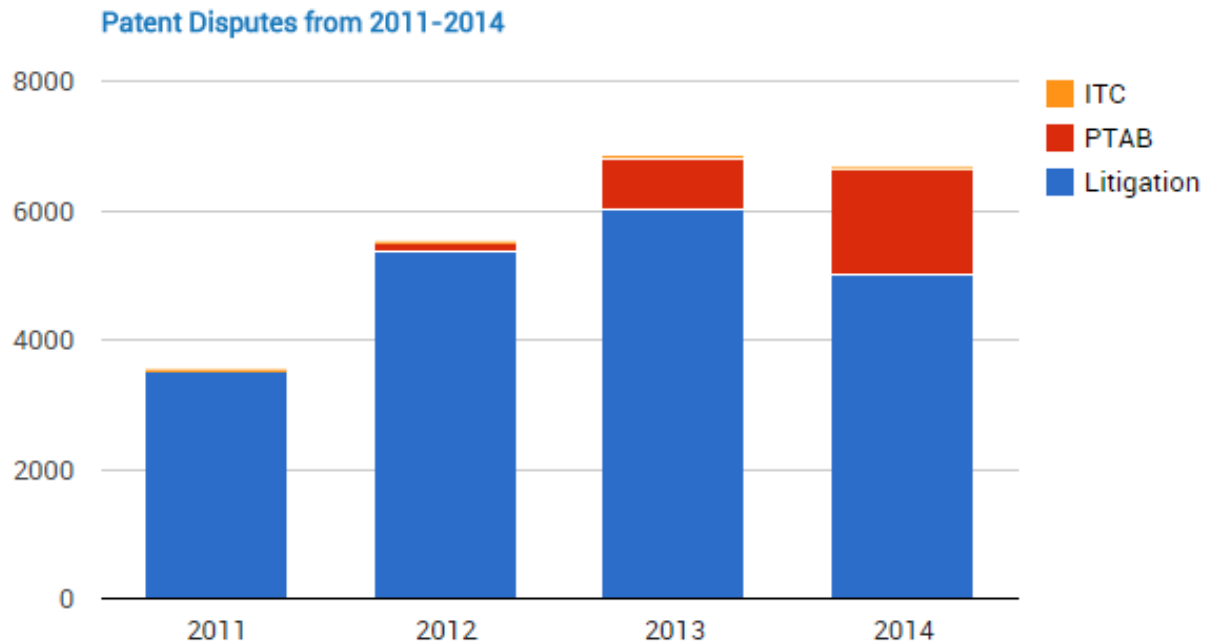
Statistics: Top 50 Trademark Registrants

Name of Applicant	Registrations
MATTEL, INC.	426
Disney Enterprises, Inc.	186
LG ELECTRONICS INC.	156
The Procter & Gamble Company	146
SAMSUNG ELECTRONICS CO., LTD.	143
Novartis AG	140
Lidl Stiftung & Co. KG	131
Twentieth Century Fox Film Corporation	119
Societe des Produits Nestle S.A.	118
L'Oreal USA Creative, Inc.	106
Conair Corporation	104
Tri-Coastal Design Group, Inc.	103
Abercrombie & Fitch Trading Co.	101
Aristocrat Technologies Australia Pty Lt	98
L'Oreal	95
JOHNSON & JOHNSON	94
IGT	91
S.C. Johnson & Son, Inc.	82
Target Brands, Inc.	79
Boehringer Ingelheim International GmbH	78
Discovery Communications, LLC	72
Sears Brands, LLC	71
Ainsworth Game Technology Limited	70
Apple Inc.	66
Bally Gaming Inc.	65

Name of Applicant	Registrations
U.S. Marine Corps, a component of the U.	62
The Saul Zaentz Company	61
WMS GAMING INC.	61
Marvel Characters, Inc.	60
Konami Gaming, Inc.	59
Microsoft corporation	59
Wal-Mart Stores, Inc.	59
HEB GROCERY COMPANY, LP	58
Starbuzz Tobacco, Inc.	57
VIACOM INTERNATIONAL INC.	56
A&E Television Networks, LLC	55
Comité International Olympique	55
HASBRO, INC.	55
Sanofi	55
Columbia Insurance Company	54
American International Group, Inc.	53
Conopco, Inc.	53
Kimberly-Clark Worldwide, Inc.	51
Walgreen Co.	51
Campus Crusade for Christ, Inc.	50
Celgene Corporation	49
Glaxo Group Limited	49
Siemens Aktiengesellschaft	49
PTT, LLC	47
REED ELSEVIER PROPERTIES INC.	47

Statistics: Trials

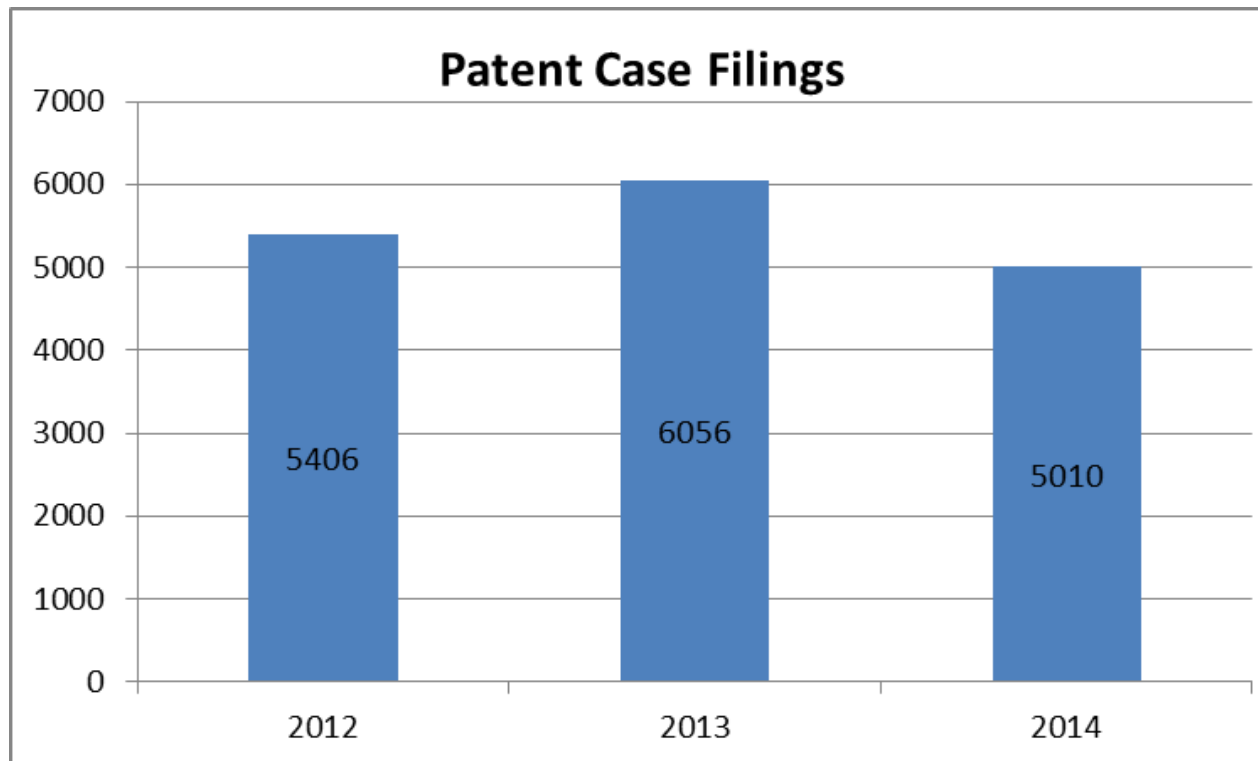
In 2014, patent disputes reached the second highest level in history, 6,674.



