

# 2015

## YEAR IN REVIEW

---

### PATENT LITIGATION

Litigation Activity Overview

---

The Maturing PTAB

---

*Alice* and § 101 Challenges

---

Shifting Case Outcomes

---

The Role of EDTX

January-December

# TABLE OF CONTENTS

<b>A LETTER FROM OUR CEO</b>	3
------------------------------	---

## LITIGATION ACTIVITY OVERVIEW

New Patent Litigation Proceedings	6
Litigants in New Patent Cases	7
Patent Accusations in New Patent Cases	8
New Docket Entries in Patent Litigation Proceedings	9
Claim Constructions	10
District Court Patent Determinations	11

## KEY PLAYERS IN DISTRICT COURT CASES

Top Patentees	12
Top Accused Infringers	13
Top Patentee Firms	14
Top Patentee Lawyers	15
Top Accused Infringers Firms	16
Top Accused Infringers Lawyers	17
Top Patent Classifications	18

## COMPARISON OF COURTS AND JUDGES

Top Courts by Number of New Cases, Litigants, and Accusations	19
Average Time to Claim Construction by Court	20
Average Time to Summary Judgment by Court	21
Average Time to Trial by Court	22
Top Judges by Number of New Cases, Litigants, and Accusations	23

Average Time to Claim Construction by Judge	24
Average Time to Motion for Summary Judgment by Judge	25
Average Time to Trial by Judge	26
Comparison of Jury Trial, Bench Trial and Dispositive Motion Outcomes	27

## IMPACT OF ALICE AND OTHER DECISIONS

Outcomes of 35 U.S.C. § 101 Challenges	29
Motion Success Rates	30
District Court Patent Determinations	32

## THE MATURING PTAB

New PTAB Petitions	33
New PTAB Petitions By Tech Code	34
PTAB Institution Decision Outcomes	35
PTAB Institution Outcomes by Asserted Unpatentability Ground	38
PTAB Patent Determinations	42

## KEY PLAYERS IN THE PTAB

Top PTAB Petitioners	44
Top Patent Owners in PTAB Proceedings	45
Top Firms in the PTAB	46
Top Attorneys in the PTAB	48

<b>OUR YEAR IN REVIEW</b>	50
---------------------------	----

<b>ABOUT OUR METHODOLOGY</b>	52
------------------------------	----

# 2015 YEAR IN REVIEW

## A LETTER FROM OUR CEO

### DEAR FRIENDS:

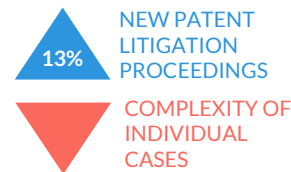
As the past few years have shown, there is no “normal” year for U.S. patent litigation. 2015 was another active year, and another year of surprises. After falling slightly in 2014, the number of new patent litigation proceedings rebounded in 2015, increasing 13% overall. While the number of new U.S. district court cases increased 15% over 2014, the number of Patent Trial and Appeal Board (PTAB) proceedings increased only 7%.

Yet beyond those macro level statistics, the patent landscape continues to shift, prompting all members of the patent community to reevaluate business and legal strategies. In this report, we analyze patent litigation data from the U.S. district courts, the International Trade Commission (ITC), and AIA proceedings in the PTAB to help you better understand those changes. Key findings include:

### OVERALL LITIGATION ACTIVITY

The number of new patent litigation proceedings increased by 13% in 2015 and the number of litigants in those new cases increased at a similar rate, 12.6%. While these numbers suggest a growing volume of patent litigation activity, a look at a different metric – the number of infringement *accusations* asserted in those new cases – increased by a modest 1.3% overall and actually *declined* by 5.5% in the U.S.

district courts. These numbers suggest that, while the number of patent cases is increasing, the complexity (and perhaps the stakes) of individual cases is decreasing. (See pages 6-11.)



### THE MATURING PTAB

As the PTAB matures, outcomes have become slightly more balanced. At the institution phase, the number of net institutions (the difference between the number of claims instituted and not instituted) has dropped. However, that drop is highly dependent on the unpatentability ground asserted. Net institutions for claims challenged on anticipation grounds (35 U.S.C. § 102) dropped sharply throughout 2015, as did claims challenged under 35 U.S.C.

§ 112. But net institutions for claims challenged on obviousness grounds (35 U.S.C. § 103) remained relatively flat during the first half of 2015, then spiked sharply during the last half of the year. Net institutions for claims challenged on unpatentable subject matter grounds (35 U.S.C. § 101) rose sharply throughout 2014, but began dropping in April 2015 and continue to decline. (See pages 33-41.) Once instituted, claims are overwhelmingly found unpatentable. To date, 78.8% of PTAB proceedings to reach a final written decision resulted in one or more claims being deemed unpatentable. (See page 42.)



### ALICE AND SECTION 101 CHALLENGES

*Alice* and the new test for patentable subject matter under 35 U.S.C. § 101 are playing an increasingly important role in patent litigation. From the date *Alice* was decided through the end of 2015, U.S. district courts addressed 191 Section 101 patent challenges, 67% of which were granted in whole or part. But, importantly, results vary significantly by district. In EDTX, the success rate was only 35%. Also interesting, the timing of the motion in relation to the stage of litigation does not appear to affect the outcomes. In other words, within a specific court, the grant rate for challenges brought in the early stages of litigation is very close to the grant rate for challenges brought in a mature stage. (See page 29.)



## SHIFTING CASE OUTCOMES

Case outcomes in U.S. district courts continue to shift against patentees. As a proportion of all determinations, 2015 saw the highest percentage of invalidity determinations and the lowest percentage of infringement determinations since 2008, both by a wide margin. (See pages 10 and 27.)



## THE ROLE OF EDTX

The Eastern District of Texas remains the most popular forum for patent disputes when considering the number of new cases (44.2% of all new cases), or the number of litigants in those cases (27.9% of all litigants in new cases). But when considering the number of infringement accusations, Delaware holds the top spot (22.5% versus 19.4% for EDTX). (See page 19.)

**44.2%** OF ALL NEW CASES

As lawmakers, courts, and administrative agencies continue to shift the patent landscape, navigating the path to optimal legal outcomes grows more complex. We hope you find this report to be a valuable tool. If you are a Docket Navigator subscriber, we appreciate your business. We are honored and grateful for your support. If you are not a Docket Navigator subscriber and would like to learn more about our service, please visit our [website](#) or contact us anytime.

Very best wishes for 2016,

Darryl E. Towell  
CEO/Co-founder

## WE WELCOME YOUR FEEDBACK

Our work helping you navigate the complexities of patent litigation is just beginning. As we continue to enhance Docket Navigator services, we welcome and encourage your input. If you have any questions about this report or suggestions for making it better, please contact us at 866-352-2749 or send an email to [contact@docketnavigator.com](mailto:contact@docketnavigator.com). Additional contact information can be found on our [contact](#) page.

# NEW IN 2016

## EXCITING NEW FEATURES IN OUR PIPELINE

### NEW MOBILE APP (Coming in February)

More than twenty percent of our 13,000+ subscribers now view Docket Navigator content on a mobile device. In early 2016 we will release the Docket Navigator mobile app which will allow you to receive this content on a mobile device. The app will cover:

- The Docket Report
- Docket Alerts
- New Case Alerts
- Special Reports

Available for iOS and Android, subscribers will be able to select the type of content to receive and whether to receive push notifications.

### ENHANCED USER INTERFACE (Coming Spring 2016)

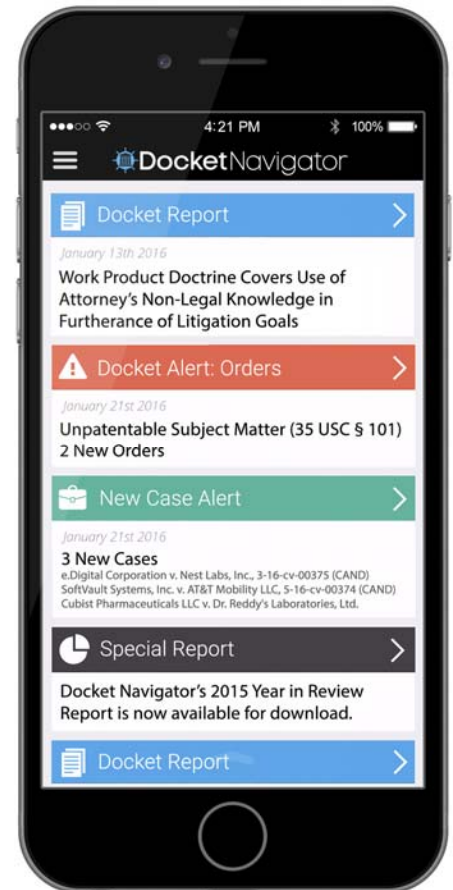
Navigating Docket Navigator is about to get much easier! Our new user interface features:

- A sleek new look that integrates traditional search results and new analytics tools
- Touch-friendly design that looks and works better in a mobile environment
- Virtual “binders” to help save, organize, and share research
- Pre-configured searches for answer frequently-asked questions
- Structured search assistant to simplify complex queries

### EXPANDED COVERAGE (Coming Fall 2016)

Every year, we expand the scope of Docket Navigator coverage. Here is a preview of some upgrades in progress for 2016.

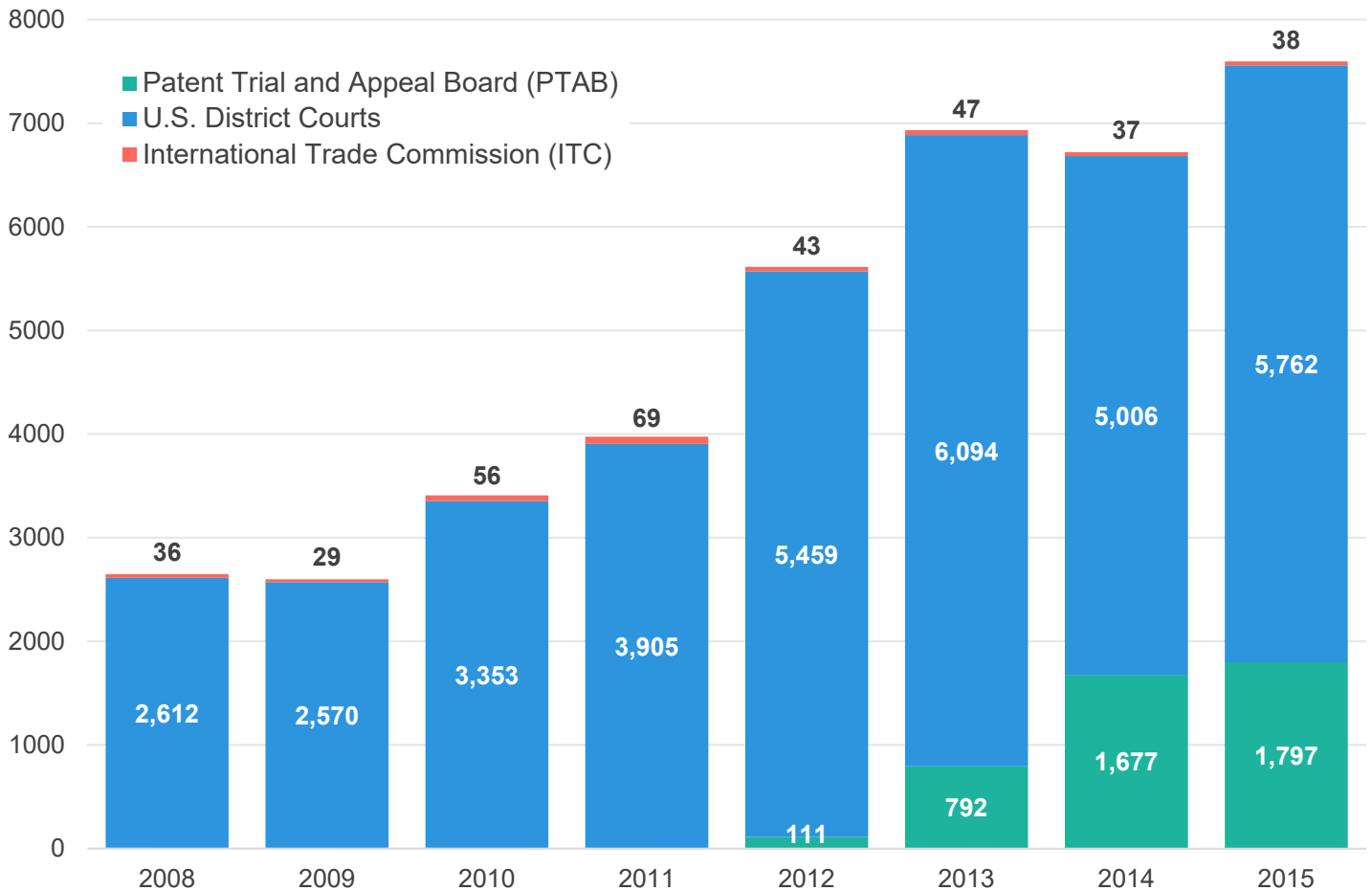
- Expanded Federal Circuit coverage. Track U.S. district court, ITC and PTAB decisions during appeal.
- Additional Practice Areas. We’re working to expand Docket Navigator services to cover Trademark, Copyright, and other federal practice areas.



# NEW PATENT LITIGATION PROCEEDINGS

## 2008-2015

Since 2008, the number of patent litigation proceedings has grown by 187%. After a small decline in 2014, the number of new patent litigation proceedings in 2015 increased by 13% to a record 7,597. In the district courts, the number of new patent infringement cases increased by 15%, and in the PTAB the number of AIA proceedings (IPR, CBM and PGR reviews) increased by a smaller 7%.



**▲ 13%**  
ALL PROCEEDINGS

**▲ 15%**  
DISTRICT COURTS

**▲ 7%**  
PTAB



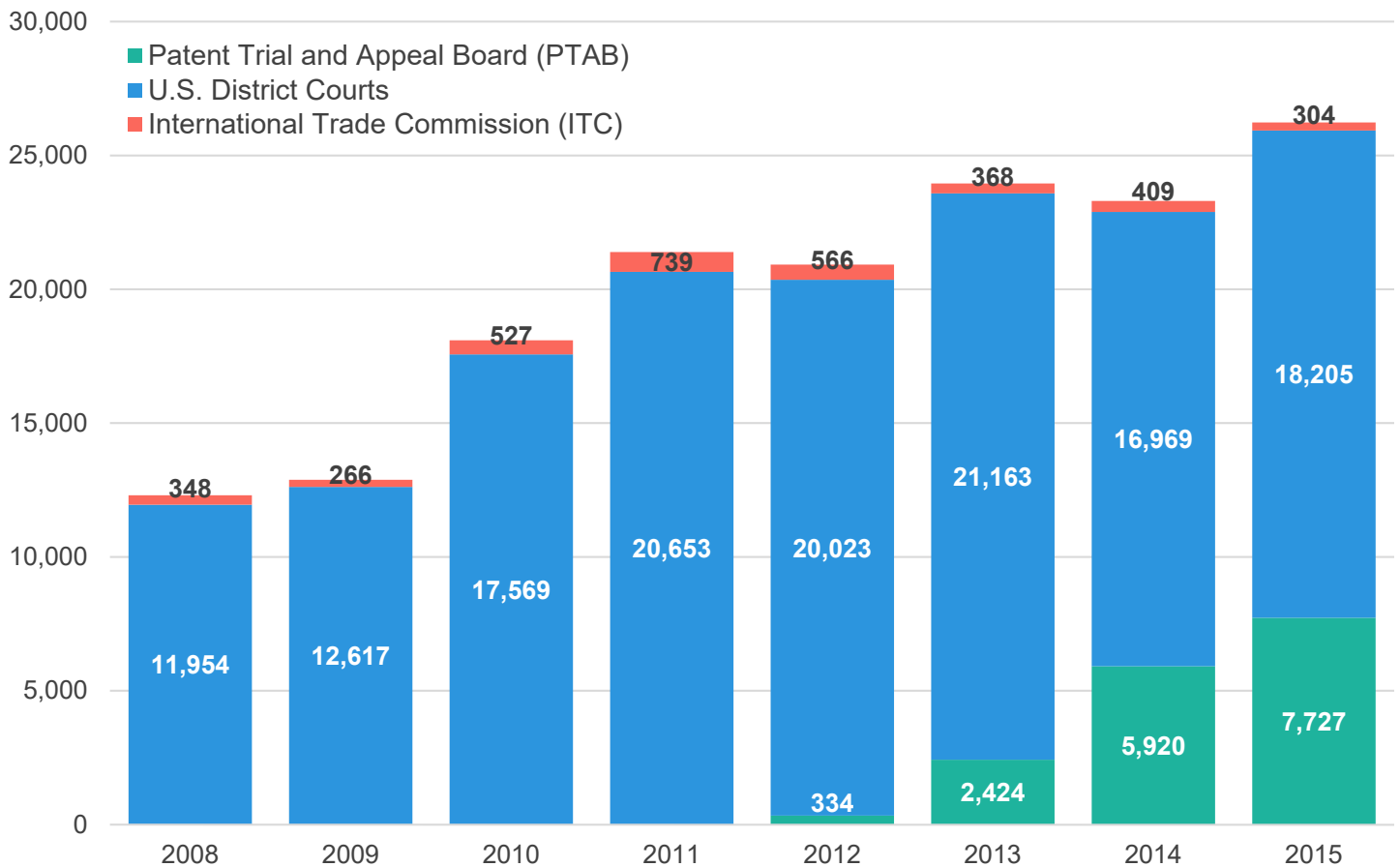
Want to be notified when a new case is filed?

It's easy to get New Case Alerts. Go to your "[MY ACCOUNT](#)" page in Docket Navigator and click "activate new case alerts". You'll be notified throughout the day as new patent cases are added to the database.

# LITIGANTS IN NEW PATENT CASES

2008-2015

The number of litigants of all types in new patent proceedings increased by 13% overall, making 2015 a record year. However, while the number of litigants in new U.S. district court cases increased 7% over 2014, 2015 still ranked below 2013, 2012, and 2011. Conversely, the number of litigants in new PTAB proceedings grew more than 30% over 2014, more than tripling the number of litigants involved in proceedings initiated in 2013.



**▲ 13%**  
ALL PROCEEDINGS

**▲ 30%**  
PTAB

**▲ 7%**  
DISTRICT COURTS



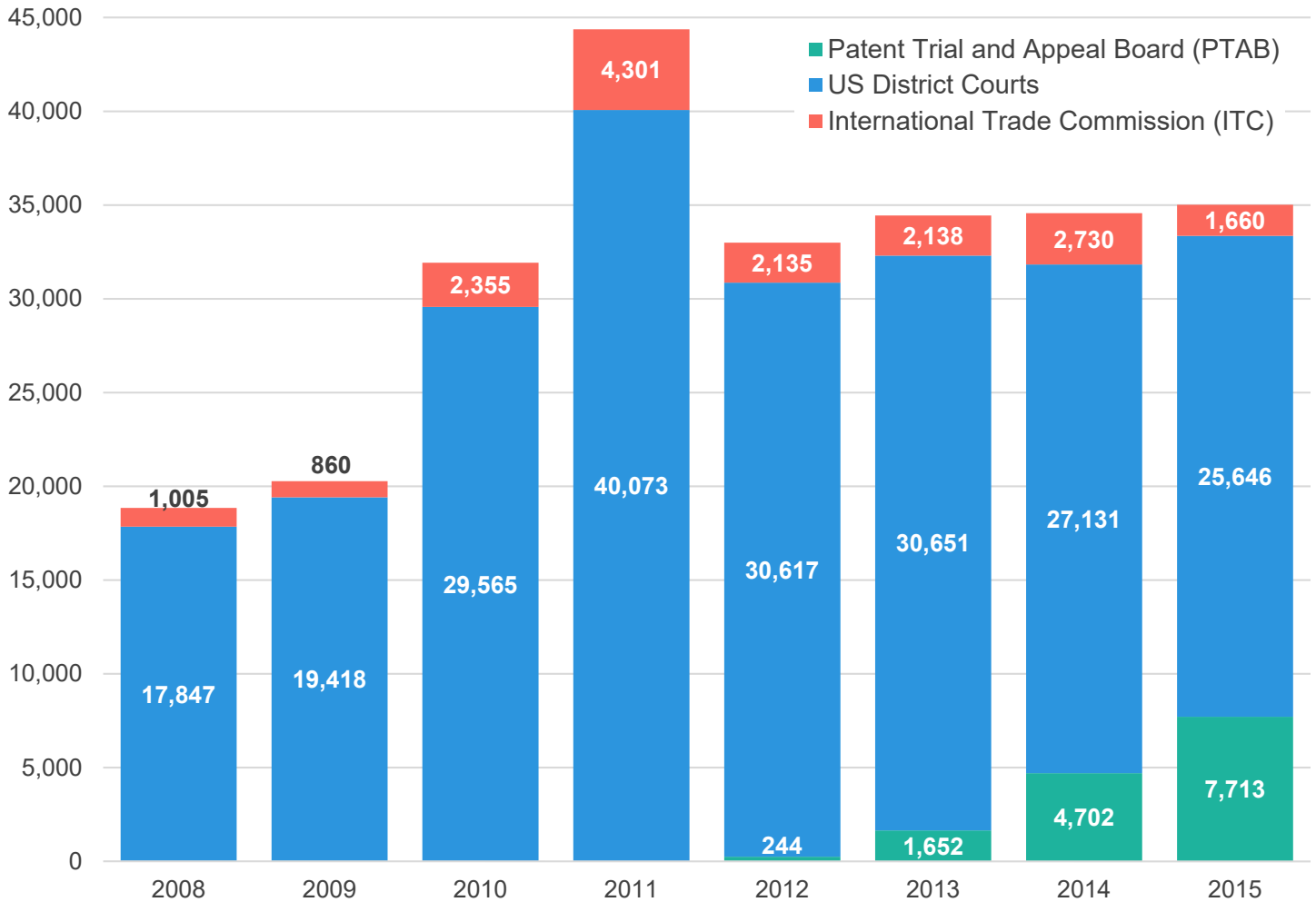
Want to be notified when a company is named in a patent suit?

It's easy with a Docket Alert. When performing a cases search, just enter the company's name and click **"CREATE ALERT"** at the bottom of the page. We'll run that same search for you each weekday morning, and if there are any "hits" we will send you an email.

# PATENT ACCUSATIONS IN NEW PATENT CASES

2008-2015

With the exception of 2011, the number of accusations asserted in new patent cases has increased at a very modest rate since 2010. For 2015, the total number of accusations asserted in all new cases grew by only 1.3% over 2014 and only 10% over 2010. But the number of accusations asserted in new U.S. district court cases dropped to the lowest level since 2009. In contrast, the number of accusations in the PTAB grew by 64% in 2015, more than four and a half times the number asserted in 2013.



▲ **1.3%**  
ALL PROCEEDINGS

▼ **5.5%**  
DISTRICT COURTS

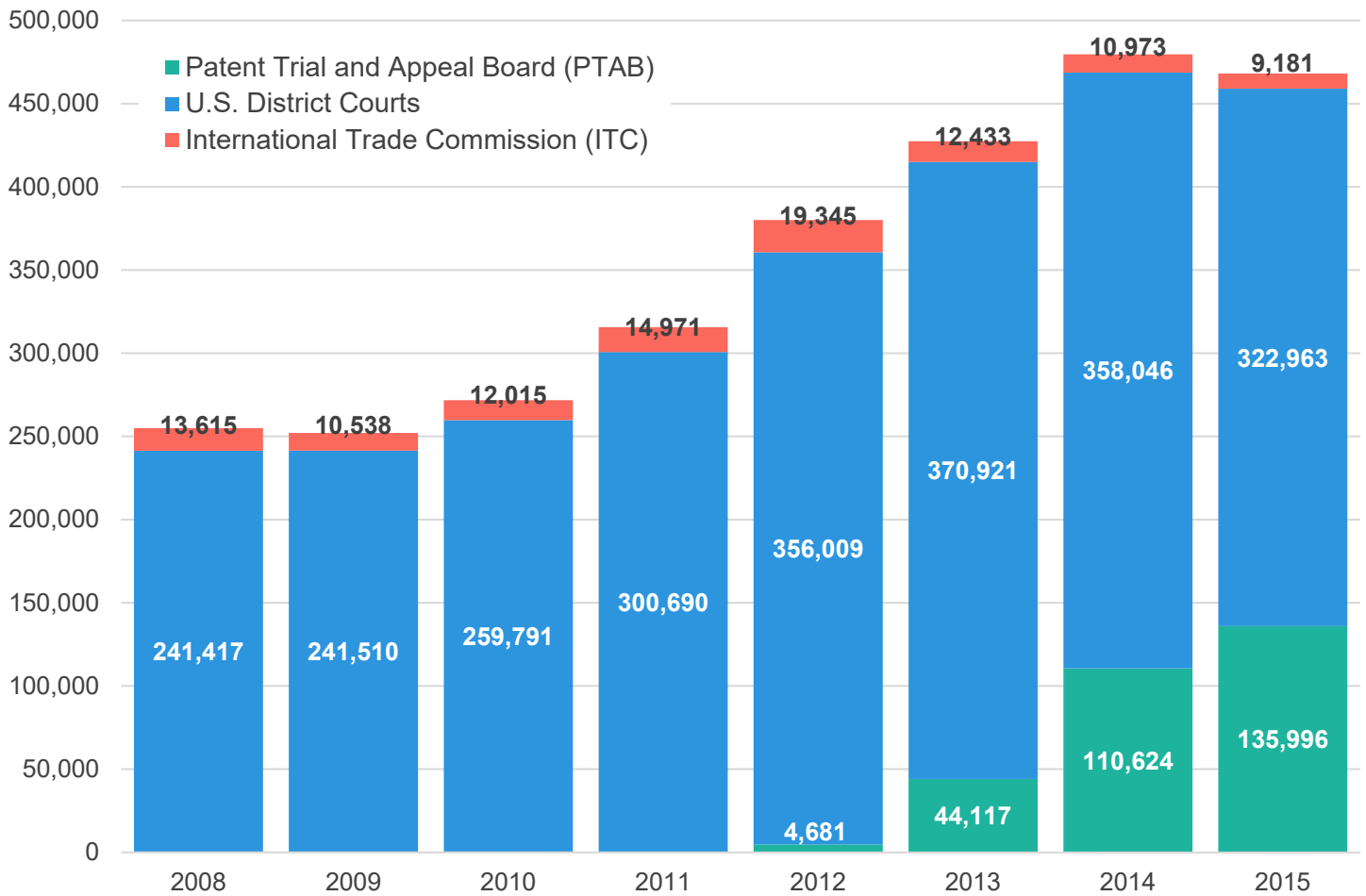
▲ **64%**  
PTAB



# NEW DOCKET ENTRIES

## 2008-2015

2015 was the first year since 2008 in which the total number of docket entries in patent proceedings dropped. While the total number of docket entries in U.S. district court cases dropped by about 10%, the number of docket entries in PTAB proceedings grew by 23%.



