

The background of the slide features a black and white photograph of a modern office interior. In the foreground, the silhouettes of several people are visible, some sitting at a long table or desk, looking towards a large window. The window is the primary light source, creating a bright, high-contrast scene. The office has a clean, minimalist aesthetic with vertical lines from the window frames and horizontal lines from the desk.

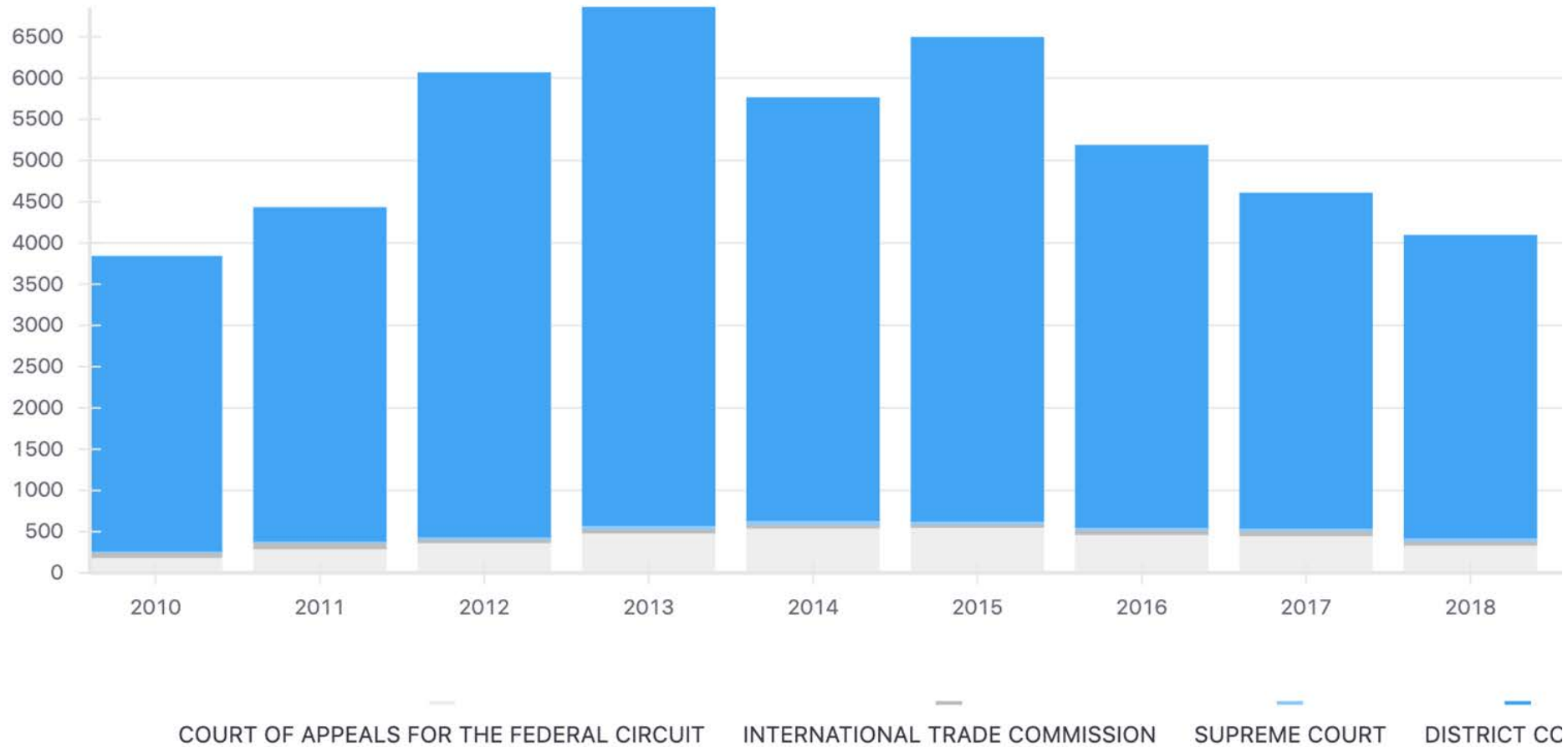
Patent Year in
Review

Unified Patents
Inc.