From UnifiedPatents.com

Statistics: Trials

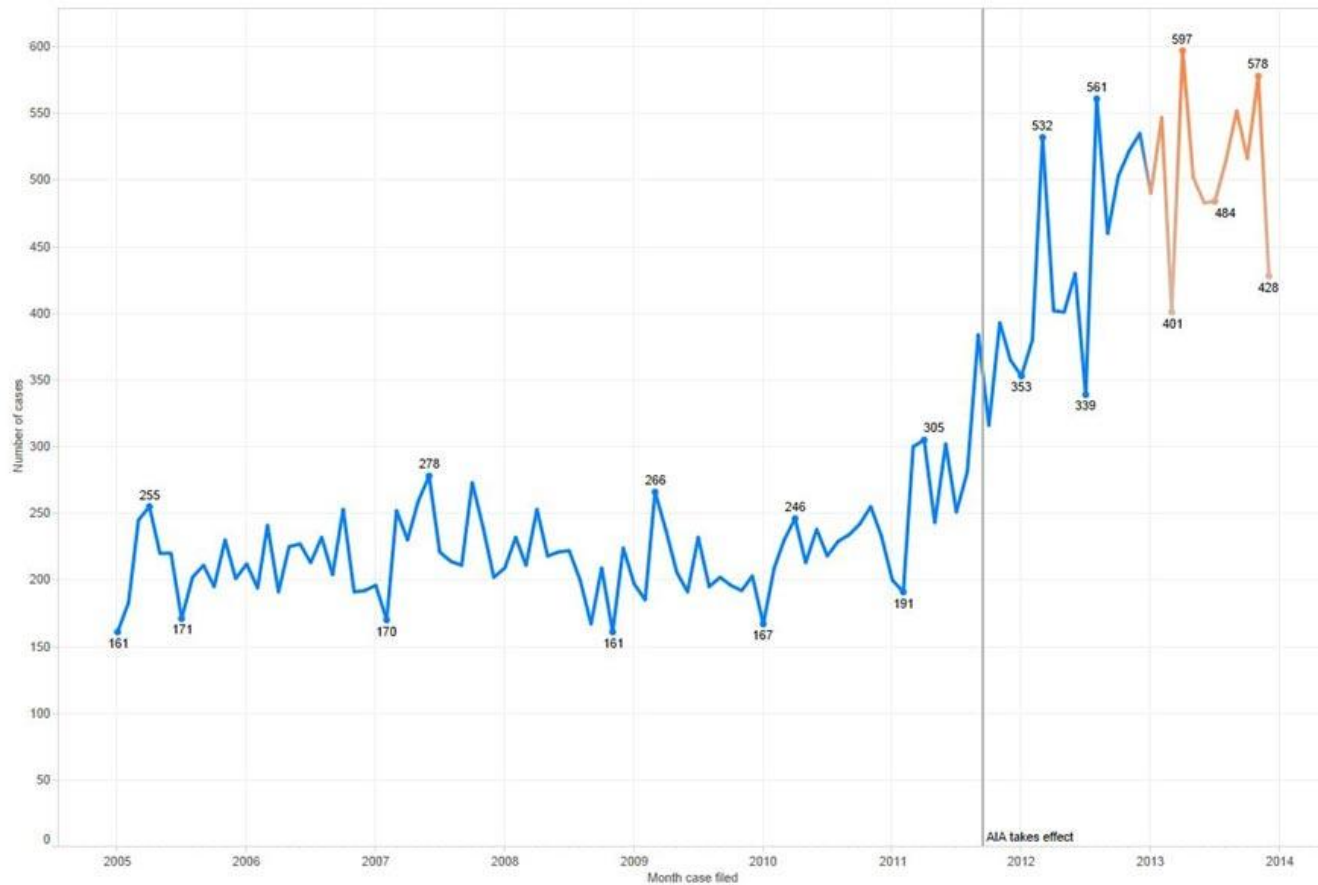
Patent litigation filings remain high but have declined in light of the new Post-Grant Proceedings.