▼ **2.4%**  
ALL PROCEEDINGS

▼ **10%**  
DISTRICT COURTS

▲ **23%**  
PTAB



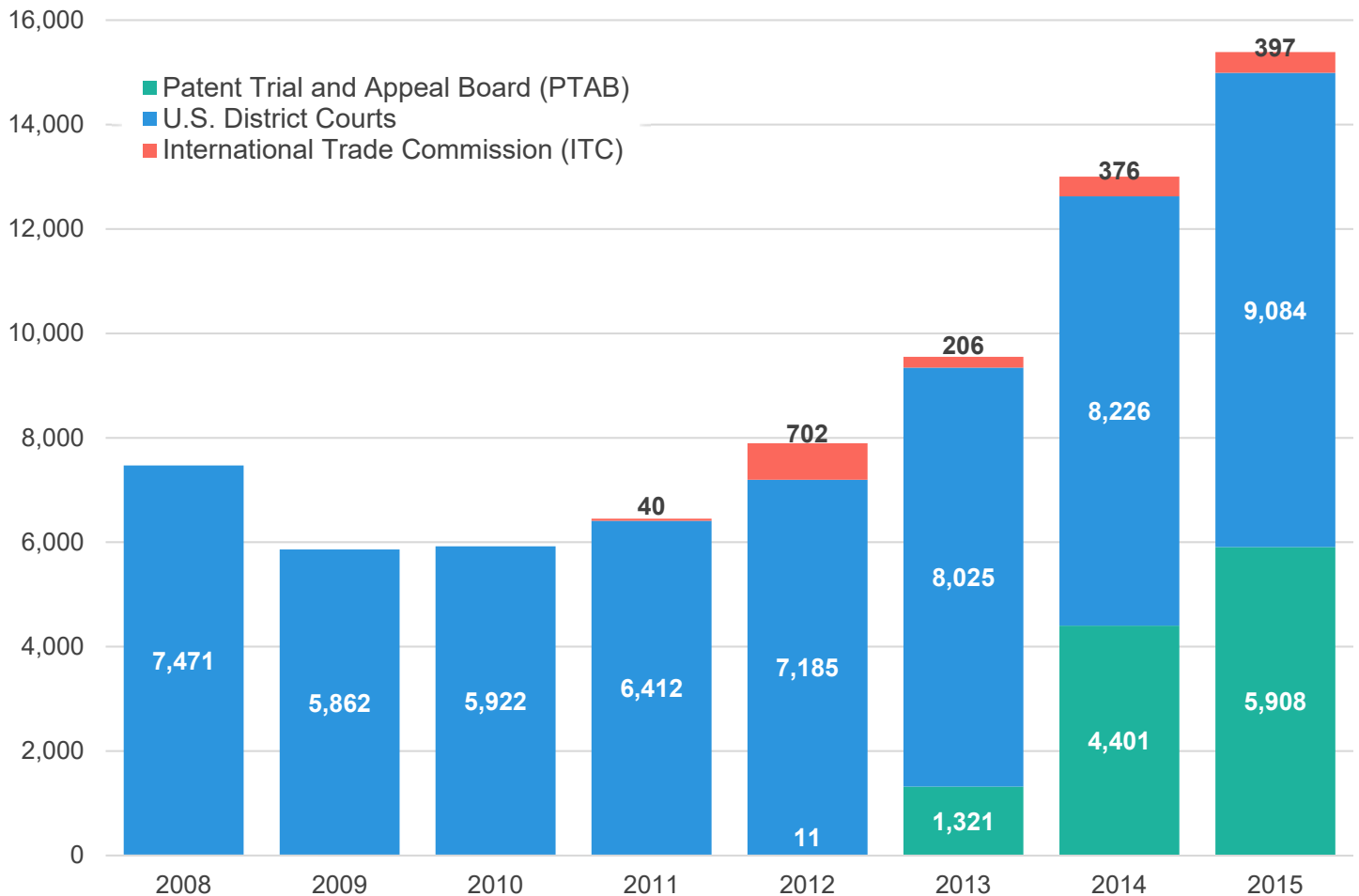
Would you like to be notified of any new filings on a patent case?

Go to the [CASE SUMMARY PAGE](#) and click on the Filings tab. Then click "Create Alert" at the bottom of that tab. We'll check that tab for you every weekday and notify you of any new docket entries that we find.

# CLAIM CONSTRUCTIONS

## 2008-2015


2015 was a record year for claim constructions, increasing 18% over 2014 which was also a record year. In the U.S. district courts, the number of claims construed increased by 10%, but the PTAB recorded the largest increase of 34%. For comparison, the PTAB construed about as many terms in 2015 as all U.S. district courts combined in 2009 or 2010.



**▲ 18%**  
ALL PROCEEDINGS

**▲ 10%**  
DISTRICT COURTS

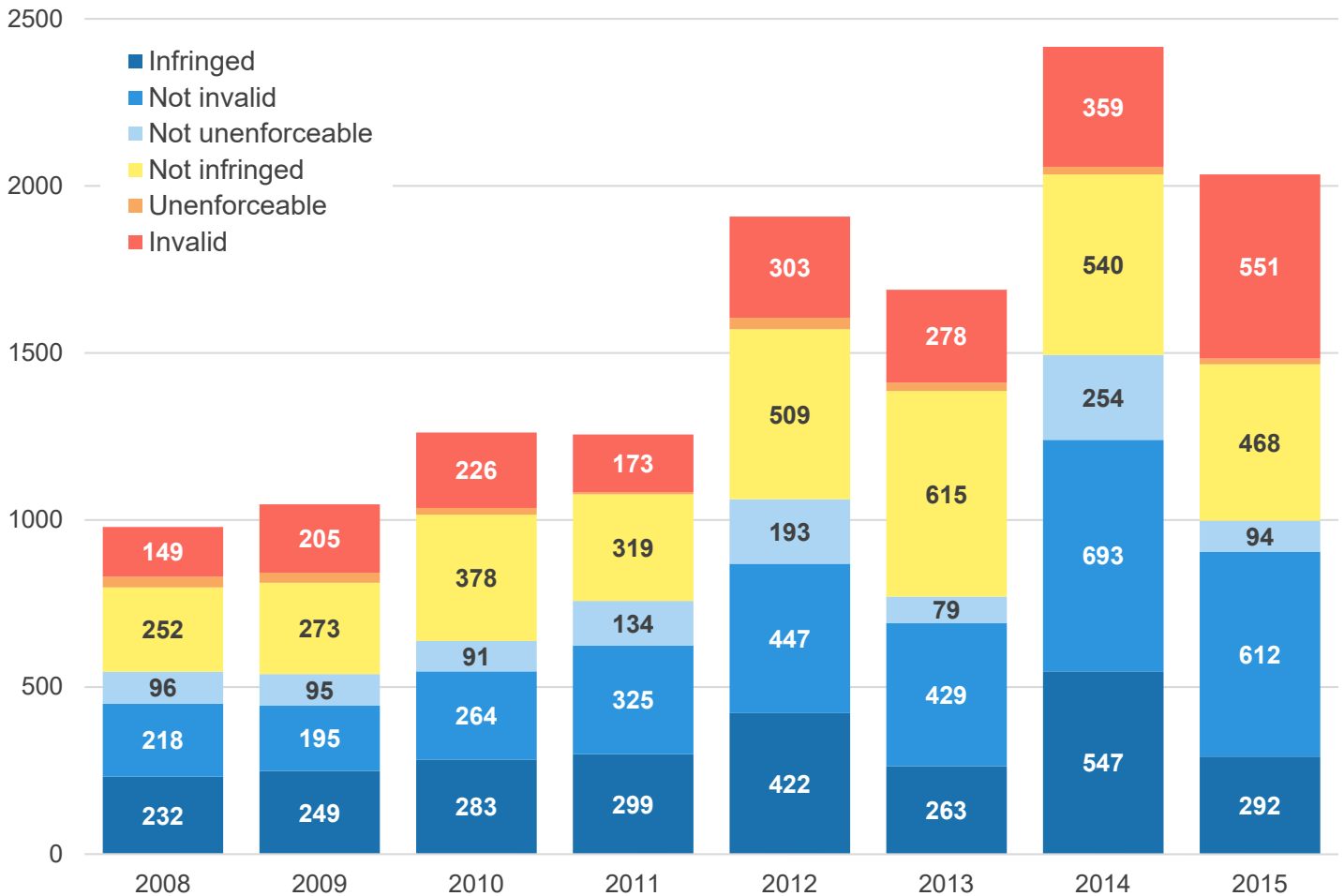
**▲ 34%**  
PTAB

 You can search the Docket Navigator dictionary of more than 92,000 construed claim terms by performing a **TERMS SEARCH**. You can even set up a Docket Alert to be notified the next time a court construes a claim by clicking “Create Alert” at the bottom of the page.

# DISTRICT COURT PATENT DETERMINATIONS

2008-2015

In 2015, the total number of patent determinations of all types fell by almost 16% from 2014's record level. Yet 2015 still recorded the second highest number of patent determinations since 2008. In addition, the distribution of determinations continued to shift. The number of invalidity determinations increased by more than 53%. Conversely, the number of infringement determinations declined by almost 47%. The chart in page 32 shows the distribution of determinations each year as a percentage of total determinations within a year.



▼ **15.8%**  
ALL DETERMINATIONS

▲ **53.5%**  
INVALIDITY

▼ **46.6%**  
INFRINGEMENT



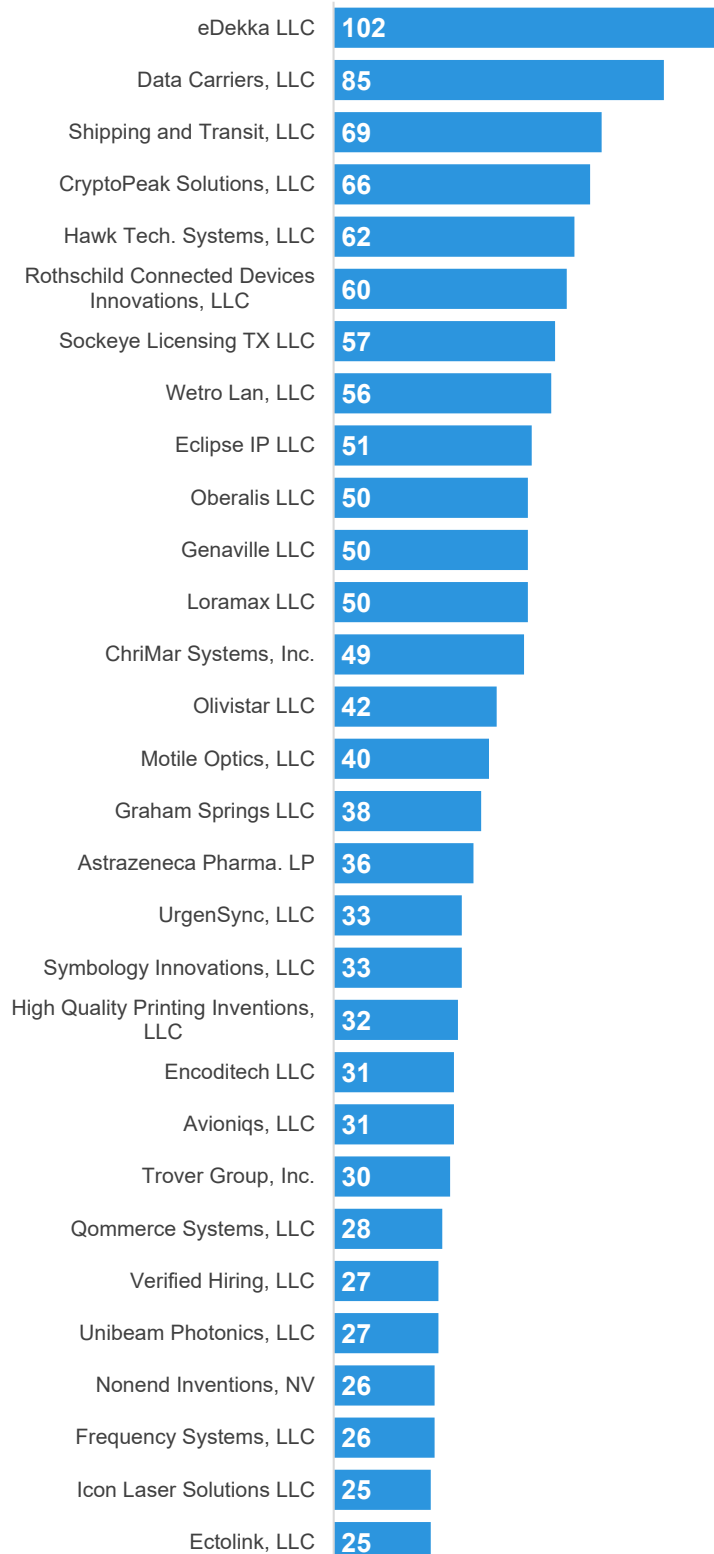
Did you know that you can use a patent determination as a search filter?

For example, you can **GENERATE A LIST** of all cases in which a patent claim has been found invalid.

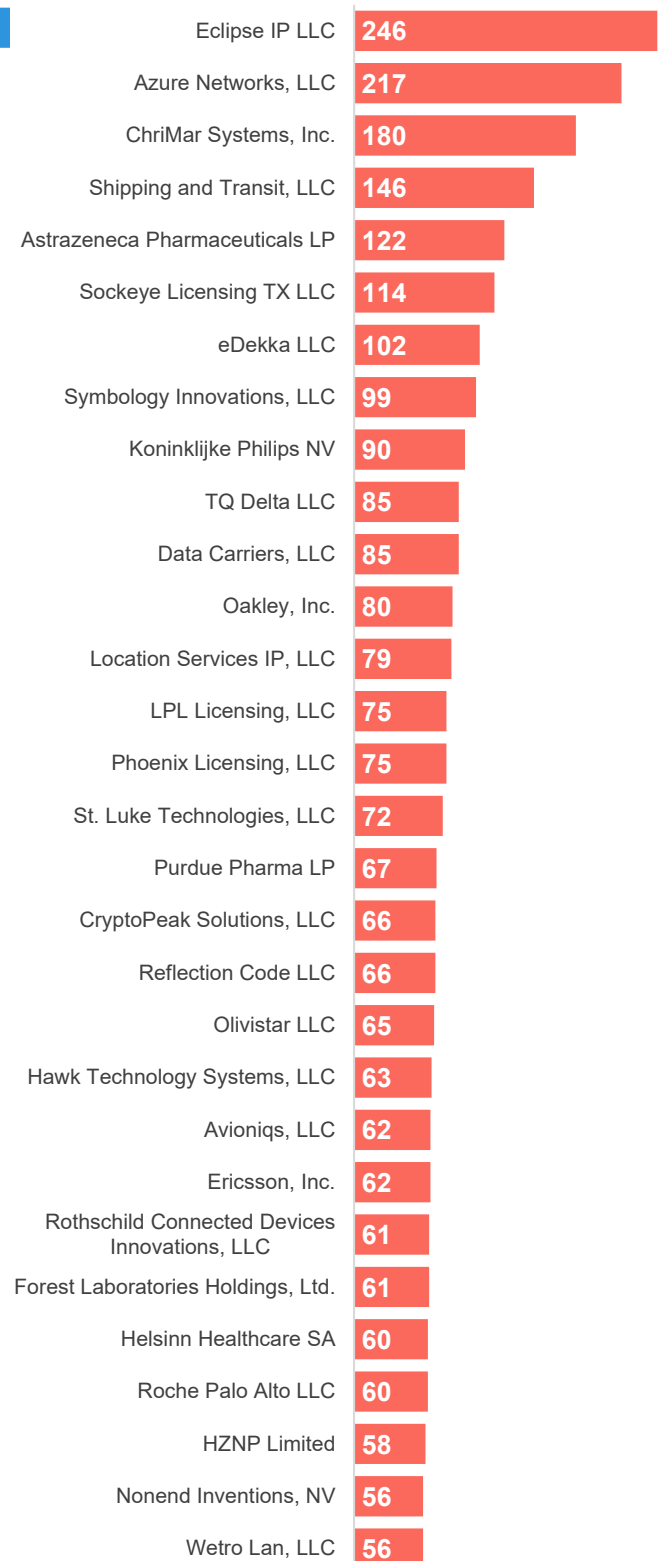
# TOP PATENTEES

## In District Court Cases in 2015

### NUMBER OF NEW PATENT CASES



### NUMBER OF PATENT ACCUSATIONS



# TOP ACCUSED INFRINGERS

## In District Court Cases in 2015

### NUMBER OF NEW PATENT CASES



### NUMBER OF PATENT ACCUSATIONS



# TOP PATENTEE FIRMS

## In District Court Cases in 2015

### NUMBER OF NEW PATENT CASES

Austin Hansley PLLC	425
Tadlock Law Firm	273
Spangler Law	175
Stamoulis & Weinblatt	157
Kizzia & Johnson	145
Ni Wang & Massand	143
Morris Nichols Arsht &...	139
Capshaw DeRieux	137
Brandt Law Firm	136
McCarter & English	120
Olavi & Dunne	103
Scheef & Stone	101
Corcoran IP Law	99
Farnan	98
DiNovo Price Ellwanger &...	91
Ferraiuoli LLC	88
Direction IP Law	87
Finnegan Henderson...	79
Cotman IP Law Group	74
Bayard	64
Parker Bunt & Ainsworth	62
Russ August & Kabat	60
Devlin Law Firm	59
Paul Hastings	59
Collins Edmonds...	56

### NUMBER OF LITIGATION MILESTONES

Ward Smith & Hill	159
Perkins Coie	123
Farnan	106
Fish & Richardson	96
Capshaw DeRieux	78
McKool Smith	78
Finnegan Henderson...	73
Quinn Emanuel Urquhart &...	72
Russ August & Kabat	71
Cooley	67
Bayard	66
Morris Nichols Arsht &...	63
Susman Godfrey	58
Latham & Watkins	58
Dechert	55
Niro Haller & Niro	55
Albritton Law Firm	54
Paul Hastings	53
McDermott Will & Emery	50
Foley & Lardner	50
Hayes Messina Gilman &...	48
McCarter & English	47
Nelson Bumgardner	47
Wilmer Cutler Pickering...	46
Ashby & Geddes	46

# TOP PATENTEE LAWYERS

## In District Court Cases in 2015

### NUMBER OF NEW PATENT CASES

Austin Hansley	423
Brandon M. LaPray	423
Craig Tadlock	273
Keith Smiley	242
John J. Harvey, Jr.	223
Andrew W. Spangler	175
Stamatios Stamoulis	158
Richard C. Weinblatt	158
Jay B. Johnson	145
Todd Y. Brandt	137
Hao Ni	137
Benton Patterson	136
Elizabeth L. DeRieux	135
Jack B. Blumenfeld	128
Neal G. Massand	127
D. Bradley Kizzia	119
Anthony Ricciardelli	119
Stevenson Moore V	119
Timothy Wang	117
Matt Olavi	102
Bryan R. Haynes	101
Jaspal S. Hare	100
Peter J. Corcoran, III	99
Brian E. Farnan	98
Brian J. Dunne	96
D. Jeffrey Rambin	95
Eugenio J. Torres-Oyola	88
David R. Bennett	87
David B. Dyer	87
Andrew G. DiNovo	75
Michael J. Farnan	74
Rasheed M. McWilliams	74
Daniel P. Hipskind	72
Daniel C. Cotman	72
Daniel L. Schmid	70
Dorian S. Berger	68
Maryellen Noreika	67
Krystal L. Gibbens	66

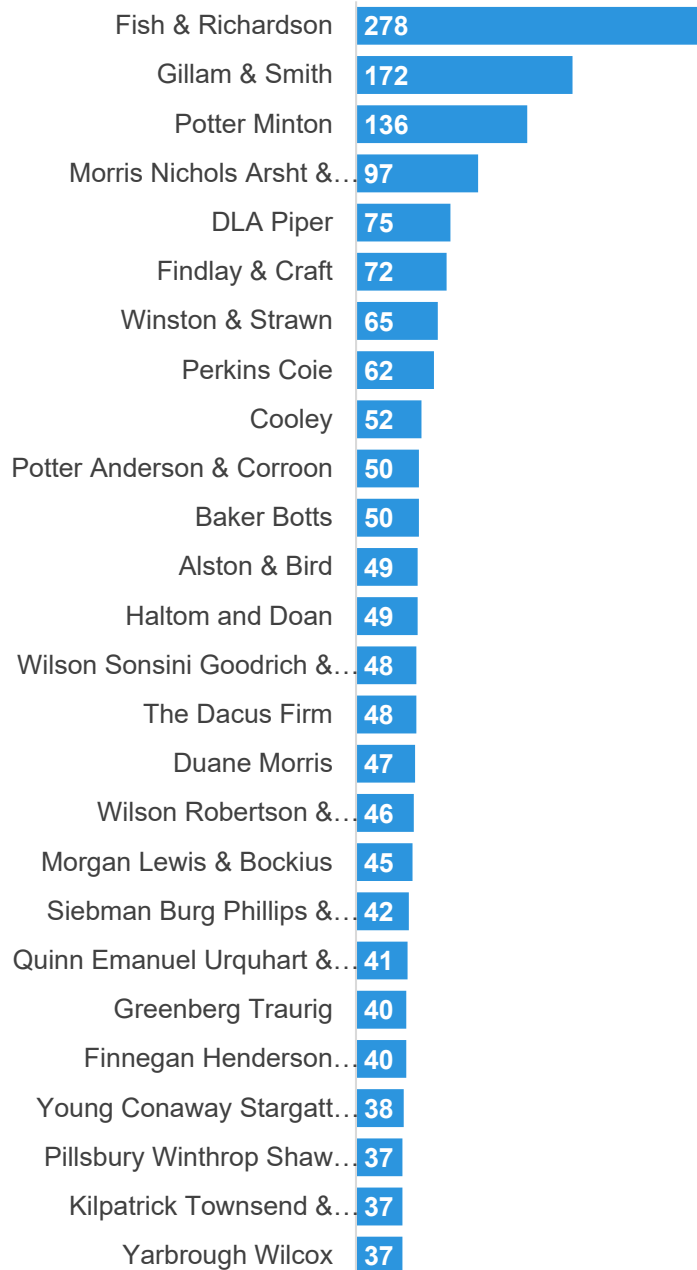
### NUMBER OF LITIGATION MILESTONES

T. John Ward, Jr.	142
J. Wesley Hill	120
Brian E. Farnan	106
Claire Abernathy Henry	90
Elizabeth L. DeRieux	78
Michael J. Farnan	76
D. Jeffrey Rambin	72
Marc A. Fenster	69
S. Calvin Capshaw	68
Stephen B. Brauerman	66
Richard D. Kirk	59
Vanessa R. Tiradentes	56
Jack B. Blumenfeld	53
Eric M. Albritton	52
Martin J. Black	48
Paul J. Hayes	47
Steven E. Lipman	45
James J. Foster	45
Thomas R. Fulford	44
Samiyah Diaz	44
James C. Hall	44
Michael James Ercolini	43
Stamatios Stamoulis	40
Andrew C. Mayo	40
Richard C. Lin	39
Kevin Gannon	39
Jennifer Lu Gilbert	39
Christopher D. Banys	39
Stephen E. Edwards	38
Paul J. Cronin	38
Matthew D. Powers	38
Dean G. Bostock	38
Timothy J. Devlin	37
Terrence P. McMahon	37
Richard C. Weinblatt	37
Courtland Reichman	37
Blake B. Greene	37
Bindu A. Palapura	37

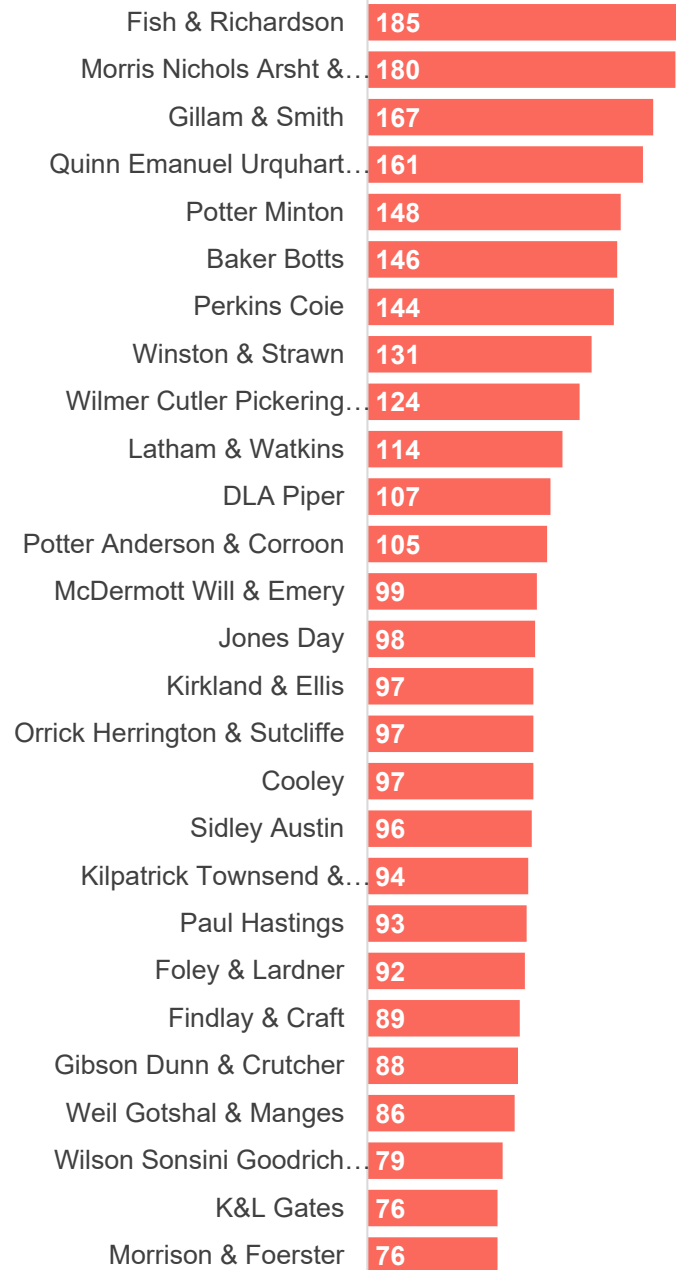
# TOP ACCUSED INFRINGERS FIRMS

## In District Court Cases in 2015

### NUMBER OF NEW PATENT CASES



### NUMBER OF LITIGATION MILESTONES



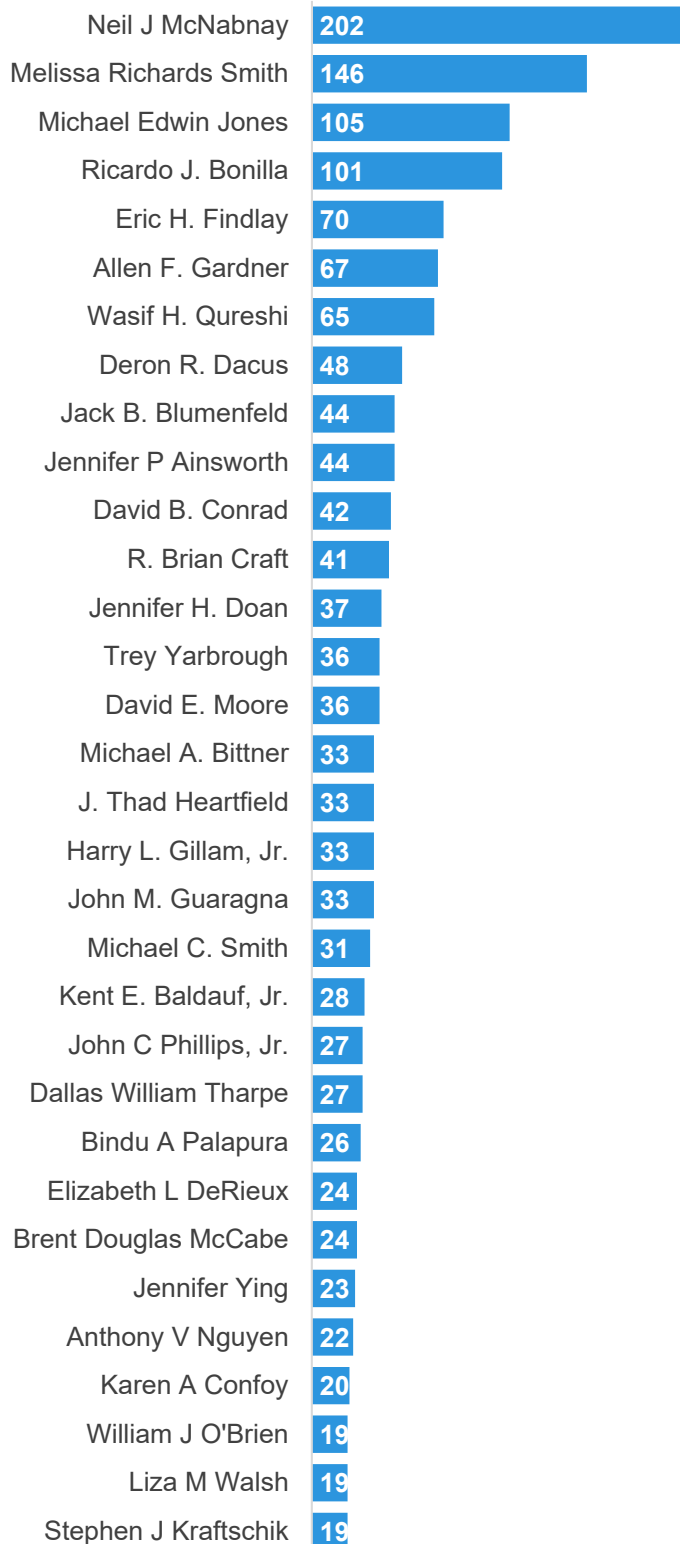
To view average times to milestones like claim construction or trial for specific courts or judges, click the ["TIME TO MILESTONES"](#) tab on the main Docket Navigator search page.



