

Patent Public Advisory Committee Meeting

CRU Statistical Data



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Director, Central Reexamination Unit

November 21, 2013

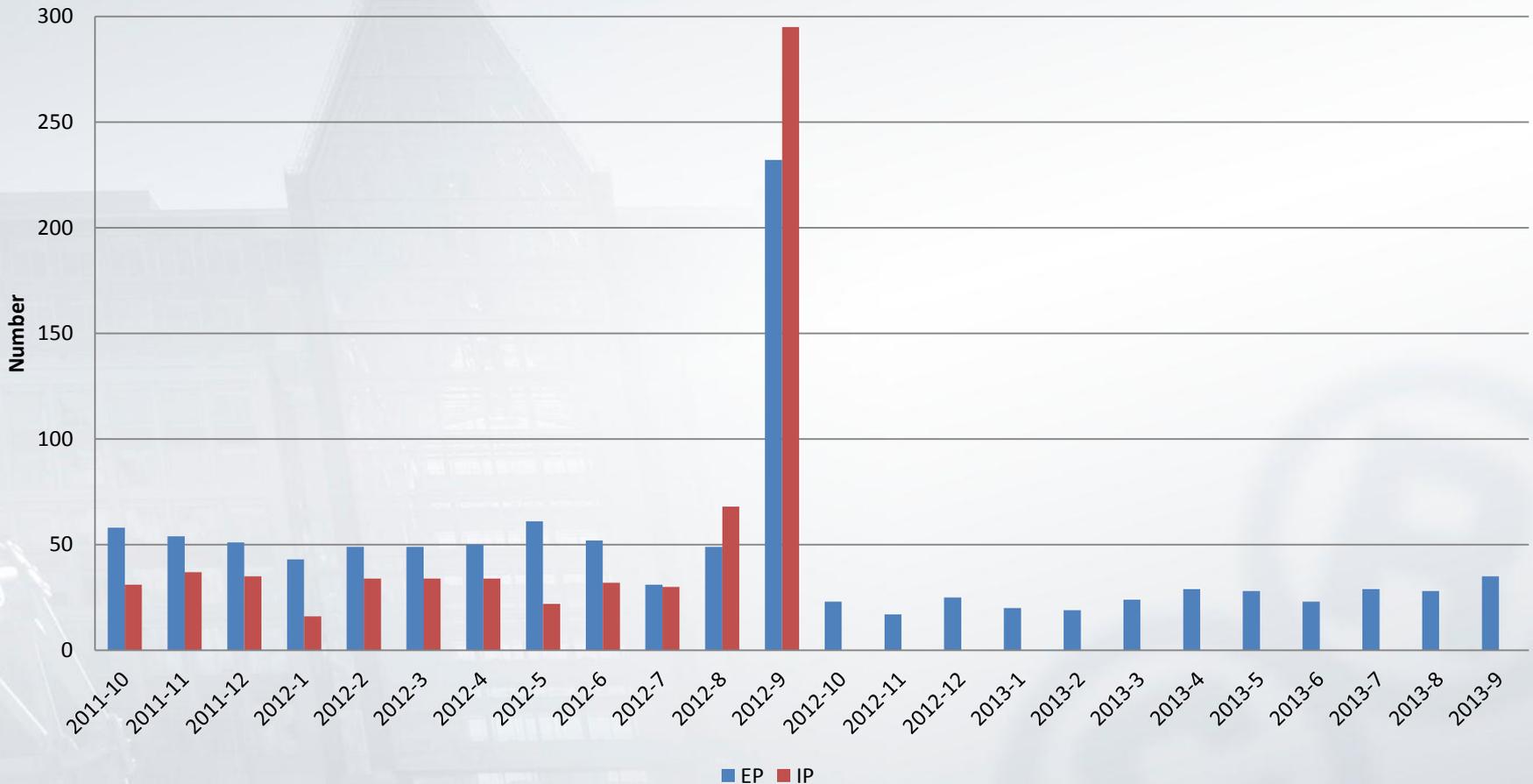


Frequently Used Acronyms

- **3PR** = Third Party Requester
- **41.77 Rejection** = A new ground of rejection issues by the Patent Trial Appeals Board in an *Inter-Partes* Reexamination proceeding issued pursuant to 37 CFR 41.77(a)
- **ACP** = Action Closing Prosecution
- **AIA** = America Invents Act
- **Appeal** = An Appeal by the one of the parties of the Examiner's decision
- **CAFC** = Court of Appeals for the Federal Circuit
- **CRU** = Central Reexamination Unit
- **EP** = *Ex Parte* Reexamination Proceeding
- **FR** = Final Rejection
- **IP** = *Inter Partes* Reexamination Proceeding
- **NF** = Non Final Office Action
- **NIRC** = Notice of Intent to Issue a Reexamination Certificate (*Inter Partes* or *Ex Parte*)
- **NIR Ced** = Proceeding terminated by the issuance of a Notice of Intent to Issue a Reexamination Certificate
- **PO** = Patent Owner
- **PTAB** = Patent Trial Appeals Board, data includes decisions by its predecessor the Board of Patent Appeals and Interferences (BPAI)
- **RAN** = Right of Appeal Notice
- **RLP** = Reasonable Likelihood of Prevailing of rejection in a IP reexamination proceeding filed after September 16, 2011
- **SNQ** = Substantial New Question of patentability



