Patent Public Advisory Committee Meeting

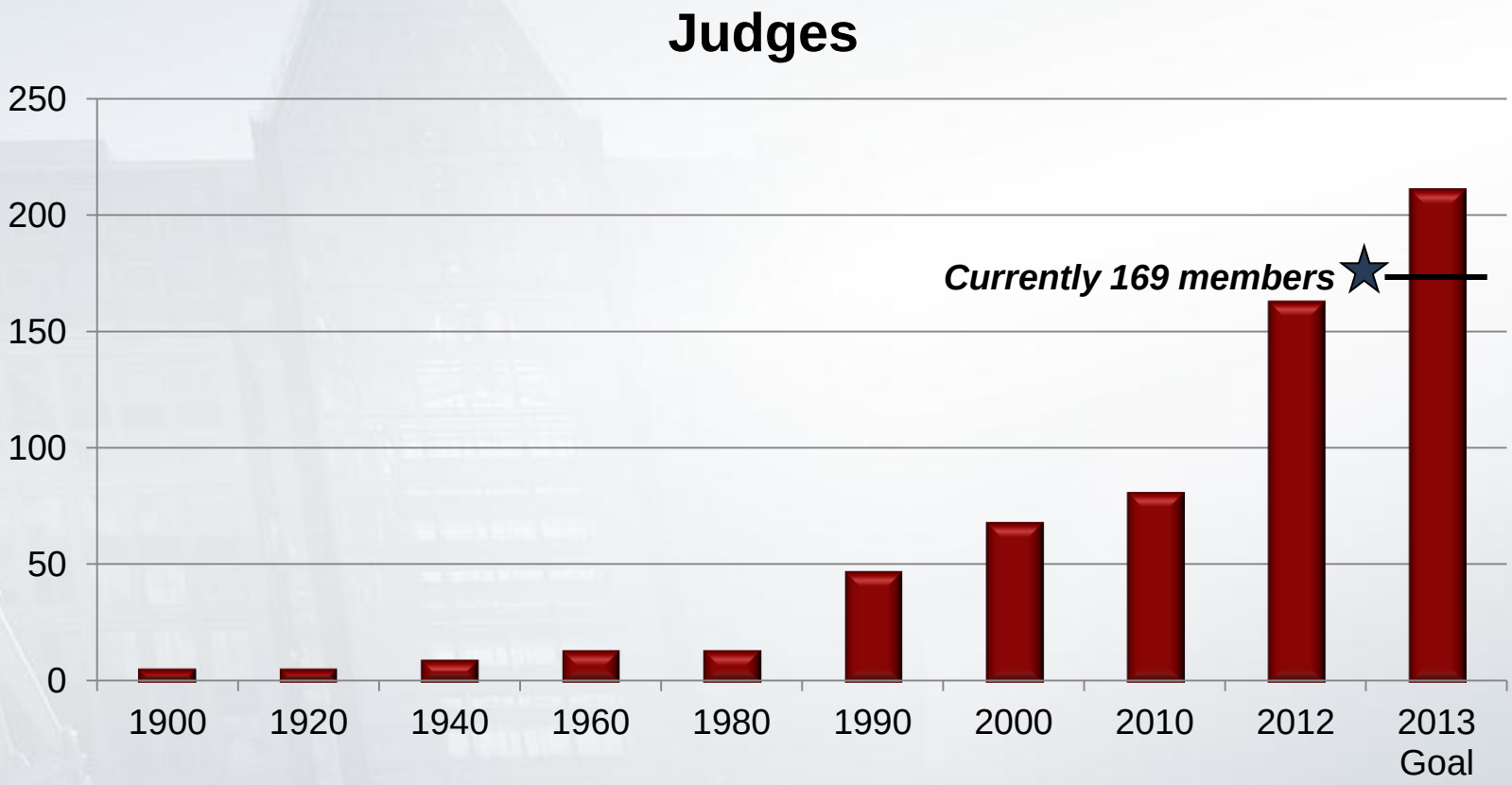
Patent Trial and Appeal Board Update

James Donald Smith
Chief Administrative Patent Judge
Patent Trial and Appeal Board
August 15, 2013

Board Expansion

- Since October 2011
  - Reviewed nearly 1,700 applicant records
  - Interviewed nearly 290 candidates
  - Selected 90 highly qualified candidates to become new Judges
  - We stand at 169 Judges as of July 29, 2013.
- Opportunities at Detroit/Denver/Dallas/Silicon Valley Satellite Offices (for now)
  - Selecting candidates from previous postings now
- Goal for FY2013 - add more judges