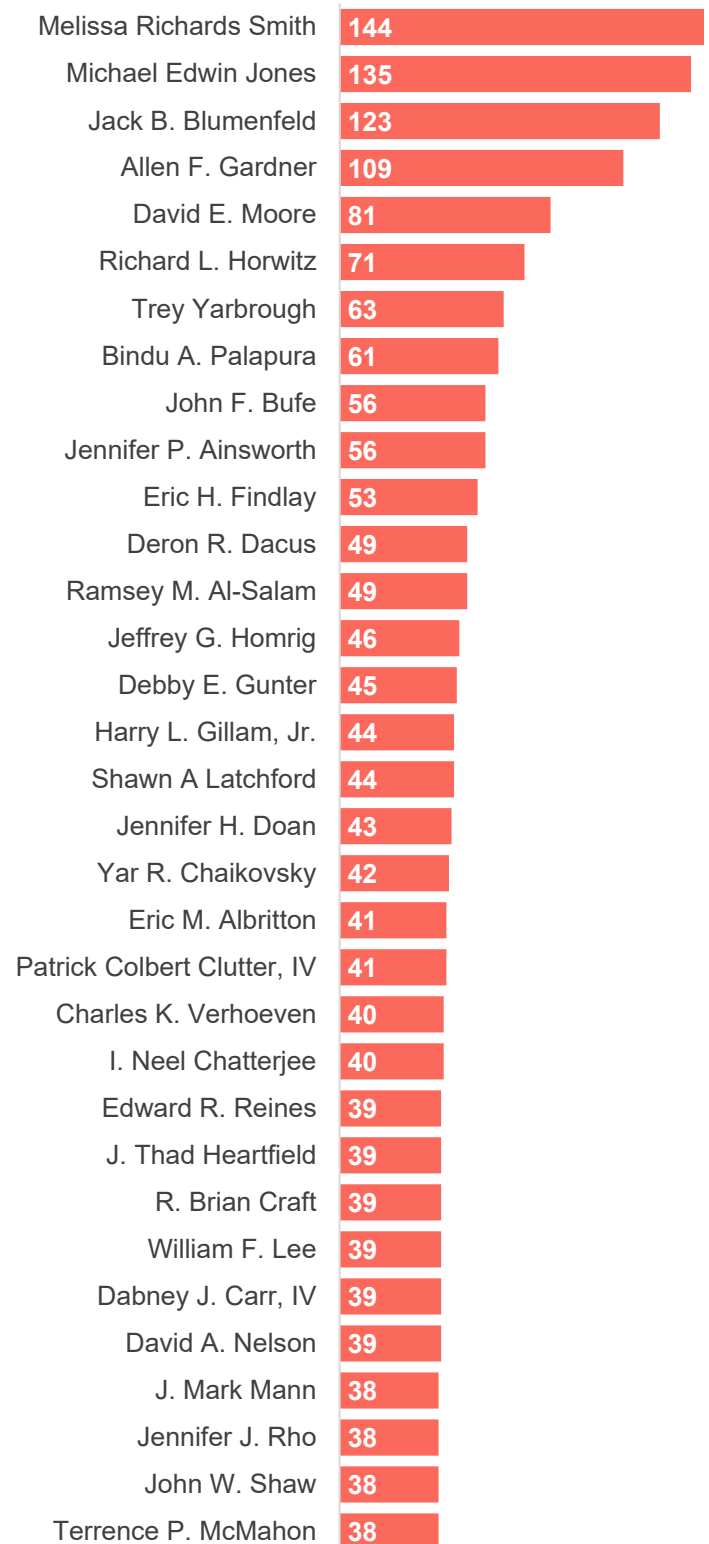
# TOP ACCUSED INFRINGERS LAWYERS

## In District Court Cases in 2015

### NUMBER OF NEW PATENT CASES

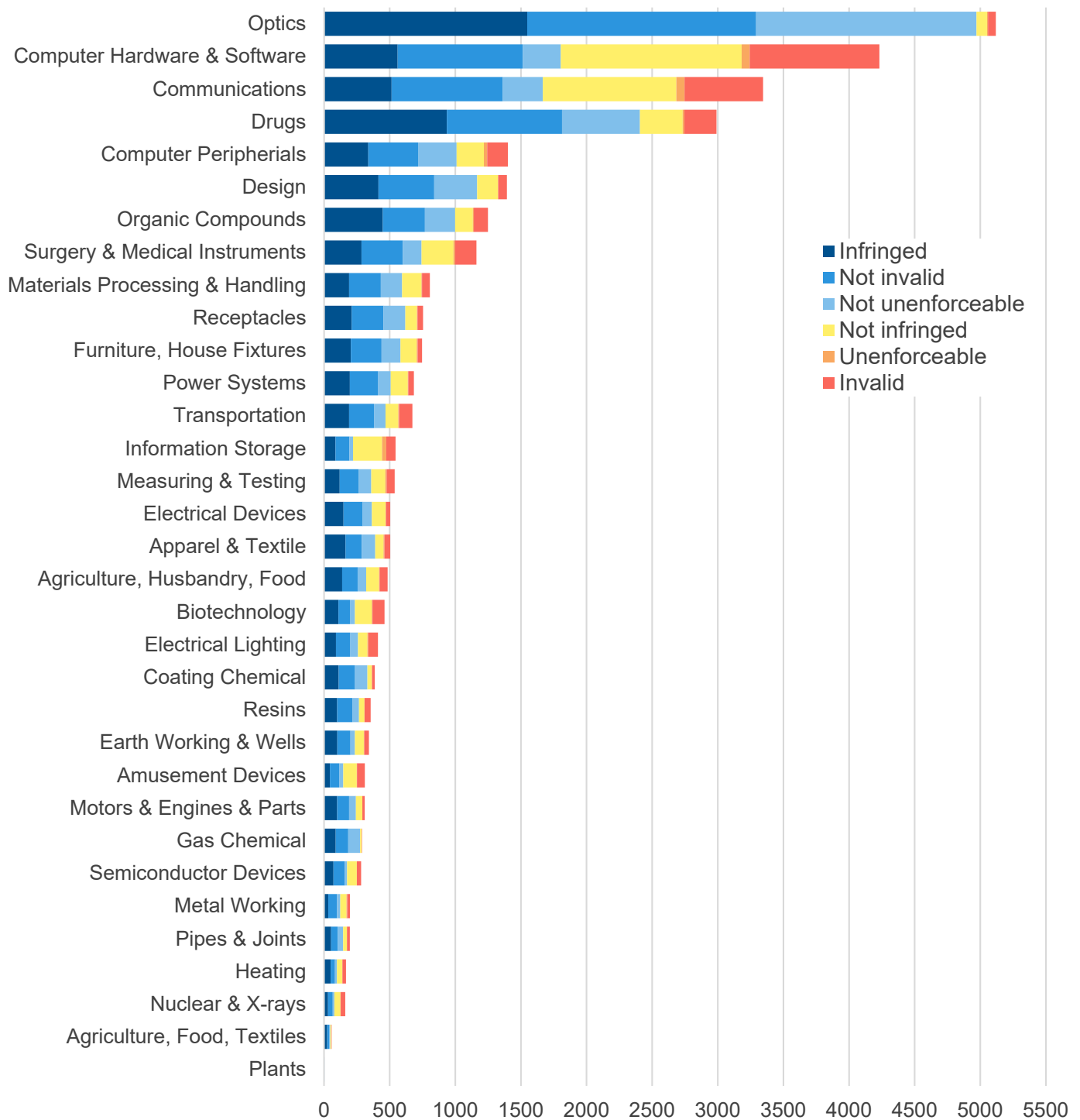


### NUMBER OF LITIGATION MILESTONES



# TOP PATENT CLASSIFICATIONS

By Number of Determinations 2008-2015



You can find a list of cases involving a specific class of patents with a [CASES SEARCH, FILTERED BY PATENT CLASSIFICATION](#).

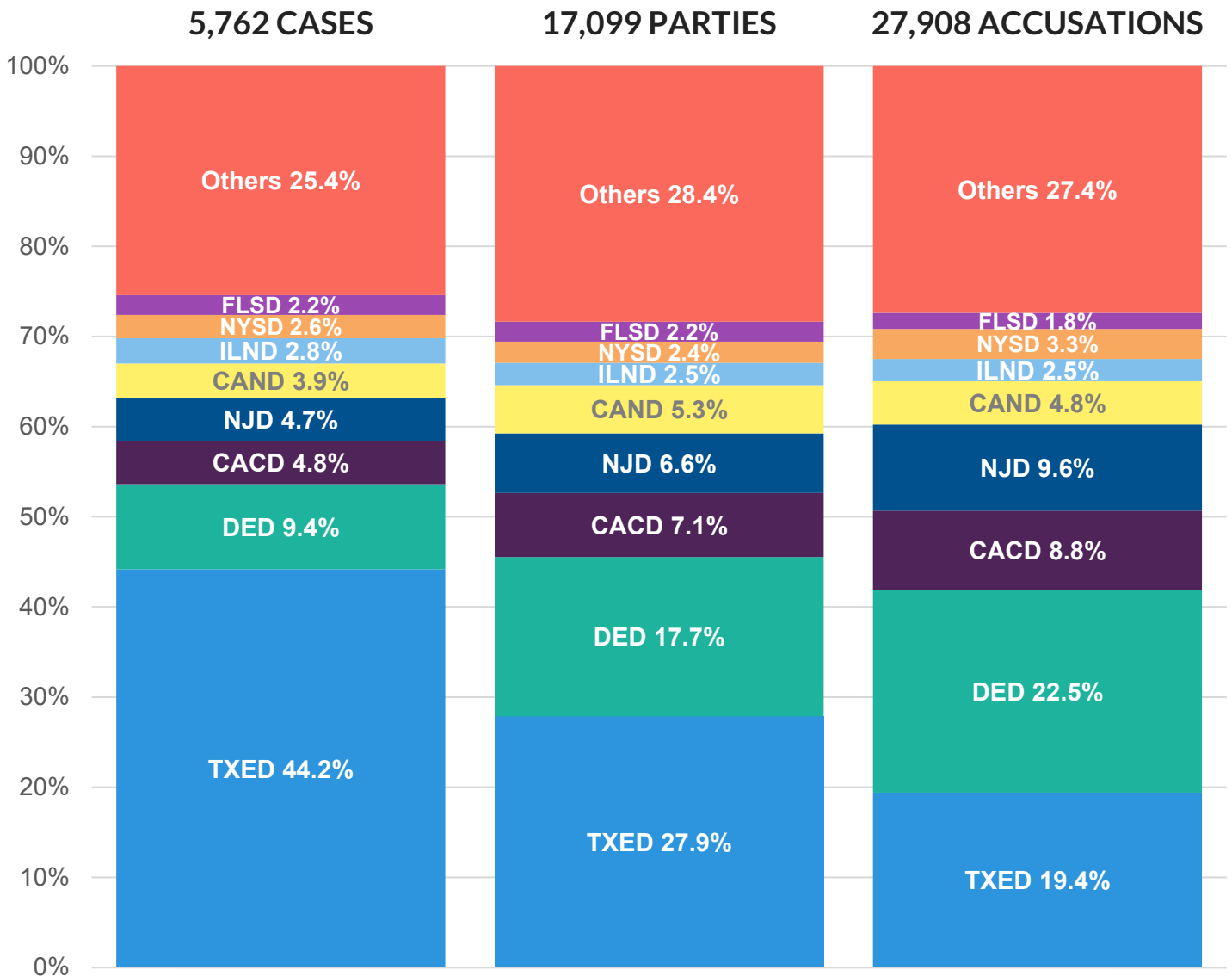
# TOP COURTS

## By New Cases, New Litigants, and New Accusations

The volume of litigation activity is often expressed in terms of number of cases. But cases are not equal in size or complexity. This is particularly true since the enactment of the AIA joinder rules, which prompted many plaintiffs to file multiple cases where they previously would have filed one. In addition, failure to account for case relationships (transfers of venue, consolidations, etc.) can further skew the results. (See “Related Cases” on page 54.)

In addition to the number of cases, we measure the number of *litigants* involved in those new cases. In this way, cases involving multiple defendants are given greater weight than cases involving a single defendant. We also measure the number of *accusations* asserted in those cases, so cases involving multiple patents are given more weight than cases involving a single patent. (See “Patent Accusations” on page 53.) The result is a more granular measure of litigation activity.

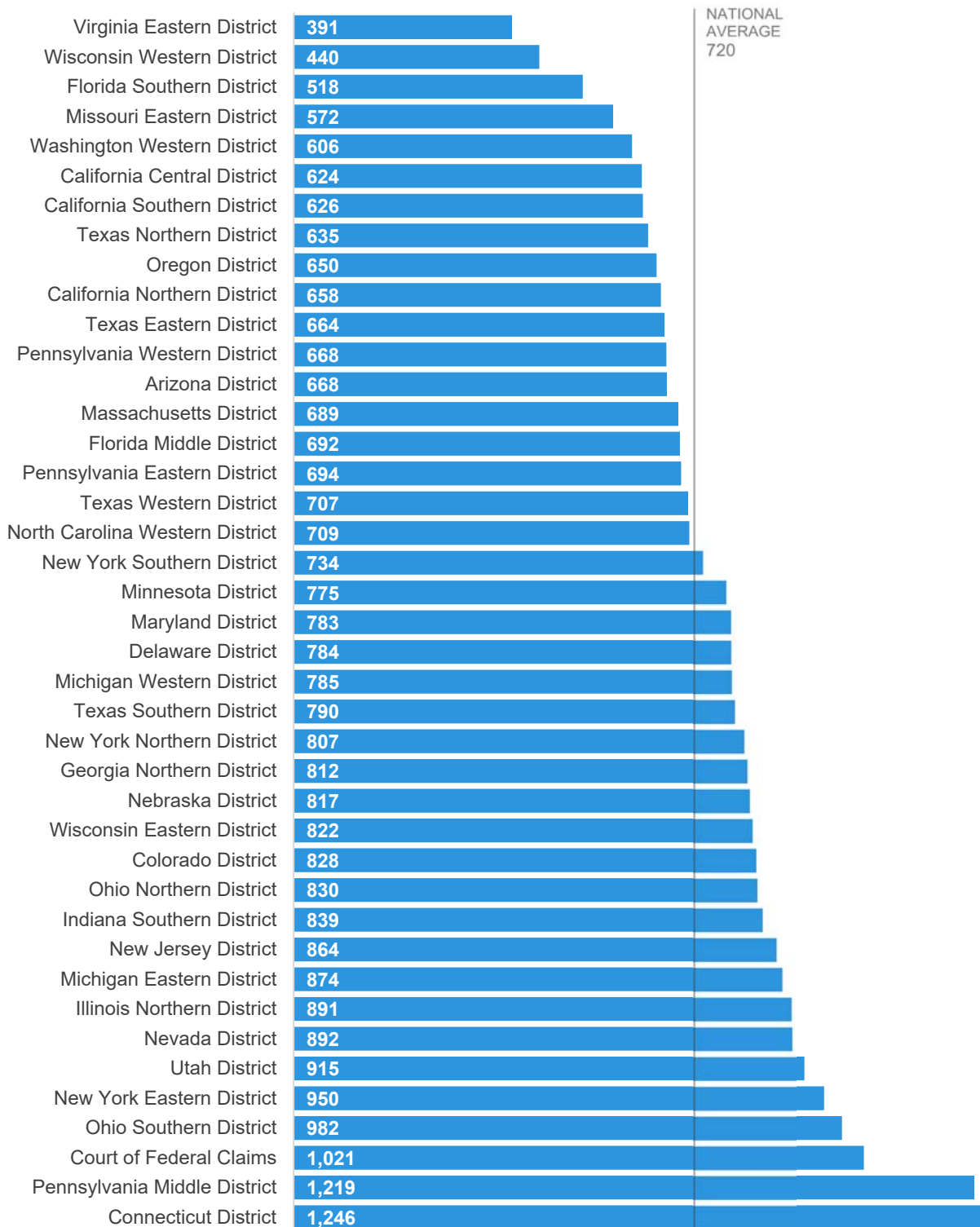
Looking at 2015, 44.2% of all new patent cases were filed in the EDTX. But those cases involved only 27.9% of the litigants in new cases. Further, the new EDTX cases involved only 19.4% of all new accusations, whereas new DED cases involved of 22.5%.



# AVERAGE TIME TO CLAIM CONSTRUCTION

## By Court 2008-2015

This chart shows the average number of days from case filing to claim construction by US district courts with at least 15 claim construction orders filed between 2008 and 2015. The national average for all patent litigation cases over the same period was just under two years, 720 days. Eighteen courts beat the national average, with Virginia Eastern and Wisconsin Western Districts occupying the top two positions.

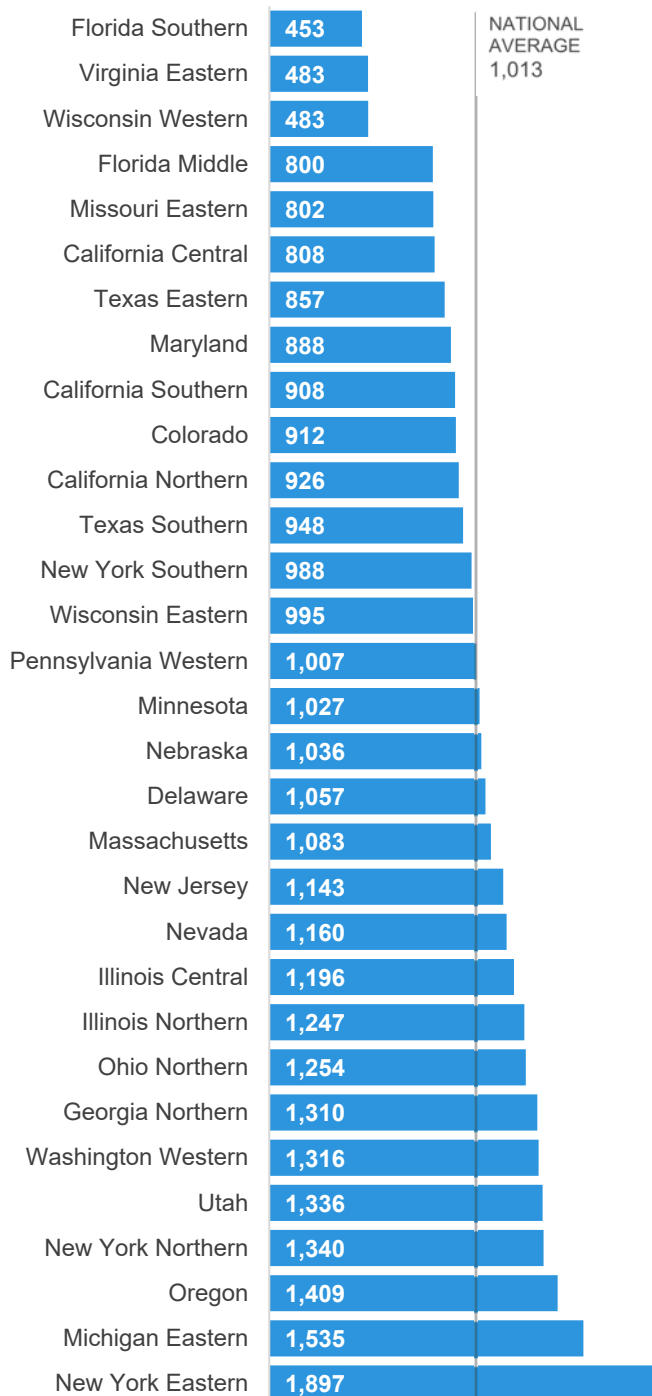


# AVERAGE TIME TO SUMMARY JUDGMENT

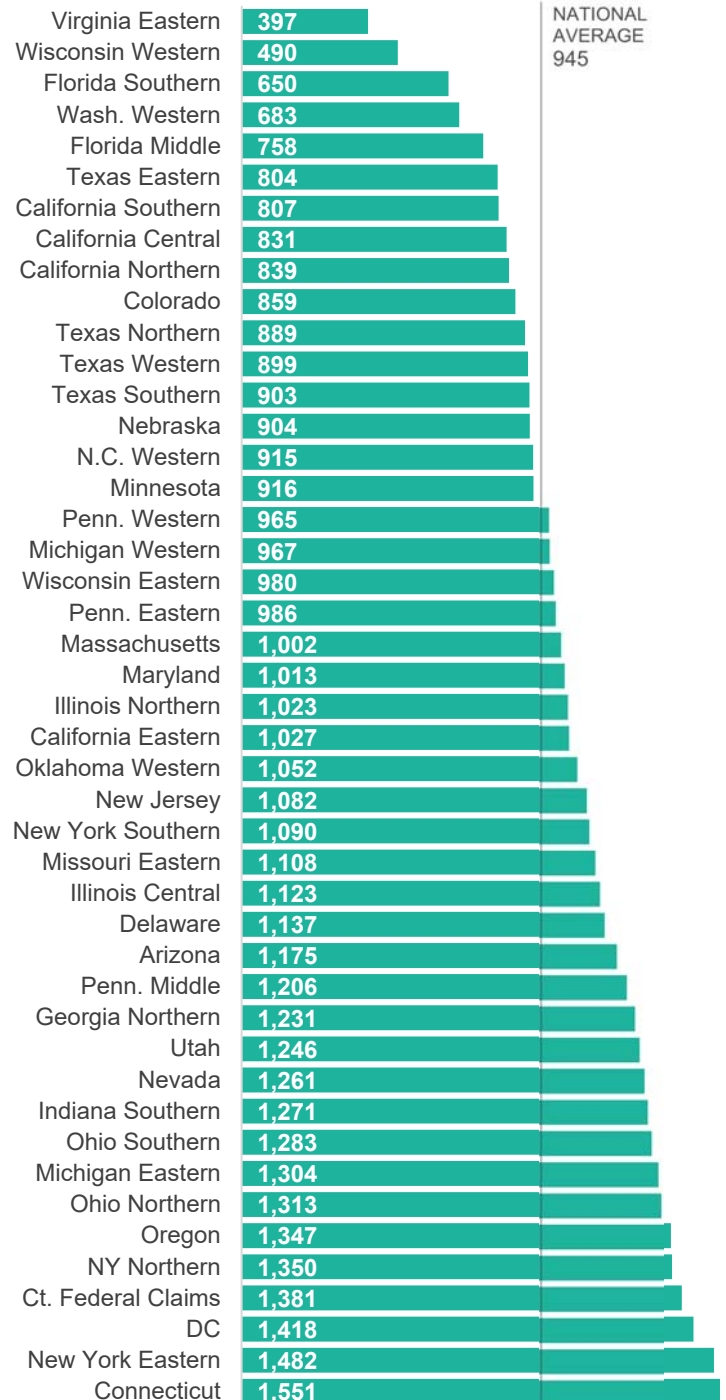
## By Court 2008-2015

This chart shows the average number of days from case filing to a motion for summary judgment (MSJ) in US District Courts for orders which occurred between 2008 and 2015. The chart labeled “MSJ in favor of patentee” shows times for motions, which if granted, would favor the patentee. Conversely, the chart labeled “MSJ against patentee” shows times for motions, which if granted, would favor an accused infringer or patent challenger. Only districts with at least 15 orders between 2008 and 2015 are shown.

