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# Patent Values and Litigation: The New Normal?

February 18, 2015

Licensing Executives Society: Palo Alto

## Panelists:

- Marta Beckwith, Aruba Networks
- Bruce Beron, Litigation Risk Management Institute
- Neel Chatterjee, Orrick
- Claudia Frost, DLA Piper
- Lynne Weber, Duff & Phelps

Moderator: Chris Bakewell, Duff & Phelps

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# Patent Buy/Sell Trends



## Average selling prices: down

» *2013: \$467,000 per patent*

» *2014: \$360,000 per patent*



## Liquidity: down

» *Prior years: 50% brokered packages listed and sold*

» *2014: under 25% brokered packages listed and sold*

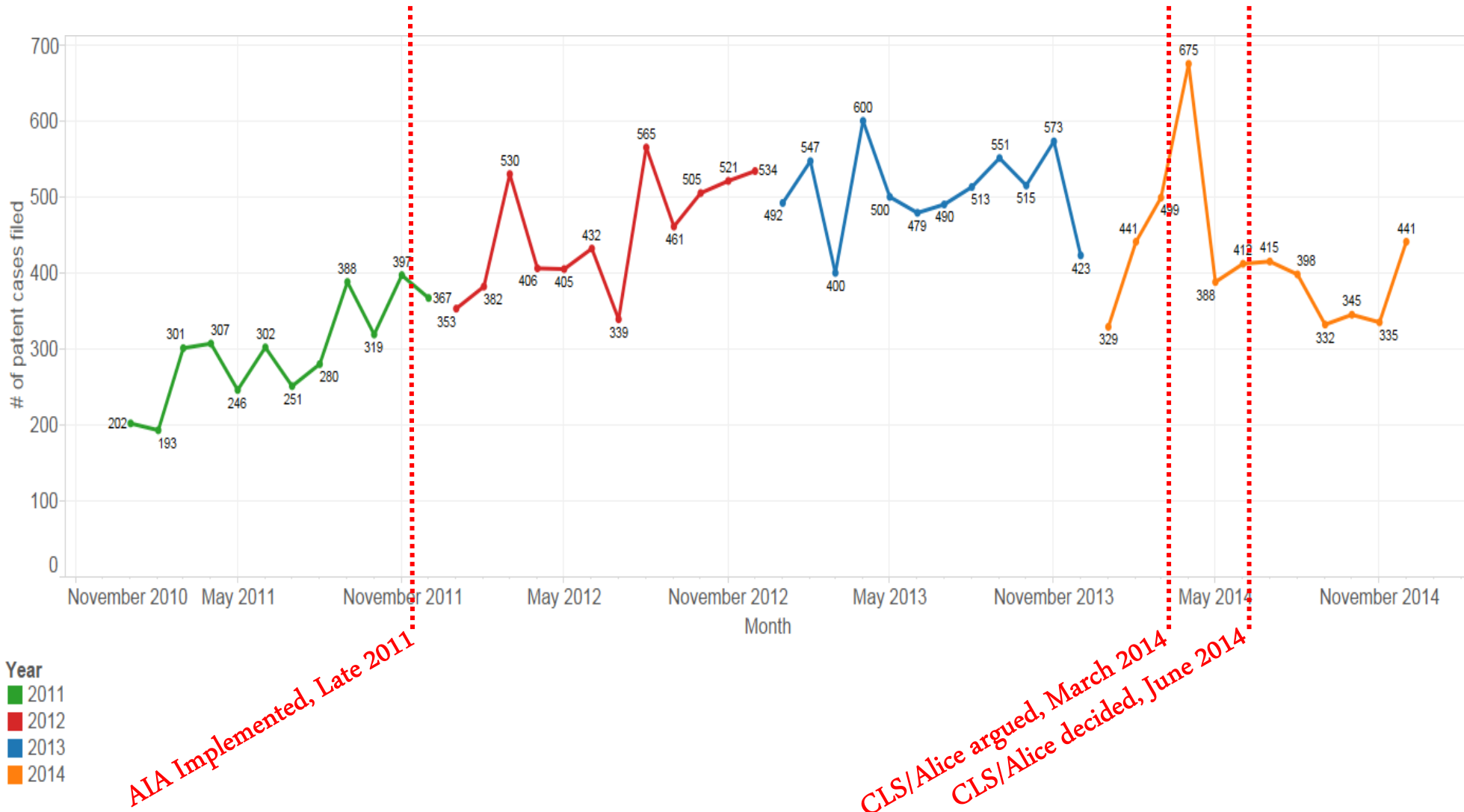
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## The New Normal?

