

Patent Public Advisory Committee Meeting

Patent Trial and Appeal Board Update



James Donald Smith
Chief Administrative Patent Judge
Patent Trial and Appeal Board
November 21, 2013



State of the Board



Board Expansion

- Since October 2011
 - Reviewed nearly 1,700 applicant records
 - Interviewed over 300 candidates
 - Selected 98 highly qualified candidates to become new Judges
 - We stand at 177 Judges as of November 13, 2013
- Opportunities at Detroit/Denver/Dallas/Silicon Valley Satellite Offices (for now)
 - Selecting candidates from previous postings now
- Goal for FY2013 - add more judges



APJ Training

The Training Committee conducts formal training for all members of the Board.

For newer judges, the Training Committee provides:

- initial guidance to ease the transition to the Board's unique mission and culture; and
- tools and techniques on how to deal with issues we see on a regular basis.

For all judges, the Training Committee provides regular training sessions focused:

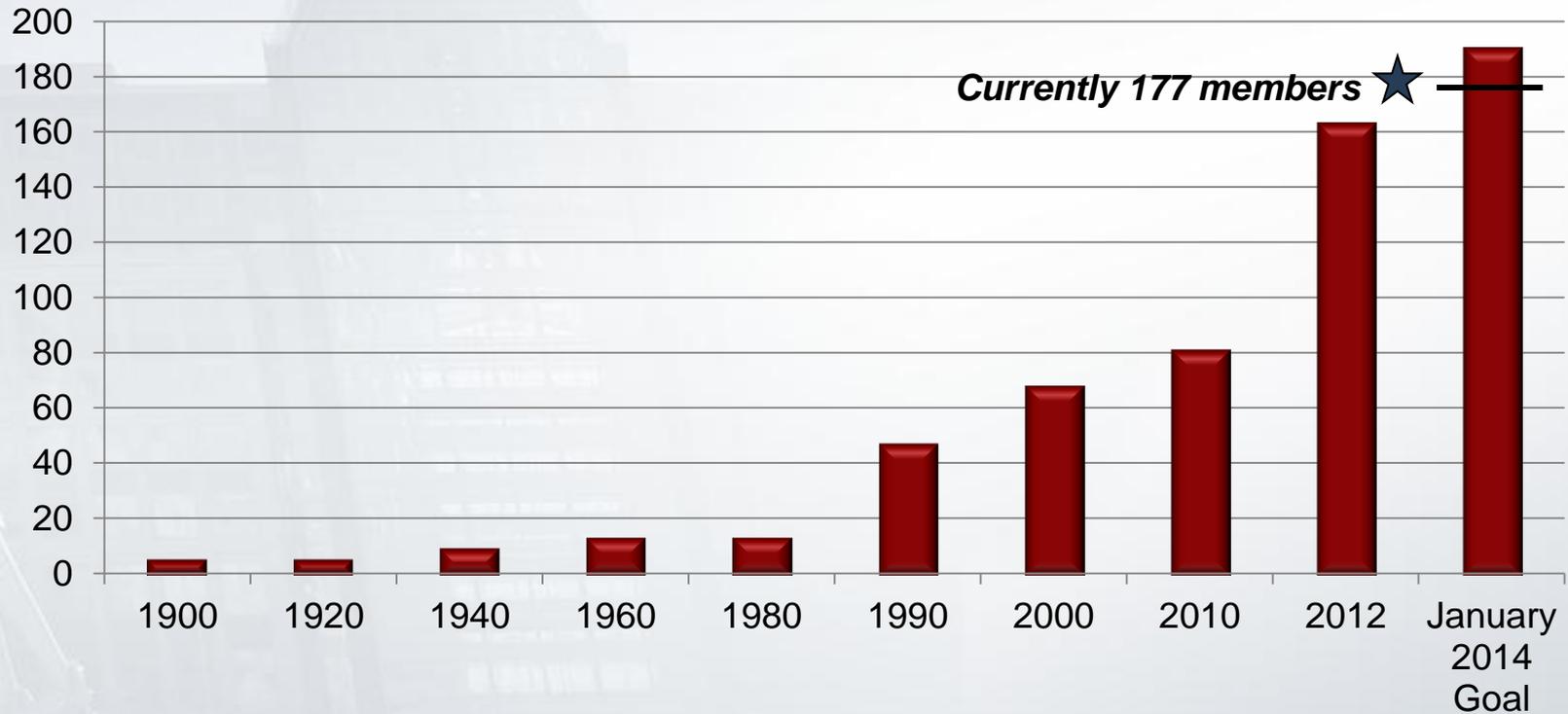
- on evolving case law; and
- the new trial proceedings implemented by the America Invents Act.

Our agenda is developing continually, based on member-input, as we constantly strive to look for new ways to more effectively and efficiently fulfill our mission.



Members of the Board

Judges





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 in progress.

- **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 in progress.