Reexamination Filings Fiscal Years 2012 - 2013

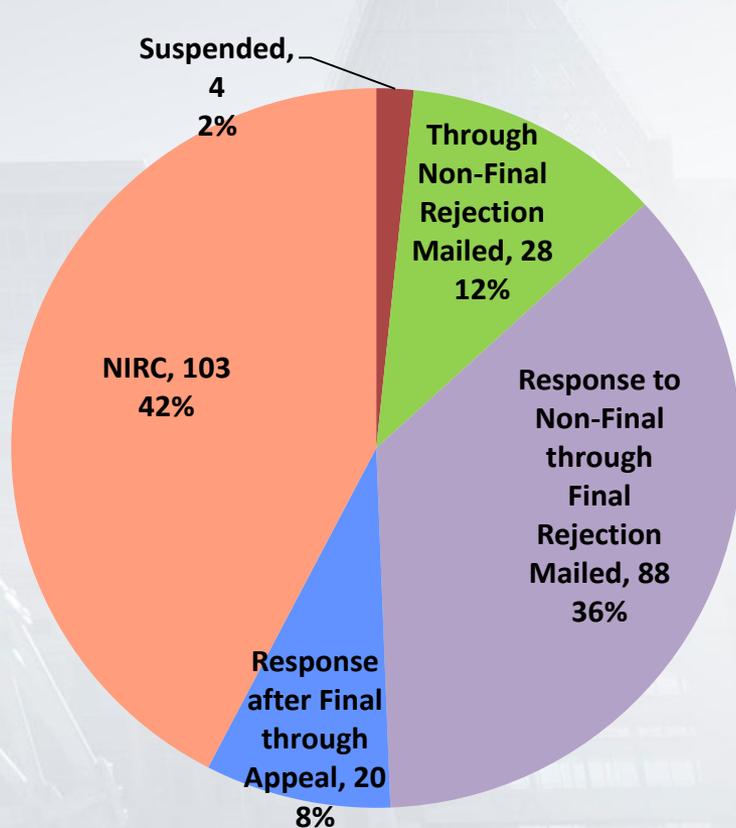


•As of September 16, 2012, Inter Partes Reexaminations were no longer available

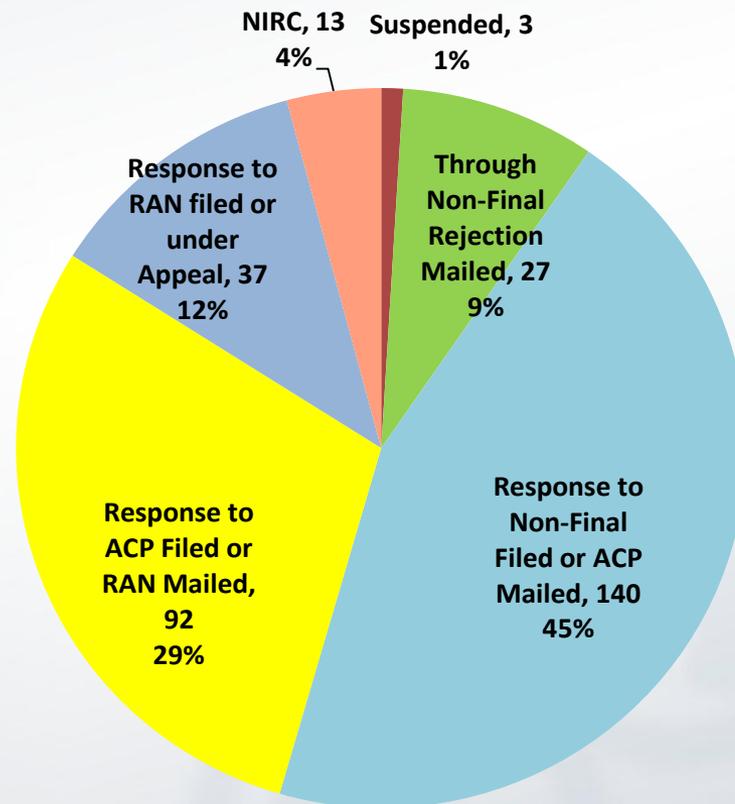


Prosecution Status of Reexams Filed Aug 12, 2012 to Sept 15, 2012

Ex Parte Reexaminations Filed



Inter Partes Reexaminations Filed





Time from Filing to NIRC

Ex Parte and Inter Partes Proceedings NIRC mailed

Fiscal Years 2012-2013

Ex Parte Proceedings

	Months to <i>EP</i> NIRC without Notice of Appeal	Months to <i>EP</i> NIRC after PTAB decision	Months to <i>EP</i> NIRC with Subsequent Appeal to the Federal Circuit	All <i>EP</i> NIRC
25% NIRCed within X Months	7	29	56	8
50% NIRCed within X Months	10	35	71	12
75% NIRCed within X Months	15	47	89	23
95% NIRCed within X Months	25	68	115	66
Average	12	39	75	20
Total number of proceedings	853	174	69	1096