*“I think the need for legislative reform is a lot less right now than it was a year ago and it probably makes sense to wait a bit and see how these cases play out and what the new dynamic looks like before we try to rewrite the rules.”*

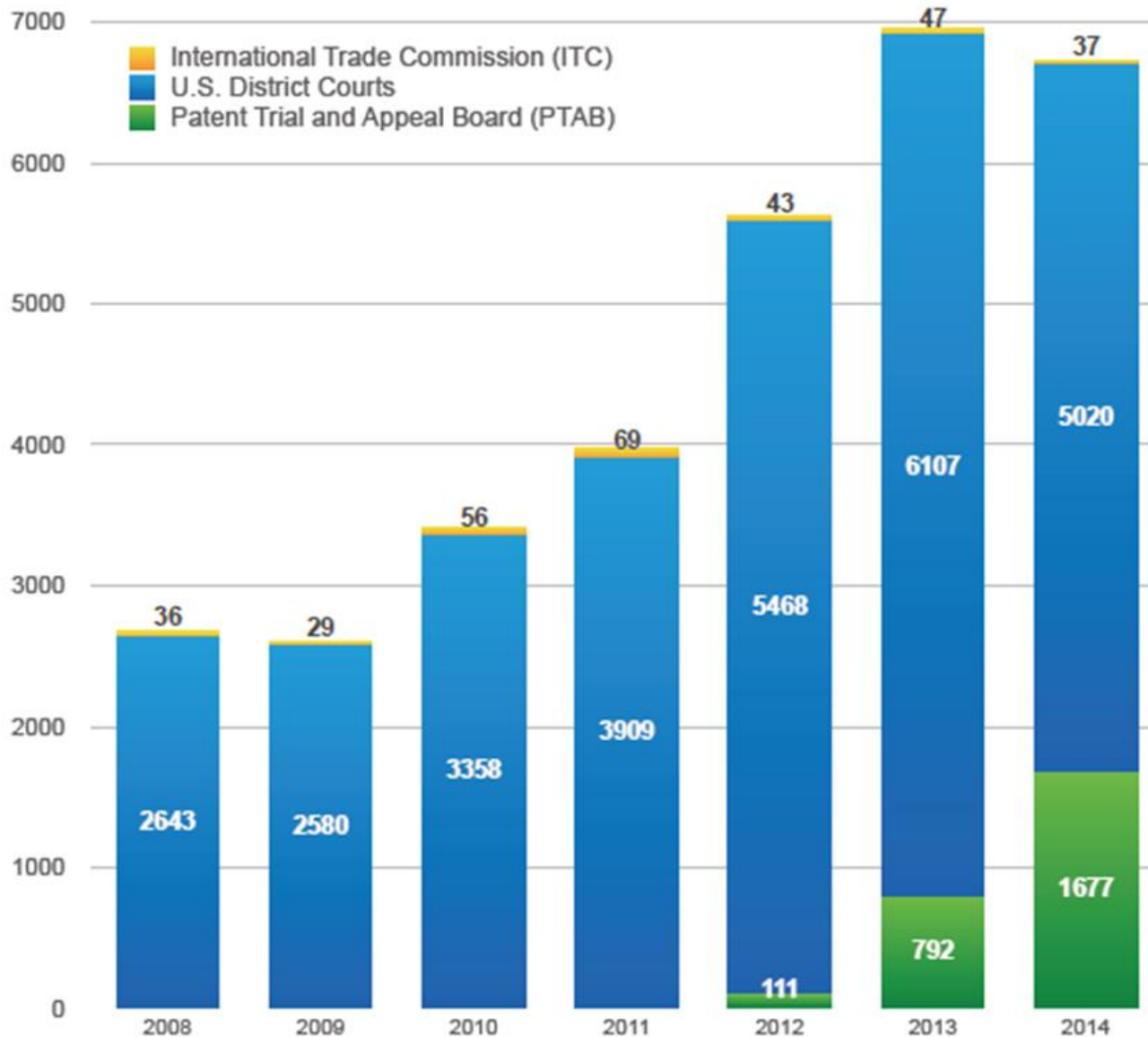
**Mark Lemley**  
**October 14, 2014**

# Patent Lawsuit Filings per Month (2011-2014)



Source: Lex Machina

# New Patent Litigation Proceedings, 2008-2014

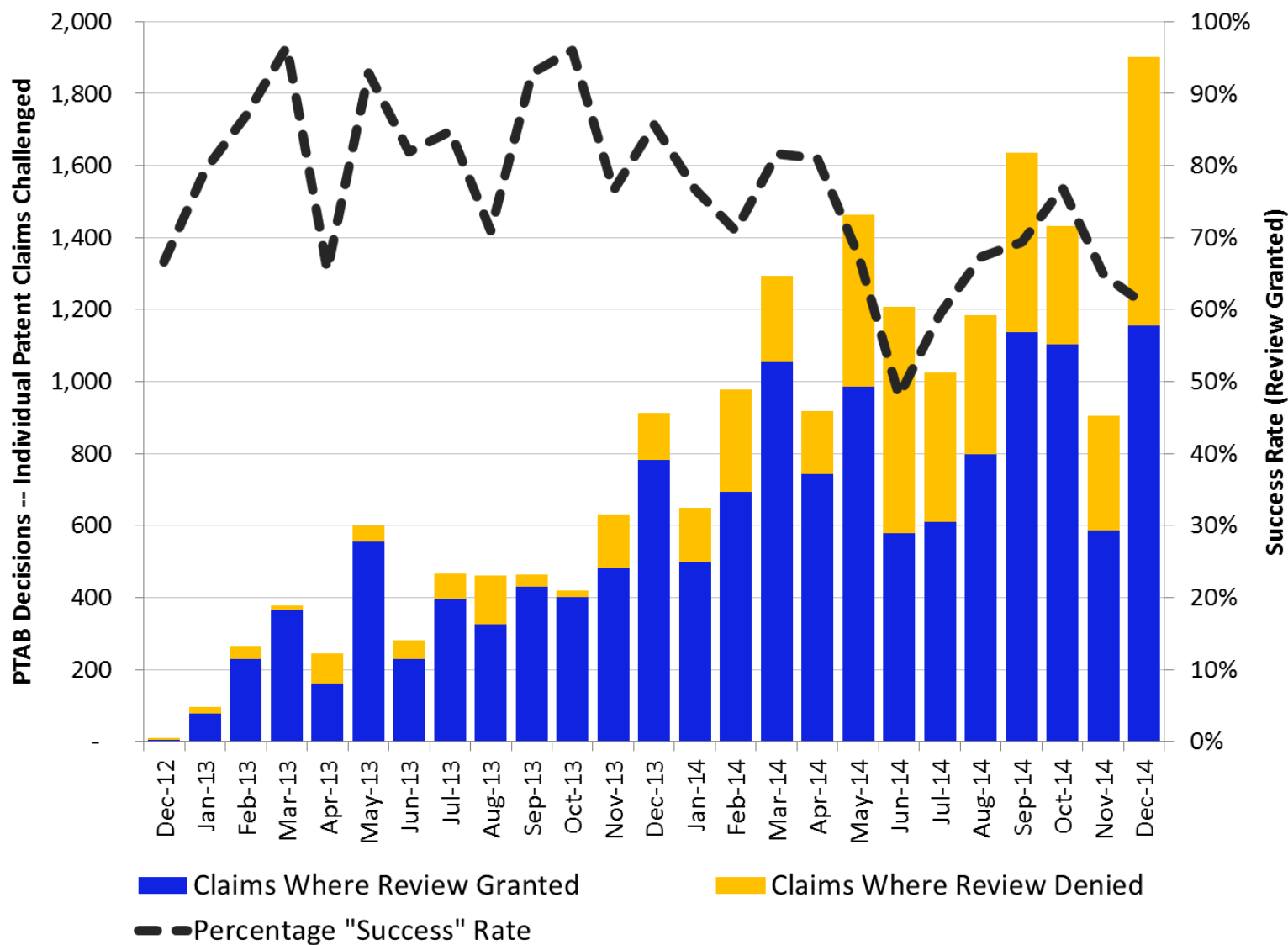


***District Court Cases  
Down 18% in 2014***

***PTAB Proceedings  
Up 212% in 2014***

# PTAB Reviews Granted and Denied

To date, review granted for 73% of all challenged claims



# Key CAFC Royalty Damages Cases

Case	Significance
<i>Cornell</i> (2009)	<ul style="list-style-type: none"><li>• Applied EMVR in a royalty context</li><li>• Smallest saleable unit</li></ul>
<i>Lucent</i> (2009)	<ul style="list-style-type: none"><li>• EMVR</li><li>• Comparable licenses</li></ul>
<i>ResQNet</i> (2010)	<ul style="list-style-type: none"><li>• Comparable licenses and litigation settlements</li></ul>