### MSJ IN FAVOR OF PATENTEE



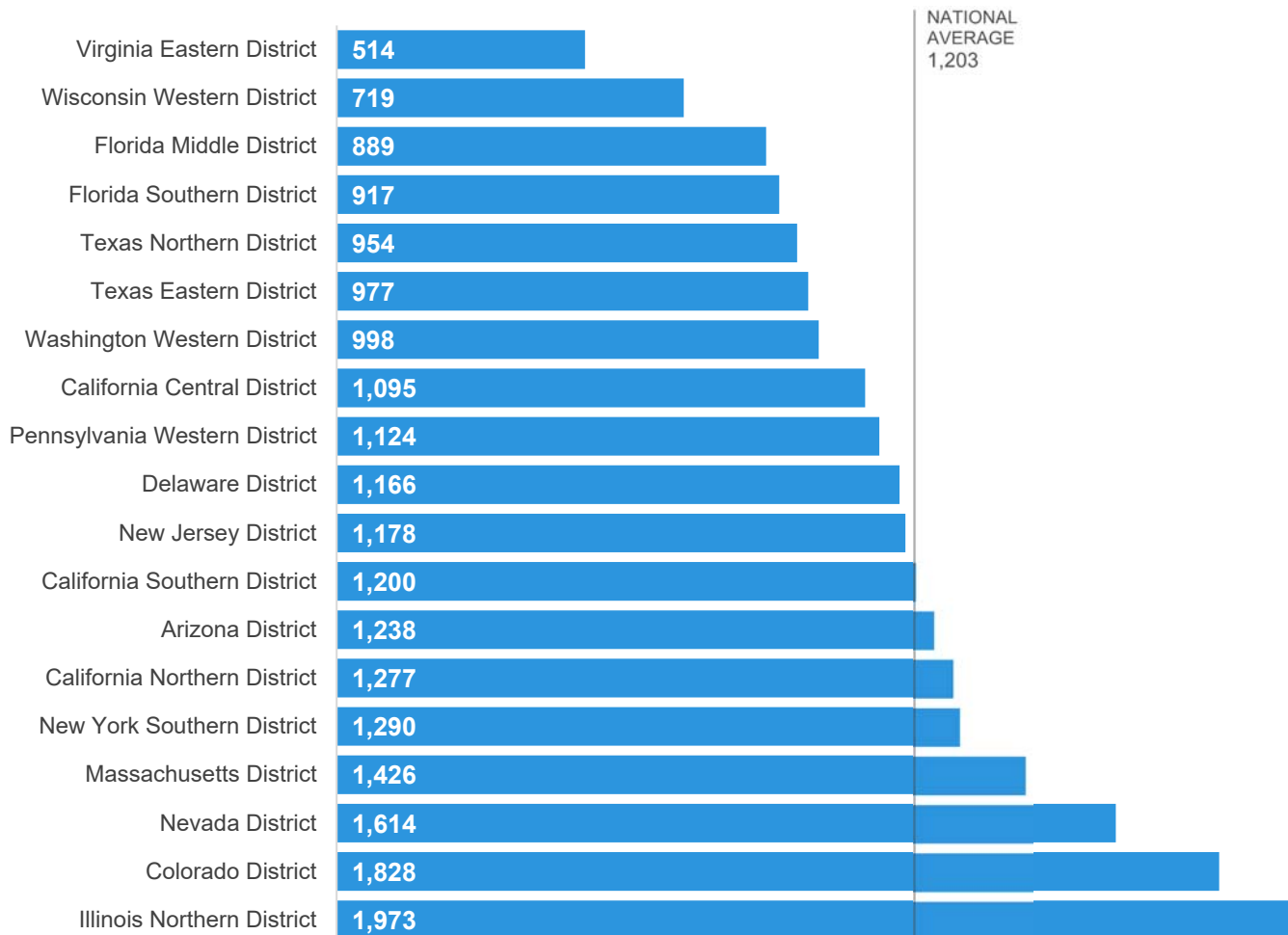
### MSJ AGAINST PATENTEE



# AVERAGE TIME TO TRIAL

## By Court 2008-2015

This chart shows the average number of days from case filing to a trial event in US District Courts with at least 10 occurrences between 2008 and 2015. The national average for all patent litigation cases over the same period was 1,203 days.

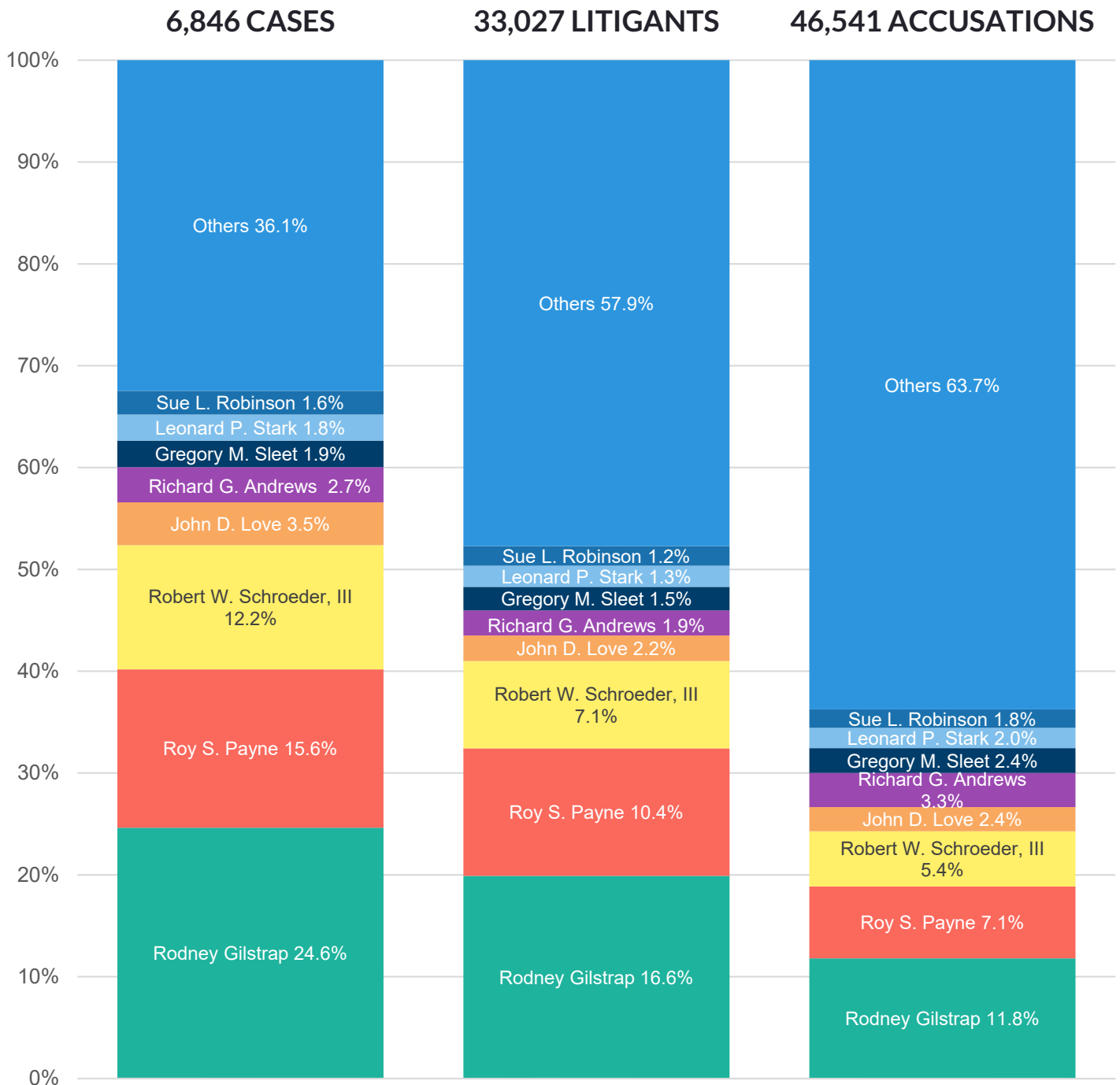


You can find all Verdicts issued since 2008 with a [DOCUMENTS SEARCH](#). Want to add bench rulings? Click the pencil icon next to the "type of court document" in the Search Criteria, then click "[FINDINGS OF FACT AND CONCLUSIONS OF LAW](#)".

# TOP JUDGES

## By New Cases, New Litigants, and New Accusations

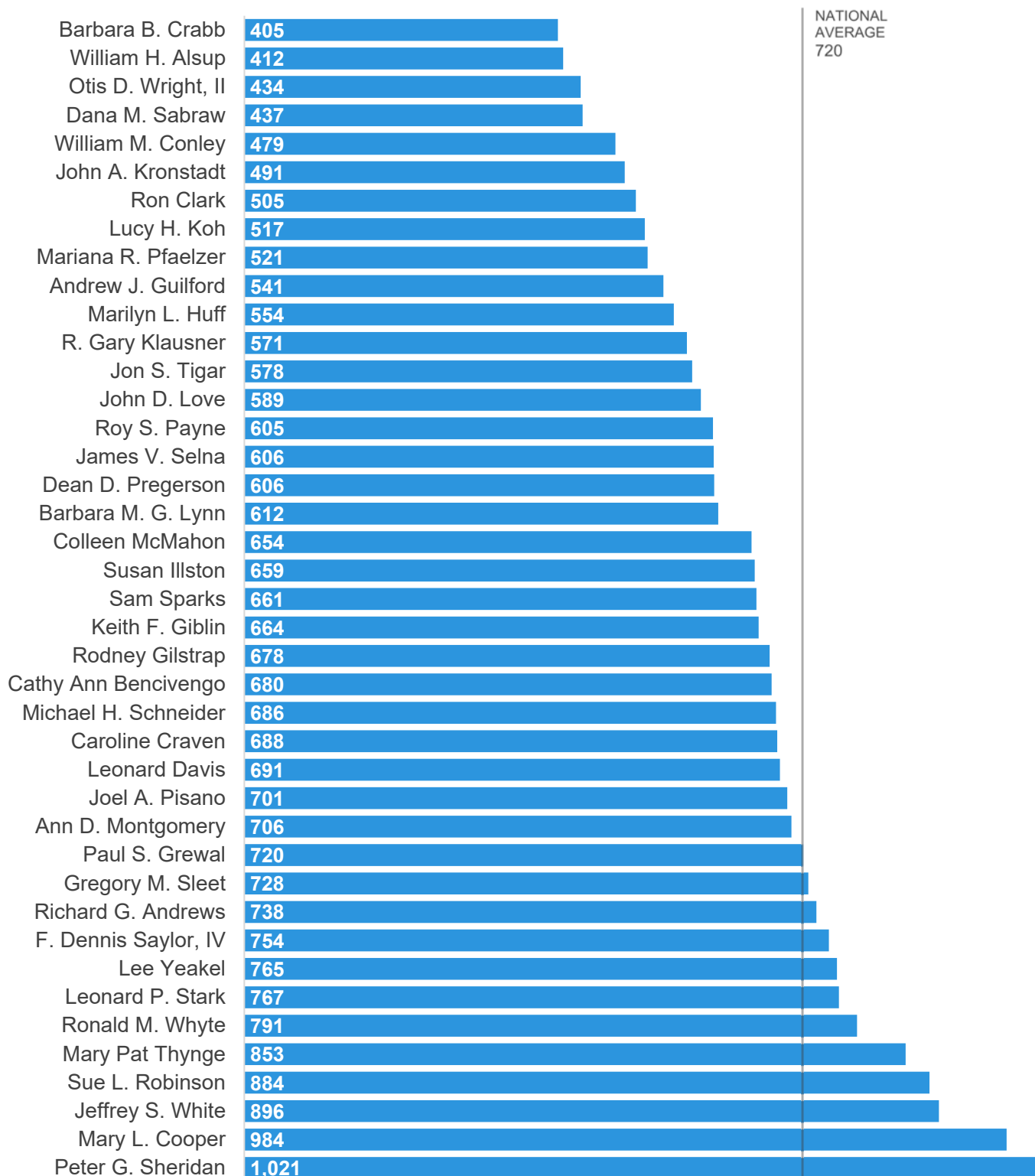
This chart shows a comparison of the top judges by number of new patent litigation cases filed in 2015, the number of litigants in those new cases, and the number of accusations in those cases. The total number of new district court cases increased, as did the number of cases assigned to the top eight judges. The top eight judges presided over 63.9% of all new cases in 2015; almost the same group of eight presided over 52% in 2014. Judge Rodney Gilstrap continues to carry the lion's share (24.6%) of patent litigation with a total of 1,686 cases filed in 2015. Although the top eight judges were assigned 63.9% of all new cases in 2015, those cases involved only 42.1% of the litigants in all new district court cases and only 36.3% of the accusations in those cases. (See page 53 for information on how accusations are calculated.)



# AVERAGE TIME TO CLAIM CONSTRUCTION

## By Judge

The chart below shows the average number of days from case filing to claim construction for judges with at least 20 claim construction orders filed between 2008 and 2015. The national average for all patent litigation cases over the same period was just under two years, 720 days.





# AVERAGE TIME TO MOTION

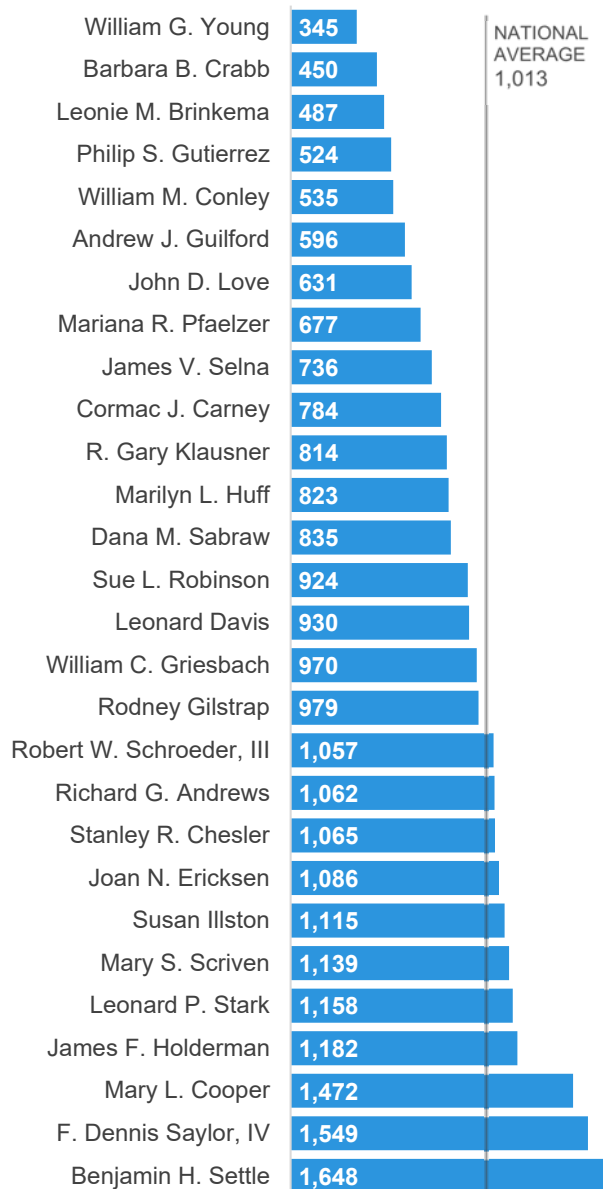
## For Summary Judgment by Judge

The charts below show the average number of days from case filing to a Motion for Summary Judgment (MSJ) ruling by district court judges which occurred between 2008 and 2015. The chart labeled “MSJ in favor of patentee” shows times for motions, which if granted, would favor the patentee. Conversely, the chart labeled “MSJ against patentee” shows times for motions, which if granted, would favor an accused infringer or patent challenger.

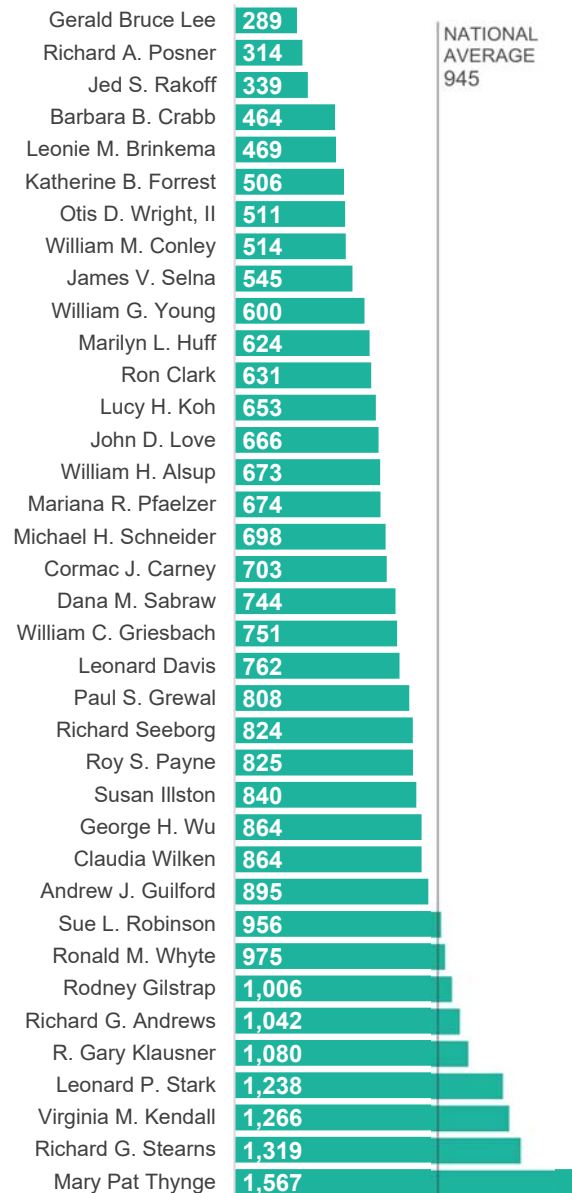
For MSJ against patentee, only judges with at least 20 total MSJ orders between 2008 and 2015 were considered. Since there were far fewer MSJ orders in favor overall, for those orders the minimum threshold was lowered to 10 total MSJ orders.

The national average for all patent litigation cases over the same period was roughly comparable, at 1,013 and 945 days respectively.

### MSJ IN FAVOR OF PATENTEE



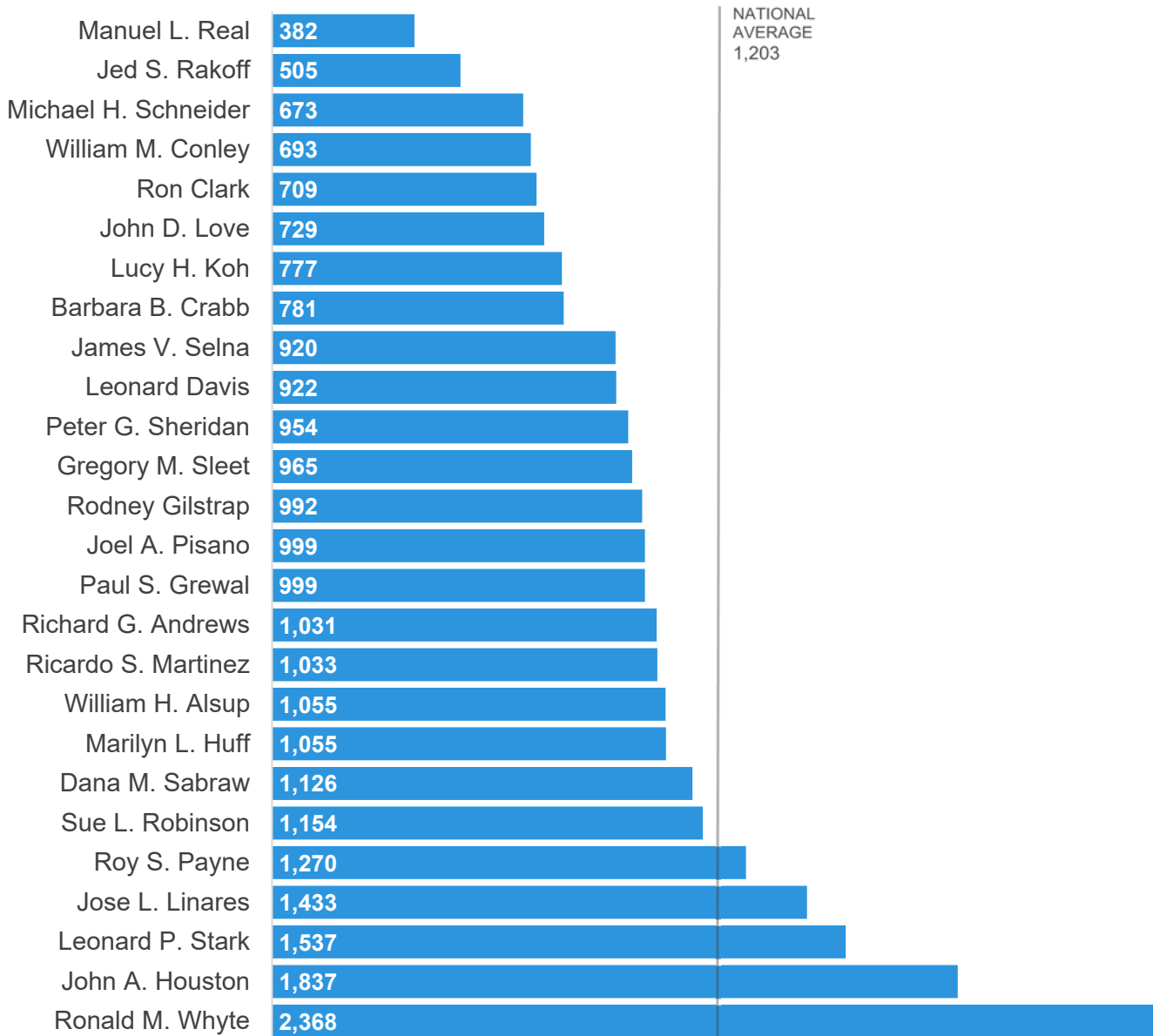
### MSJ AGAINST PATENTEE



# AVERAGE TIME TO TRIAL

## By Judge

The chart below shows the average number of days from case filing to a trial event before District Court judges with at least six occurrences between 2008 and 2015. The national average for all patent litigation cases over the same period was 1,203 days.



You can view a [JUDGE'S LITIGATION HISTORY](#) in patent cases with a Judges search. Just click Judges on our [SEARCH PAGE](#), type in the last name and click the judge's full name in the drop-down suggestions. Be sure to click the tabs across the top of the page to reveal more information.

# COMPARISON OF JURY TRIAL, BENCH TRIAL AND DISPOSITIVE MOTION OUTCOMES

2008-2015

These charts show how patent determinations differ based on the jurisdiction and type of proceeding. It is designed to help answer questions like: “Am I more likely to succeed with a jury or in a bench trial?” or “Are juries in Delaware more likely to favor patent owners than juries in New Jersey?”

The line labeled “verdict” represents determinations rendered in jury verdicts. The line labeled “FFCL” represents determinations rendered in FRCP 52 Findings of Fact and Conclusions of Law following bench trials. The line labeled “MSJ” represents determinations rendered in orders on summary judgment motions. The line labeled “Other” represents determinations rendered in all other types of court documents.

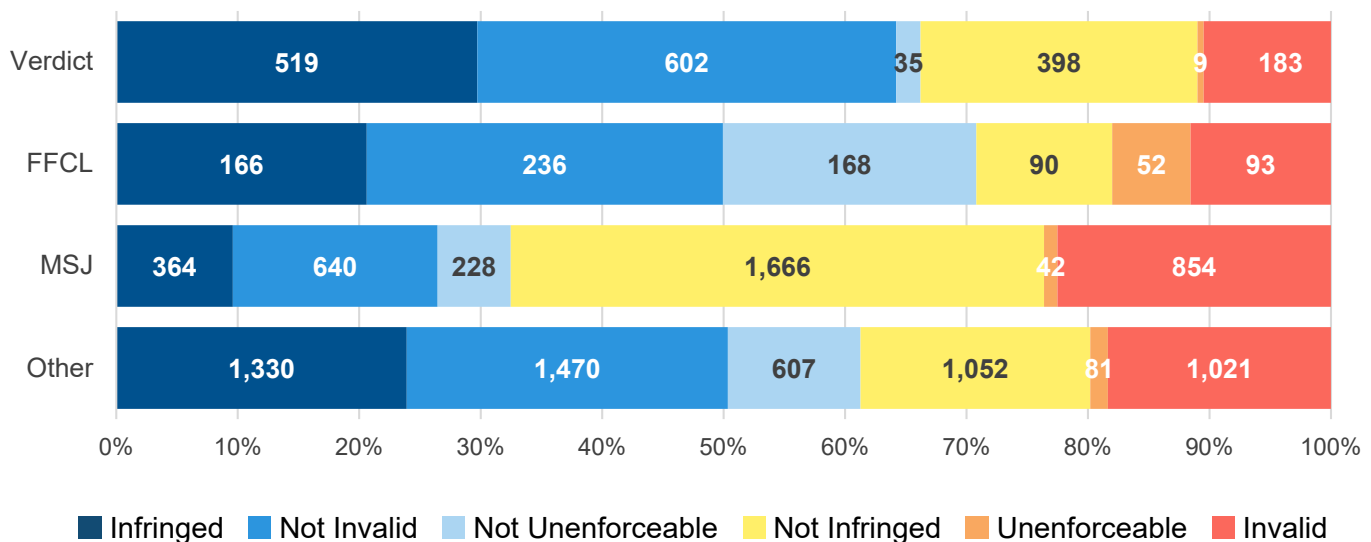
## HOW TO READ THESE CHARTS

Each colored line represents the determinations rendered in a specific type of proceeding: jury trial, bench trial, summary judgment, or other. Colors correspond to the type of determination. Blue shades represent determinations that favor patentees.