December 11, 2019

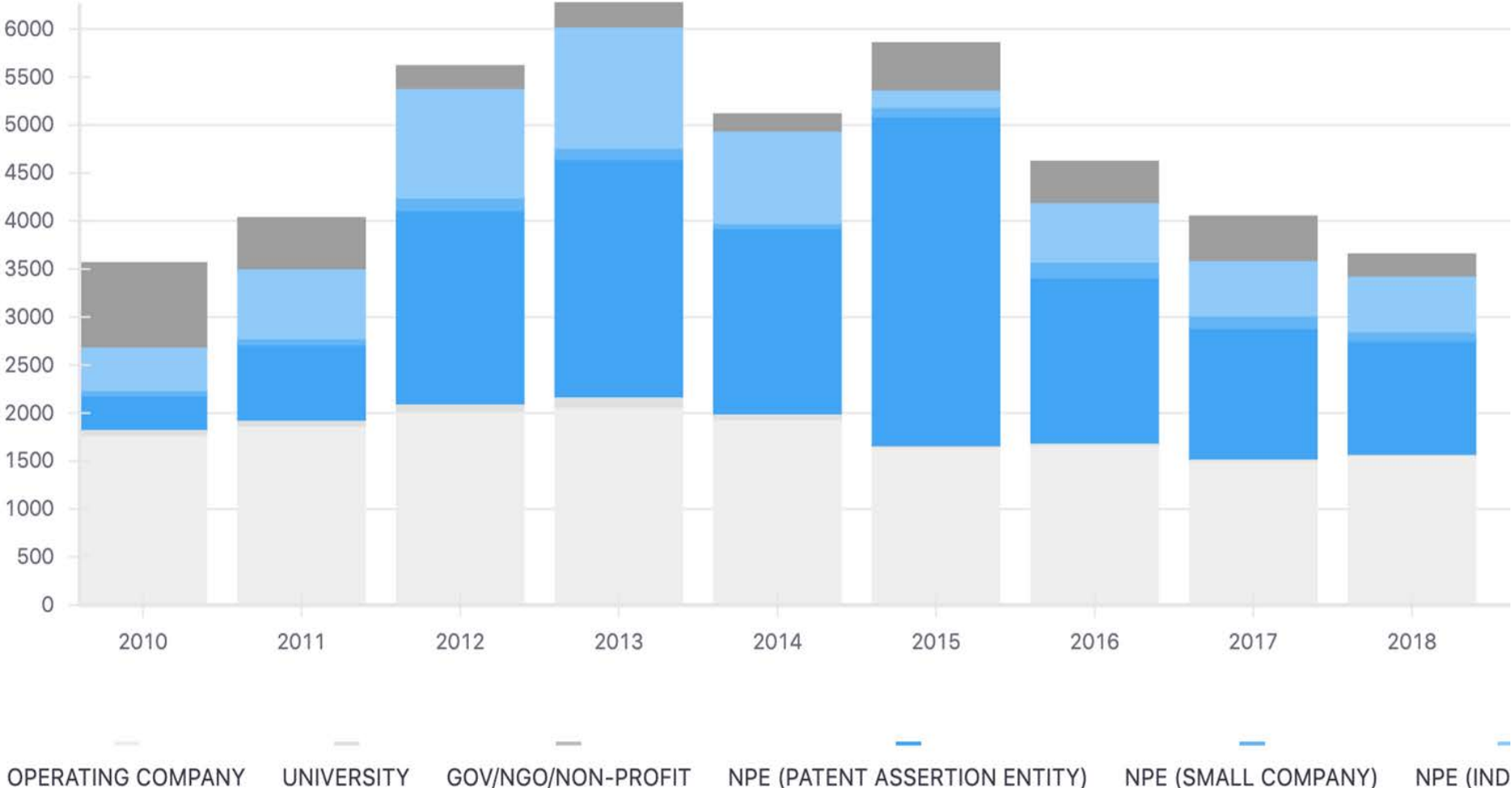


Patent Disputes: Overall litigation



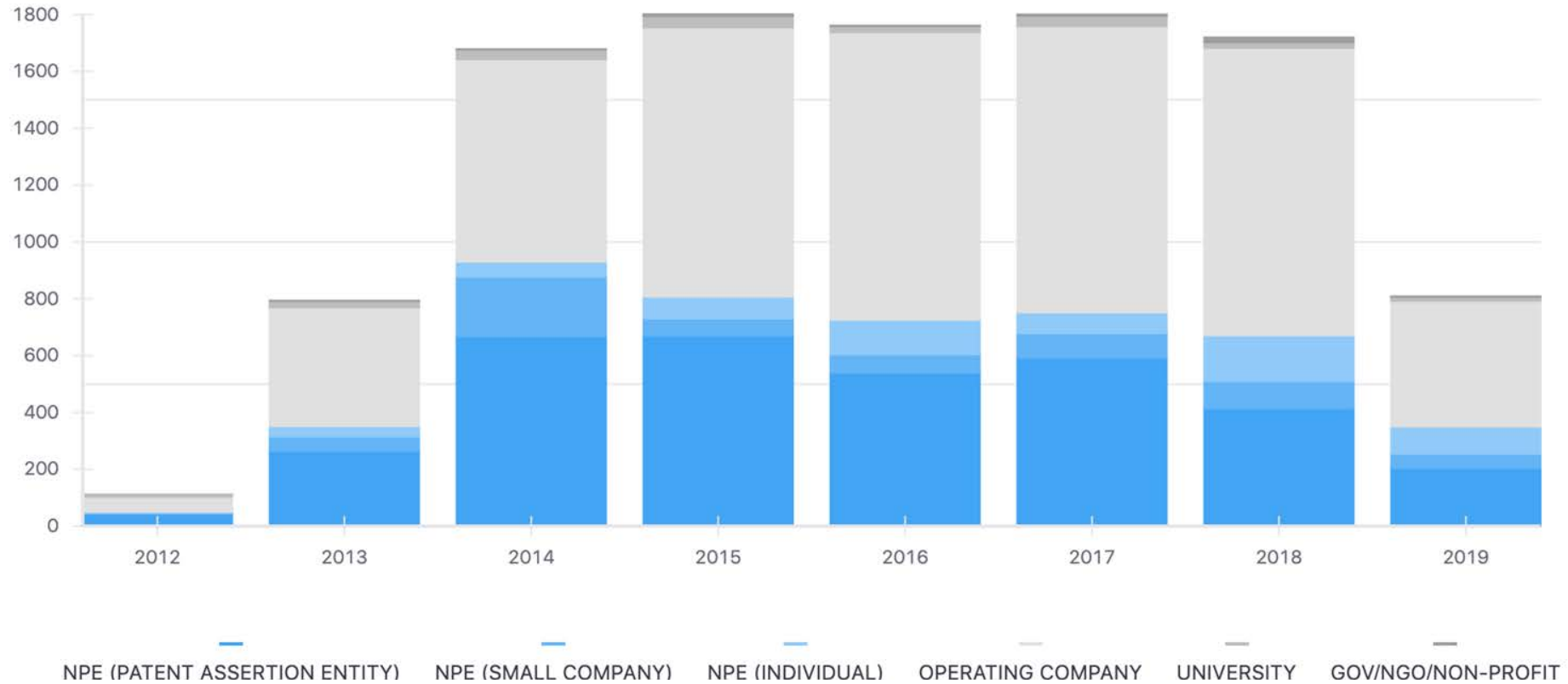
Patent Disputes: District Court (NPE)