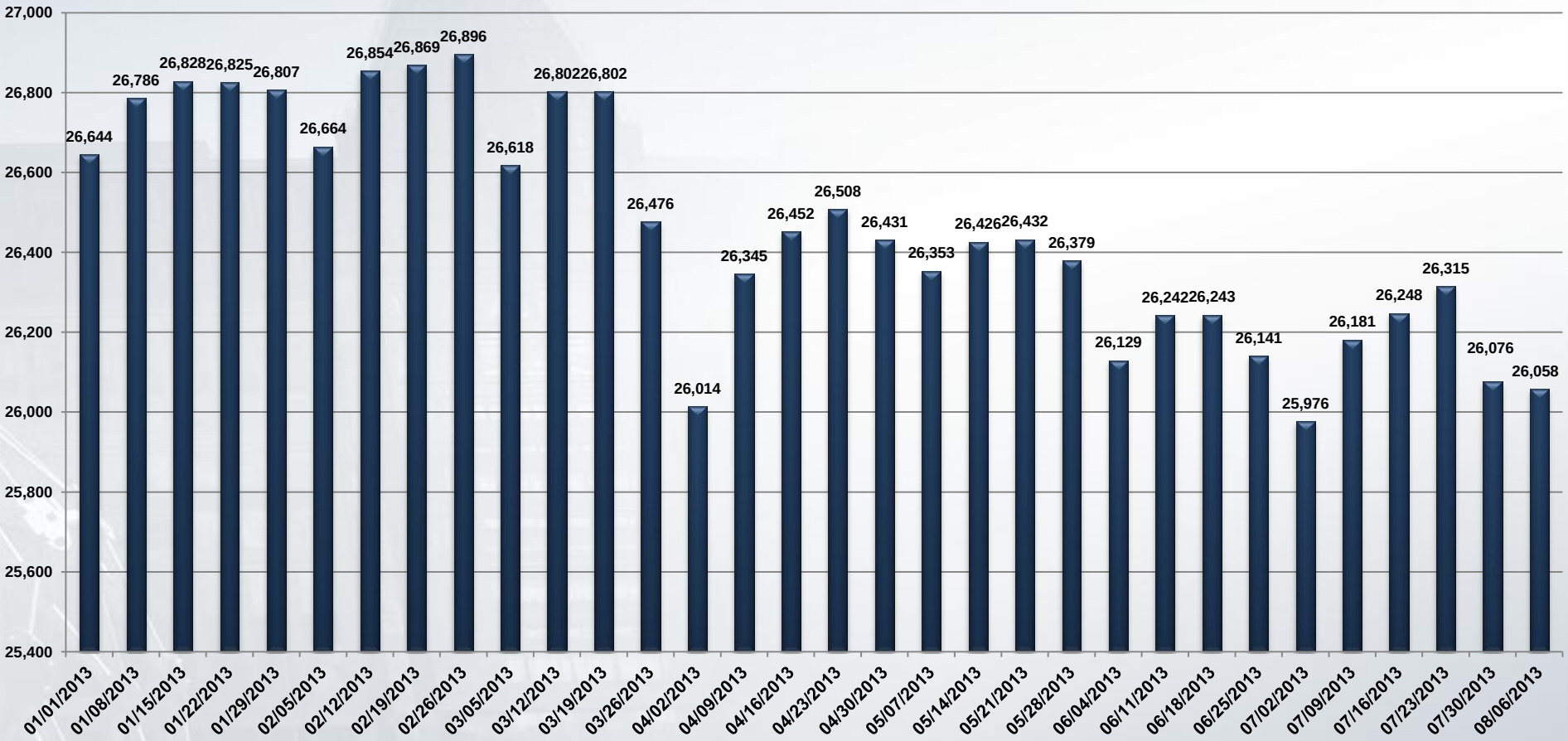
Members of the Board



Board Backlog

- Growth of the Backlog has been halted:
  - Overall, for the last 6 months, more decisions issued than new appeals received
  - Encouraging (for now)
- Benefiting from numerous factors
  - Successful expansion in FY2012 that needs to continue in FY2013
  - Somewhat lower end-of-year intake for FY2012 and beginning of FY2013
  - Extraordinary efforts by current Judges
- Trend can still be reversed if ex parte appeal intake and AIA intake grow faster than new hires

Board Backlog



PTAB Receipts and Dispositions

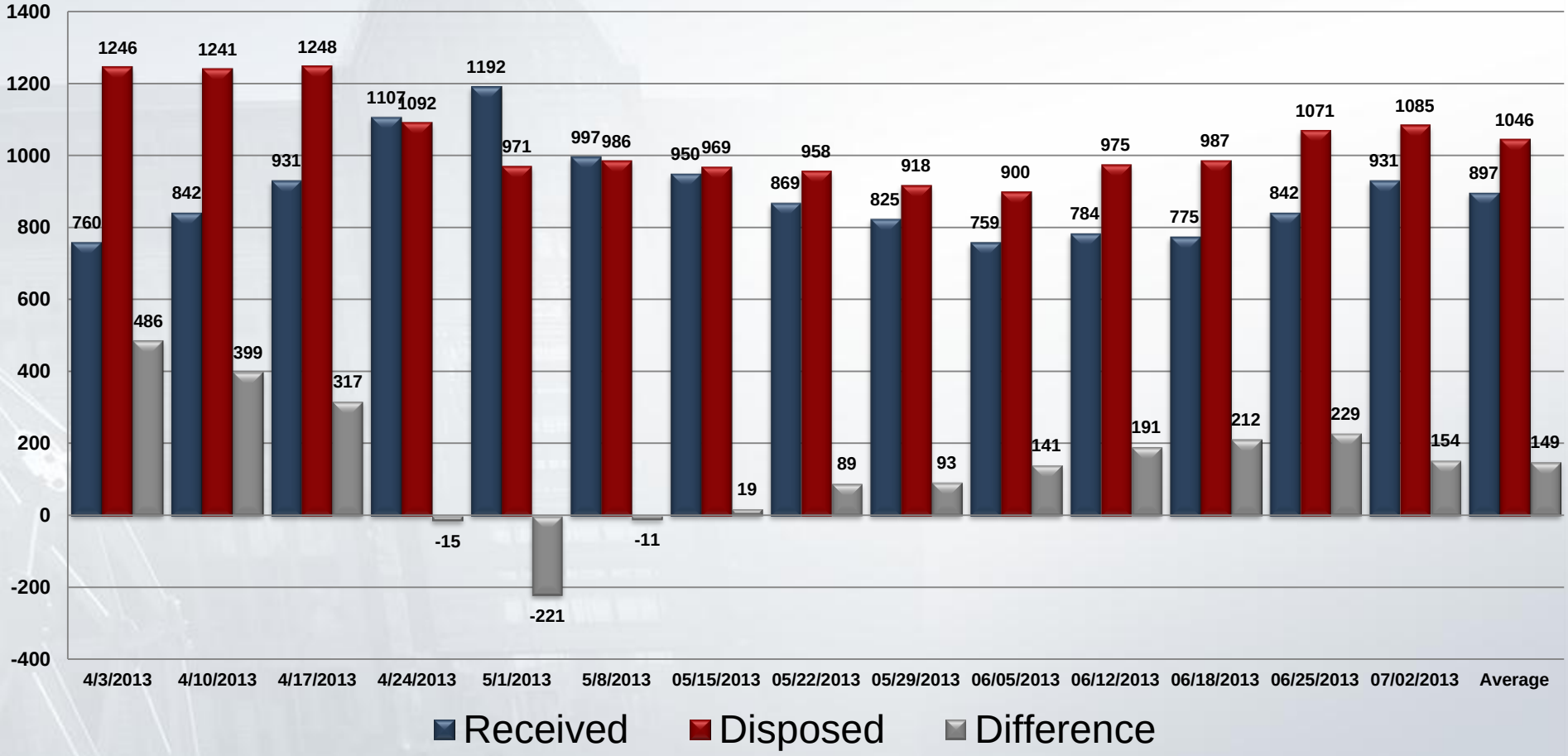
Past Month

PTAB Receipts and Dispositions			
Period:	07/06/2013	thru	08/06/2013
Discipline	**# Cases Received**	**# Cases Disposed**	**Difference (Disposed minus Received)**
Biotech	68	38	-30
Business Methods	78	88	10
Chemical	127	160	33
Contested Cases	43	21	-22
Design	1	5	4
Electrical	414	404	-10
Mechanical	263	285	22
*****Totals*****	**994**	**1001**	**7**