From LESUSACanada.com

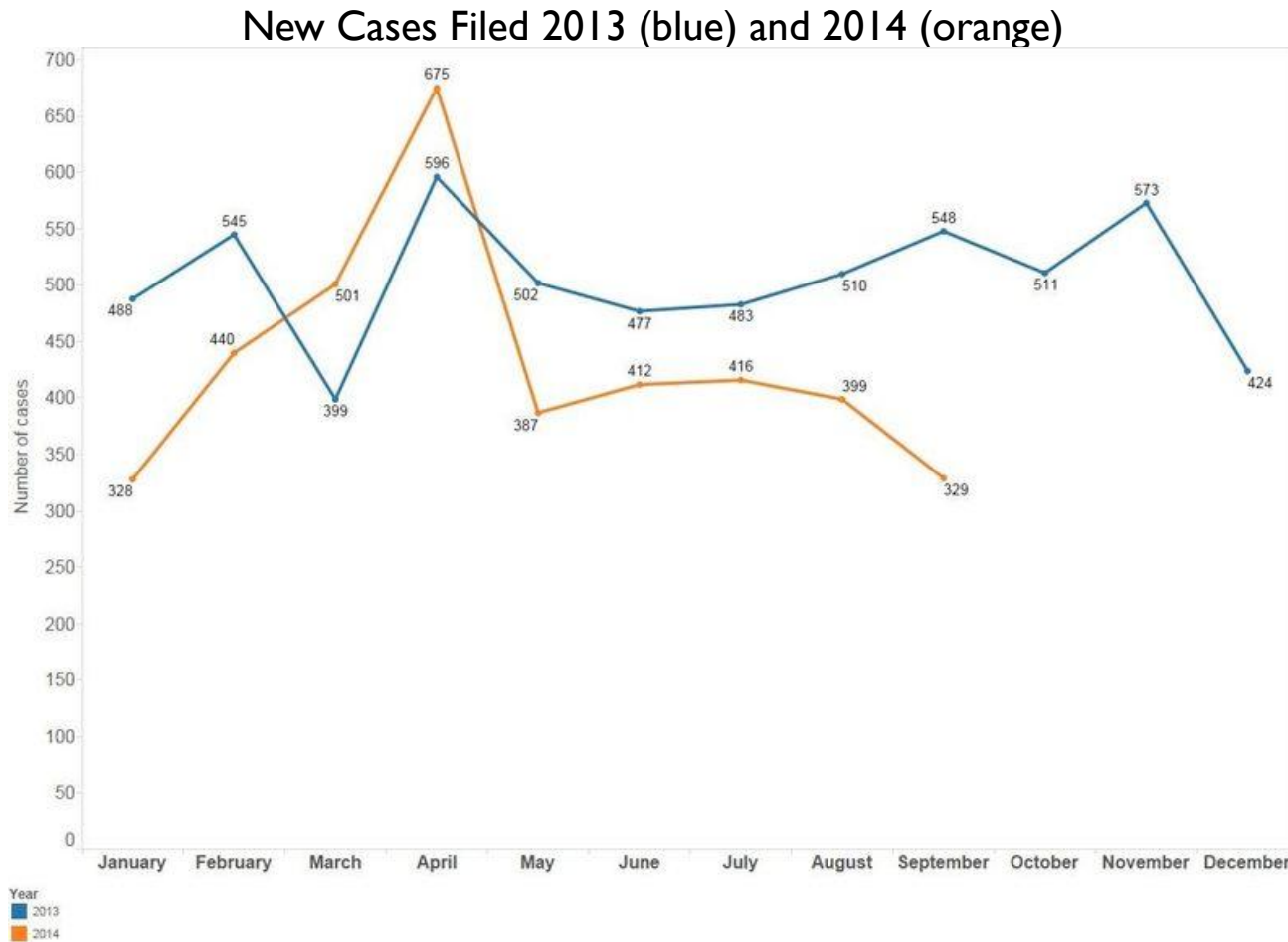
Statistics: Trials

New Cases Filed 2005-2013, by month (2013 in orange)



From LexMachina

Statistics: Trials



From LexMachina

Statistics: Trials

Districts With Most New Cases Filed

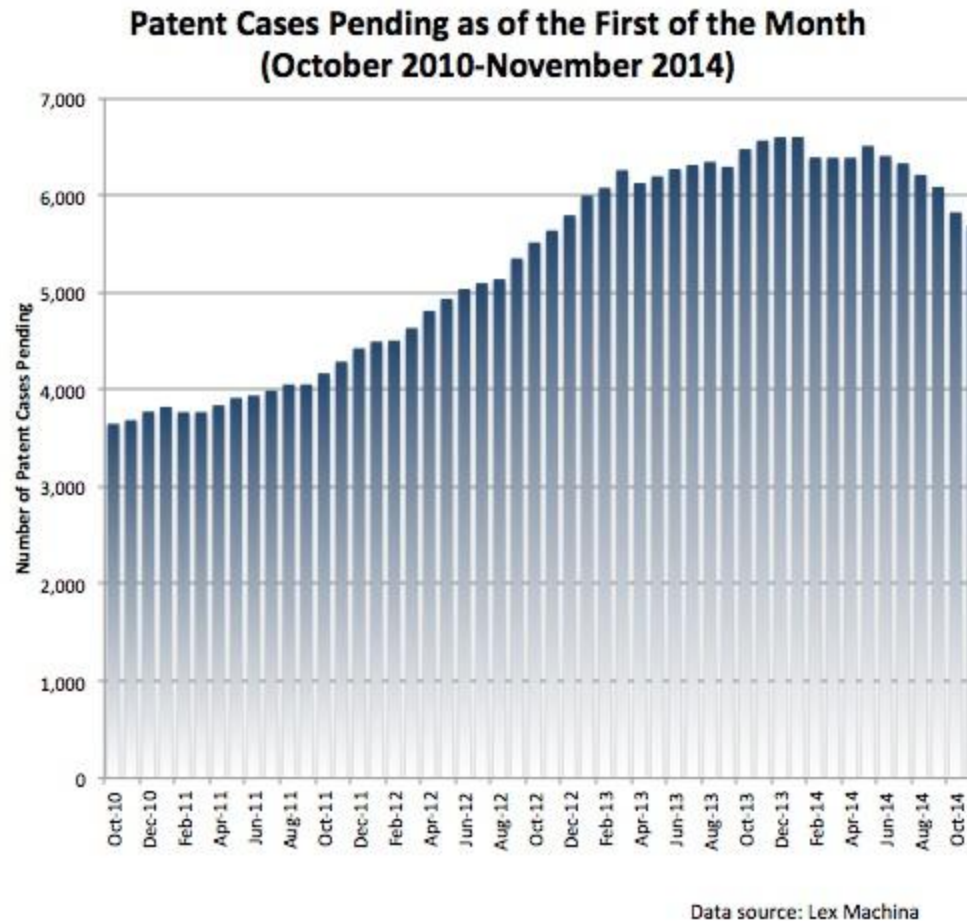
Rank	District	2013	2012	Net Change
1	Eastern District of Texas	1,495	1,247	+248
2	District of Delaware	1,336	1,002	+334
3	Central District of California	399	499	-100