<i>Uniloc</i> (2011)	<ul style="list-style-type: none"><li>• 25% rule of thumb</li><li>• EMVR</li></ul>
<i>Laser Dynamics</i> (2012)	<ul style="list-style-type: none"><li>• EMVR</li><li>• Comparable licenses and litigation settlements</li></ul>
<i>VirnetX</i> (2014)	<ul style="list-style-type: none"><li>• EMVR</li><li>• Profit splitting (Nash bargaining solution)</li><li>• Emphasis on incremental value</li></ul>
<i>Ericsson</i> (2014)	<ul style="list-style-type: none"><li>• FRAND</li><li>• EMVR and “large number prejudice”</li></ul>
<i>AquaShield</i> (2014)	<ul style="list-style-type: none"><li>• Importance of <i>ex ante</i> valuation approach</li></ul>

# New IEEE FRAND Policy



## IEEE Statement Regarding Updating of its Standards-Related Patent Policy

8 February 2015 - IEEE is the world's largest technical professional organization dedicated to advancing technology for the benefit of humanity.

The IEEE Standards Association ("IEEE-SA") provides a neutral body to foster the development of standards. IEEE-SA has established rules that must be followed in all IEEE standards development activities. Those rules require that standards be developed under procedures that incorporate due process, openness, transparency, broad consensus building, and balance without dominance to ensure that all parties are heard. IEEE strives to develop standards that can achieve universal availability and gain widespread adoption in the market.

Patents play an increasingly important role in standards, and IEEE-SA's rules include provisions relating to the use of patented technology associated with IEEE standards. The policy must balance several concerns, including respect for the rights of patent-holders and assurance that licenses to standards-essential patents are available on reasonable and nondiscriminatory terms to all implementers.

## Key Provisions

- ✓ Defined "reasonable rate"
- ✓ Defined "compliant implementation"
- ✓ Preclusion on seeking injunctive relief
- ✓ Reciprocity provisions



## Department of Justice

FOR IMMEDIATE RELEASE  
MONDAY, FEBRUARY 2, 2015  
[WWW.JUSTICE.GOV](http://WWW.JUSTICE.GOV)