PTAB Receipts and Dispositions

Weekly: 04/03/2013 through 07/02/2013

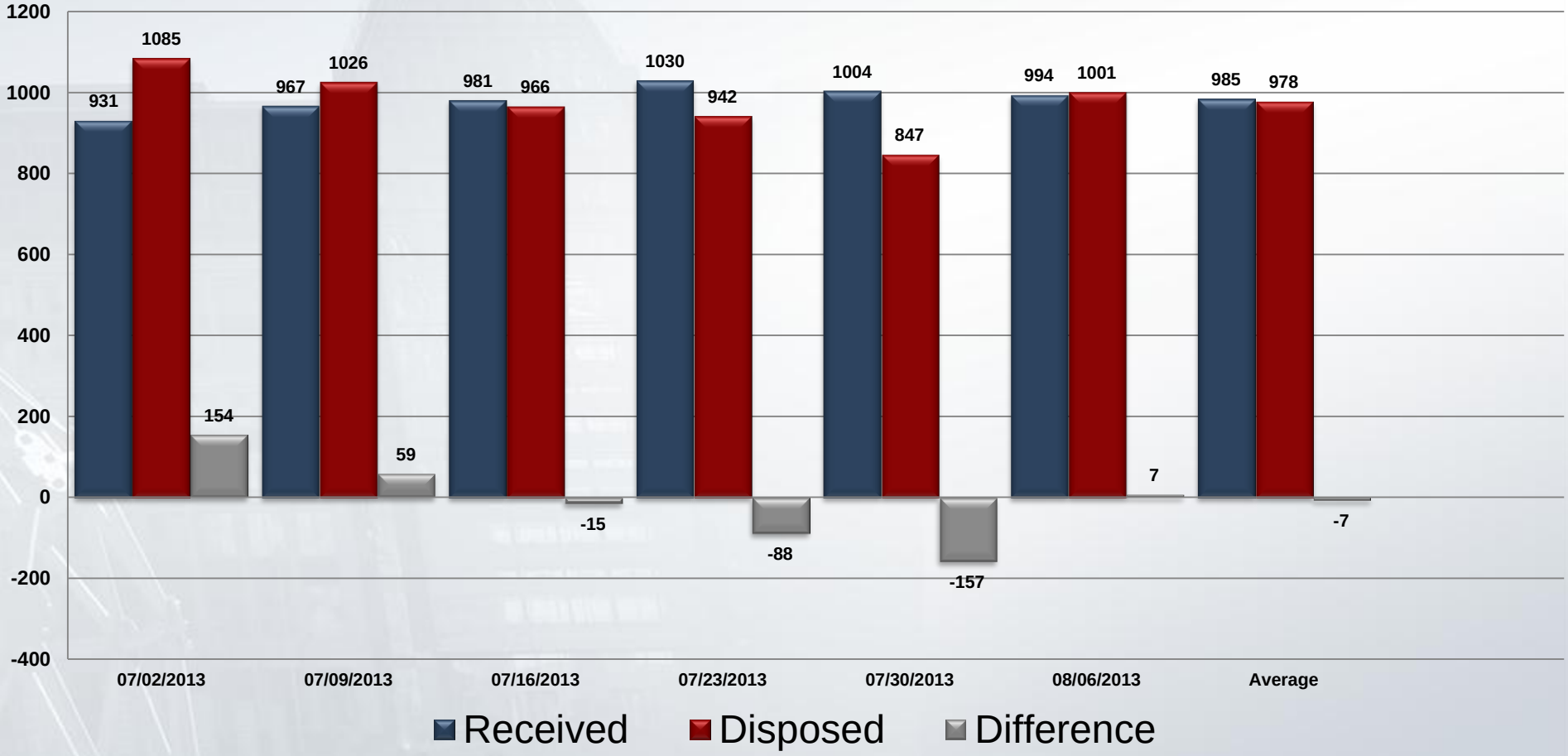
Receipts & Dispositions Summary Report FY2013 – 3rd Quarter