Trials by District (in 2013)

District	Bench	Jury	Bench & Jury	Total
District of Delaware	17	8	0	25
Eastern District of Texas	11	22	8	25
Southern District of New York	11	7	1	17

From LexMachina

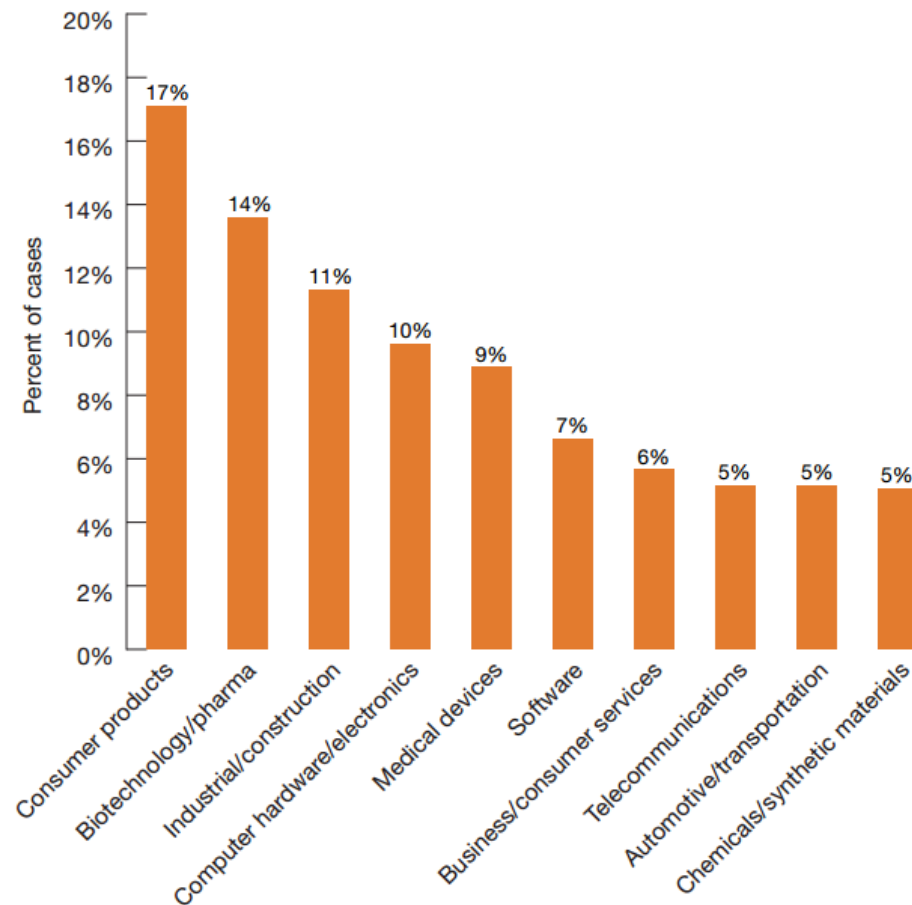
Statistics: Trials



From PatentlyO.com

Statistics: Trials

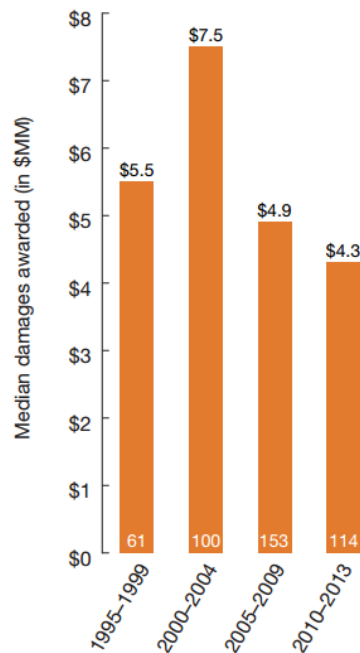
Chart 7a. Distribution of cases: top ten industries, 1995–2013



From PricewaterhouseCoopers

Statistics: Trials

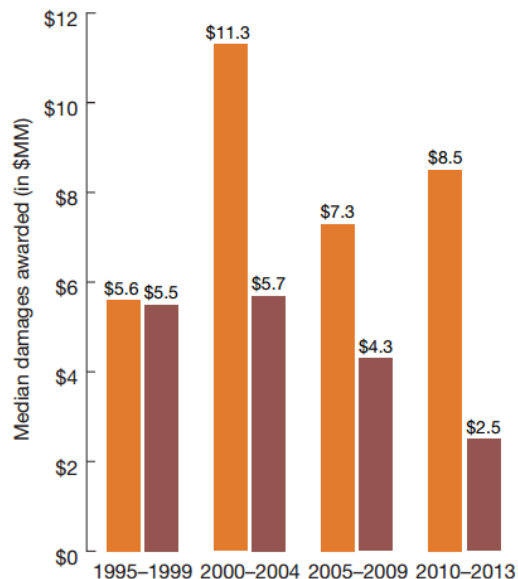
Chart 2a. Median damages awarded



Median damages are adjusted for inflation to 2013 US dollars.

The number of identified decisions is indicated within the respective column.

Chart 2b. Median damages awarded: nonpracticing entities vs. practicing entities

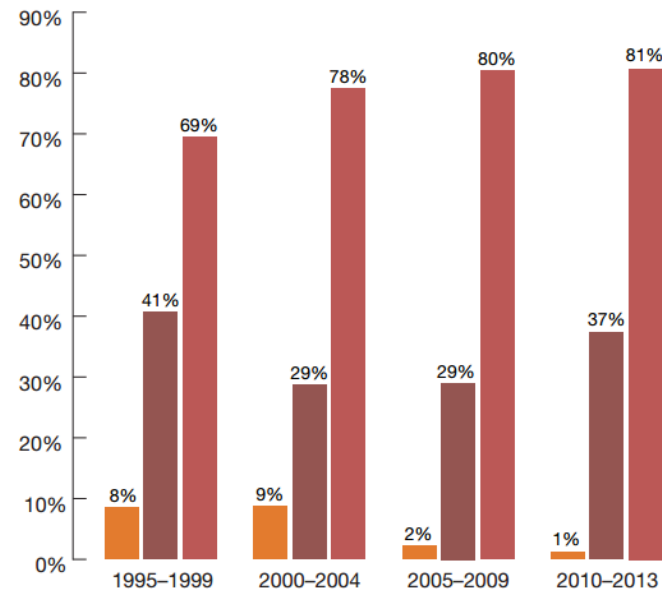


Nonpracticing entities

Practicing entities

Median damages are adjusted for inflation to 2013 US dollars.