NPE v.s. Non-NPE Plaintiffs



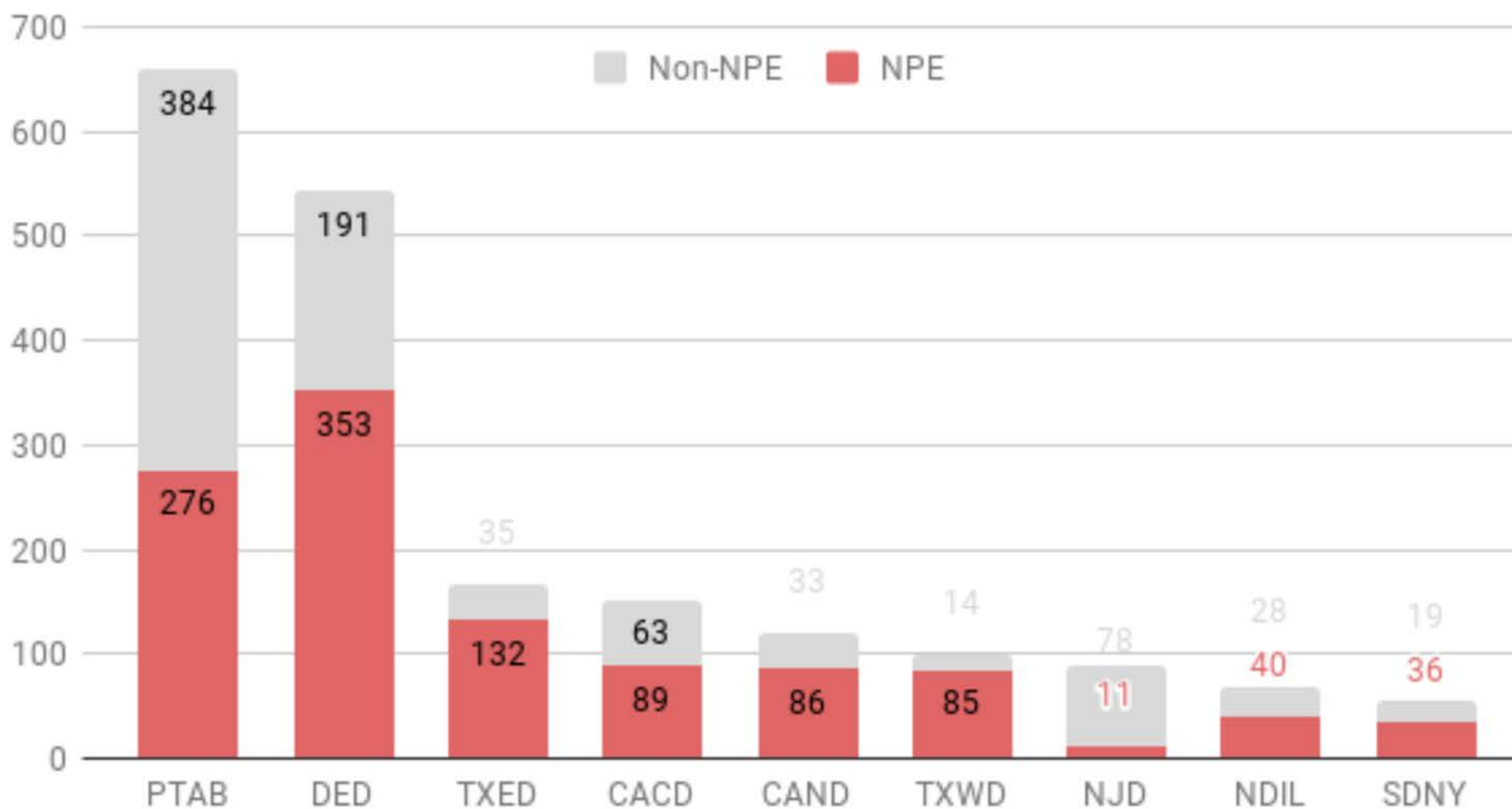
Patent Disputes: PTAB

NPE v.s. Non-NPE Patent Owners



Patent Dispute Venues

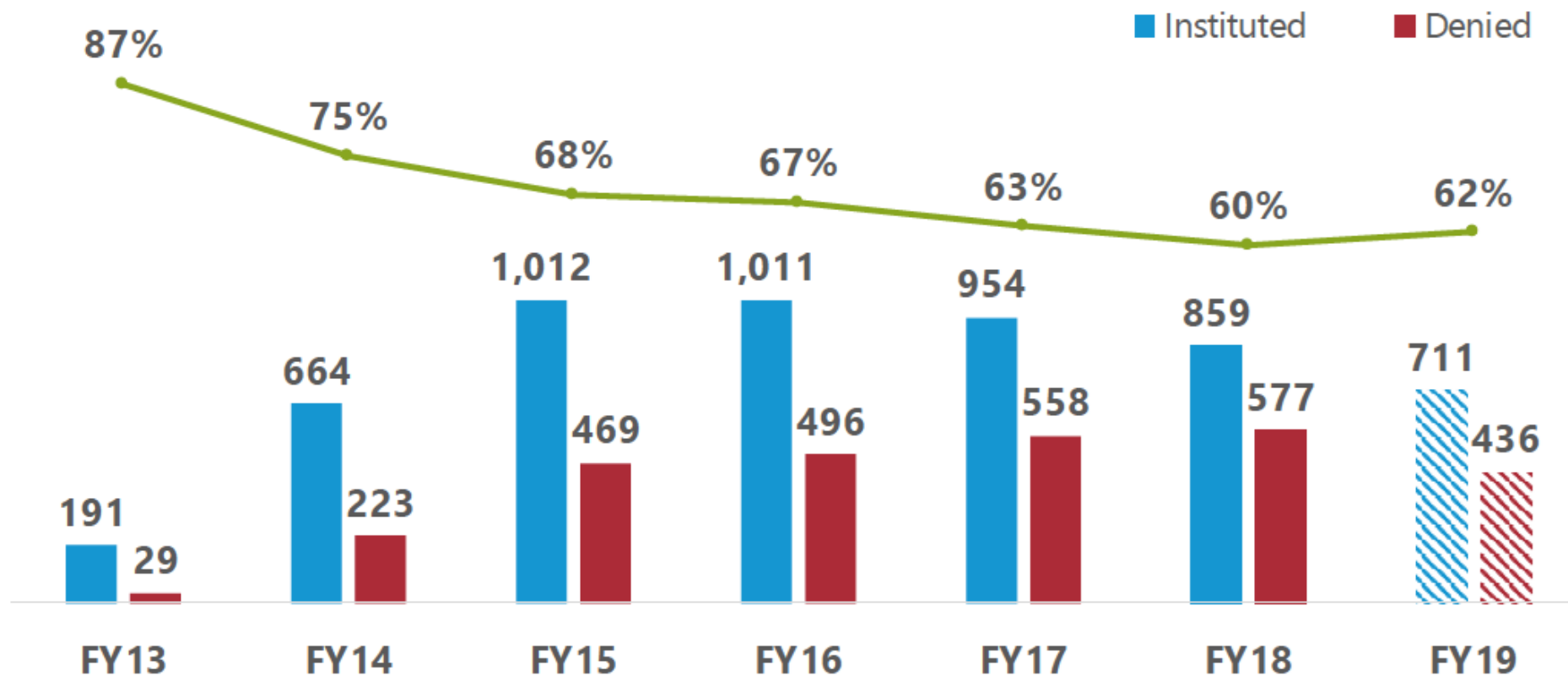
Patent Litigation Venues: 1H 2019



IPR/PGR/CBM institution

Institution Rates

(FY13 to FY19: Oct. 1, 2012 to Jul. 31, 2019)



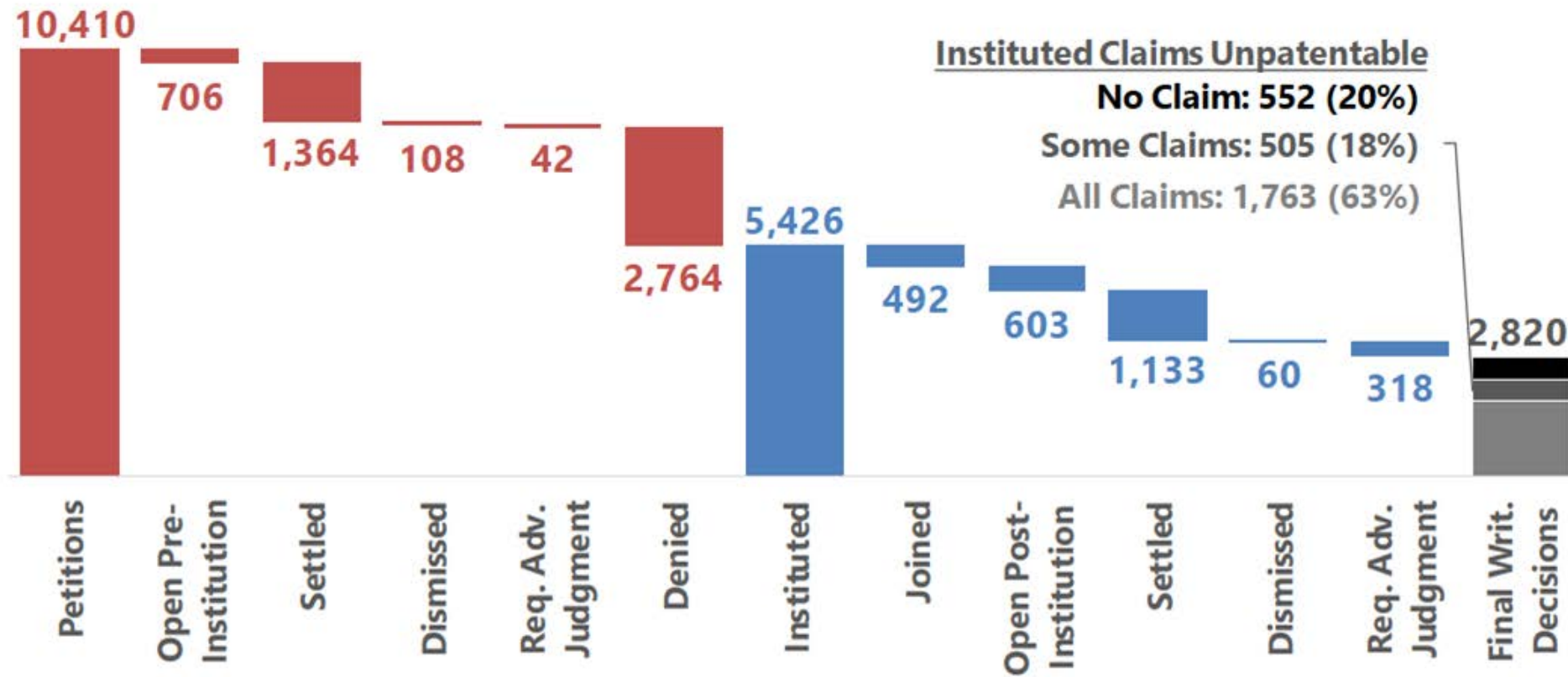
Institution rate for each fiscal year is calculated by dividing petitions instituted by decisions on institution (i.e., petitions instituted plus petitions denied). The outcomes of decisions on institution responsive to requests for rehearing are excluded.