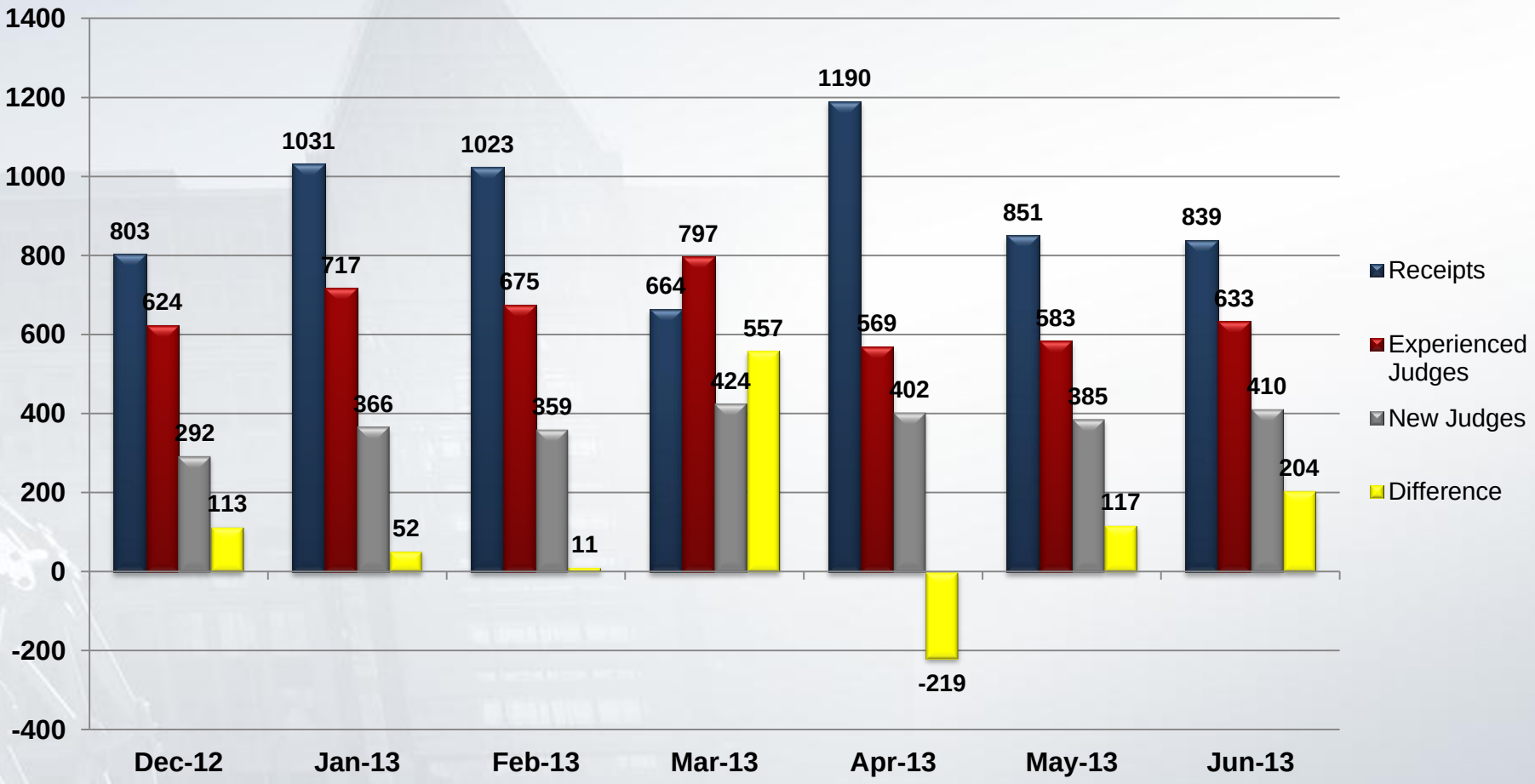
PTAB Receipts and Dispositions

Weekly: 07/02/2013 through 07/23/2013

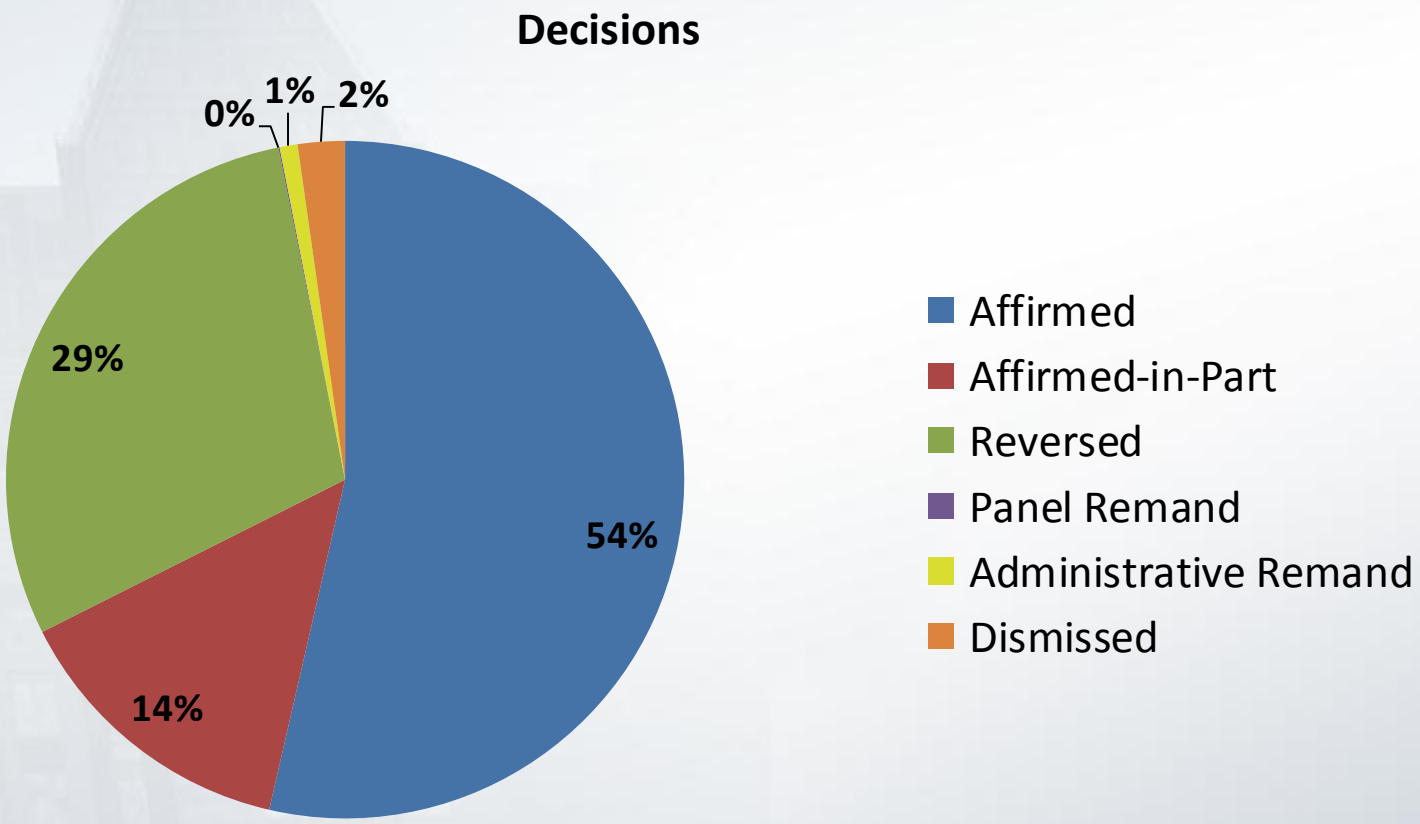
Receipts & Dispositions Summary Report FY2013 – 4th Quarter