Chart 5. Composition of damages awards



Price erosion

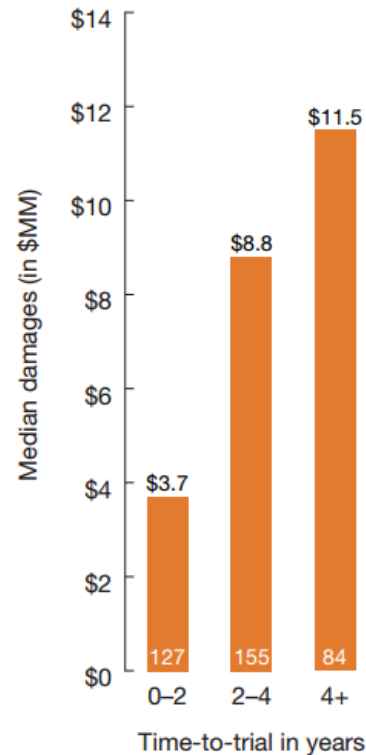
Lost profits

Reasonable royalty

From PricewaterhouseCoopers
(2014 Report)

Statistics: Trials

Chart 8b. Median damages based on time-to-trial: 1995–2013



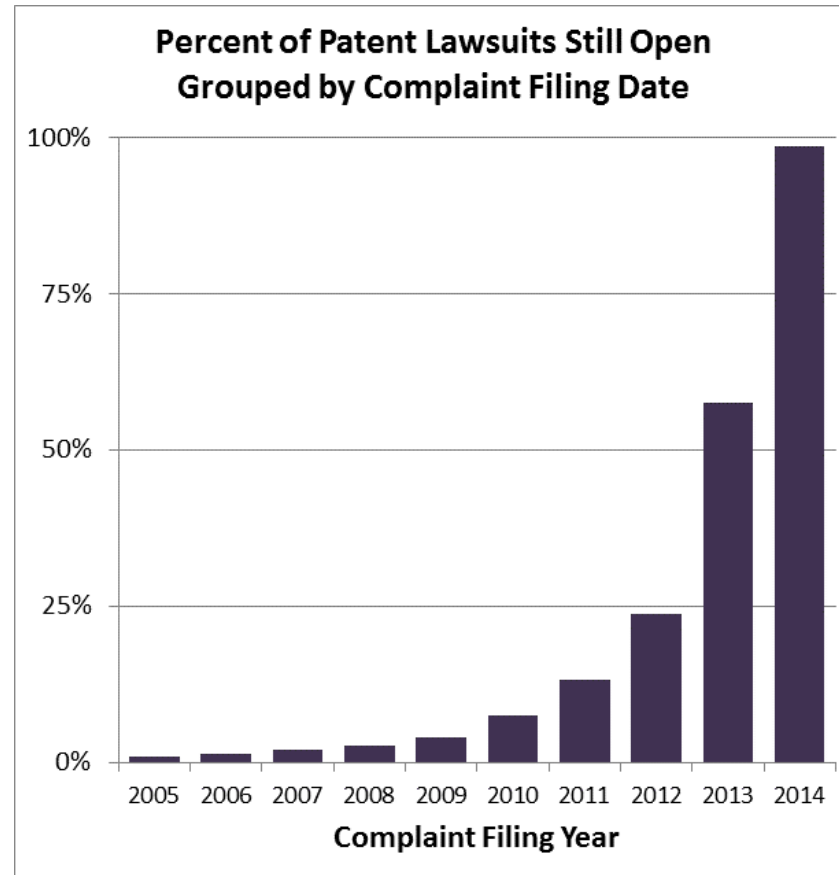
Median damages are adjusted for inflation to 2013 US dollars.

The number of identified decisions is indicated within the respective column.

From PricewaterhouseCoopers
(2014 Report)