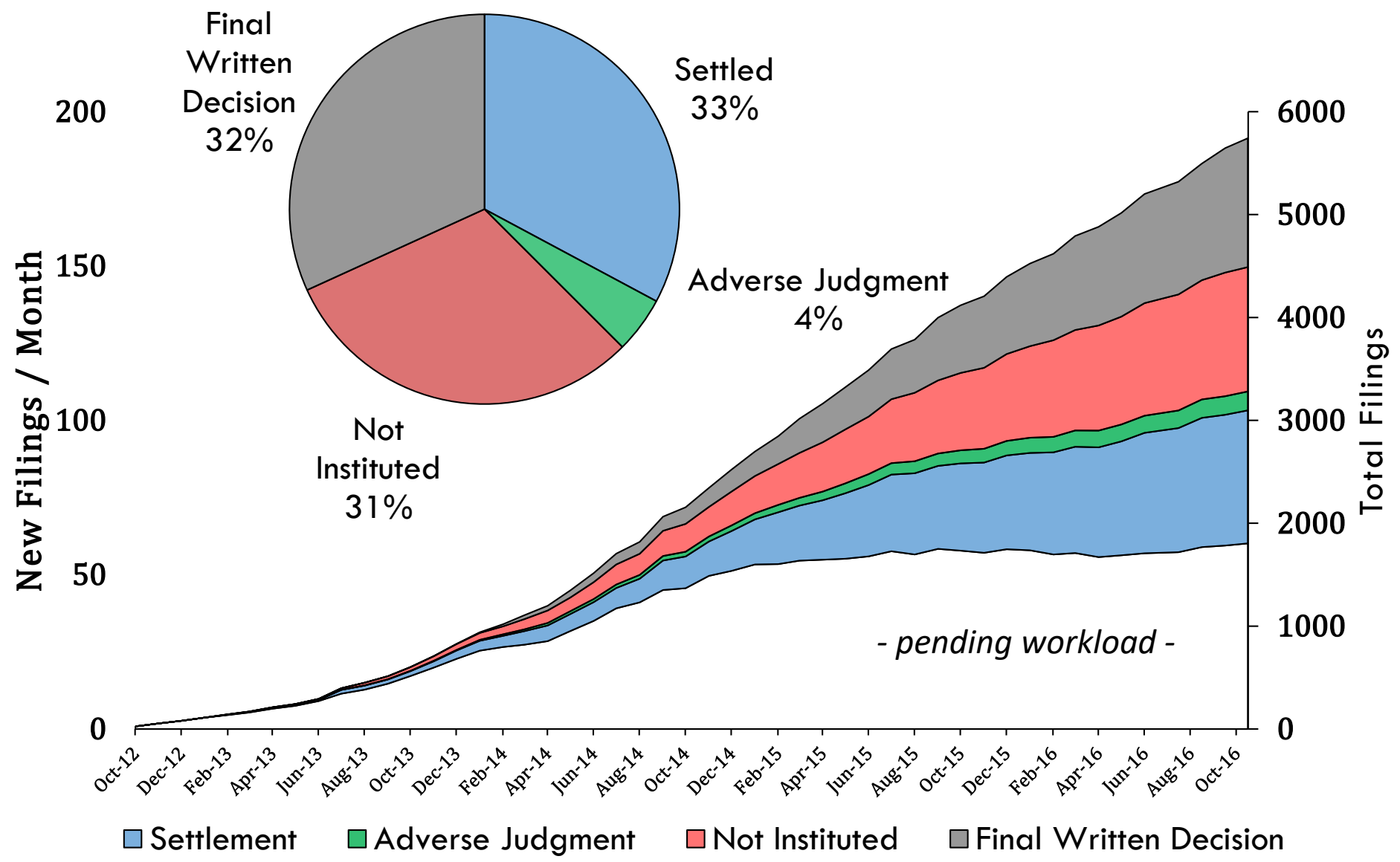
IPR Petition Status

Status of Petitions

(All Time: Sept. 16, 2012 to Jul. 31, 2019)



IPR Resolutions



Gen. Litigation Costs: 2013, 2017, 2019

At risk	2013	2017	2019
< \$1 million	\$700k	\$500k	\$700k
\$1-\$10 million	\$2 million	\$1 million	\$1.5 million
\$10-\$25 million	\$3.25 million	\$2 million	\$2.7 million
> \$25 million	\$5.5 million	\$3 million	\$4 million

AIPLA Survey (2013, 2017, 2019). Median; self-reported

IPR Phase	Mean Cost
To petition	\$105,000
Through IPR trial	\$325,000
Through appeal	\$450,000

NPE Litigation Costs: 2013, 2017, 2019

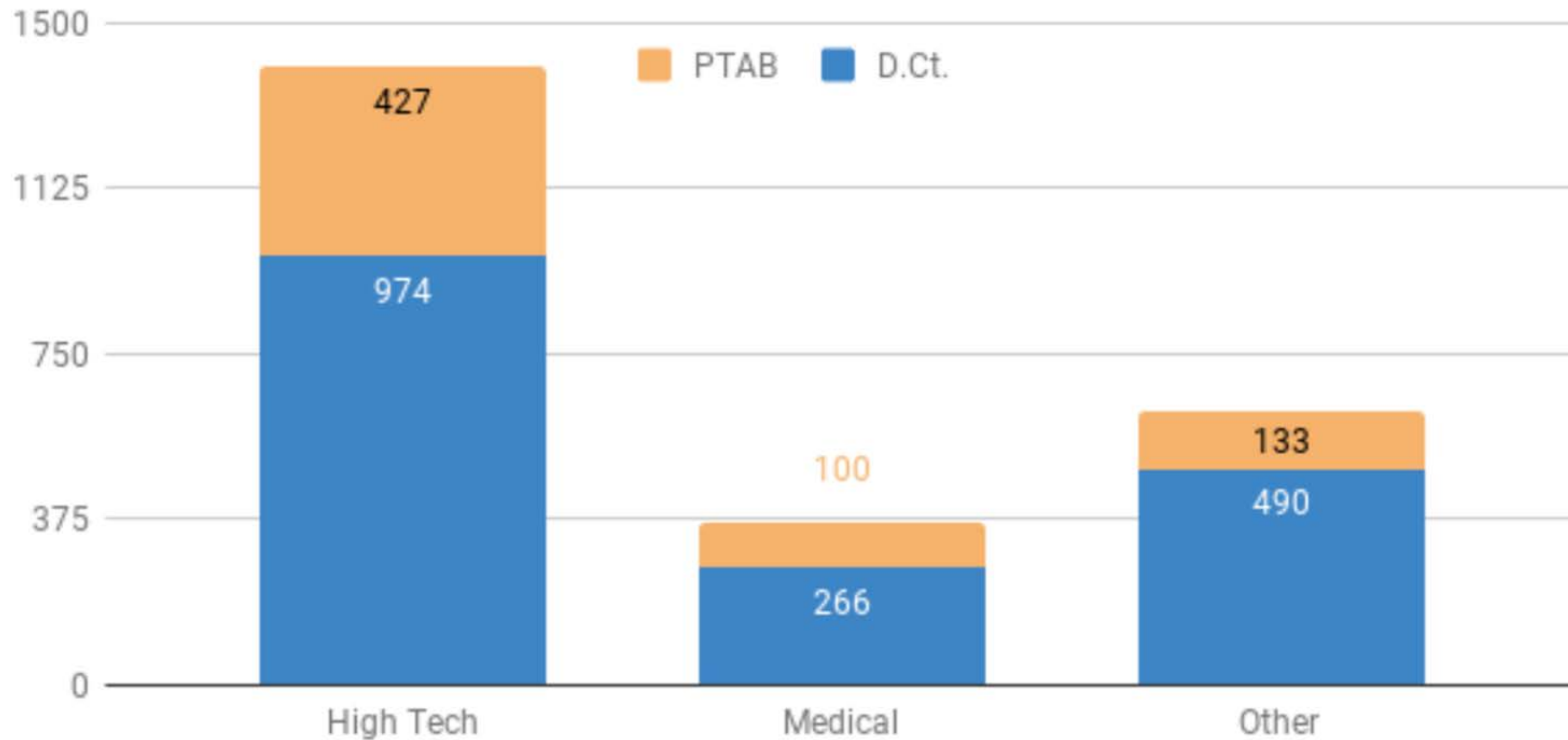
At risk	2013	2017	2019
< \$1 million	\$600k	\$500k	\$750k
\$1-\$10 million	\$1.25 million	\$850k	\$1.875 million
\$10-\$25 million	\$2.4 million	\$1.25 million	\$3.0 million
> \$25 million	\$4.0 million	\$2 million	\$4.5 million