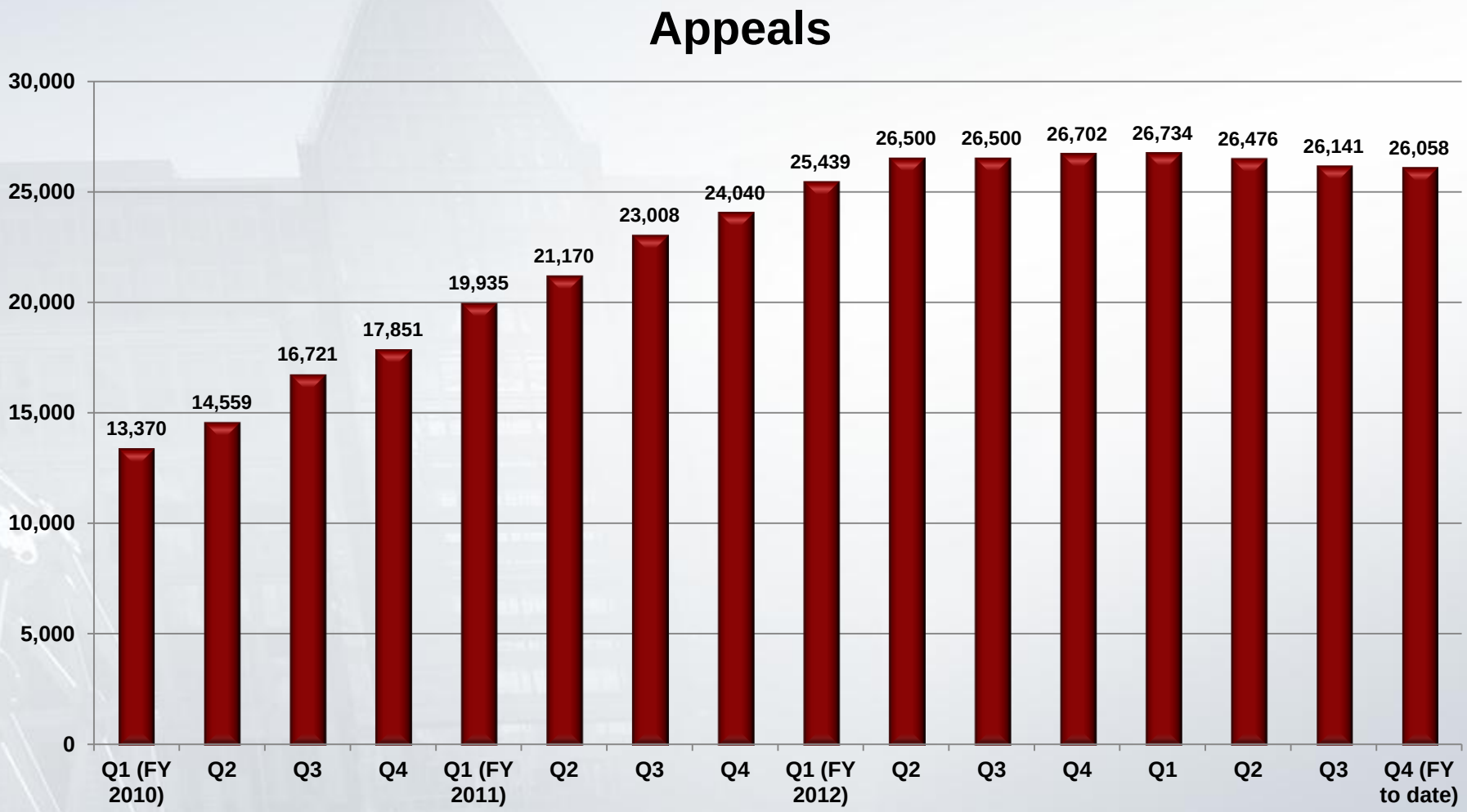
Monthly Receipts and Dispositions – New Judge Comparison