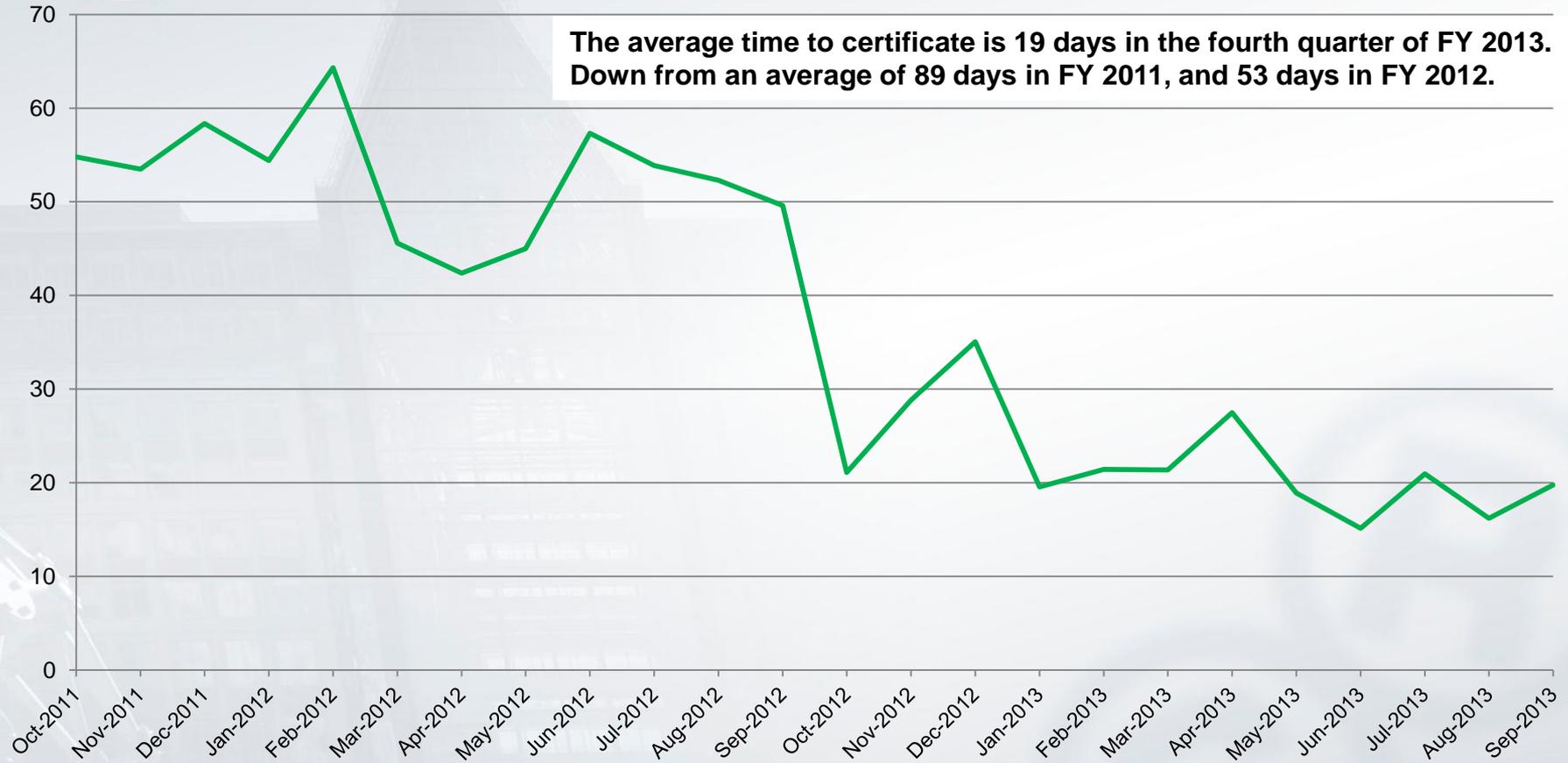
Inter Partes Proceedings

	Months to <i>IP</i> NIRC without Notice of Appeal	Months to <i>IP</i> NIRC after PTAB decision	Months to <i>IP</i> NIRC with Subsequent Appeal to the Federal Circuit	All <i>IP</i> NIRC
25% NIRCed within X Months	12	33	51	18
50% NIRCed within X Months	18	45	59	33
75% NIRCed within X Months	27	56	70	52
95% NIRCed within X Months	44	80	99	80
Average	21	48	67	38
Total number of proceedings	149	127	38	314