AIPLA Survey (2013, 2017, 2019). Median; self-reported

IPR Phase	Mean Cost
To petition	\$105,000
Through IPR trial	\$325,000
Through appeal	\$450,000

Patent Disputes: 1st Half 2019, by Industry

1H 2019: Patent Litigation by Industry

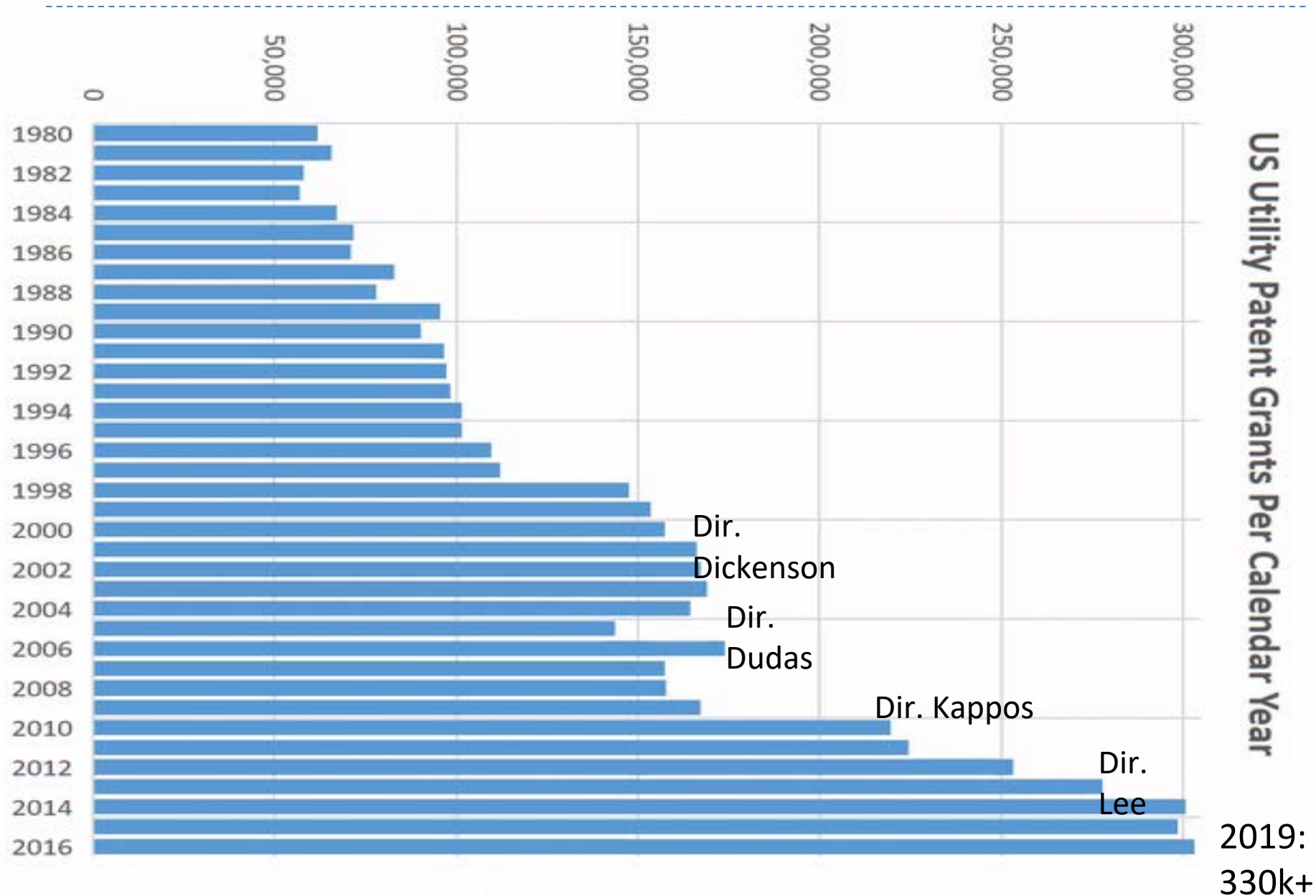


Patent Filing/Grant/Backlog Rates

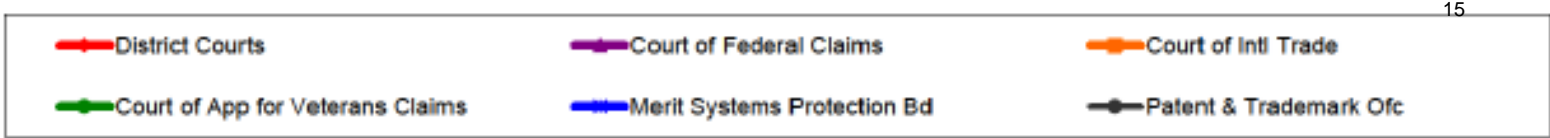
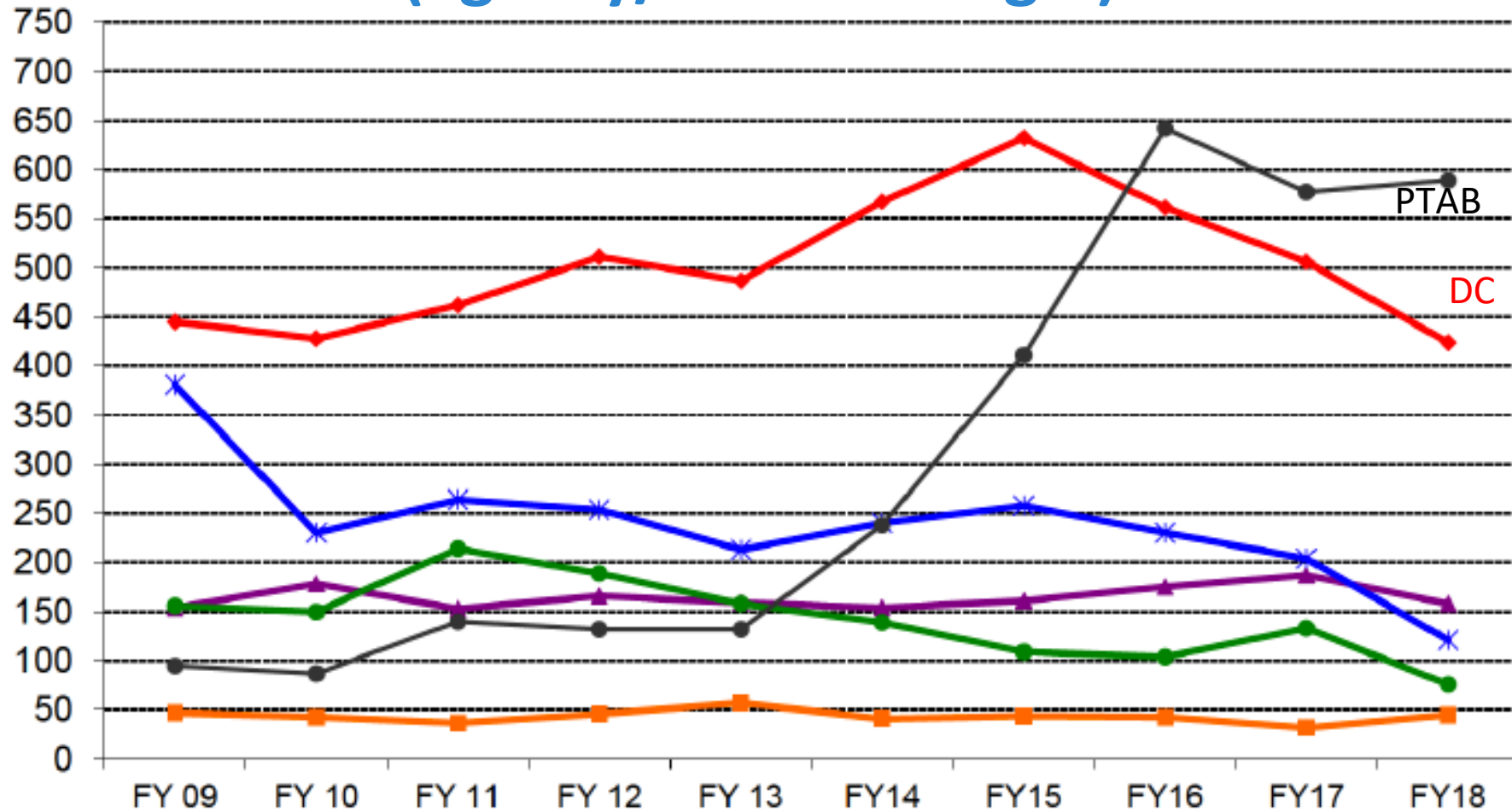
Utility P.	2014	2015	2016	2017	2018
Filed	618,457	618,062	650,411	650,350	643,349
Granted	329,612	322,449	334,107	347,243	338,072
<i>Pending</i>	<i>1,127,701</i>	<i>1,099,468</i>	<i>1,070,163</i>	<i>1,082,661</i>	<i>1,034,316</i>