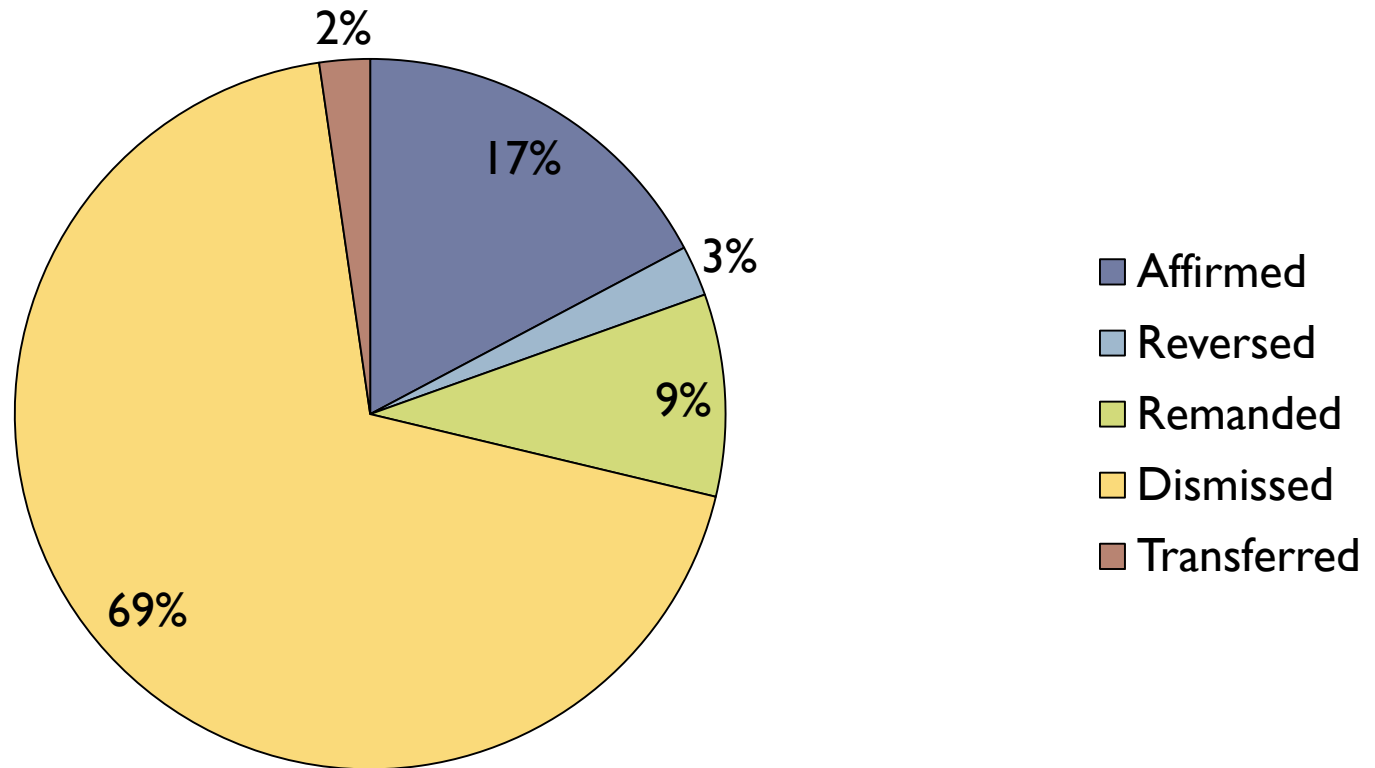
Statistics: Trials



From Patently-O Blog

Statistics: Patent Cases in Litigation

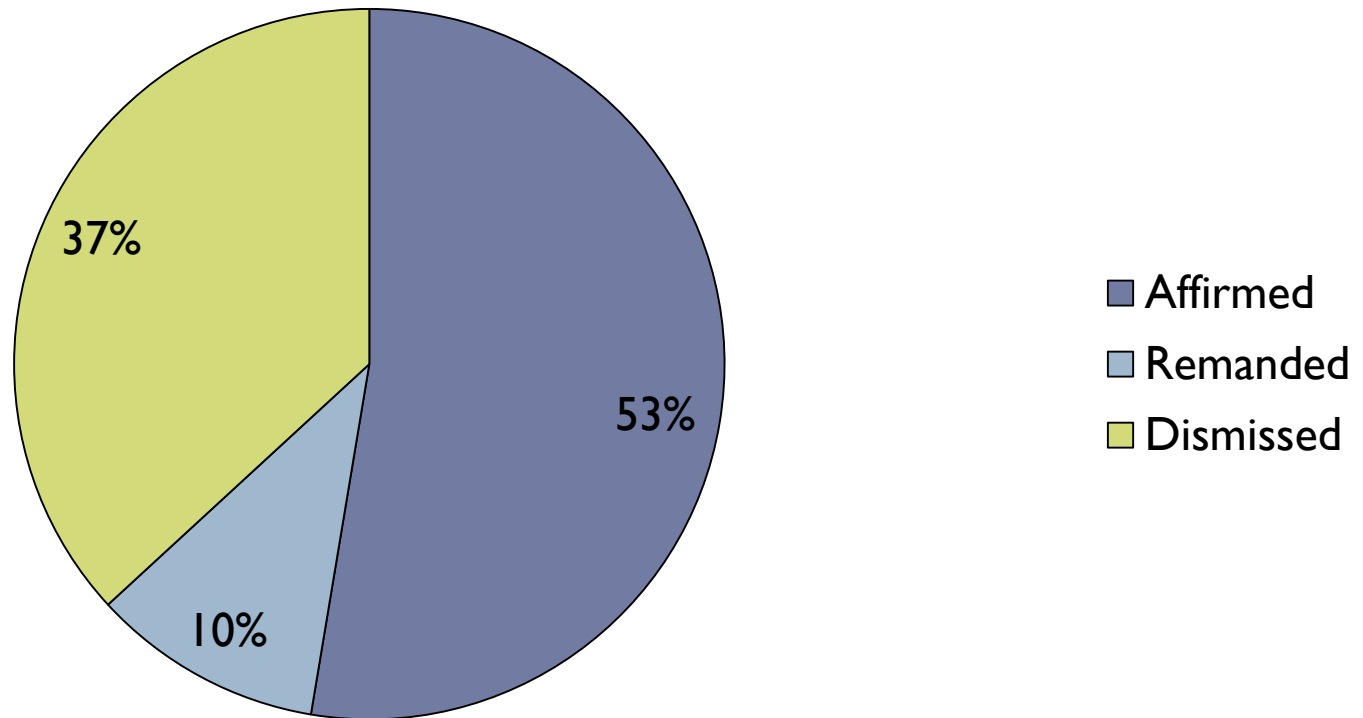
United States Courts of Appeals Inter Partes Cases Disposals in FY 2014