Decisions by Type: FY2013



Size of the Backlog for the Past 16 Quarters

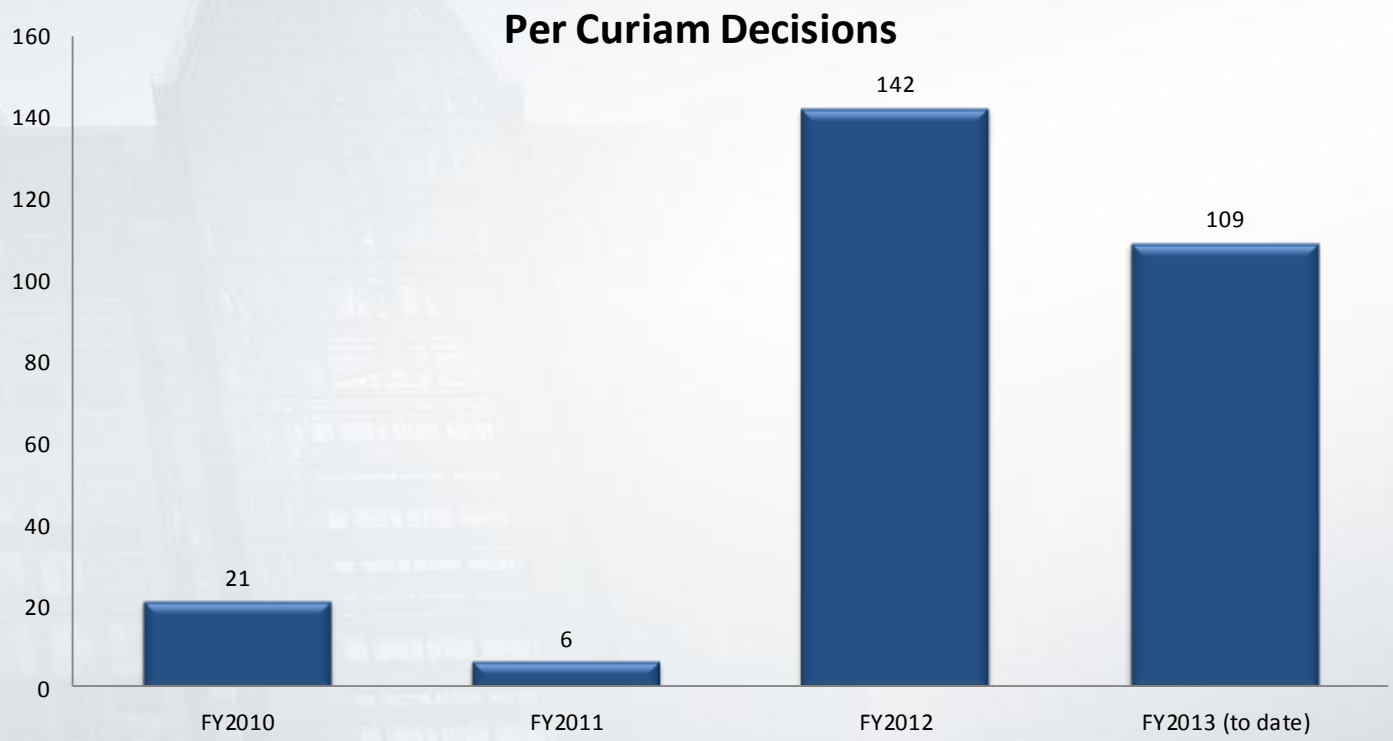


Decisions Adopting Persuasive Arguments Made in the Record

- Allow the Board to issue decisions based on arguments presented by Examiners or Appellants
  - Shorter decisions; disposed sooner; sometimes designated **"*Per Curiam*"**
- Arguments of record must sufficiently explain the decision
- Working with the offices of the Under-Secretary and Solicitor, the rules were finalized

"Per Curiam" Short Decisions

as of 07/01/2013



Outcomes at the Federal Circuit

	FY2012	FY2013 (to 08/06/2013)	Total
Affirmances	67	41	108
Reversals	4	3	7
Remands	10	7	17
Dismissals	12	13	25
Total	93	64	157

Published Opinions

- Committee established to increase designation of precedential and informative decisions
- Also posted are informative orders from AIA proceedings
- Looking at optimizing manner of posting on site

AIA Progress (as of July 31, 2013)

- Number of AIA Petitions

Total	IPR	CBM	PGR	DER
437	396	39	1	1

- AIA Petition Technology Breakdown

Technology	Number of Petitions	Percentage
Electrical/Computer	309	70.7%
Mechanical	51	11.7%
Chemical	43	9.8%
Bio/Pharma	32	7.3%
Design	2	0.5%

- Number of Patent Owner Preliminary Responses

	Filed	Waived
IPR	169	37
CBM	23	2

- AIA Trials Instituted/Settlements/Final Written Decisions

	Instituted Trials	Denials	Joinders	Total Number of Decisions on Institution	Settlements	Final Written Decisions
IPR	122	11	4	137	34	
CBM	12	3		15	1	1

AIA Petitions Filed and Hearings Scheduled (as of July 31, 2013)

Month	Petitions Filed					AIA Hearing Sessions Scheduled	
	IPR	CBM	PGR	DER		IPR	CBM
September 2012	17	8					
October 2012	24	5					
November 2012	24	2					
December 2012	32						
January 2013	25						
February 2013	30						
March 2013	38	2					
April 2013	27	4					1
May 2013	45	7					
June 2013	65	8	1	1			
July 2013	69	3					
August 2013						1	1
September 2013						1	
October 2013						5	4(6)
November 2013						11(15)	1
December 2013						15(24)	1
January 2014						17(23)	
February 2014						7(9)	1
March 2014						4(5)	
TOTALS	396	39	1	1		73 (103)	9 (11)

(#) - numbers in parentheses indicate the number of cases scheduled for hearing in the month, as some sessions include more than one case

Top Districts for Patent Litigation*

• Eastern District of Texas	1266
• District of Delaware	995
• Central District of California	514
• PTAB	364
• Northern District of California	260

* FY 2012 data used for District Courts
PTAB data is September 2012 to June 2013

Number of Patent Trials

- FY 2012 Nationally – 139 Trials
- FY 2013 PTAB – 122 Trials instituted to date
- Only 9 settlements to date

Quicker and Less Expensive Proceedings

- Time to Trial
  - Median 2.5 years in district court
  - 18 mos. in PTAB
- Patent Litigation Cost (per AIPLA 2011 Survey)
  - Based on dollar value at risk:
  - <$1 m: $916,000 (average, all costs, per party)
  - $1m - $25 m: $2,769,000 (average, all costs, per party)
  - >$25 m: $6,018,000 (average, all costs, per party)

Expanding Jurisdiction?

- Sen. Schumer's Bill S. 866
  - CBMs no longer limited to "a financial product"
  - CBMs no longer "provisional"
- White House Task Force
  - Supports Schumer bill
- More CBMs?

Who is Paying Attention?

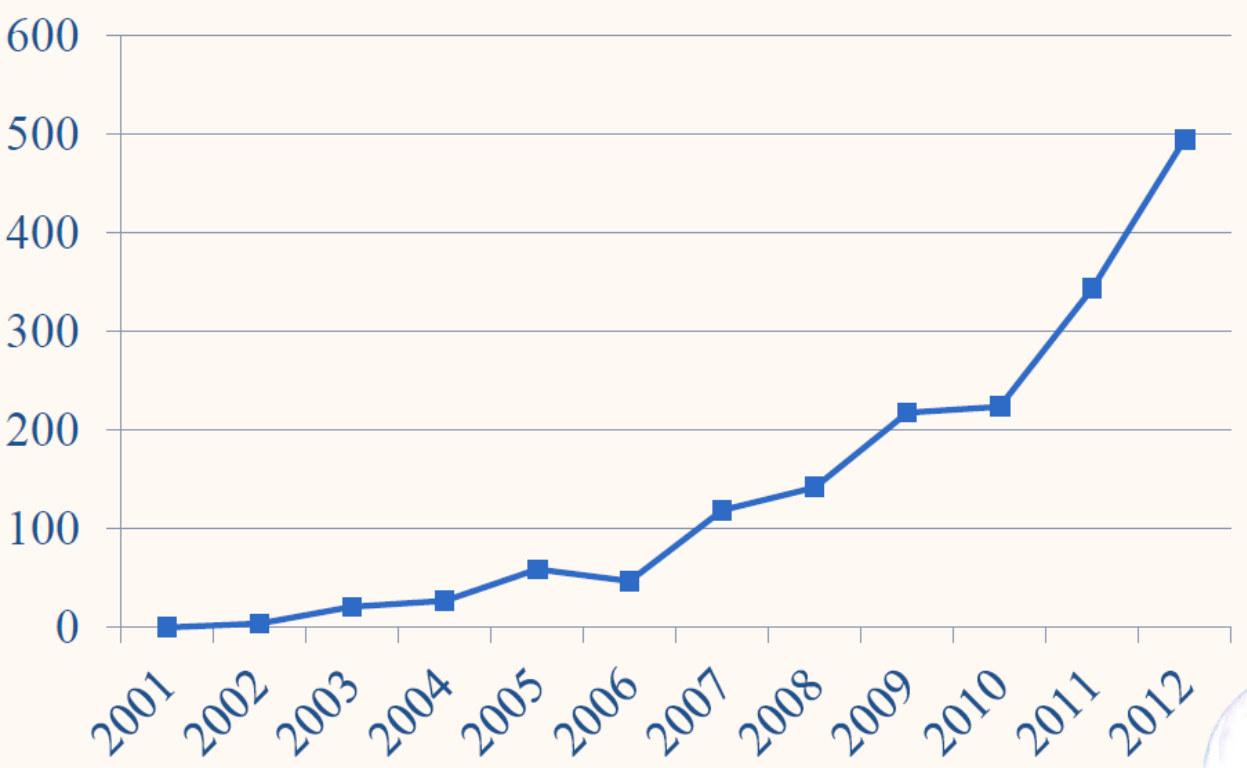
- Federal Circuit
  - Is Fresenius v. Baxter International (July 2, 2013) involving reexaminations a precursor?
- Congress
  - Rep. Goodlatte's Patent Discussion Draft
  - S.866 (Schumer bill)
- Public
  - SAP v. Versata Final Hearing and Decision