**On track for a record year in FY2019 (as projected by Dennis Crouch)*

Patent Grant Rates: Historical



Federal Circuit Caseload (agency/court of origin)



AIA Federal Circuit Appeals

57% of cases lead to written opinion; 77% of appeals affirmed.

Filed	2,038*
Rulings (Total) = Opinions + Rule 36 Affirmances	<u>985 Total (571 cons.)</u> 565 (Op.) (298 cons.) 420 (R. 36) (273 cons.)
Affirmances	760 (444 cons.)
Aff'd-in-part	118 (55 cons.)
Rev'd & vacated	107 (72 cons.)
w/PTO Intervention	333 (PTO 250, AG 83)

*18
mandamus

2. Real parties in interest and privies

1) Member Organizations

Applications in Internet Time, LLC v. RPX Corp., 897 F.3d 1336 (Fed. Cir. 2018), cert. denied, 139 S. Ct. 1366 (2019)

2) Interorganizational Entities

Ventex Co. Ltd. v. Columbia Sportswear North America Inc., IPR2017-00651, Paper 148 (Jan. 24, 2019) (precedential)

3. Public availability of prior art

Issues:

1. What is the showing required by a petitioner at the institution stage to establish publication status?
2. What is required for a final written decision to establish publication status?

3. Public availability of prior art

Trials@uspto.gov
571.272.7822

Paper No. 15
Filed: April 3, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HULU, LLC,
Petitioner,

v.

SOUND VIEW INNOVATIONS, LLC,
Patent Owner.

Case IPR2018-01039
Patent 5,608,062

Before ANDREI IANCU, *Under Secretary of Commerce for Intellectual Property
and Director of the United States Patent and Trademark Office*,
DREW HIRSHFELD, *Commissioner for Patents*, and SCOTT R. BOALICK,
Chief Administrative Patent Judge.

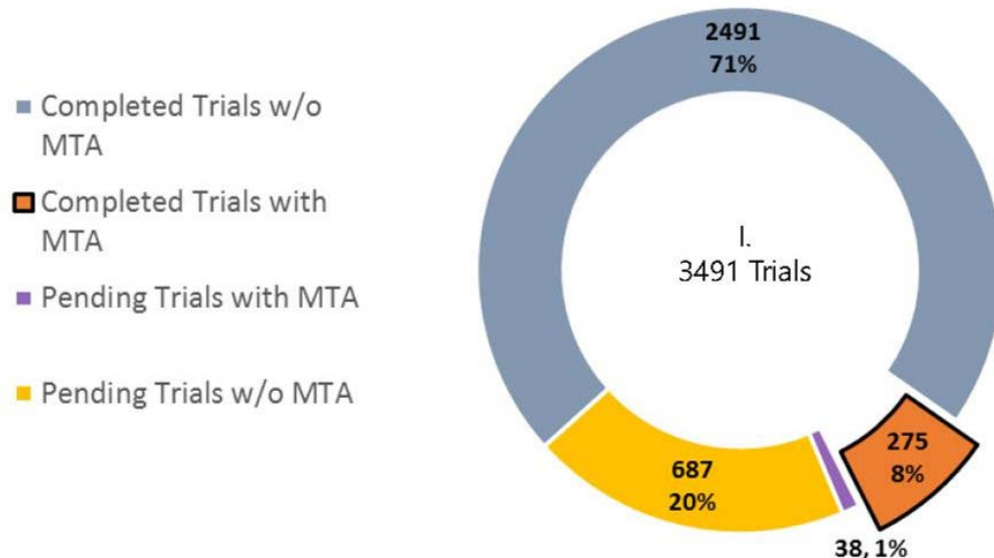
PER CURIAM.

ORDER

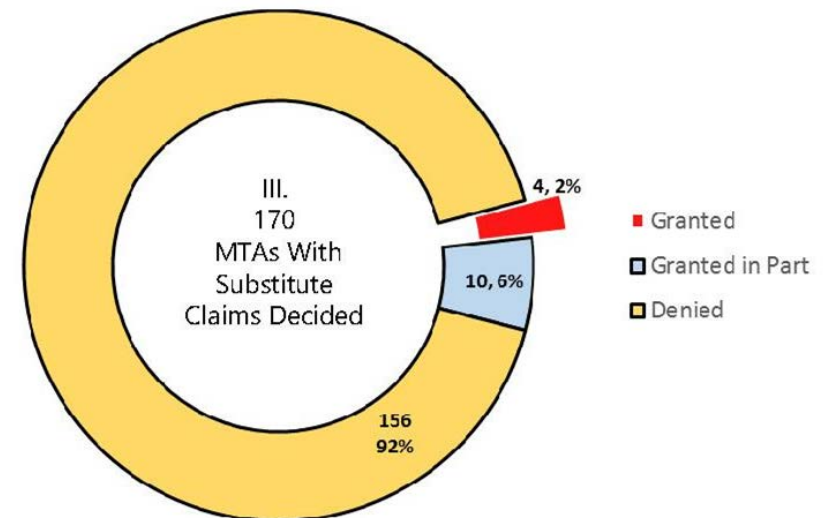
4. Motions to Amend

As of September 30, 2017, four days prior to the *en banc* decision in *Aqua Products*, MTAs were submitted in only 8% of all trials, with 92% being denied for all substitute claims

How Many Motions to Amend Are Filed?



How Many Motions to Amend Substituting Claims Are Granted?



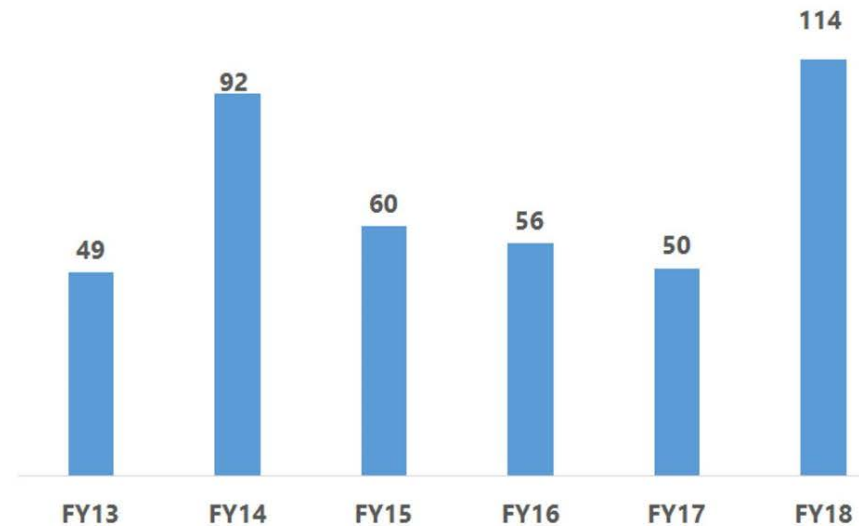
Source: Patent Trial and Appeal Board Motion to Amend Study (September 30, 2017)

<https://www.uspto.gov/sites/default/files/documents/PTAB%20MTA%20Study%20%203%20%20update%20through%2020170930.pdf>

4. Motions to Amend

The number of MTAs increased significantly in the year following the *en banc* decision in *Aqua Products*.