## ALL US DISTRICT COURTS

Across all US district courts, over 70% of all bench trial determinations favored patentees. Jury trial determinations also favored patentees, but to a lesser degree. On the other hand, 67.5% of summary judgment determinations favor accused patent infringers or patent challengers.

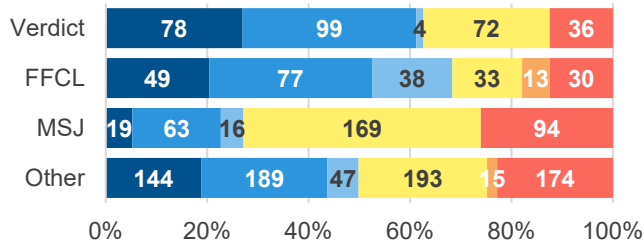


However, a closer look at the top courts shows even more variation. *(next page)*

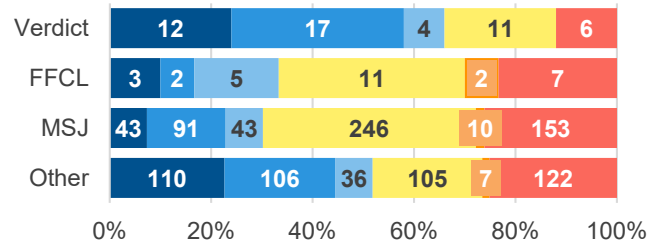
# COMPARISON OF JURY TRIAL, BENCH TRIAL AND DISPOSITIVE MOTION OUTCOMES

Continued

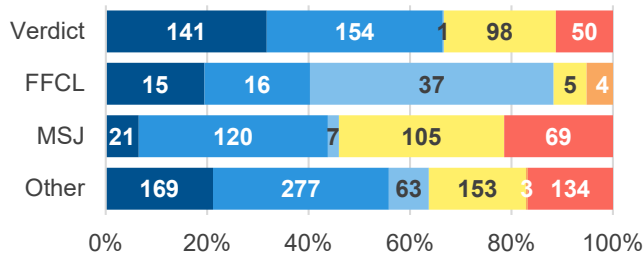
## DELAWARE DISTRICT



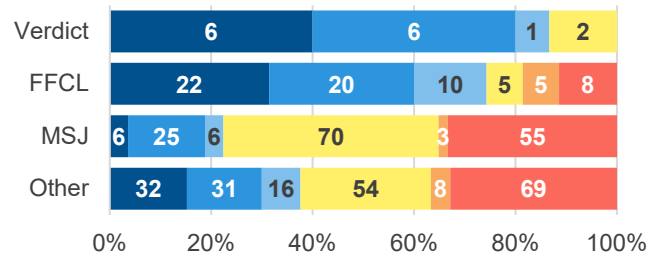
## CALIFORNIA CENTRAL DISTRICT



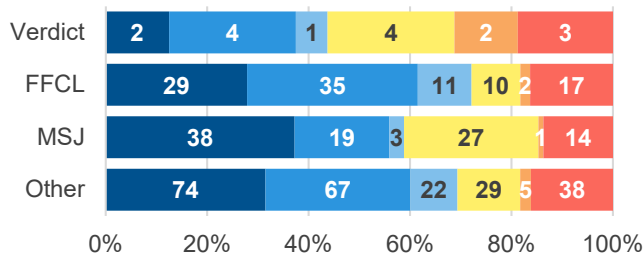
## TEXAS EASTERN DISTRICT



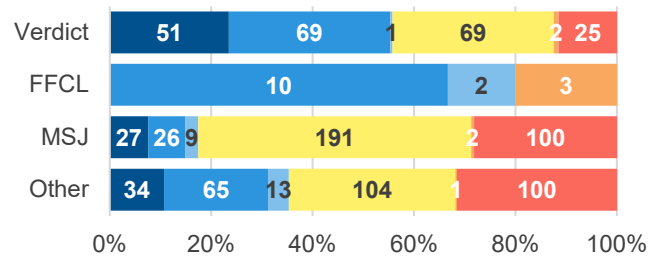
## NEW YORK SOUTHERN DISTRICT



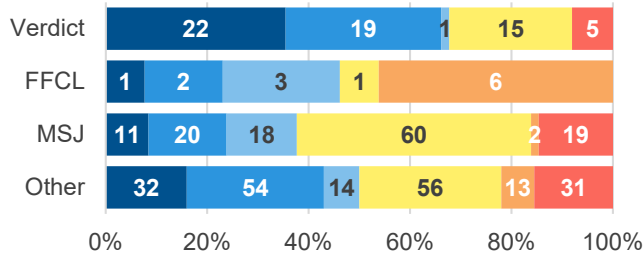
## NEW JERSEY DISTRICT



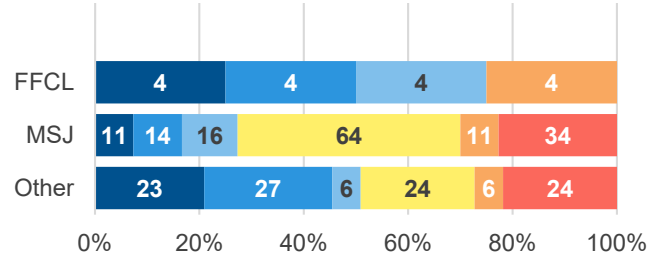
## CALIFORNIA NORTHERN DISTRICT



## CALIFORNIA SOUTHERN DISTRICT



## ILLINOIS NORTHERN DISTRICT



■ Infringed 
 ■ Not Invalid 
 ■ Not Unenforceable 
 ■ Not Infringed 
 ■ Unenforceable 
 ■ Invalid

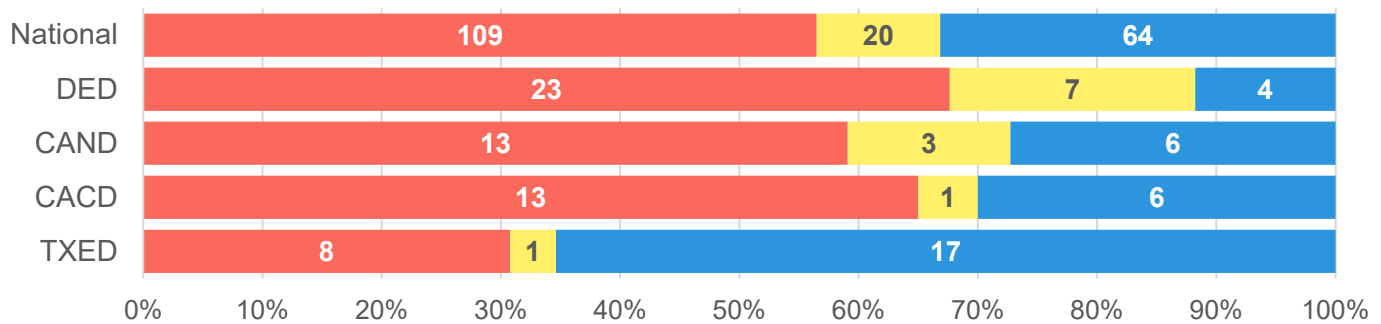
# OUTCOMES OF 35 U.S.C. § 101 CHALLENGES

These charts show the outcomes of judicial decisions on challenges to patent validity under 35 U.S.C. § 101 after *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*, 573 U.S. \_\_\_, 134 S.Ct. 2347 (2014), through the end of 2015. During that time, U.S. district courts addressed 191 Section 101 patent challenges, 67% of which were resolved favorable or partially favorable to the patent challengers. But, importantly, the results vary significantly by district. In EDTX, only 35% of challenges were resolved favorable or partially favorable to the patent challengers. Conversely, DED resolved 88% of § 101 challenges in favor or partially in favor of the patent challenger.

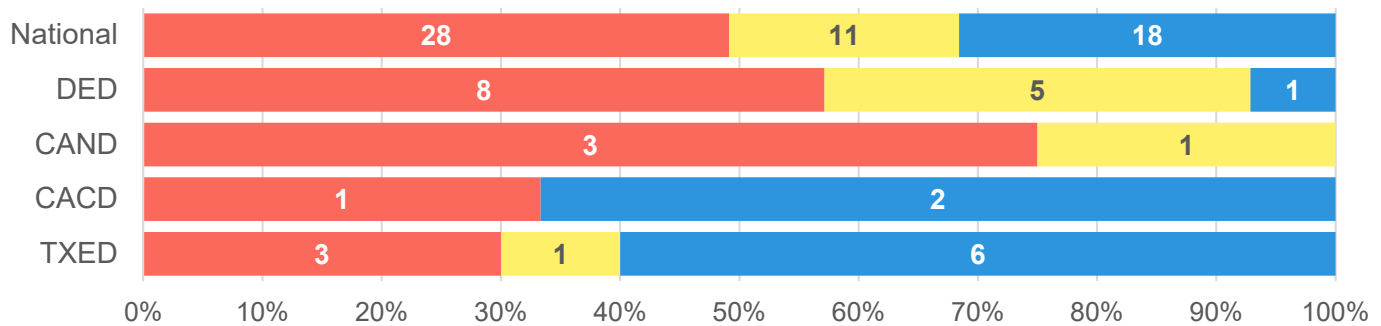
Also interesting, the timing of the motion in relation to the stage of litigation does not appear to affect the outcomes. Within a specific court, the grant rate for challenges brought in the early stages of litigation is very close to the grant rate for challenges brought at a mature stage.

■ Favorable to Patent Challenger
 ■ Partially Favorable to Patent Challenger
 ■ Favorable to Patentee

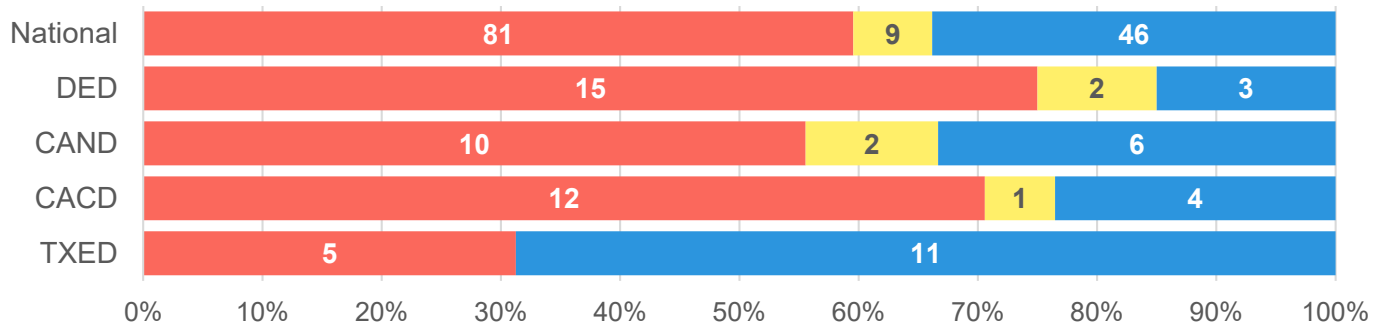
## All § 101 Challenges



## § 101 Challenges Asserted in Early Stage



## § 101 Challenges Asserted in Mature Stage

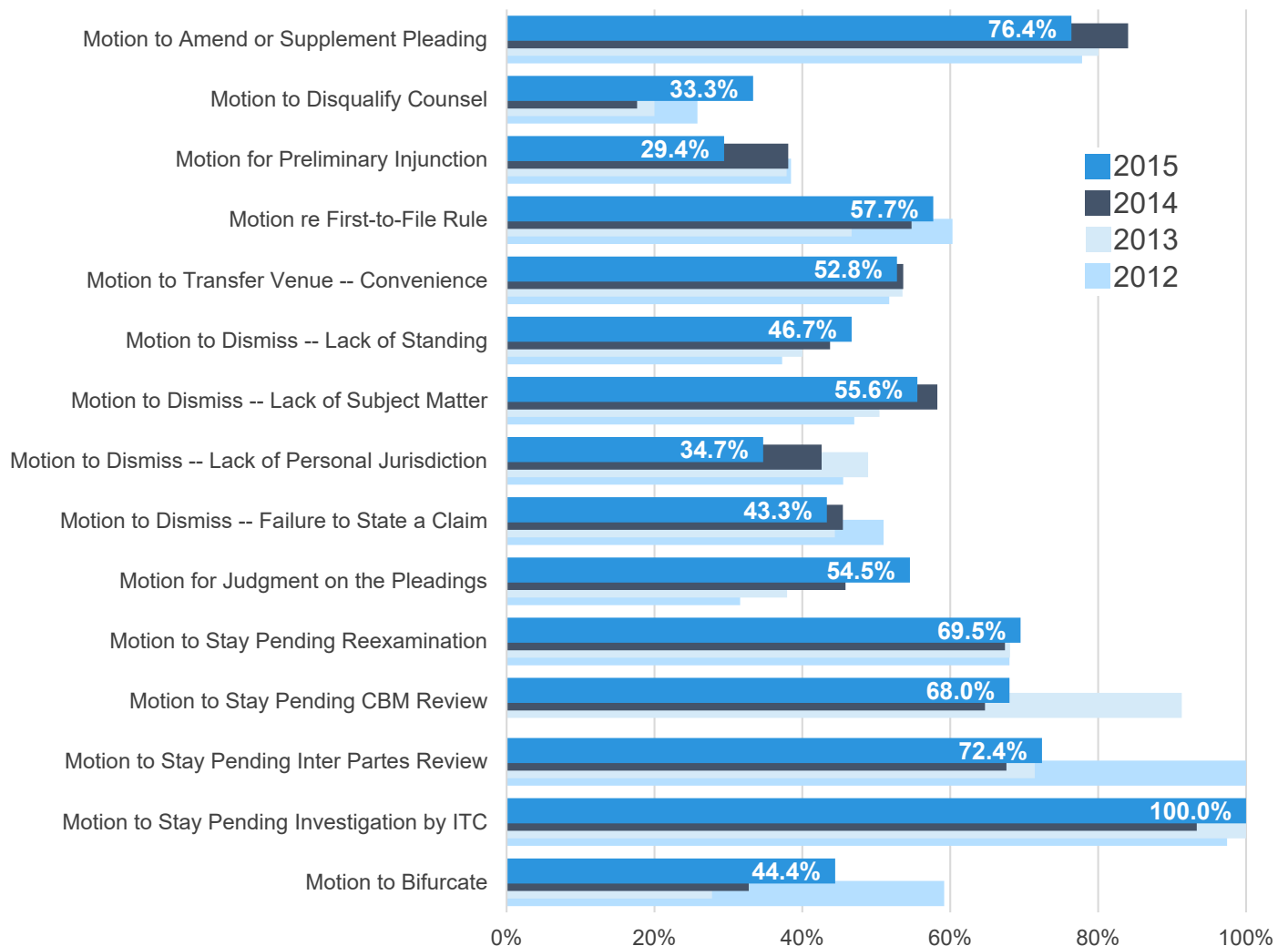


# MOTION SUCCESS RATES

## 2012-2015

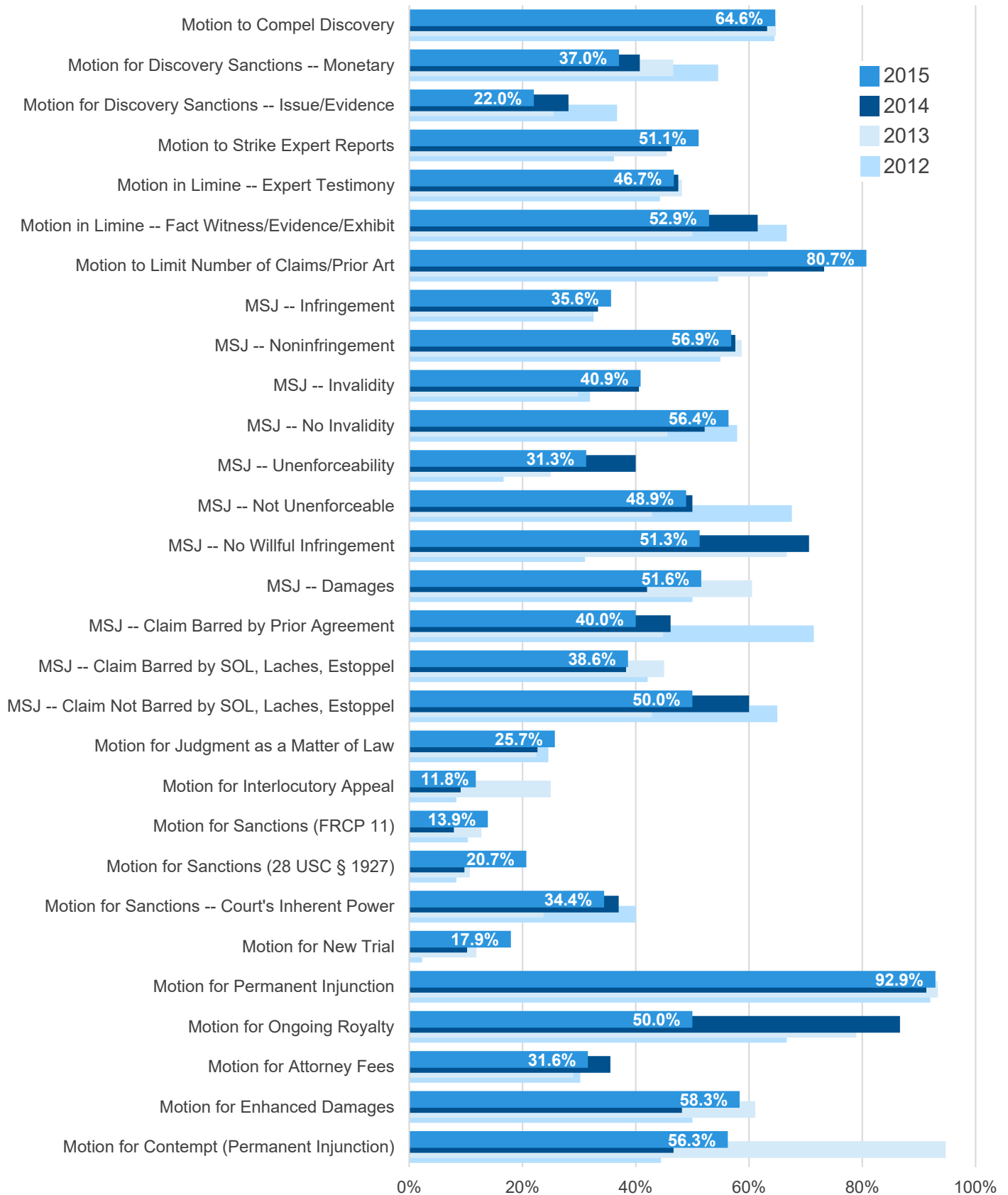
This chart shows the success rates of more than 40 types of motions from 2012 to 2015. Excluding single-year variances, the national success rate for most types of motions remained relatively stable over the four-year period. This might suggest that, despite significant changes in the legal landscape, the daily administration of patent disputes in US district courts remains relatively unchanged. A few notable exceptions include:

- Motions for summary judgment of patent invalidity:** In 2012 and 2013, the success rate of summary judgment motions challenging the validity was around 30% each year. But in 2014 and 2015, the success rate jumped to more than 40%, likely reflecting the impact of challenges under 35 U.S.C. § 101 after *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*, 573 U.S. \_\_\_, 134 S.Ct. 2347 (2014).
- Motions for summary judgment of no willful infringement:** Success rates skyrocketed from less than 10% in 2011 to more than 70% in 2014, likely due to the heightened standard under *Bard Peripheral Vascular, Inc. v. W.L. Gore and Assocs., Inc.*, 682 F.3d 1003 (Fed. Cir. 2012) (*en banc*) and 35 U.S.C. § 298. In 2015, however, the success rate fell to just over 51%.
- Motions to limit the number of claims or prior art:** Success rates increased from about 50% in 2011 to more than 80% in 2015.



# MOTION SUCCESS RATES

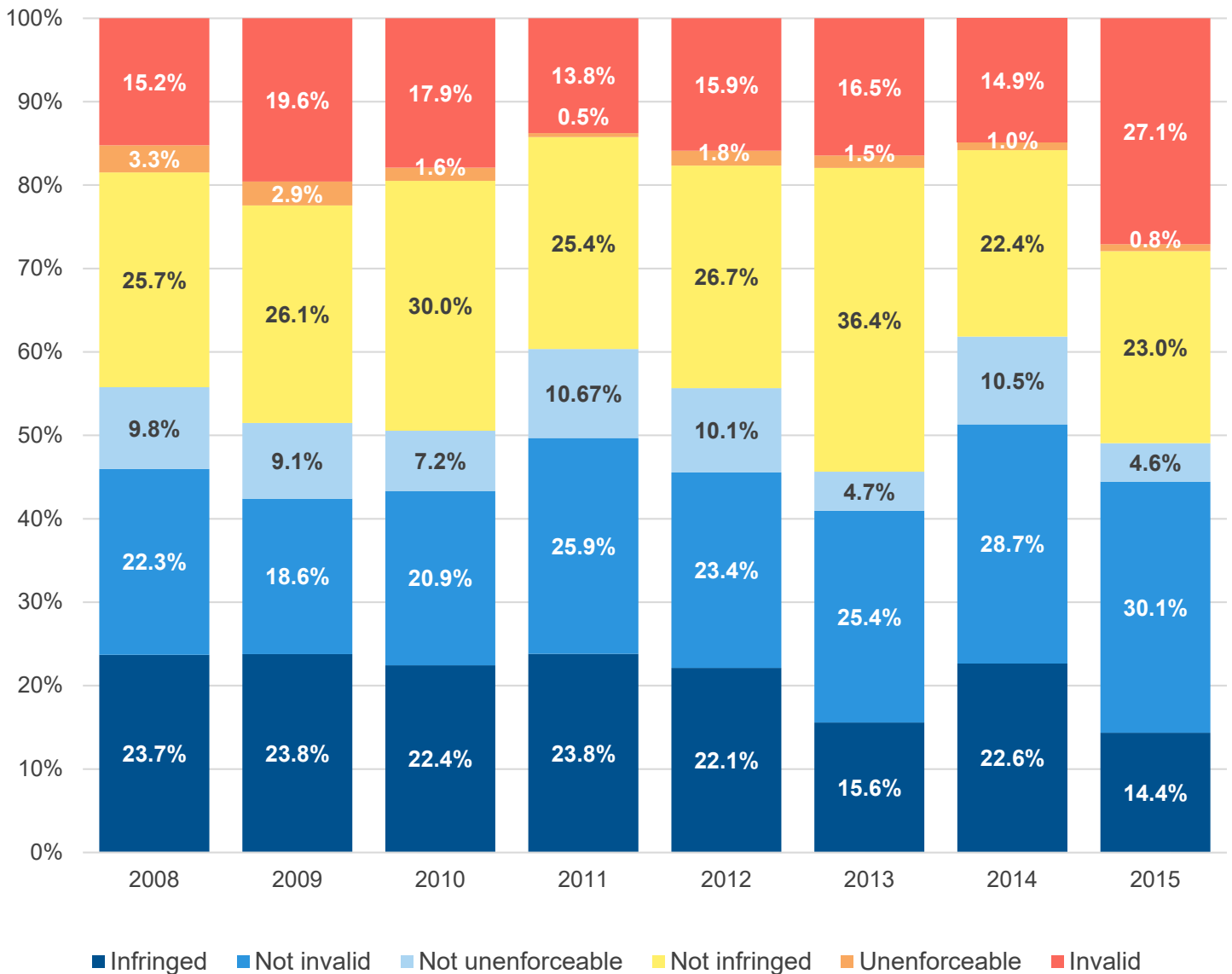
Continued



# DISTRICT COURT PATENT DETERMINATIONS

## 2008-2015 (Percentage)

This chart shows the percentage of each type of patent determination based on the total number of determinations of all types for that year. 2015 saw a significant increase in the percentage of determinations of invalidity, nearly *doubling* the previous year's number. In contrast, the percentage of infringement determinations in 2015 fell to 14.4%, the lowest level in at least eight years.




**2014 14.9%**  
**2015 27.1%**  
**INVALID**


**2014 22.6%**  
**2015 14.4%**  
**INFRINGEMENT**

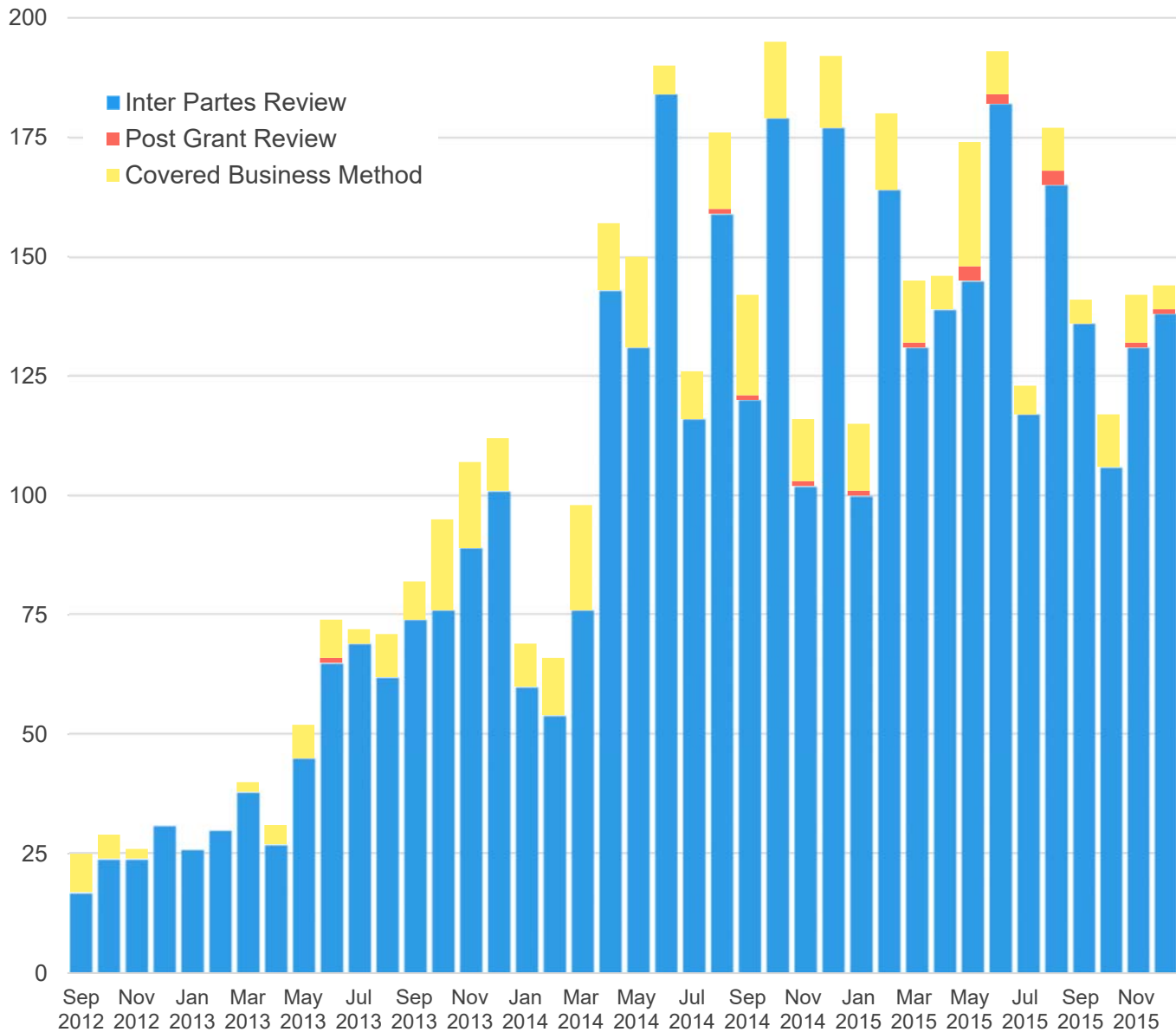

**2014 11.5%**  
**2015 5.4%**  
**ENFORCEABILITY (COMBINED)**



# NEW PTAB PETITIONS

2012-2015

The chart below shows the number of new IPR, CBM, and PGR petitions filed in the Patent & Trademark Appeals Board (PTAB) by month.