From USPTO.gov

Statistics: Trademark Cases in Litigation

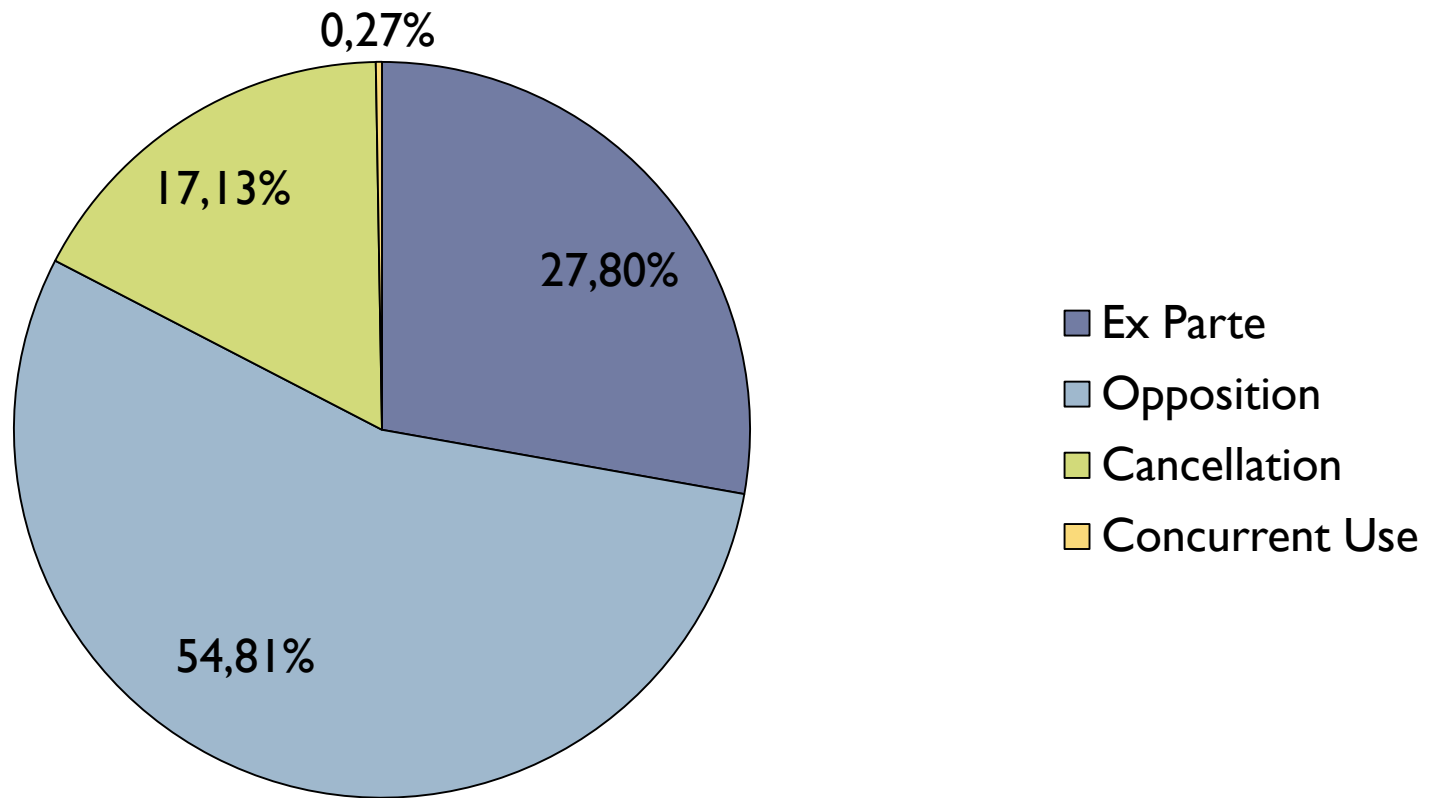
United States Courts of Appeals Inter Partes Cases Disposals in FY 2014