Inter Partes Reexamination Statistics

Inter Partes Activity	2008	2009	2010	2011	2012
Determinations on Requests, total	150	229	231	365	543
Requests Granted	142	218	224	344	495
Requests Denied	8	11	7	21	48
Requests known to have related Litigation	115	220	196	280	298
Filings by Discipline					
Chemical	38	35	45	57	100
Electrical	67	153	174	216	263
Mechanical	63	70	62	97	163

Inter Partes Reexamination Statistics

Inter Partes Reexamination Requests Granted



Ex Parte Reexamination Statistics

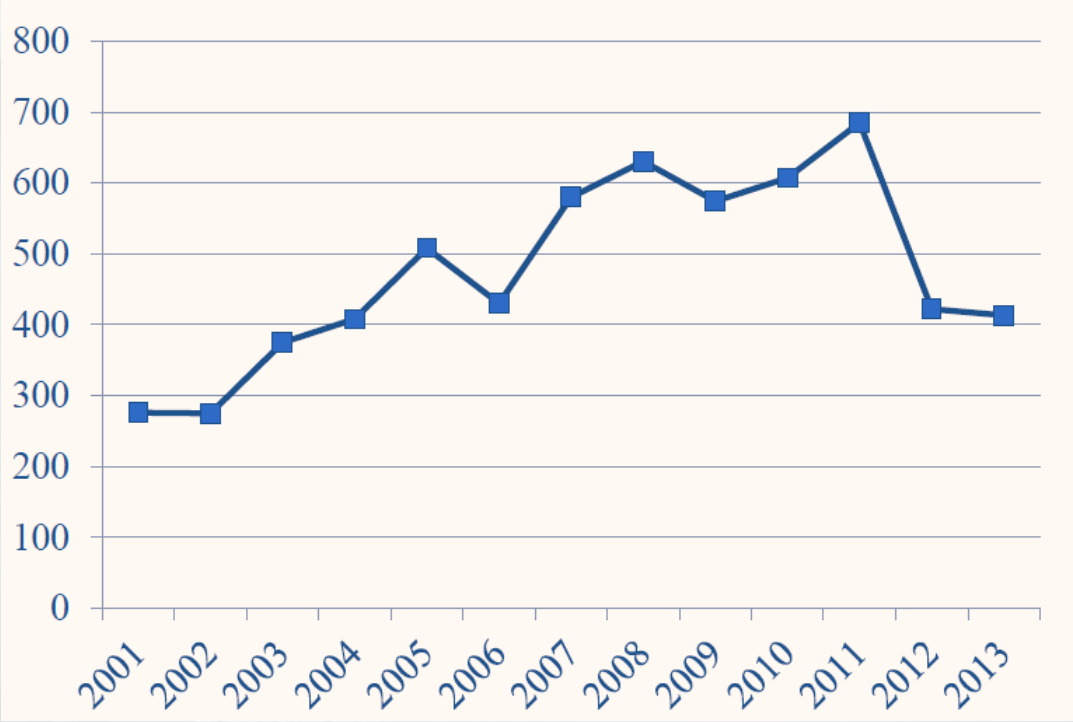
Ex Parte Activity	2009	2010	2011	2012	2013*
Determinations on Requests, total	614	662	767	475	442
Requests Granted	574	607	685	422	413
Requests Denied	40	55	82	53	39
Requests known to have related Litigation	372	347	326	100	NA
Filings by Discipline					
Chemical	120	137	143	162	NA
Electrical	335	414	395	426	NA
Mechanical	197	217	216	191	NA

*Data through 3rd quarter

NA=Data not readily available

Ex Parte Reexamination Statistics

Ex Parte Reexamination Requests Granted*



*Data for FY2013 through 3rd quarter

Current Reexamination Statistics

	Inter Partes Reexam FY 2012	Inter Partes Reexam FY 2013 *	Ex Parte Reexam FY 2012	Ex Parte Reexam FY 2013*
PTAB Pendency	5.9 months	6.3 months	4 months	6 months
Disposals	154	166	114	85
Docketed	72	99	53	53
Inventory	113	149	66	69

*Through June 30, 2013

Projected Reexamination Trend(s)

- Increased intake of *inter partes* reexaminations in FY2012 indicates an impending increase of appeals at the Board
- Exact number and timing is hard to predict
  - Increased staffing at the Central Reexam Unit (CRU)
  - Petitions
- Estimates using historical data give a general idea of when appeals will arrive at the Board

Projected Reexamination Trend(s)

- *Ex Parte Reexam*
  - The Board will likely see continued robust intake for *ex parte* reexam appeals in FY2014 and FY2015
- *Inter Partes Reexam*
  - The Board will likely see a significant increase in *inter partes* reexam appeals beginning in FY2014
  - The Board will likely see a severe increase in *inter partes* reexam appeals in FY2015 and FY2016