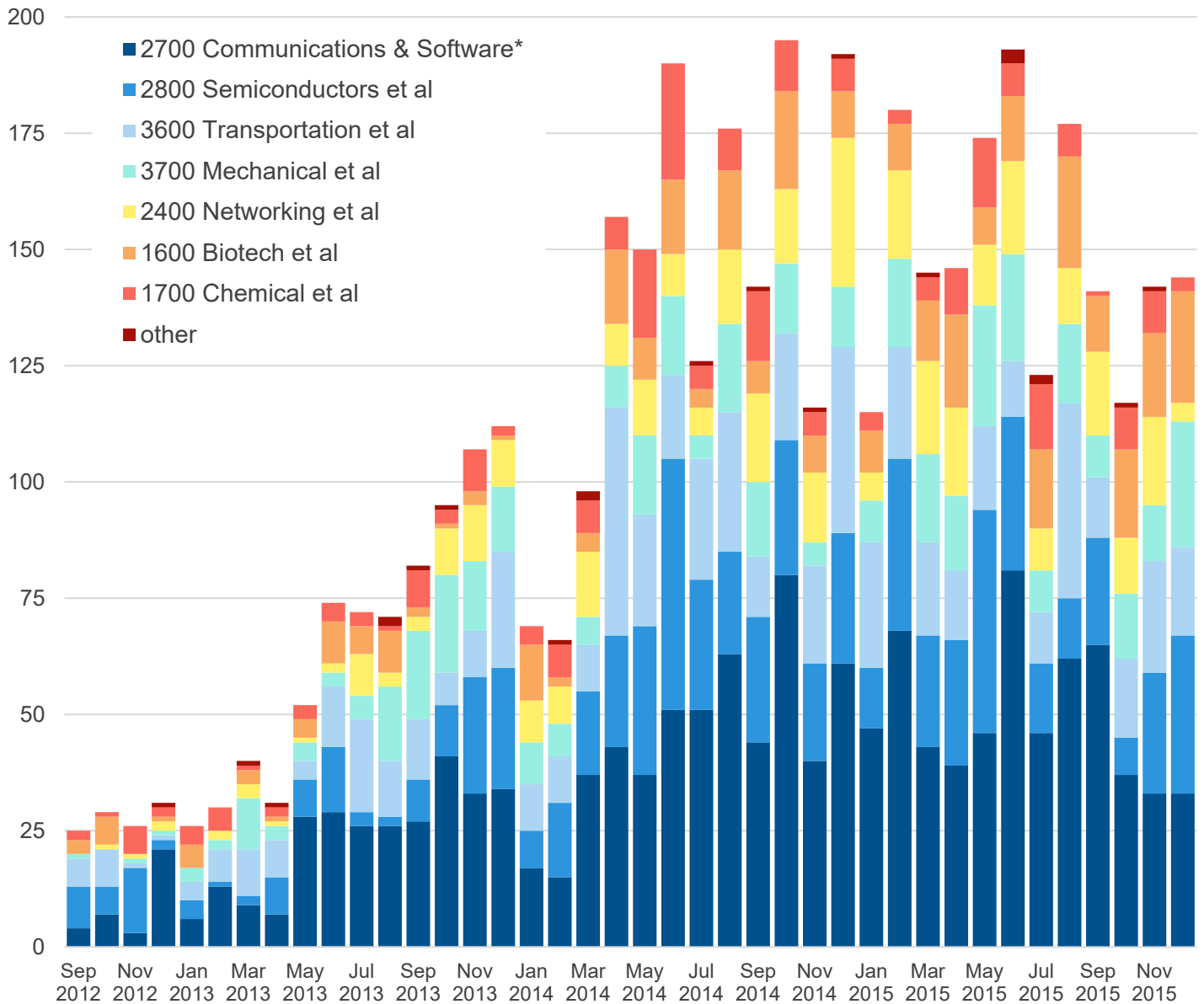


Want to be notified whenever a new PTAB petition is filed?  
 Just click "Create Alert" at the bottom of this [LIST OF PTAB CASES](#).

# NEW PTAB PETITIONS BY TECH CODE

2012-2015

This chart shows the number of IPR, CBM and PGR petitions by Tech Code that were filed in the PTAB each month. Each Tech Code is represented by a different colored band.

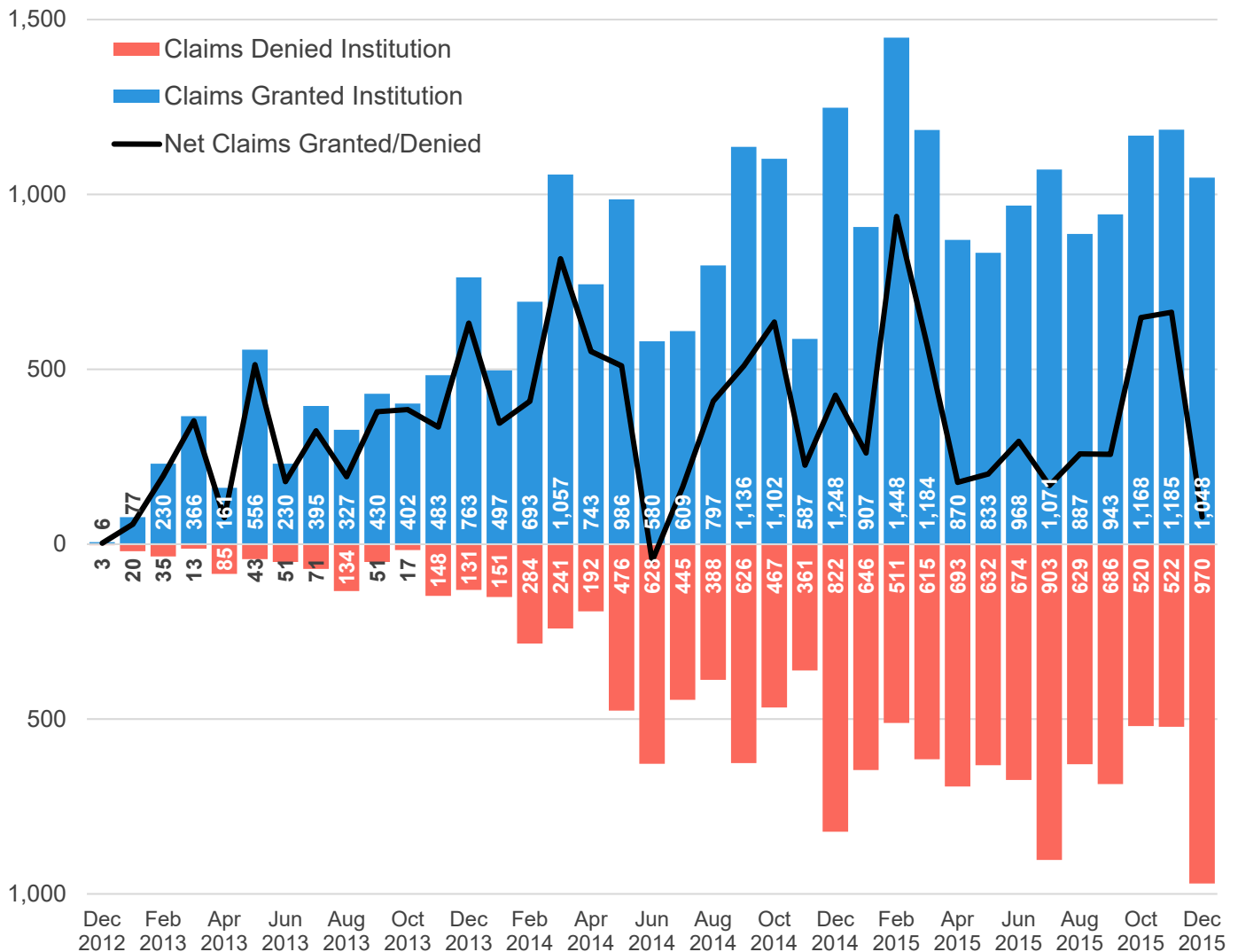


\*Tech Code 2700 (Communications and information systems) has been split into Tech Codes: 2100 (Computer Architecture and Software) and 2600 (Communications). For purposes of this chart, Tech Code 2700 includes all three.

# INSTITUTION OUTCOMES – BY MONTH

This chart shows the outcomes of institution decisions for individual patent claims challenged in an IPR, CBM, or PGR petition. Bars above the midline show the number of claims in which review was granted on at least one ground, bars below the midline show the number of claims in which review was denied on all grounds.

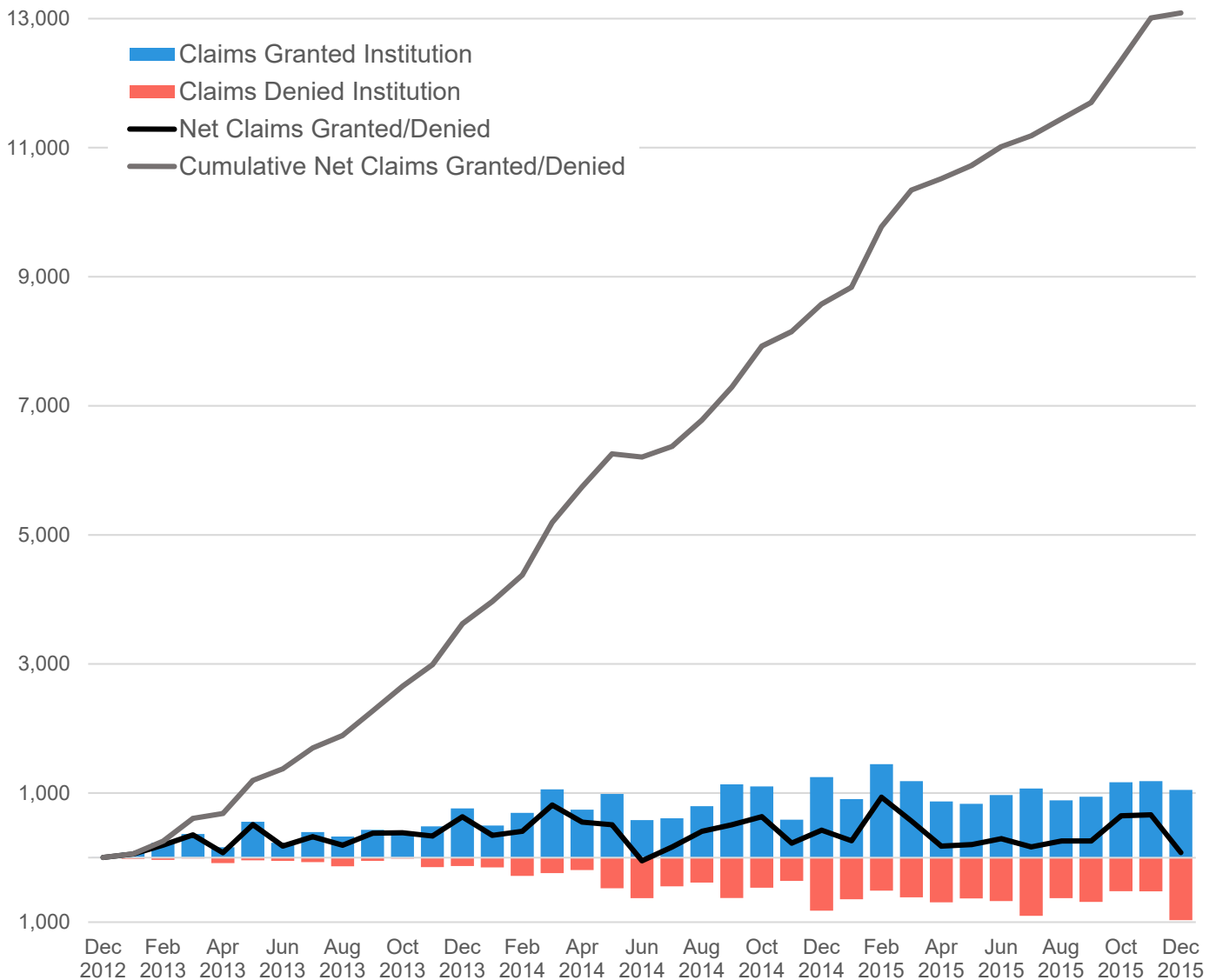
**Net Grants/Denials.** The Net Grants/Denials line shows the net number of claims for which institution was granted minus the number denied. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied institution that month. When it appears below the midline it means more claims were denied institution than granted that month.



# INSTITUTION OUTCOMES – CUMULATIVE

This chart is the same as the chart on the previous page, but adds a new line.

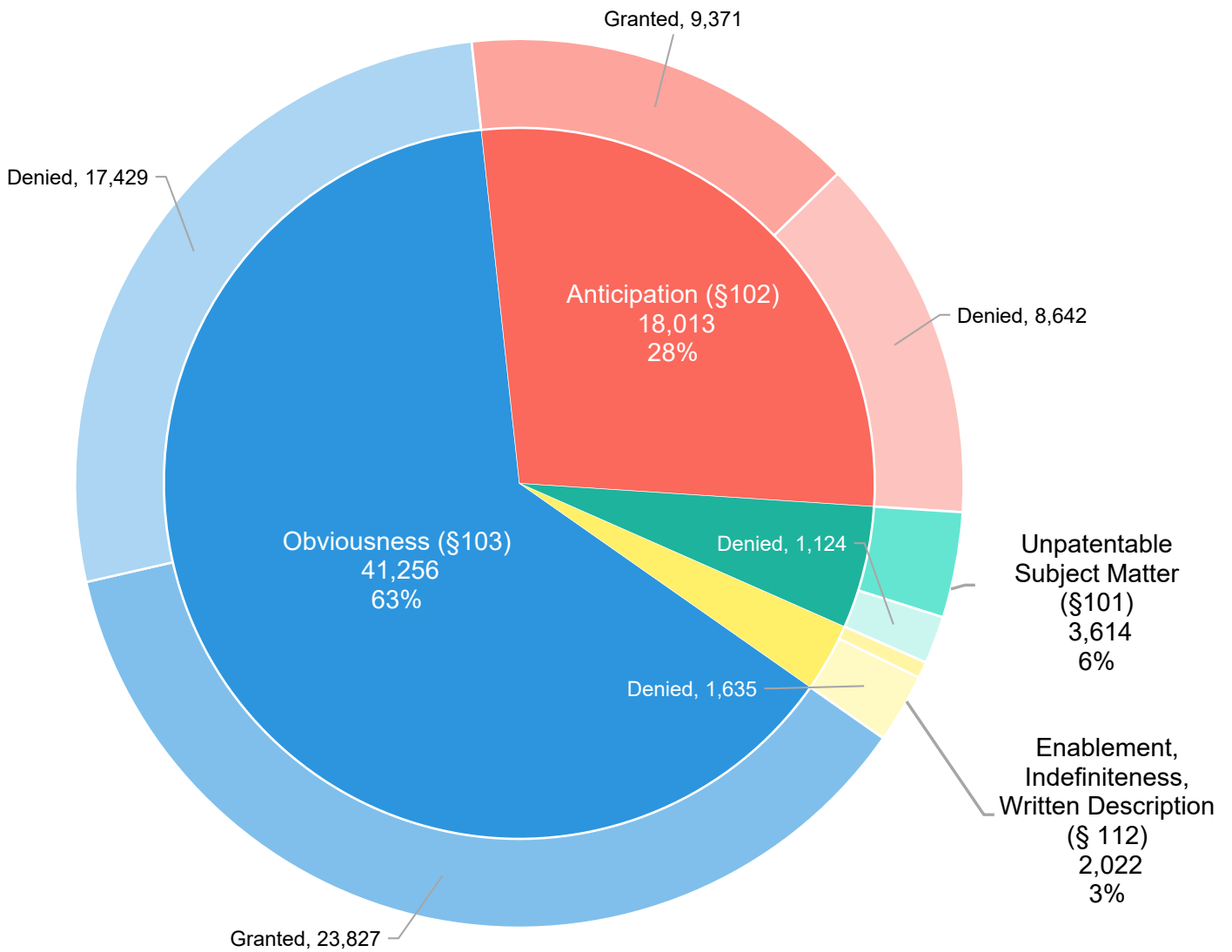
**Cumulative Claims Granted/Denied.** The Cumulative Claims Granted/Denied line shows the cumulative number of net claims granted or denied institution each month. If the same number of claims were granted and denied institution over time, the Cumulative Claims Granted/Denied line would be horizontal. When the line rises, it indicates a trend toward granting institution. When the line falls, it indicates a trend toward denying institution.



**66%** SUCCESS RATES OF ALL PTAB CLAIMS SINCE THE AIA WAS ENACTED

# INSTITUTION OUTCOMES – TOTAL

This chart shows the outcomes of institution decisions for individual patent claims, by ground, challenged in an IPR, CBM, or PGR petition based on the asserted statutory ground for unpatentability from the time the PTAB came into existence through the end of 2015.



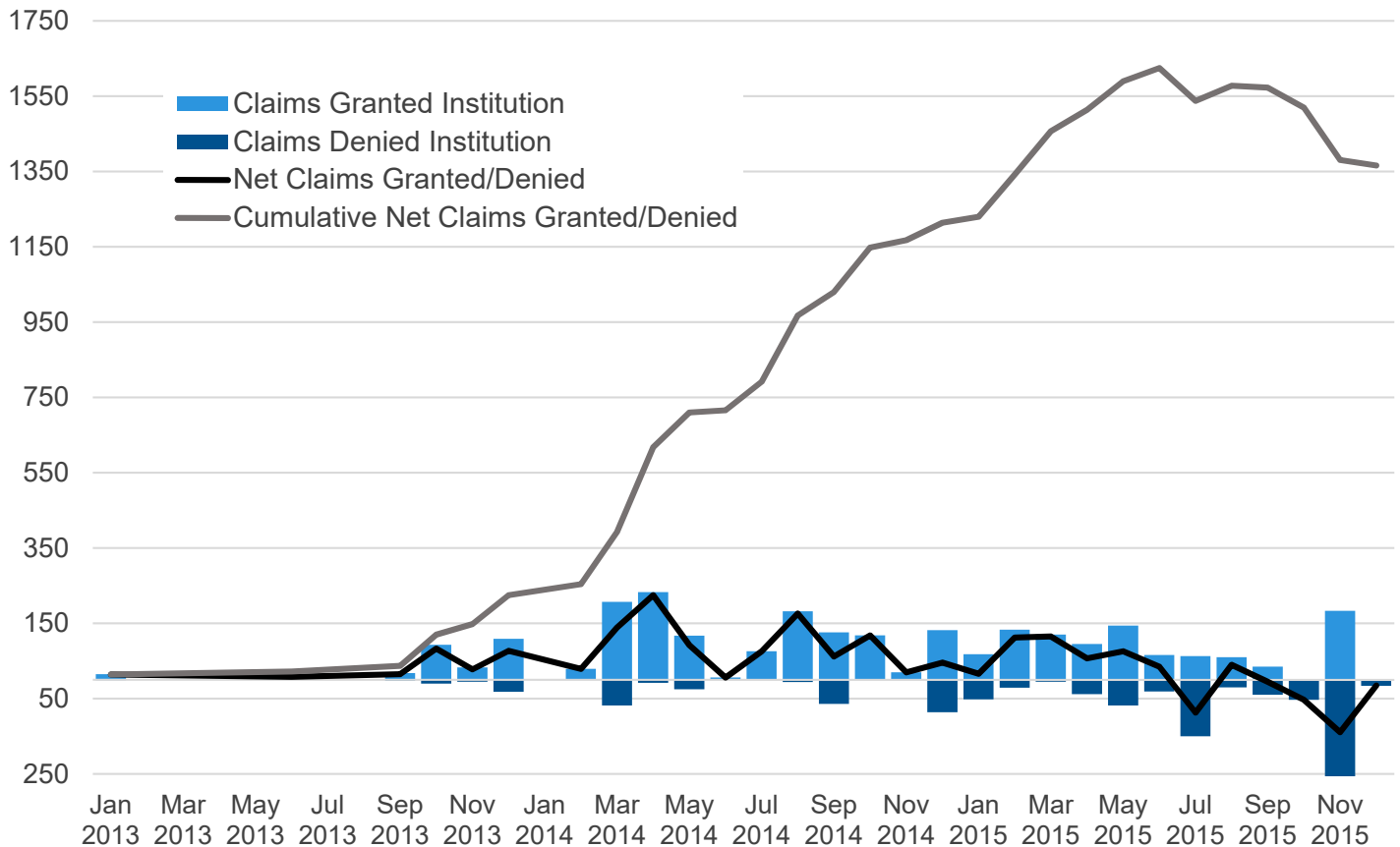
# INSTITUTION OUTCOMES – § 101

## For Claims Challenged on Unpatentable Subject Matter Grounds (35 U.S.C. § 101)

This chart shows the outcomes of institution decisions for individual patent claims challenged in a PTAB petition on the ground of lack of patentable subject matter (35 U.S.C. § 101). Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

**Net Grants/Denials.** The Net Grants/Denials line shows the net number of claims for which institution was granted minus the number of claims denied. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that month. When the Net Grants/Denials line appears below the the midline, it means more claims were denied institution than granted that month.

**Cumulative Net Claims Granted/Denied.** The Cumulative Net Claims Granted/Denied line shows the cumulative number of Net Grants/Denials. When the line rises, it indicates a trend toward granting institution; when the line falls, it indicates a trend toward denying institution. When the line is flat, it indicates the same number of claims are granted and denied institution of review.



**68.9%** SUCCESS RATE OF CLAIMS CHALLENGED UNDER 35 U.S.C. § 101 SINCE THE AIA WAS ENACTED

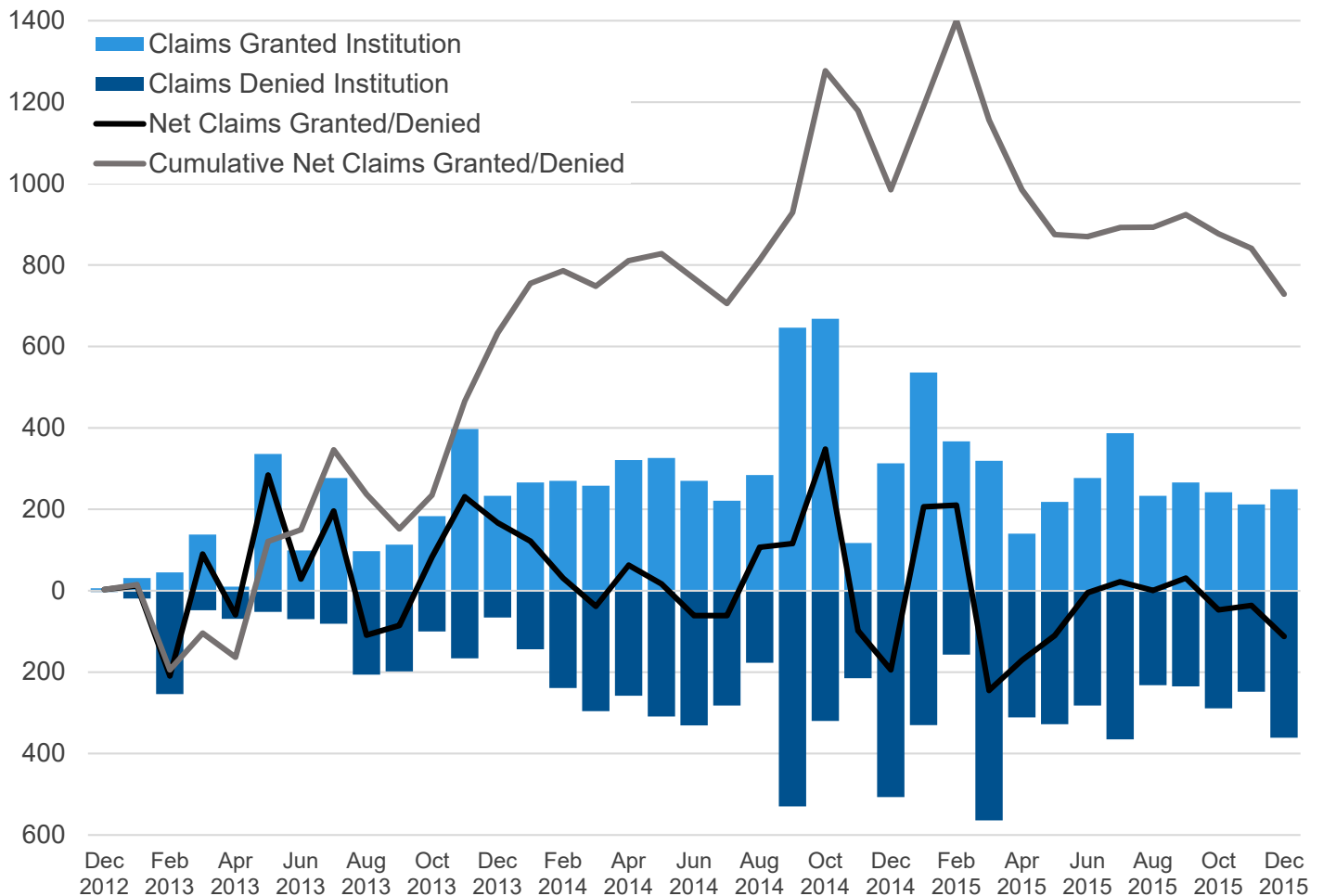
# INSTITUTION OUTCOMES – § 102

## For Claims Challenged on Anticipation Grounds (35 U.S.C. § 102)

This chart shows the outcomes of institution decisions for individual patent claims challenged in a PTAB petition on anticipation (35 U.S.C. § 102) grounds. Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

**Net Grants/Denials.** The Net Grants/Denials line shows the net number of claims for which institution was granted minus the number of claims denied. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that month. When the Net Grants/Denials line appears below the midline, it means more claims were denied institution than granted that month.