From USPTO.gov

Statistics: Contested Trademarks Cases

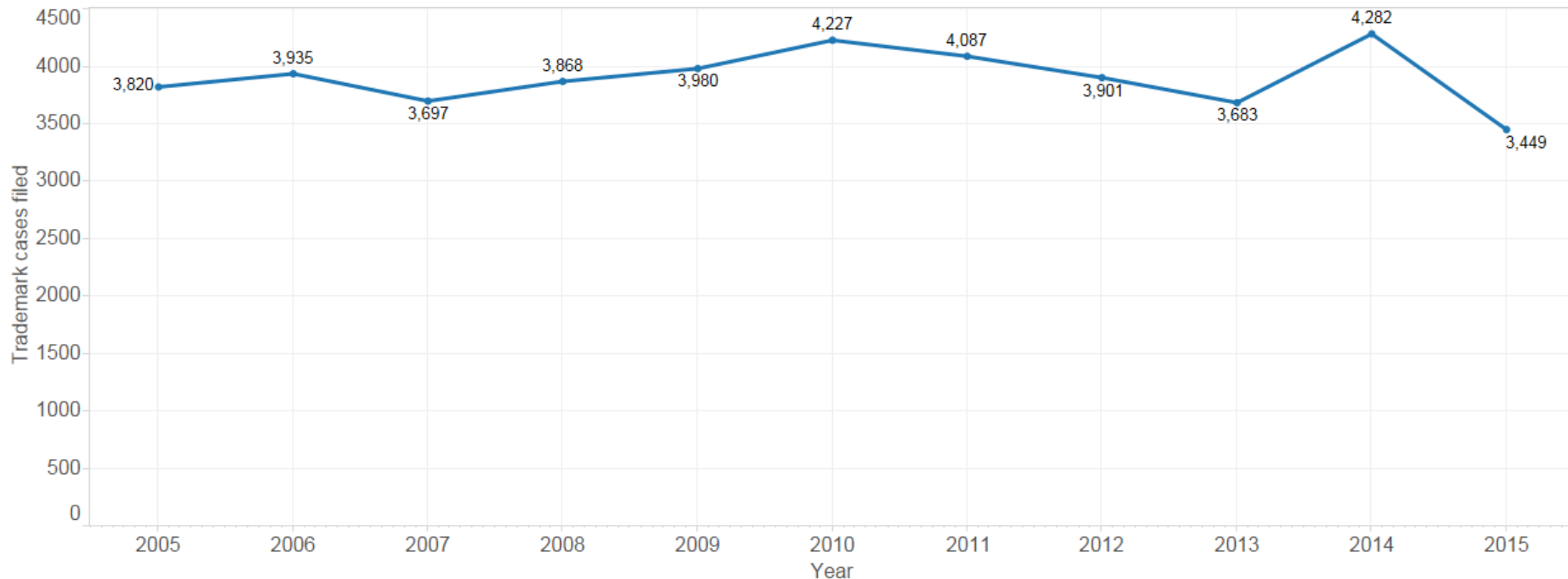
Cases Filed During FY 2014



From USPTO.gov

Statistics: Trademarks Cases Filed

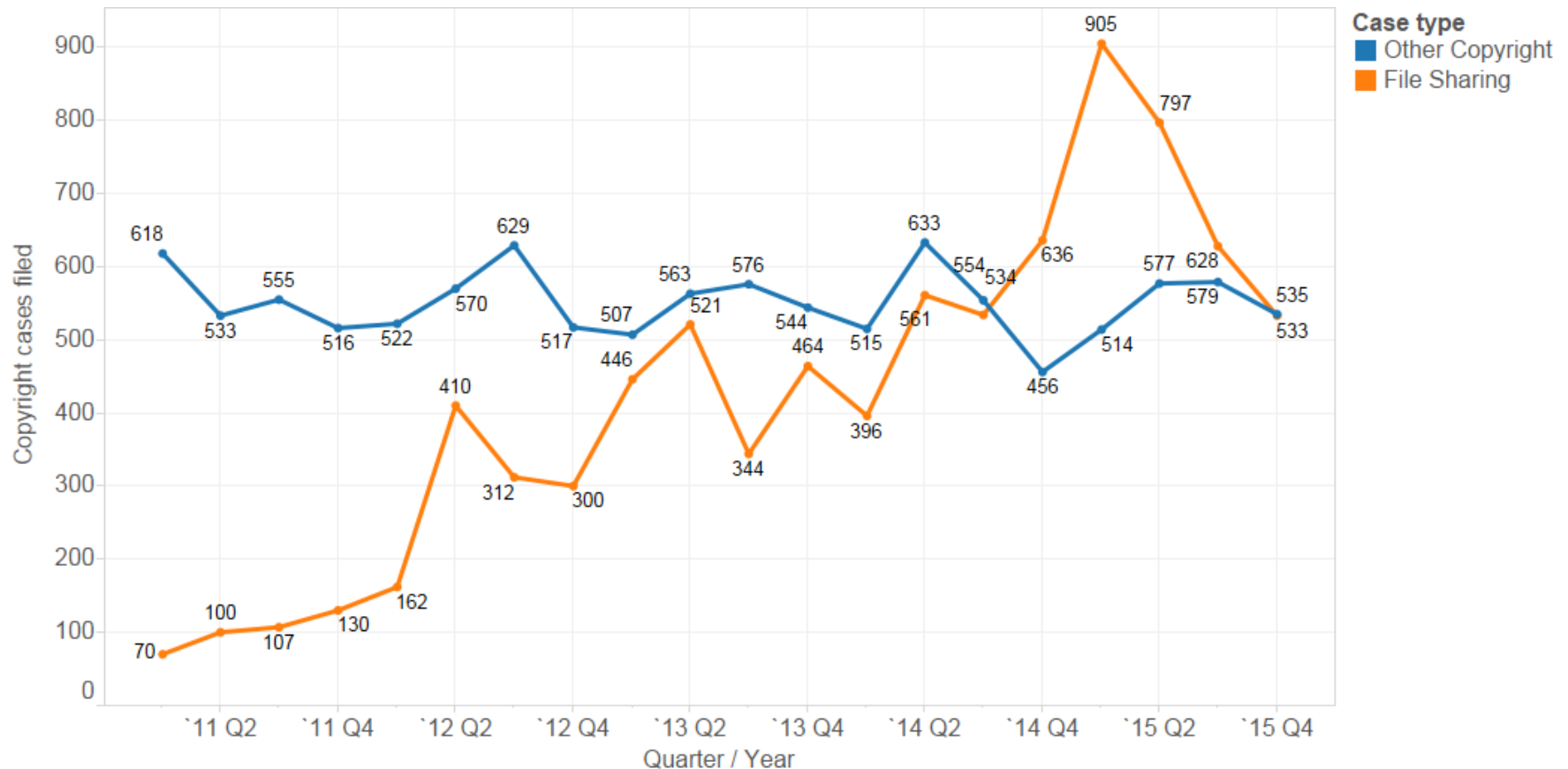
Trademark cases filed: 2005-2015



From Lex Machina



Statistics: Copyright Cases Filed



From Lex Machina

Statistics: Trials

- ▶ A 2012 study concludes:
 - ▶ Plaintiffs fared better before juries (62.9% win rate in jury trials, 51.3% in bench trials).
 - ▶ Trial length advantages neither party (average plaintiff victory: 7.76 days; average defendant victory: 7.74 days).

- ▶ Also, in terms of venue:
 - ▶ 40% of all infringement trials between 2003 and 2012 happened in either ED Texas, D Del, ND Cal, CD Cal, or D Mass.
 - ▶ All other things being equal, plaintiffs are not more successful in ED Texas to a statistically significant degree.
 - ▶ ED Texas, CD Cal, and D Del have shorter trials.

- ▶ Source: Lemley et al., *Rush to Judgment? Trial Length and Outcomes in Patent Cases* (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2217690)

Statistics: Trials

- ▶ From a study of all patent litigation filed in 2008 and 2009 (roughly 5000 lawsuits):
 - ▶ 949 decisions on the merits overall (most of the rest settled or were withdrawn, although a few are still pending).
 - ▶ 430 summary judgments of invalidity (only 31% of all invalidity challenges were successful, but § 101 challenges were successful 54% of the time).
 - ▶ 473 summary judgments of noninfringement, plus 36 stipulated judgments of noninfringement after claim construction.
 - ▶ 290 cases went to trial (206 by jury).
 - ▶ Patentees won only 164 cases.
 - ▶ 481 appeals to the Federal Circuit (273 saw a decision, 126 settled before the decision, 82 are still pending).

- ▶ Source: Allison et al., *Understanding the Realities of Modern Patent Litigation* (available at <http://www.texaslrev.com/understanding-the-realities-of-modern-patent-litigation/>)

Statistics: Trials

- ▶ 5,418 new patent suits filed in 2012, 6,092 filed in 2013.
- ▶ For 2013:
 - ▶ Top 5 districts in terms of patent cases files: ED Tex, D Del, CD Cal, ND cal, SD Cal. (ND Ill fell from 5th place in 2012 to 6th.)
 - ▶ Only 128 patent suits made it to trial (67 in either D Del, ED Tex, SDNY), suggesting a large percentage of settlements.
 - ▶ Fastest filing-to-trial-date court: ED Penn (255-day median); slowest: WDNY (2423-day median).
- ▶ Source: Lex Machina (<https://lexmachina.com/2014/05/patent-litigation-review/>).

Thanks

- ▶ Most graphs in the PAE and Statistics sections (and alerts to many of the described legal developments) via Patently-O, at <http://www.patentlyo.com/>
- ▶ Additional graphs via PricewaterhouseCoopers's "2014 Patent Litigation Study," LexMachina's "2014 Patent Litigation Year in Review," and PatentsPostGrant.com
- ▶ Special thanks to Darlene Tzou, Stein IP law clerk, for a significant amount of researching and compiling of this presentation