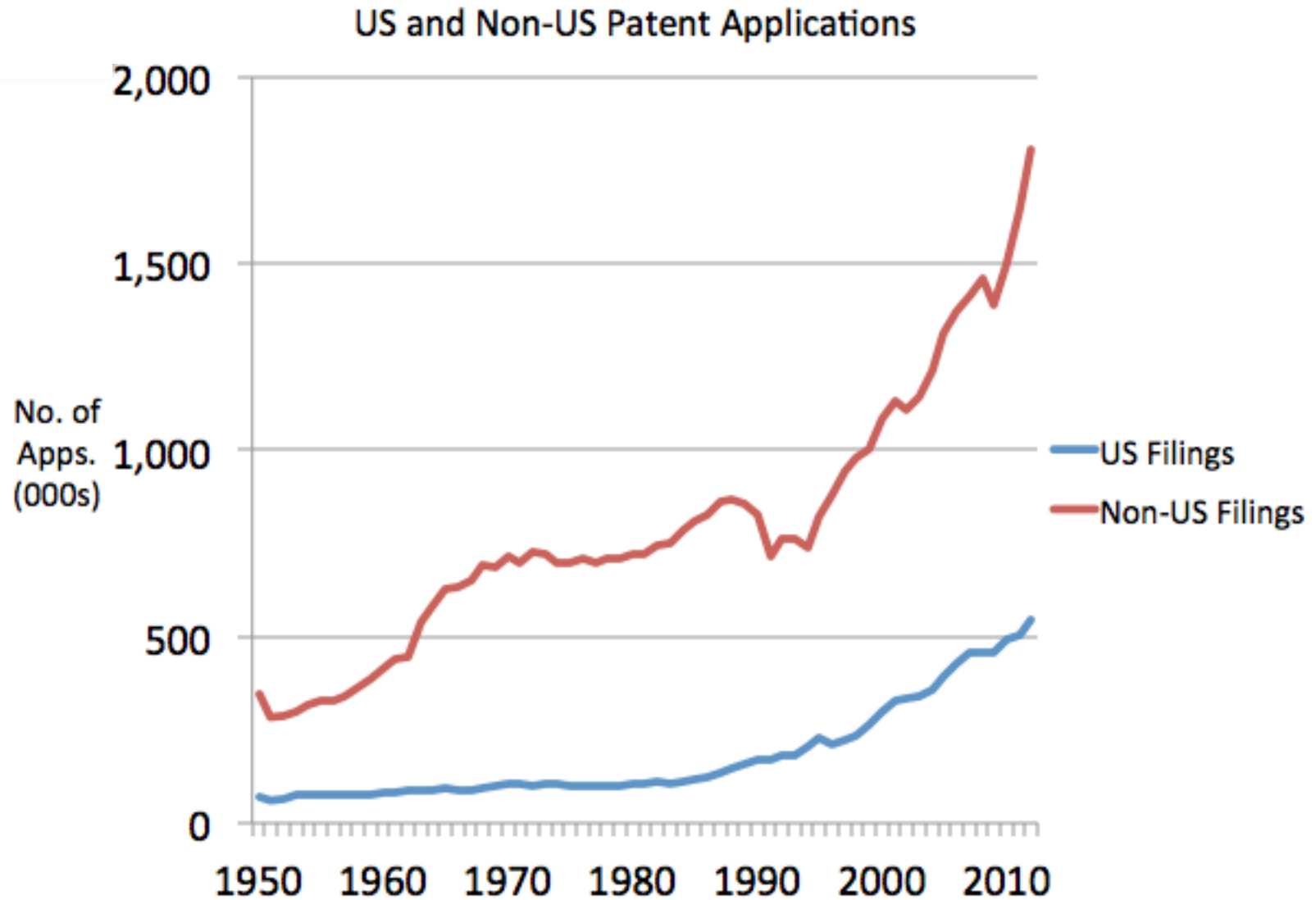
AT  
(202) 514-2007  
TTY (866) 544-5309

### DEPARTMENT OF JUSTICE WILL NOT CHALLENGE STANDARDS-SETTING ORGANIZATION'S PROPOSAL TO UPDATE PATENT POLICY

WASHINGTON — The Department of Justice announced today that it will not challenge a proposal by the Institute of Electrical and Electronics Engineers, Inc. (IEEE) to update the IEEE Standards Association's (IEEE-SA) patent policy. That policy governs the incorporation of patented technology in IEEE standards and explains the terms under which holders of patents essential to IEEE standards commit to make licenses available for use in implementing IEEE standards.



# Promoting Innovation?



# Other Knobs to Turn?



- More patent reform needed?
- Fee shifting
- Deference to District Courts
- Inducement
- Right to jury trial
- Issues at the PTAB
- Injunctive relief
- Developments overseas