**Cumulative Net Claims Granted/Denied.** The Cumulative Net Claims Granted/Denied line shows the cumulative number of Net Grants/Denials. When the line rises, it indicates a trend toward granting institution; when the line falls, it indicates a trend toward denying institution. When the line is flat, it indicates the same number of claims are granted and denied institution of review.



**52%** SUCCESS RATE OF CLAIMS CHALLENGED UNDER 35 U.S.C. § 102 SINCE THE AIA WAS ENACTED

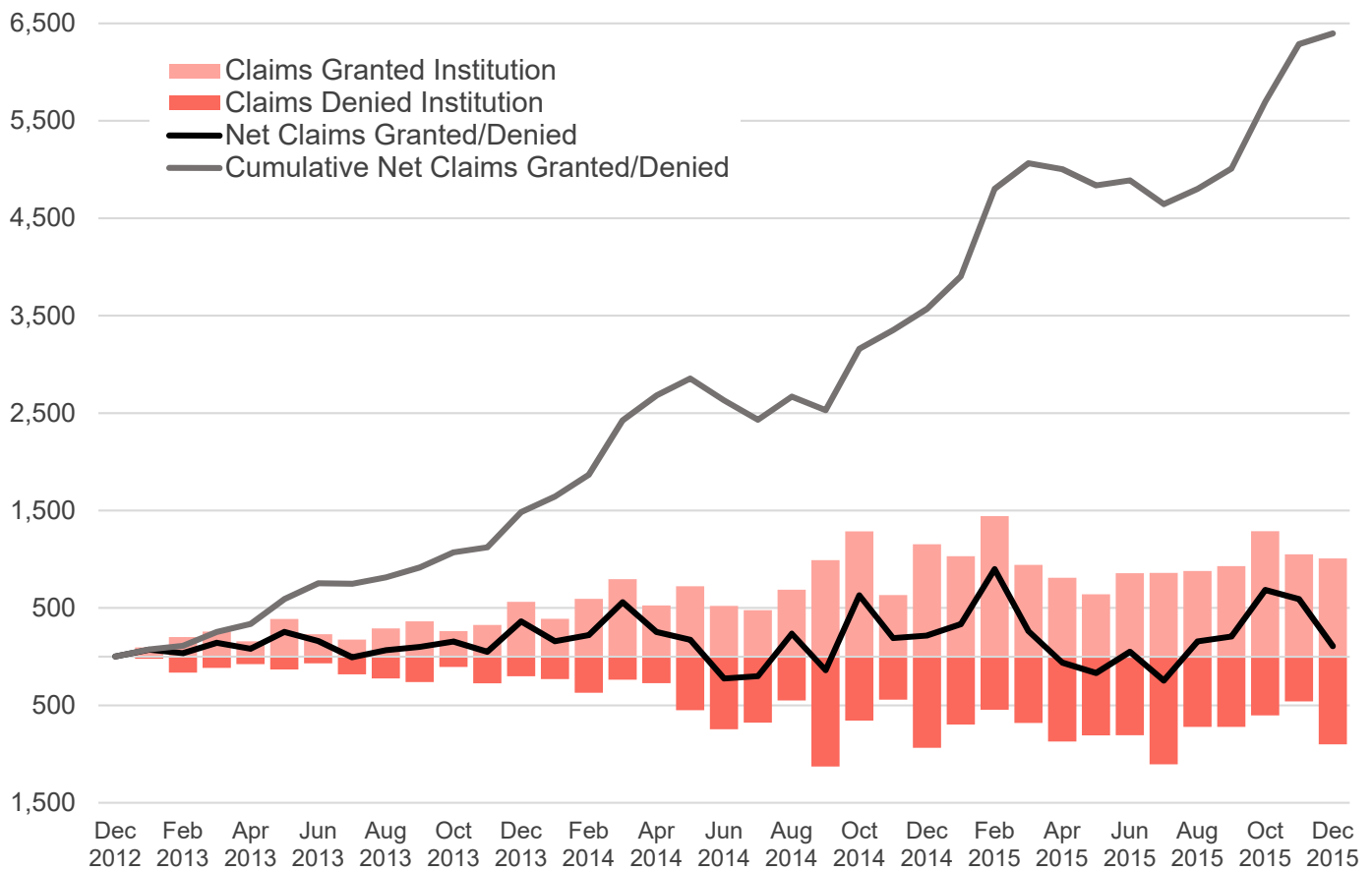
# INSTITUTION OUTCOMES – § 103

## For Claims Asserts on Obviousness Grounds (35 U.S.C. § 103)

This chart shows the outcomes of institution decisions for individual patent claims challenged in a PTAB petition on obviousness (35 U.S.C. § 103) grounds. Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

**Net Grants/Denials.** The Net Grants/Denials line shows the net number of claims for which institution was granted minus the number of claims denied. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that month. When the Net Grants/Denials line appears below the midline, it means more claims were denied institution than granted that month.

**Cumulative Net Claims Granted/Denied.** The Cumulative Net Claims Granted/Denied line shows the cumulative number of Net Grants/Denials. When the line rises, it indicates a trend toward granting institution; when the line falls, it indicates a trend toward denying institution. When the line is flat, it indicates the same number of claims are granted and denied institution of review.



**57.8%** SUCCESS RATE OF CLAIMS CHALLENGED UNDER 35 U.S.C. § 103 SINCE THE AIA WAS ENACTED



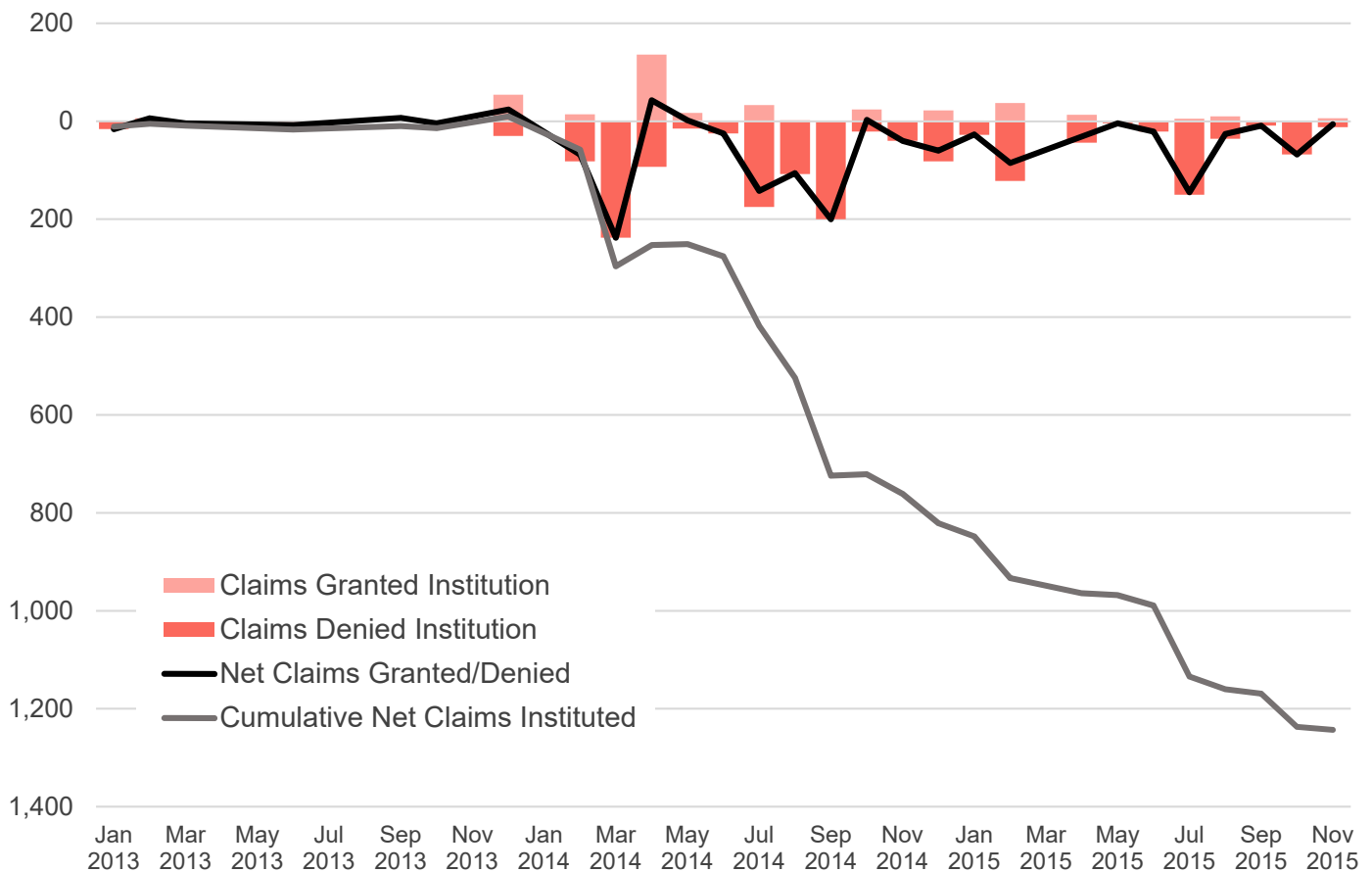
# INSTITUTION OUTCOMES – § 112

## For Claims Challenged on 35 U.S.C. § 112 Grounds

This chart shows the outcomes of institution decisions for individual patent claims challenged in a PTAB petition on 35 U.S.C. § 112 grounds. Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

**Net Grants/Denials.** The Net Grants/Denials line shows the net number of claims for which institution was granted minus the number of claims denied. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that month. When the Net Grants/Denials line appears below the midline, it means more claims were denied institution than granted that month.

**Cumulative Net Claims Granted/Denied.** The Cumulative Net Claims Granted/Denied line shows the cumulative number of Net Grants/Denials. When the line rises, it indicates a trend toward granting institution; when the line falls, it indicates a trend toward denying institution. When the line is flat, it indicates the same number of claims are granted and denied institution of review.

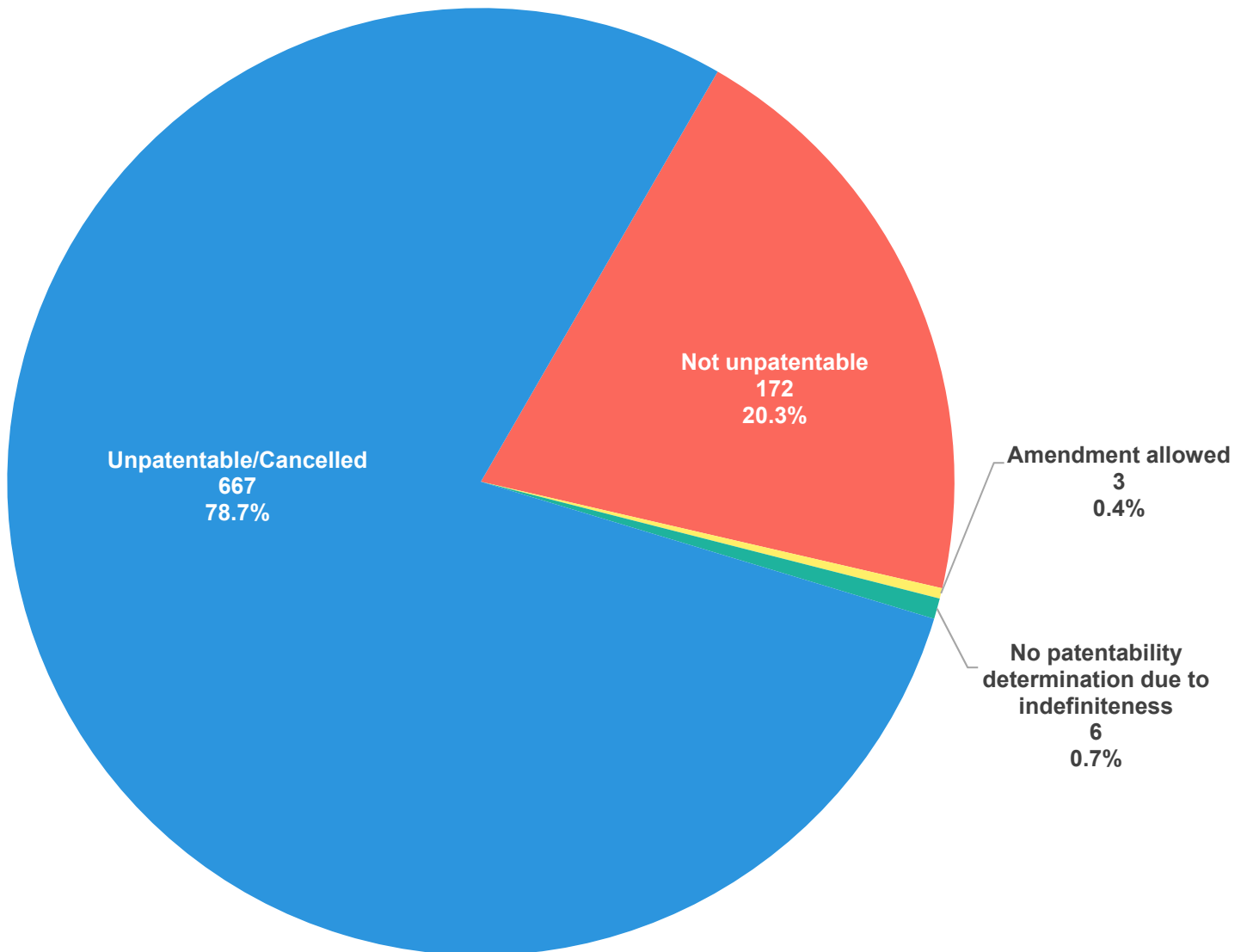


**19.1%** SUCCESS RATE OF CLAIMS CHALLENGED UNDER 35 U.S.C. § 112 SINCE THE AIA WAS ENACTED

# PTAB PATENT DETERMINATIONS

2012-2015

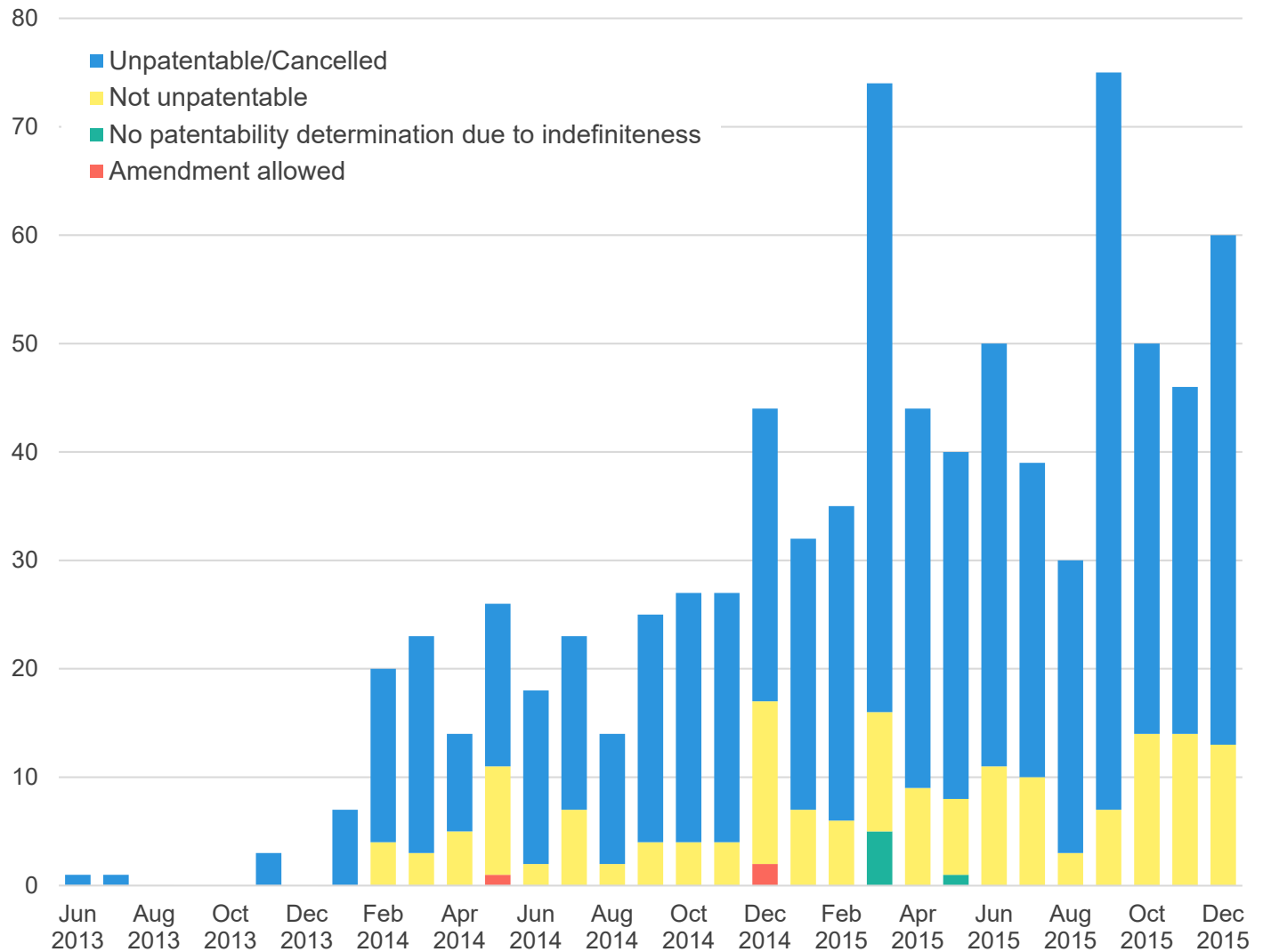
This chart shows the number of patent determinations in Final Written Decisions over the past three years by the PTAB in IPR, CBM and PGR proceedings.



# PTAB PATENT DETERMINATIONS

## 2012-2015 by Month

This chart shows the number of patent determinations by month over the past three years by the PTAB in IPR, CBM, and PGR proceedings. Each color represents a different type of determination.



You can view all patent determinations in IPR, CBM, and PGR proceedings with a [DETERMINATIONS SEARCH](#).

## TOP PTAB PETITIONERS

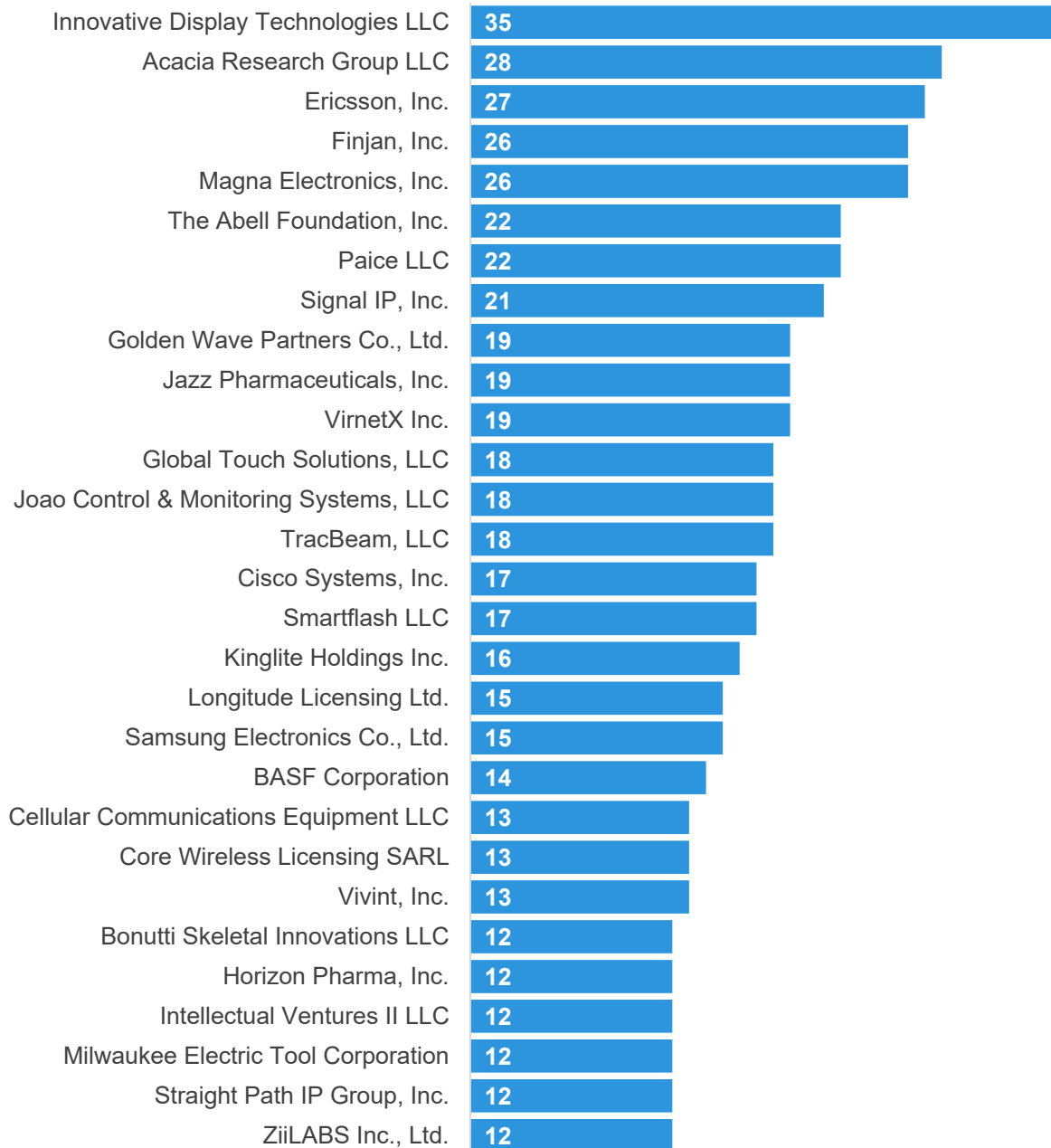
The following is a list of petitioners that filed petitions for IPR, CBM or PGR Review in 2015. For the purpose of this chart, affiliates have been removed. (For example, Lupin Pharmaceuticals, Inc. is on the list, but Lupin, Inc. is not.) This helps make the list a more accurate representation of PTAB proceedings, where there may be many parties-in-interest appearing on the same cases.



You can set up an alert on all new PTAB IPRs, CBMs, or PGRs by clicking “Create Alert” at the bottom of a [CASES SEARCH RESULTS PAGE](#), filtered by PTAB as the court/agency.

# TOP PATENT OWNERS IN PTAB PROCEEDINGS

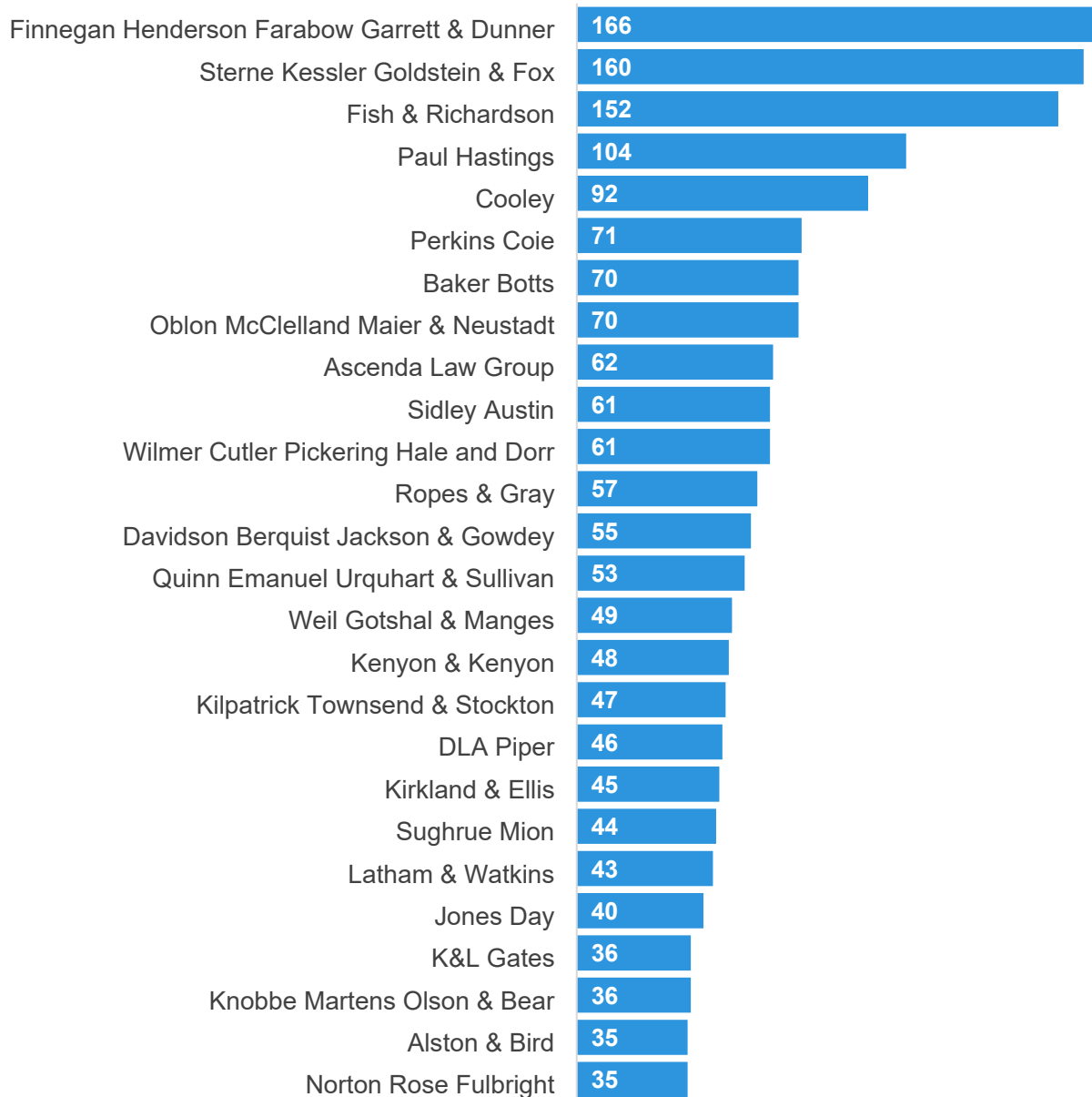
The following is a list of patent owners that had their patents challenged in petitions for IPR, CBM or PGR Review in 2015. For the purpose of this chart, affiliates have been removed. (For example, Intellectual Ventures II LLC is on the chart, and Intellectual Ventures I LLC is not.) This helps make the list a more accurate representation of PTAB proceedings, where there may be many parties-in-interest appearing on the same cases.