Projected Impact on Reexam Appeals

Impact of increased Reexamination filings on number of Appeals Docketed

	Inter Partes Reexam	Ex Parte Reexam
FY2014	Significant Impact	Significant Impact
FY2015	Severe Impact	Significant Impact
FY2016	Severe Impact	

Reexamination Statistics

- Number of Board Decisions

Fiscal Year	Inter Partes Reexam	Ex Parte Reexam
2011	56	149
2012	154	114
2013*	166	85
2013**	190-230	90-110
2014**	145-260	100-110
2015**	115-240	90-110

*Data through June 30, 2013
**Projected

Satellite Offices

- Dallas-Fort Worth
  - The permanent location for the USPTO's Dallas office is scheduled to open in Fall 2014 in the Terminal Annex Federal Building, 207 Houston Street, Dallas, TX.
  - Five administrative patent judges currently work at a temporary office in the Santa Fe Federal Building, 1114 Commerce Street, Dallas, TX.
  - The process for selecting a Regional Manager for this office is anticipated to begin in late 2013.
- Denver
  - The permanent location for the USPTO's Denver office is scheduled to open in February or March of 2014 in the Byron C. Rogers Federal Office Building, 1960 Stout Street, Denver, CO.
  - On January 2, 2013, a temporary office opened at the Denver Lakewood Center, Lakewood, CO. Eight administrative patent judges currently work at that office.
  - The process for selecting a Regional Manager for this office is anticipated to begin in late 2013.

Satellite Offices

- Detroit
  - The Elijah J. McCoy USPTO Satellite Office opened for business on July 13, 2012.
  - 62 patent examiners and 10 administrative patent judges currently work at the Detroit office.
  - The Detroit office patent examiners have completed over 1,100 first office actions and participated in 30 outreach events in the Detroit metropolitan area.
  - The Regional Manager of the Detroit Office is Robin Evans.

- Silicon Valley
  - A permanent location has not been selected. The areas being considered for a permanent location are San Jose, Santa Clara, Sunnyvale, and Mountain View.
  - On April 15, 2013, a temporary office opened at 345 Middlefield Road, Building 1, Menlo Park, CA. Five administrative patent judges currently work at that office.
  - The Director for the Silicon Valley Office is Michelle Lee.

Detroit, Michigan

Elijah J. McCoy
United States Patent
and Trademark Office

300 River Place South
Suit 2900
Detroit, Michigan 48207

Opened July 13, 2012

10 Administrative Patent Judges

Denver, Colorado

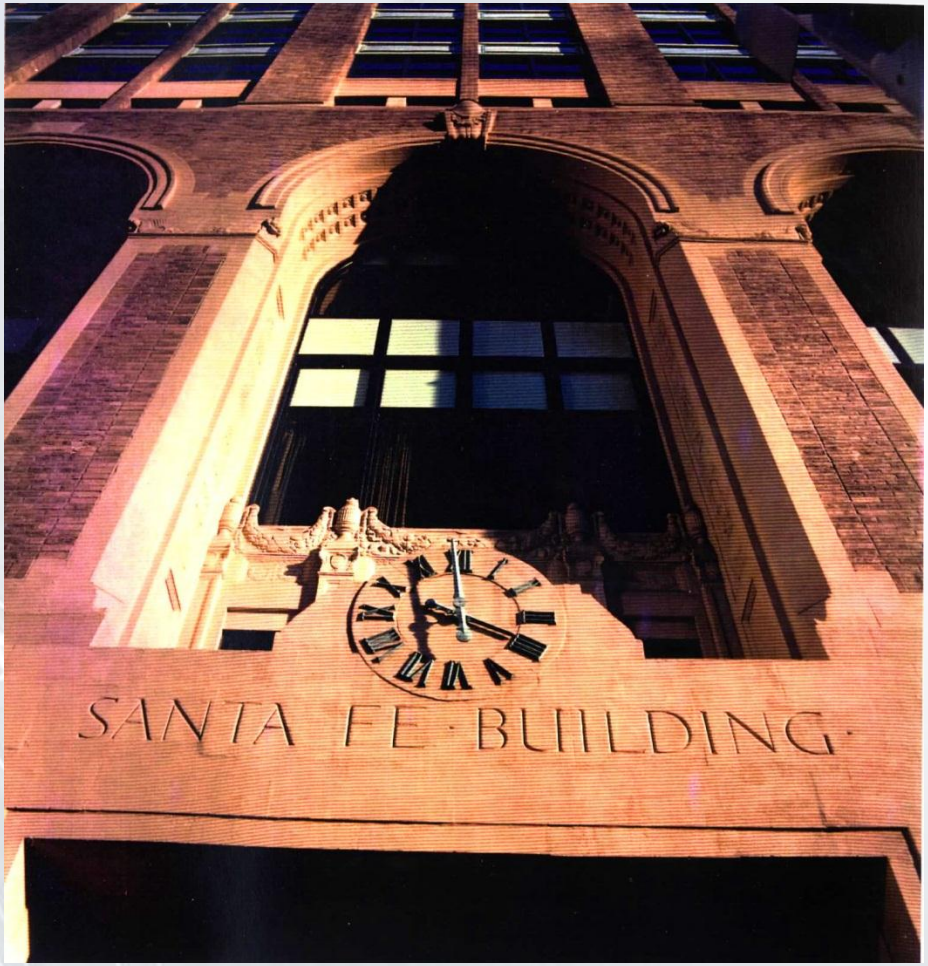
Denver Federal Center

B20/D1000
W 6th Ave & Kipling Street
Lakewood, Colorado 80225

Opened January 2, 2013

8 Administrative Patent Judges

Dallas, Texas



Santa Fe Building

1114 Commerce Street
Suite 705
Dallas, TX 75202

Opened March 18, 2013

5 Administrative Patent Judges

Menlo Park, California

U.S. Geological Survey Building

345 Middlefield Road
Menlo Park, CA 94025

Opened April 15, 2013
5 Administrative Patent Judges

Questions and Comments?

James D. Smith

Chief Administrative Patent Judge

Patent Trial and Appeal Board

571-272-9797

James.Smith@uspto.gov