Time from NIRC to Certificate Fiscal Years 2012-2013

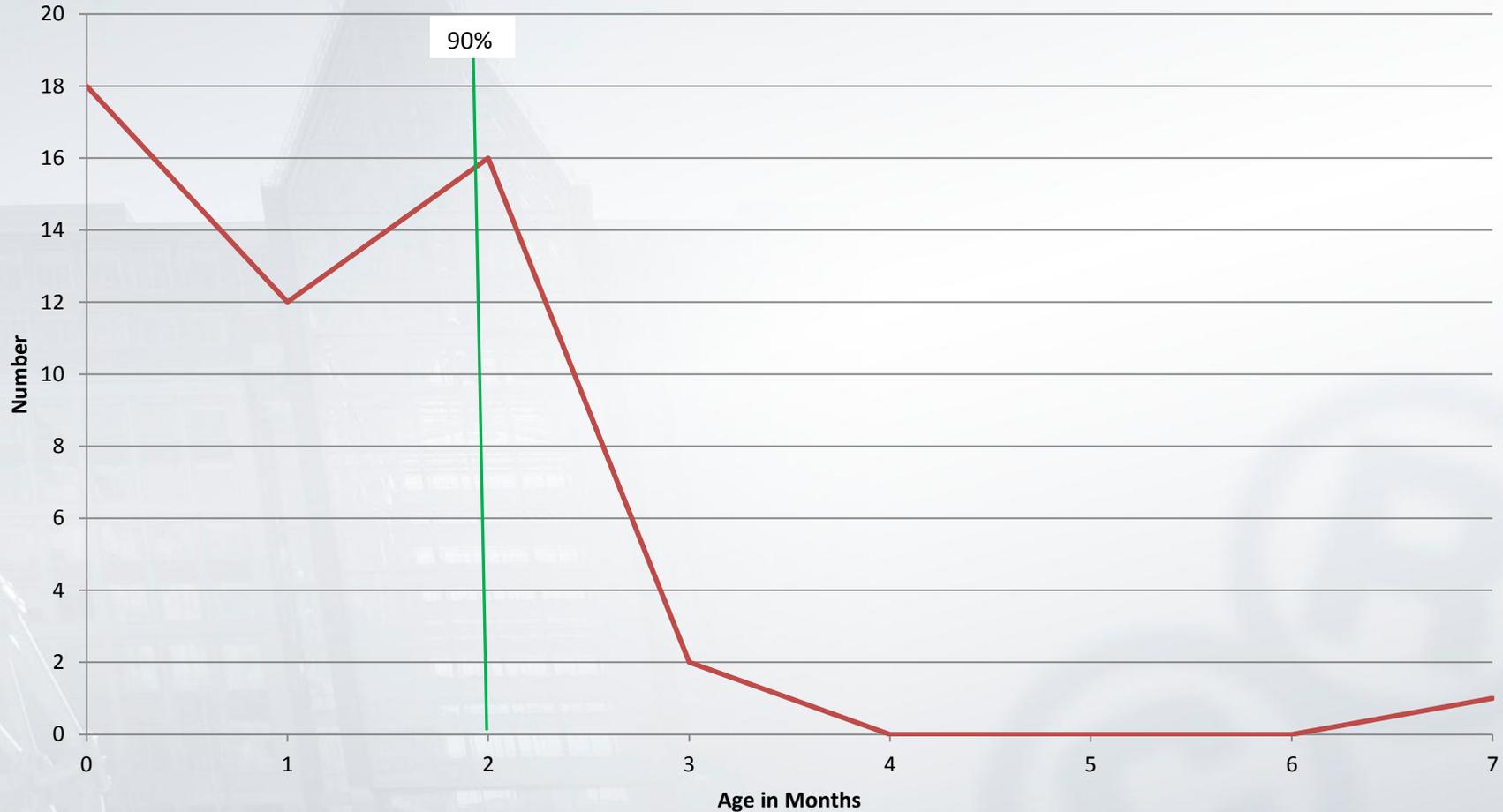
The average time to certificate is 19 days in the fourth quarter of FY 2013. Down from an average of 89 days in FY 2011, and 53 days in FY 2012.



- **A revamped publication process went into effect on October 1, 2012, and led to shorter publication processing times**
- **Since Jan 2013: 546 certificates have published**
 - **77.5% of all certificates were published in less than 21 days**
 - **The shortest time to certificate from forwarding to publications is 4 days**



Total CRU Petitions Inventory as of 9/30/2013



The CRU's petition inventory has dropped from a high of 205 at the end of the first quarter 2013.



All Reexam Appeals Fiscal Years 2012-2013

	<i>EP</i>	<i>IP</i>
Notice of Appeals filed	307	508 (includes both PO and 3PR Notice of Appeals)
First Examiner's Answers	232	389
Decided by the PTAB	230	298
Pending at PTAB as of 9/30/2013	75	237
Decided by CAFC	83	39
Pending at CAFC as of 9/30/2013	32	58

- Note that not all Notice of Appeals result in forwarding to the PTAB
- The PTAB and CAFC decisions are during the time period stated in the title.
 - Not all decisions issue in the same year the Notice of Appeal or Examiner's Answer are filed
- The count of IP Notice of Appeals includes proceedings where either the Patent Owner or Third Party filed a Notice of Appeal, however, if both parties appeal it is only counted once



Current Status of Appeals at PTAB & CAFC Oct 2011 through Sept 2013

	EP Appeals	IP Appeals
Awaiting decision at PTAB	63	138
Awaiting rehearing	12	8
Awaiting 41.77 rejection	NA	33
Appealed to the CAFC, not yet decided	32	58
Total	107	237

- These proceedings are awaiting decision and are a subset from slide 6 rows 4 and 6 to indicate the next action by PTAB or CAFC