You can set up an alert on all new PTAB IPRs, CBMs, or PGRs by clicking “Create Alert” at the bottom of a [CASES SEARCH RESULTS PAGE](#), filtered by PTAB as the court/agency.

## TOP FIRMS IN THE PTAB

The following is a list of the top law firms and corporate legal departments measured by the number of IPR, CBM and PGR proceedings in 2015 in which the organization represented one of the litigants.



You can view a [LIST OF PTAB PROCEEDINGS](#) with specific law firms representing the parties using a Cases search, filtered by a law firm name.

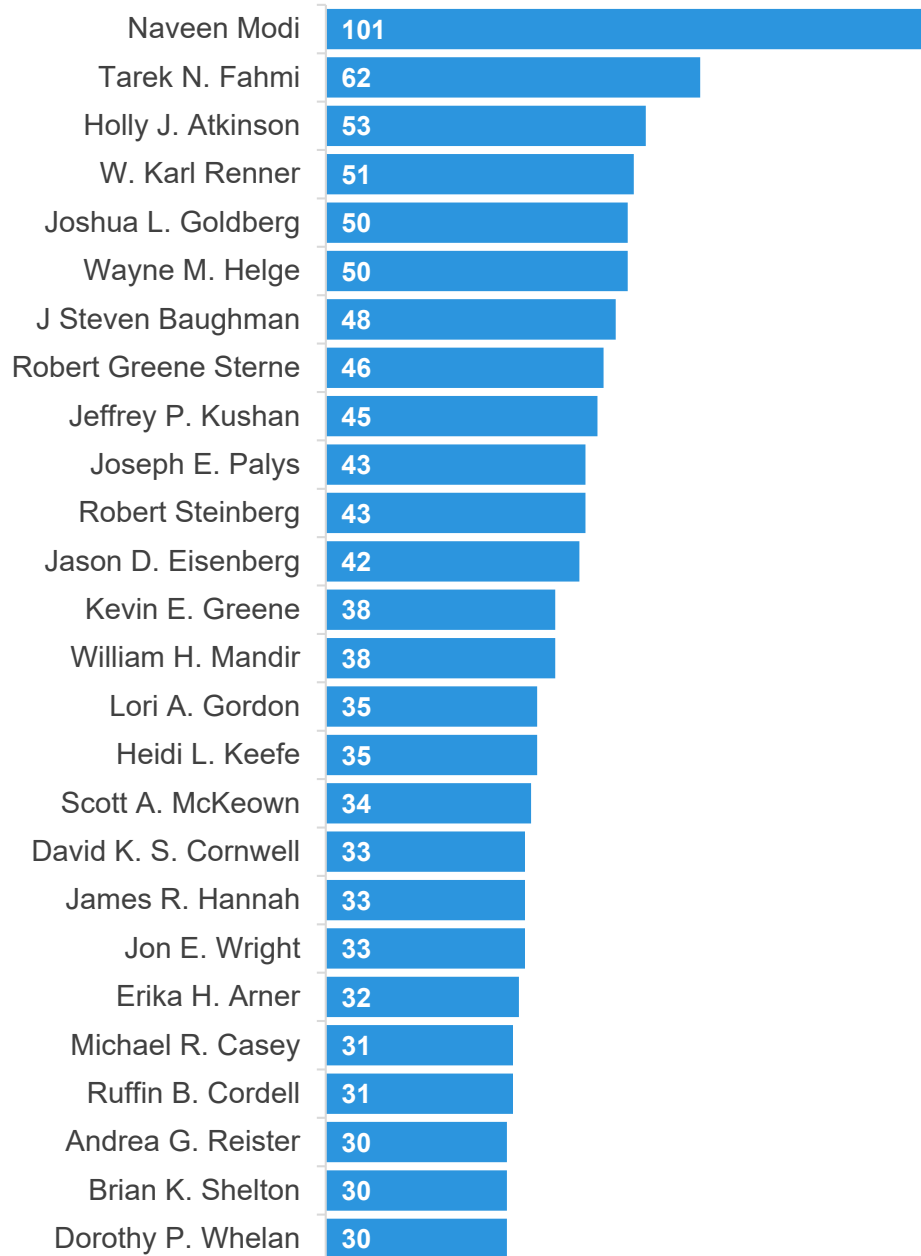
# TOP FIRMS IN THE PTAB

## Continued

Haynes & Boone	34	UNH School of Law	19
Kramer Levin Naftalis & Frankel	33	AZA Law Firm	18
Covington & Burling	32	Joao Control & Monitoring Systems	18
Mayer Brown	31	Law Offices of Gregory J. Gonsalves	18
Morrison & Foerster	30	Morgan Lewis & Bockius	18
Goodwin Procter	29	O'Melveny & Myers	18
Pepper Hamilton	29	Buchanan Ingersoll & Rooney	17
Mintz Levin Cohn Ferris Glovsky & Popeo	28	Irell & Manella	17
Proskauer Rose	27	Nelson Bumgardner	17
Gardner Linn Burkhardt & Flory	26	Quarles & Brady	17
Bragalone Conroy	25	Williams & Connolly	17
Lathrop & Gage	25	DiNovo Price Ellwanger & Hardy	16
Brooks Kushman	24	Harness Dickey & Pierce	16
Finjan Inc.	24	Pillsbury Winthrop Shaw Pittman	16
Venable	24	Martin & Ferraro	15
Duane Morris	23	Neifeld IP Law	15
Lerner David Littenberg Krumholz & Mentlik	23	Robins Kaplan	15
Intellectual Ventures	23	Akin Gump Strauss Hauer & Feld	14
Sheppard Mullin Richter & Hampton	23	Banner & Witcoff	14
Wilson Sonsini Goodrich & Rosati	23	Blank Rome	14
Orrick Herrington & Sutcliffe	22	Crowell & Moring	14
Bryan Cave	21	Fenwick & West	14
Dentons	21	McKool Smith	14
Foley & Lardner	21	Unified Patents, Inc.	14
McAndrews Held & Malloy	21	Arnold & Porter	13
SoCal IP Law Group	21	Baker & McKenzie	13
Heninger Garrison Davis	20	Cravath Swaine & Moore	13
Stadheim & Gear	20	Dorsey & Whitney	13
Wolf Greenfield & Sacks	20	Erise IP	13
Baker & Hostetler	19	Lee & Hayes	13
Desmarais	19	Skiermont Derby	13
Dovel & Luner	19	Renaissance IP Law Group	13
Fitzpatrick Cella Harper & Scinto	19	Faegre Baker & Daniels	12
Greenberg Traurig	19	Locke Lord	12
Hill Kertscher & Wharton	19	Law Offices of Marc R. Labgold, PC	12
McDermott Will & Emery	19	Panitch Schwarze Belisario & Nadel	12
Novak Druce Connolly Bove + Quigg	19	Steptoe & Johnson	12

## TOP ATTORNEYS IN THE PTAB

The following is a list of the top attorneys measured by the number of IPR, CBM or PGR proceedings in 2015 in which the attorney represented one of the litigants.



You can view a [LIST OF PTAB PROCEEDINGS WITH A SPECIFIC ATTORNEY REPRESENTING THE PARTIES](#) using a Cases search, filtered by an attorney name.



# TOP ATTORNEYS IN THE PTAB

## Continued

Bing Ai	29	George C. Summerfield	20
Timothy W. Riffe	29	Darren M. Jiron	20
Jason E. Stach	28	Michelle K. Holoubek	20
David L. Cavanaugh	27	John V. Biernacki	19
Brian J. Livedalen	26	Christopher Frerking	19
W. Todd Baker	26	Brian E. Ferguson	19
Jonathan R. K. Stroud	26	James M. Heintz	19
Timothy A. Flory	26	Vivek A. Ganti	19
Terence J. Linn	26	Brent K. Yamashita	19
Terry A. Saad	25	Lionel M. Lavenue	19
Michael Kim	24	Orion Armon	19
T. William Kennedy	24	P. Andrew Riley	19
F. Dominic Cerrito	24	Kevin K. McNish	19
Jeffrey R. Bragalone	24	Evangeline Shih	18
Jeffrey H. Price	24	Joseph J. Richetti	18
Jay I. Alexander	24	Kevin R. Greenleaf	18
Nicholas C. Kliewer	24	Walter D. Davis, Jr.	18
Justin B. Kimble	24	James T. Wilson	18
Lisa M. Mandrusiak	24	Andrew G. Heinz	18
Eugene Goryunov	23	Dion M. Bregman	18
Alex Kuo	23	Brent R. Babcock	18
Tim R. Seeley	23	Lissi Mojica	18
Brian W. Oaks	23	Chad C. Walters	18
Allan J. Sternstein	22	Raymond A. Joao	18
Megan Freeland Raymond	22	Gregory J. Gonsalves	18
Andrew W. Schultz	22	Mitchell G. Stockwell	18
Andrew C. Mace	22	Sean Luner	18
Frank C. Calvosa	22	Edward H. Sikorski	18
Christopher T. L. Douglas	22	Michael J. Lennon	17
Timothy K. Sendek	22	Martin R. Bader	17
Linda L. Kordziel	22	Stephen S. Korniczky	17
Rene A. Vazquez	22	Steven M. Bauer	17
Joseph A Micallef	21	Don Daybell	17
A. Justin Poplin	21	Eliot D. Williams	17
Steven C. Sereboff	21	David A. Randall	17
James R. Hietala	20	Frank A. Angileri	17
Fadi N. Kiblawi	20	Nam H. Kim	17

# OUR YEAR IN REVIEW

## WE'VE MADE A FEW IMPROVEMENTS!

Each year, the patent landscape shifts and grows more complex. And each year we work to improve Docket Navigator to help you better navigate that changing environment. Here is a short list of enhancements we've completed or are nearing completion.

### NEW ANALYTICS TOOLS

#### CASES BY YEAR

Displays the number of patent cases per year in the U.S. district courts, the PTAB, and the ITC. The chart may be filtered by court, judge, company, law firm, or many other filters. Like all of our analytics tools, you can now create great looking PDF charts for clients and colleagues with the click of a button.

See a sample search here: [Cases by Year](#)

#### MOTION SUCCESS RATES

Do you ever need to know a judge's track record for granting a particular type of motion? Or how a change in the patent laws or a Supreme Court decision is being interpreted by district courts? The Motion Success Report can provide answers. For example, you can view the [success rates](#) of motions for summary judgment of noninfringement in the Northern District of California or the [trend](#) for motions to dismiss on the basis of 35 USC § 101 and how decisions like *Alice Corp. v. CLS Bank International* have impacted that trend. Like all of our analytics tools, you can now create great looking PDF charts for clients and colleagues with the click of a button.

#### LAW FIRM PROFILES

Many of our customers have asked how to view a [law firm's experience](#) in patent litigation. Our new law firm profiles show the cases a law firm has been involved with, the firm's clients, remedies for and against those clients, patent determinations for patents that their clients asserted, as well as patents they defended their clients against.

#### TIME TO MILESTONES REPORT NOW LINKS TO UNDERLYING DATA

The Time to Milestones Report is a powerful tool that lets you answer timing questions like "Will I get to a jury trial quicker in the [Eastern District of Texas](#) or the [District of Delaware](#)?" (hint: EDTX is faster by about 8 months). Now when you click on one of the "milestones" in our [Time to Milestones](#) reports, you can see all the court documents used to calculate the reported times.

#### PATENT STATISTICS PAGE

You can view a variety of patent litigation statistics 24/7 at <https://www.docketnavigator.com/stats>.

MORE THAN  
**500,000**

SEARCHES PERFORMED  
EVERY MONTH

MORE THAN  
**64,000**

ACTIVE ALERTS

MORE THAN  
**10,000,000**

DOCKET REPORTS  
DELIVERED

MORE THAN  
**13,000**

SUBSCRIBERS

## NEW SEARCHES

### DETERMINATIONS

The Docket Navigator search page now supports a new search type called [Determinations](#). This search returns a list of determinations for each patent, linked to the document that contained the court's ruling. A determination is a judicial or administrative decision about the infringement, validity, or enforceability of a patent.

### PTAB INSTITUTION DECISIONS

The Docket Navigator search page now supports a new search type called [PTAB Institutions](#). With this new search, you can now create a list of every ground that was granted or denied in an institution decision complete with the challenged claim numbers. This is a great tool for answering questions like "How many times has the PTAB granted or denied a request for review based on the ground of Indefiniteness?"

## CUSTOMIZED CASE ALERTS NOW SENT MULTIPLE TIMES PER DAY

Our New Case Alerts, which report all new cases, are generated continuously throughout the day (and evenings, weekends, and holidays). Several subscribers asked for the ability to focus these alerts to cases involving particular parties. We support that functionality with customized Docket Alerts, but until recently, Docket Alerts were generated only once per day. We enhanced our system for generating customized Docket Alerts to address this need. Now, if you create a Docket Alert on Cases using a party name as a filter, you'll be notified throughout the day if that party shows up on a case.

You can learn more about alerts, including the difference between New Case Alerts and customized Docket Alerts, in our new Learning Center [here](#).

## NEW LEARNING CENTER

We now have a great page full of helpful tips and tricks on how to use Docket Navigator. You can access the Learning Center anytime by clicking HELP at the top of our webpages. The new [Learning Center](#) includes:

- A helpful list of FAQ's, in most instances complete with live links to the search results for a variety of questions.
- Tips on how to manage your alerts, including how to edit your list of recipients.
- Some [great new videos](#) that explain Time to Milestones and Motion Success Analytics charts and how to create or edit them.
- Our complete Scope of Data.

# ABOUT OUR METHODOLOGY

## OUR PROCESS

Patent litigation statistics are available from numerous sources. But are they reliable? That depends in large part on the quality of the underlying data.

- How was the data collected?
- How is it structured?
- Who reviewed the data, and on what basis were codes and classifications assigned?
- Is the process transparent and is the underlying data available for independent analysis?

We collect raw data from government sources, primarily PACER, USPTO databases, and EDIS. Our U.S.-based editors clean, normalize, and correct the data by hand. The refined data is reviewed by experienced U.S. patent litigators or patent agents who code, classify, and summarize the data, again by hand. We rarely rely on automated processes and do so only where interpretation of the data is not required and the automated processes consistently yield highly accurate results. Even then, the data is reviewed for accuracy. Additionally, our software engineers have developed a series of checks and safety nets to identify gaps or inconsistencies in our data. Most of the data used to create this report was first published in the Docket Report and vetted by the 13,000+ patent professionals who subscribe to Docket Navigator. The underlying data is available to Docket Navigator subscribers for independent review and analysis via our publicly available database.

For a complete description visit our [scope of data](#) page.

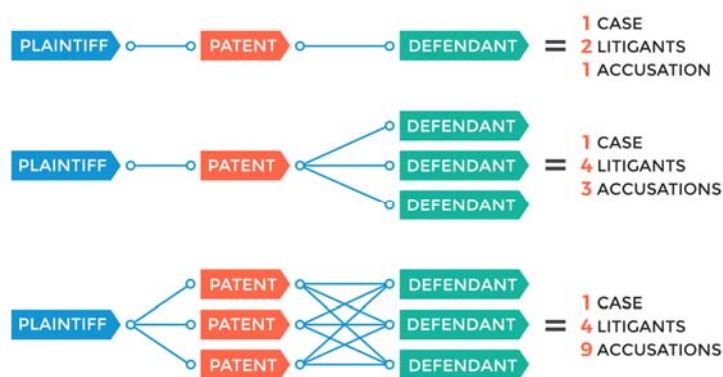
ACQUIRE FROM GOVERNMENT SOURCES	STRUCTURE	CLEAN & CORRECT	DERIVE ADDITIONAL DATA	DELIVER
<p>Public sources usually contain limited search capability.</p> <p>No “export” feature means most data must be scraped from web pages.</p> <p>Public sources often update their systems, requiring updates to the processes used to extract the public data.</p>	<p>Once acquired, the data is stored in a database that models the complexities of modern litigation.</p> <p>For example, a transferred or consolidated case may span more than one PACER docket sheet. If the database architecture does not accurately model these case relationships, events may be associated with the wrong case and cases may be miscounted.</p>	<p><b>Add missing data.</b> Some courts do not list all counsel in the docket sheets. For example, out of state attorneys appearing <i>pro hac vice</i> sometimes must be added to the case data.</p> <p><b>Correct erroneous data.</b> Documents are sometimes filed in the wrong case.</p> <p><b>Normalize spelling variations.</b> Companies, lawyers and law firms may appear in the public record under different names, for example “John Doe” and “John D. Doe, Jr.”</p>	<p>Most of the interesting data is hidden in documents and must be extracted. For example:</p> <ul style="list-style-type: none"> <li>• Type of motion</li> <li>• Motion outcome (grant, deny, etc.)</li> <li>• Claim constructions</li> <li>• Patent determinations (infringed, invalid, etc.)</li> <li>• Remedies (money damages, injunctions, etc.)</li> <li>• PTAB institutions</li> <li>• Patent accusations and outcomes (see below)</li> </ul>	<p>Use only structured, cleaned, corrected, and accurately derived data to power:</p> <ul style="list-style-type: none"> <li>• Current awareness</li> <li>• Business Development</li> <li>• Litigation Tracking</li> <li>• Early Case Analysis</li> <li>• Case Strategy</li> </ul>

## PATENT ACCUSATIONS

A Patent Accusation is a more granular way to measure the volume of litigation activity than counting the number of cases or litigants. As used in this report, the term means a request for relief in a U.S. district court, the ITC or the PTAB (AIA proceedings), the resolution of which could determine if a patent has been infringed or the patent’s validity or enforceability.

For example, a civil case with one plaintiff asserting one patent against one defendant would involve one patent accusation, whereas a case with one plaintiff asserting 5 patents against 10 defendants would result in 50 infringement accusation. Multiple claims involving the same parties and patents (e.g., a claim of infringement and a declaratory judgment counterclaim of invalidity or unenforceability) are counted as a single accusation. In a PTAB proceeding, each challenge to the patentability of a patent would create one patent accusation.

### MEASURING LITIGATION ACTIVITY



## ACCUSATION OUTCOMES (coming soon)

Many types of sporting events have exactly one winner and exactly one loser. But modern litigation is far more nuanced. Judges, juries, and litigants often find middle ground that falls short of complete victory for either side. Cases against multiple defendants will have multiple outcomes. Yet even between a single plaintiff and defendant, multiple patents may be asserted, creating the possibility of multiple outcomes – one for each patent.

Docket Navigator tracks this information at a granular level, recording a separate outcome for every Patent Accusation. (See Patent Accusation, above, for more information.) For example, in a case in which a single plaintiff (Company A) asserts two patents (Patents X & Y) against two defendants (Companies B & C), the following information can be derived from the court record and recorded in the Docket Navigator database:

PATENT ACCUSATIONS			OUTCOMES
Patentee	Asserted Patent	Accused Infringer/Patent Challenger	Result
Company A	Patent X	Company B	Patentee Win
Company A	Patent X	Company C	Accused Infringer Win
Company A	Patent Y	Company B	Patentee Win
Company A	Patent Y	Company C	Patentee Win

Accusation and outcome data is not available from any public source of litigation data. It must be derived, by hand, from court documents. (See “Our Process,” above, for more information.) Through the end of 2015, Docket Navigator has coded accusations for 52,757 cases, creating more than 361,628 new accusation records.

## WHY SHOULD I CARE ABOUT ACCUSATIONS AND OUTCOMES?

The addition of accusations and outcomes data greatly enhances the power of the Docket Navigator database and its ability to provide you with helpful information. For example, the data can be used to:

- **More accurately measure litigation activity.**

Cases come in all sizes. Some are simple, some are complex. Systems that analyze cases as the most granular level gloss over this important distinction. With the addition of *accusation* data, we can now analyze the accusations asserted in those cases and readily distinguish between simple and complex cases. Among other things, this mitigates the artificial increase in new case filings following enactment of the AIA joinder rules. The charts on pages 19 and 23 provide examples of how this data can be used in the context of overall litigation activity. But the data can be used on more focused inquiries as well. For example, we can now measure and report the experience of lawyers, law firms, judges, and companies in terms of accusations instead of cases.

- **More accurate track records.**

One of the most frequent questions we receive from subscribers is the ability to track outcomes by court, judge, law firm, company, patent, etc. Tracking outcomes on a case-by-case basis cannot provide an adequate answer. Consider the example of a defendant who prevails on liability for 9 out of 10 asserted patents, protects its most valuable product or service, but loses on the 1 remaining patent. Should that case be counted as a “win” for plaintiff and plaintiff’s counsel or a “loss” for defendant and defense counsel? Accusation and outcome data allow us to answer that question with a level of precision never before possible. The same is true of questions about the track record of a court or judge, or the litigation history of a patent.

## PATENT DETERMINATIONS

A patent determination occurs when a court or administrative agency issues a decision that determines the infringement, validity, or enforceability of one or more claims of a patent. There may be more than one determination per patent and determinations may be overturned or reversed in later proceedings. For purposes of this report, determinations based on stipulated requests have been excluded.

## RELATED CASES

The concept of a “case” is relatively well understood by those involved in litigation. But cases are often related to other cases in ways that blur the distinction between the two. For example, if a case is transferred to another court, how many cases exist? Is it accurate to say the plaintiff filed *two* cases or that the patent was asserted in *two* cases? No; there is a *single* case that existed in two different courts at two different times. As a result, there are two different case numbers and two dockets. How those two dockets are publicly recorded is determined by local judges and clerks, and varies substantially. For example, when receiving a transferred case, some courts duplicate all the documents that were previously filed in the earlier case, but other courts do not. Similarly, when entering orders in consolidated actions, some courts record a single document that applies to all constituent cases, while other courts enter duplicate documents in each individual case. Correctly associating events (pleadings, motions, orders, etc.) with the correct proceeding is crucial for accurate legal research and analysis. Litigation data services that follow a simplistic approach treat each docket as a separate case and are at the whim of local policies when determining which documents and events should be associated with a particular case. This can lead to both double counting and missing key litigation events.

Docket Navigator takes a different approach. We manually associate documents, and all of the data associated with those documents, with each case in which it forms a part of the proceedings. This association allows us to accurately identify *all* cases in which an instance of a particular action, event or sequence of events occurred. It also allows us to correctly identify unique instances of particular events and disregard any duplicate recording due to local recording policies.

## LITIGATION MILESTONES

A litigation milestone is an event that marks meaningful progress in a patent litigation proceeding such as claim construction, summary judgment, entry of a damage award or injunction, trial, etc. Milestones are determined based on Docket Navigator's classification of pleadings, orders, and other litigation documents.

## TRIAL EVENTS

A trial event is an event in a patent litigation proceeding that indicates a trial occurred in a district court proceeding. Jury trials are indicated by a verdict and bench trials are indicated by the filing of a FRCP 52 Findings of Fact and Conclusions of Law.

## EARLY STAGE AND MATURE STAGE

The chart on page 29 compares decision outcomes for patent validity challenges under 35 U.S.C. § 101 in early stages of litigation with outcomes in mature stages. For purposes of that chart, "early stage" means a § 101 challenge that was asserted in a motion to dismiss for failure to state a claim under FRCP 12(b)(6). "Mature stage" means a § 101 challenge that was addressed in any other type of court document, including, for example, motions for summary judgment, motions for judgment as a matter of law, motions for judgment on the pleadings, findings of fact and conclusions of law, motions for leave to file any of the above, motions for judgment on partial findings, and the like.

## CHALLENGED CLAIM – PTAB INSTITUTIONS

As used in the charts on pages 35 – 41, a challenged claim means a patent claim that is challenged in a PTAB proceeding as being unpatentable based on a specified statutory ground (e.g., 35 U.S.C. § 102). All arguments and evidence supporting the ground are considered together. For example, if a petitioner argues that Claim 1 is unpatentable under 35 U.S.C. § 102 in light of two different prior art references, both arguments will be considered a single challenge. Thus, if the PTAB accepts either argument or both, the claim will be regarded as instituted on 35 U.S.C. § 102 grounds. If both arguments are rejected, the claim will be regarded as denied institution on 35 U.S.C. § 102 grounds.

# THE FINE PRINT

Download or use of this report is subject to our [TERMS OF USE](#).

You are free to share this report with others. You may also utilize the data or charts in your own publications, but in all cases you must clearly attribute the source by including the following citation: "Source: Docket Navigator". You are prohibited from storing, publishing, selling, licensing or otherwise making available the information as part of any database or service.

Every effort is made to ensure that all information published is correct. However, we disclaim any liability for errors or omissions. All of the information contained in this report is provided "as is", "with all faults" and "as available." We make no express or implied warranties or guarantees about this report or any of its content.

TO THE EXTENT PERMITTED BY LAW, WE DISCLAIM IMPLIED WARRANTIES THAT THE REPORT AND ITS CONTENT ARE MERCHANTABLE, OF SATISFACTORY QUALITY, ACCURATE, FIT FOR A PARTICULAR PURPOSE OR NEED, TIMELY, RELIABLE, OR NONINFRINGEMENT.

No legal advice is intended or offered by Docket Navigator in making any of the content available, and Docket Navigator disclaims any and all liability related to any decision taken by a party in reliance upon the content. See our Terms of Use available at (<http://home.docketnavigator.com/terms-of-use/>) for a full description of the conditions on which this information is provided.

## CONTACT INFORMATION

If this report is your first introduction to Docket Navigator, we invite you to subscribe to our service. Docket Navigator is unlike any other legal research database. The daily curation, categorization, and annotation of every significant event in every patent case in the United States is the cornerstone of our product.

Docket Navigator is an essential tool for 100+ federal judges and clerks, 300+ PTAB judges and paralegals, 500+ in-house attorneys and researchers, and more than 12,000 outside attorneys, including 88 of the top 100 law firms. Contact us today to see why.

1-866-352-2749  
[contact@docketnavigator.com](mailto:contact@docketnavigator.com)