Graph V: Motions to amend filed by fiscal year
(FY13 to FY18: Oct. 1, 2012 to Sept. 30, 2018)



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4. Motions to Amend

The grant rate for MTAs also increased after *Aqua Products*.

	Denied	Granted in Part	Granted	Total
Through Sep. 30, 2017	156 (91.8%)	10 (5.9%)	4 (2.3%)	170
Sep. 30, 2017 – Sep 30, 2018	28 (80.0%)	3 (8.6%)	4 (11.4%)	35

5. Update to Trial Practice Guide

Issue: What is significant about the recent updates included in the July 2019 update to the PTAB's Trial Practice Guide ("TPG") for the following four areas:

- 1) remand practice
- 2) protective orders
- 3) discovery
- 4) discretionary institution denial, including: (a) multiple petitions, (b) co-pending litigation, and (c) cumulative art.

5. Update to Trial Practice Guide

Multiple petitions and discretionary institution denial

- “[I]n most situations” a single petition is sufficient,
- In “rare” cases “more than one petition may be necessary when:
 - Patent owner has asserted a large number of claims in litigation
 - There is a dispute about priority date
- When filing more than one petition, Petitioners should provide the following in its petition or a separate 5 page paper:
 - Ranking of the petitions
 - Succinct explanation of the differences between the petitions
- Patent Owners can respond in either the POPR or a separate 5-page paper.

6. Precedential Opinions; Deference to POP; Agency Rule Making; and *Kisor*

Issue(s): What deference should be afforded to a POP decision?

6. Precedential Opinions; Deference to POP; Agency Rule Making; and *Kisor*

What, if any, deference should be afforded to decisions of a Patent Trial and Appeal Board Precedential Opinion Panel (“POP”), and specifically to the POP opinion in Proppant *Express Investments, LLC v. Oren Technologies, LLC*, No. IPR2018-00914, Paper 38 (P.T.A.B. Mar. 13, 2019).

Order at 1-2, *Facebook, Inc. v. Windy City Innovations, LLC*, No. 18-1400, 18-1401, 18-1402, 18-1403, 18-1537, 18-1540, 18-1541 (Fed. Cir. Aug. 12, 2019)

Recent Supreme Court Case: *Kisor v. Wilkie*, No. 18-15, 588 U.S. ____ (2019).

6. Precedential Opinions; Deference to POP; Agency Rule Making; and *Kisor*

35 U.S.C. § 315(c):

If the Director institutes an *inter partes* review, the Director, in his or her discretion, may join as a party to that *inter partes* review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an *inter partes* review under section 314.

1. Supreme Court Review of PTAB

Supreme Court Review of PTAB

- *Cuozzo Speed Technologies, LLC v. Lee*, 579 U.S. ___ (2016): PTAB can use BRI standard for IPRs; decision to institute is non-appealable.
- *SAS Institute Inc. v. Iancu*, 584 U.S. ___ (2018): No partial institution on some claims for IPR.
- *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, 584 U.S. ___ (2018): IPR doesn't violate Article III or the 7th Amendment.
- *Return Mail Inc v. USPS*, 587 U.S. ___ (2019): U.S. government is not a person capable of petitioning for an IPR.
- *Dex Media Inv. v. Click-To-Call Technologies, LP*, No. 18-916: Whether 35 U.S.C. § 314(d) permits appeal of the Patent Trial and Appeal Board's decision to institute an *inter partes review* upon finding that 35 U.S.C. § 315(b)'s time bar did not apply.

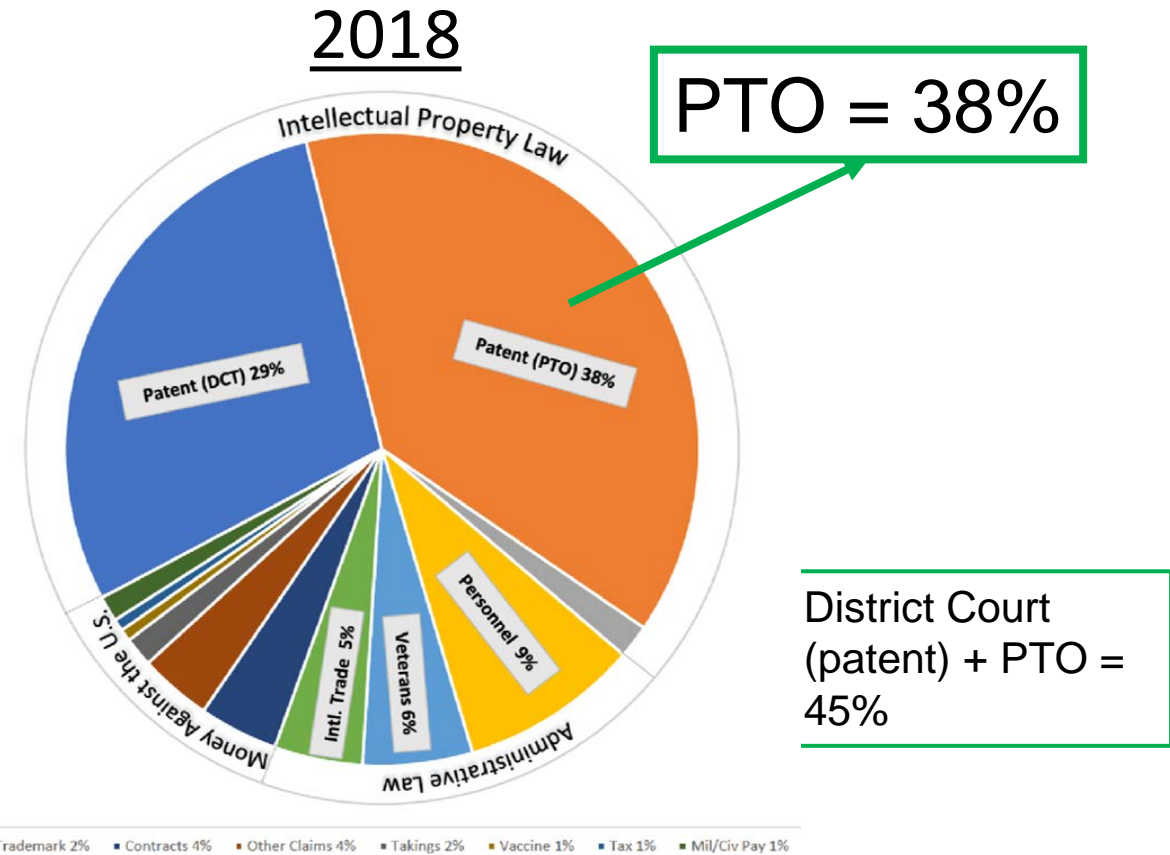
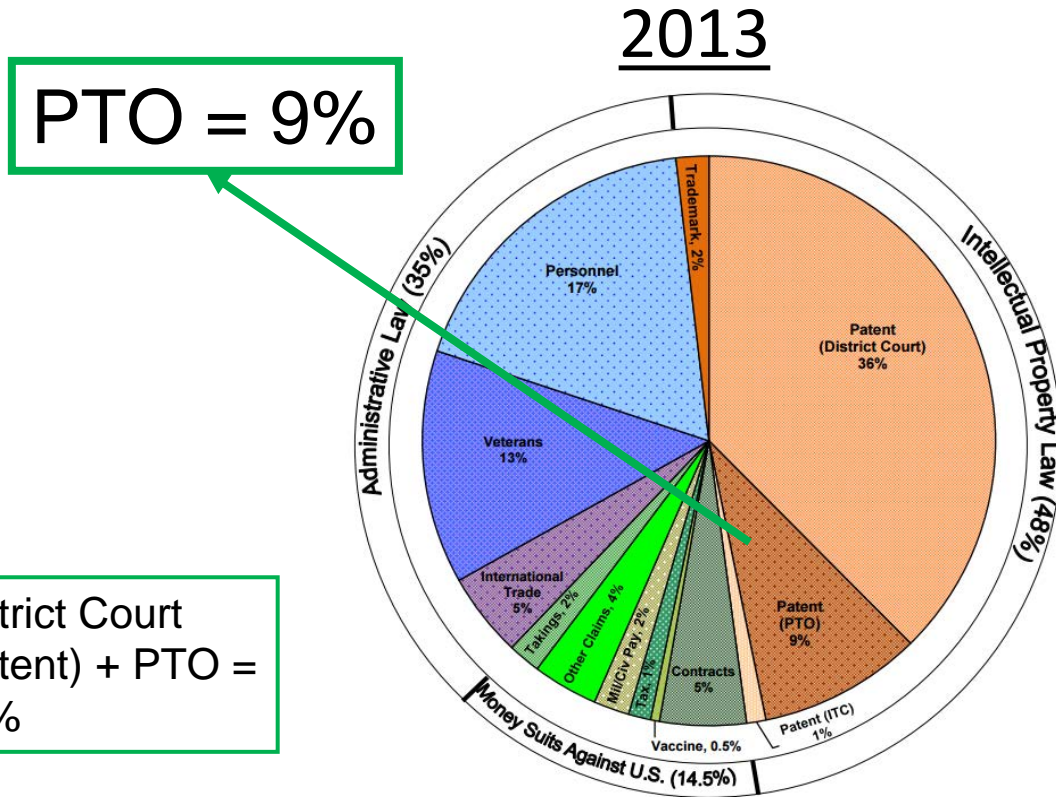
1. Supreme Court Review of PTAB