Affirmance Rate at PTAB Proceedings Decided Fiscal Years 2012-2013

PTAB decision in <i>EP</i> proceedings	Number	Percentage
Decision - Examiner Affirmed	131	65.5%
Decision - Examiner Affirmed in Part	30	15.0%
Decision - Examiner Reversed	39	19.5%
Total	200	

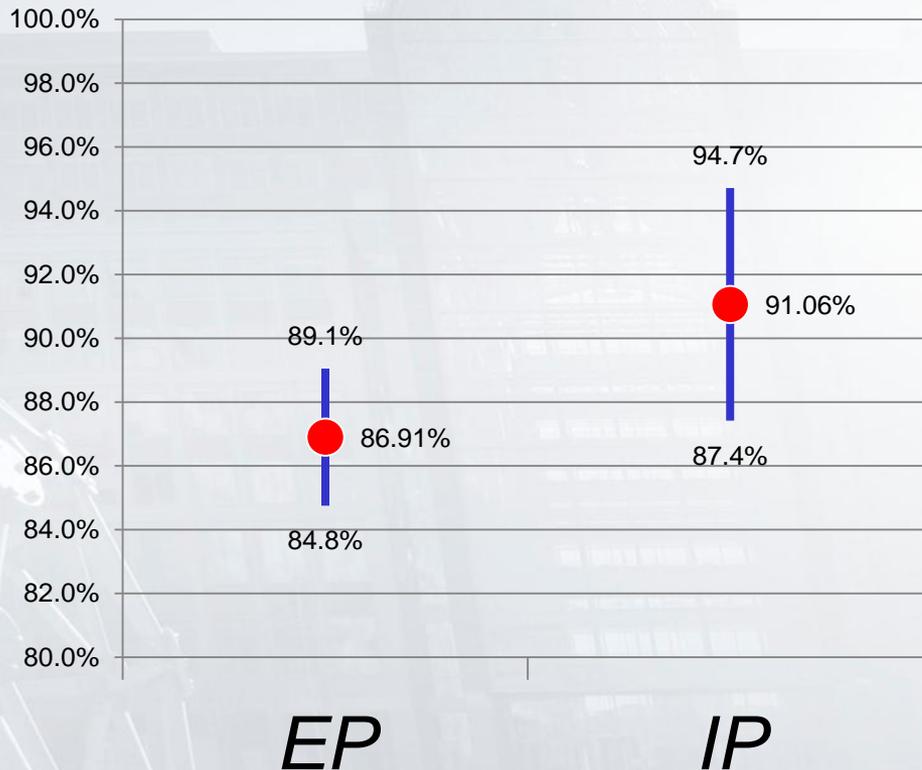
PTAB decision in <i>IP</i> proceedings	Number	Percentage
Decision - Examiner Affirmed	164	57.7%
Decision - Examiner Affirmed in Part	68	23.9%
Decision - Examiner Reversed	38	13.4%
Decision: New Ground of Rejection	14	4.9%
Total	284	

- Of the EP Affirmance in Part, a total of 1153 rejected claims were appealed
 - Of the 1153 appealed rejected claims 912 remained rejected
 - In all affirmances-in-part, 79% of the claims remained rejected
- Of the IP affirmances-in-part, a total of 1682 rejected claims were appealed
 - Of the 1682 appealed rejected claims 882 remained rejected
 - In all affirmances-in-part, 52.7% of the claims remained rejected
 - Note: the rejections in IP appeals are generally those set forth by Third Party Requester



Percentage of Patents with Claims Modified or Canceled in Reexam Certificates Apr 2012 through Sept 2013

Normalization of Certificates with all claims canceled or changes to the claims



	<i>EP</i>	<i>IP</i>
All Claims Confirmed	124 (13%)	21 (9%)
All Claims Canceled	128 (14%)	96 (41%)
Claims Changed	695 (73%)	118 (50%)

- Chart shows the 95% confidence interval of the percentage of reexaminations where claims are changed or all claims are canceled
- Amendments to claims in Reexamination Proceedings are relinquishing of scope



Questions and Comments?

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