Petitions for Certiorari

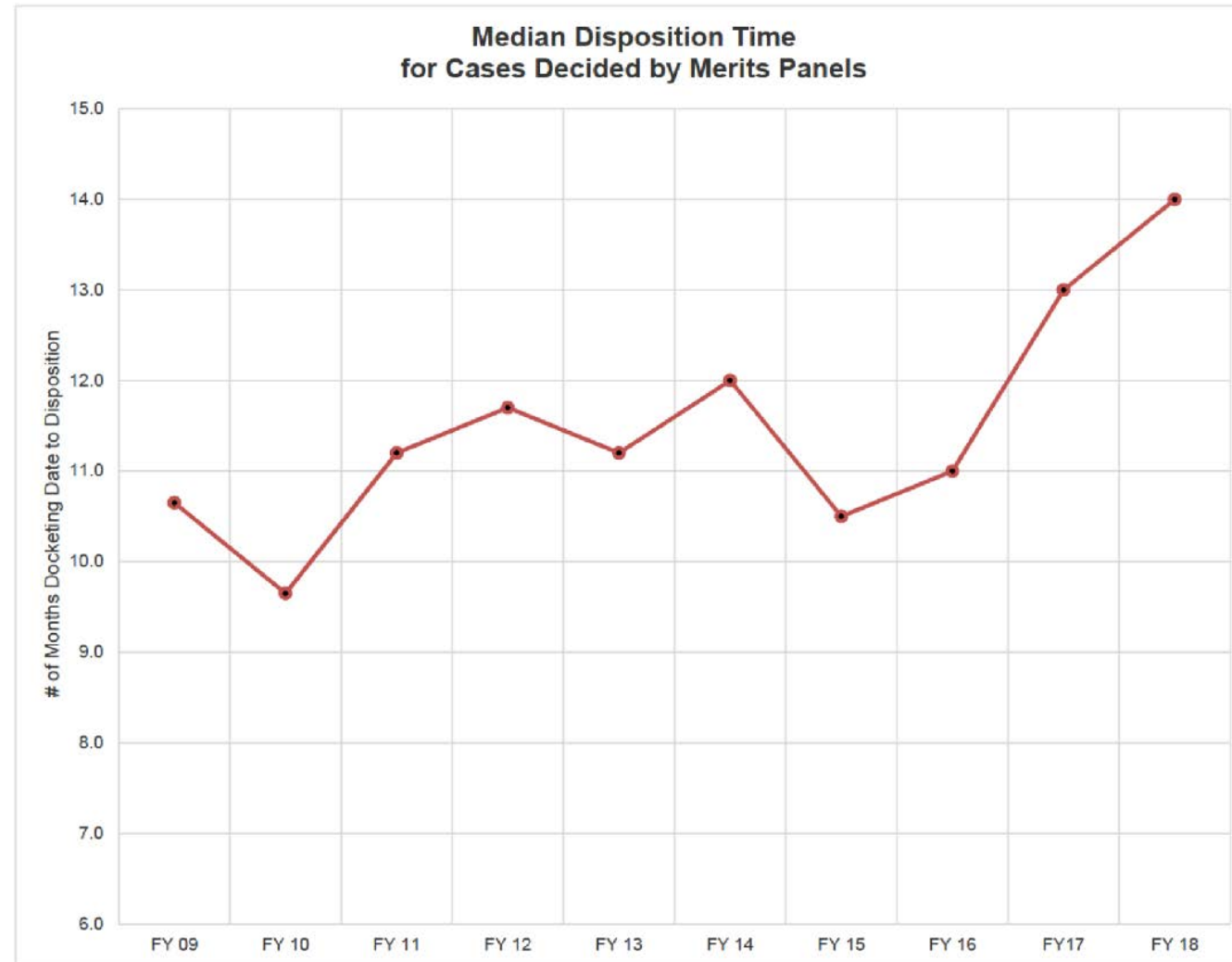
- §101 Eligibility:
 - *Hikma Pharmaceuticals USA Inc., et al. v. Vanda Pharmaceuticals Inc.*, No. 18-817 (Supreme Court 2019): Whether patents that claim a method of medically treating a patient automatically satisfy Section 101 of the Patent Act, even if they apply a natural law using only routine and conventional steps.
 - *HP Inc. v. Berkheiber*, No. 18-415 (Supreme Court 2018): Whether patent eligibility is a question of law for the court based on the scope of the claims or a question of fact for the jury based on the state of the art at the time of the patent.
- Rule 36 Affirmances:
 - *SPIP Litigation Group, LLC v. Apple Inc., et al.*, No. 19-253 (Supreme Court 2019): Whether Rule 36(e) of the Federal Circuit's Rules of Procedure violates the Fifth Amendment by authorizing panels of the Federal Circuit to affirm, with no explanation whatever, a District Court judgment resolving only issues of law.

1. Federal Circuit Review of PTAB

Federal Circuit Caseload



1. Federal Circuit Delays Grow



4. Legislative

- 101 Stalls
- STRONGER Patents Act
- House Judiciary Committee Subcommittee on Courts, Intellectual Property, and the Internet hearing on “Oversight of the U.S. Patent and Trademark Office.”
- Senate Judiciary Committee Subcommittee on Intellectual Property three-part hearings on “The State of Patent Eligibility in America” and “Innovation in America: How Congress can make our patent system Stronger.”



Thank you!

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