Satellite Offices

- **Detroit**

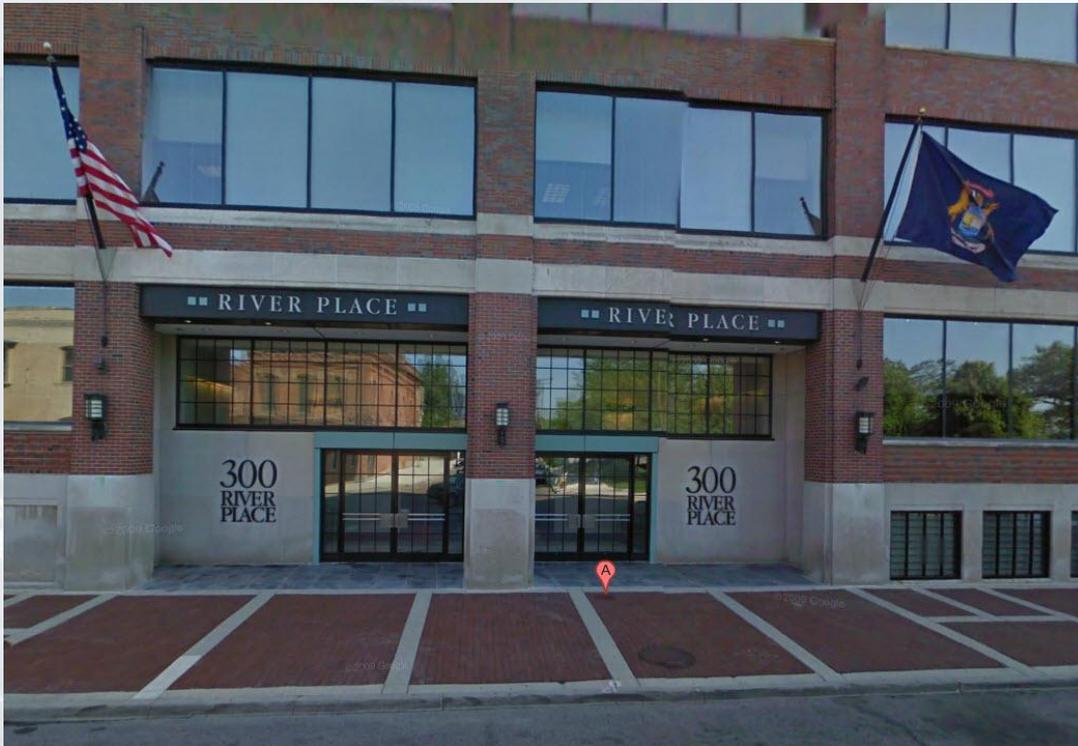
- The Elijah J. McCoy USPTO Satellite Office opened for business on July 13, 2012.
- 87 patent examiners and nine administrative patent judges currently work at the Detroit office.
- The Detroit office patent examiners have contributed to the advancement the Patent Corps has made in decreasing the unexamined new application backlog in FY13 and they have also participated in 54 outreach events in the Detroit metropolitan area.
- The Regional Manager of the Detroit Office is Mr. Terry Melius.

- **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. Nine administrative patent judges currently work at that office.
- The Director for the Silicon Valley Office is Ms. 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

9 Administrative Patent Judges



Denver, Colorado



Denver Federal Center

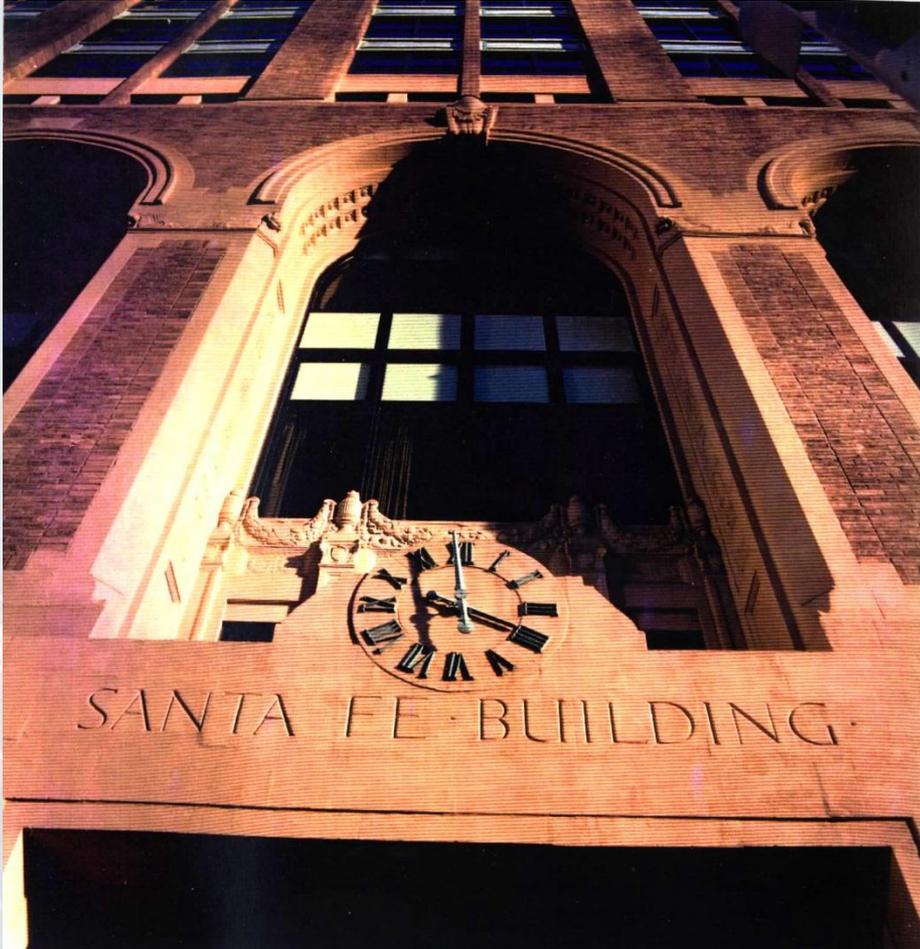
B20/D1000
W 6th Ave & Kipling Street
Lakewood, Colorado 80225

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
9 Administrative Patent Judges



Appeals Statistics

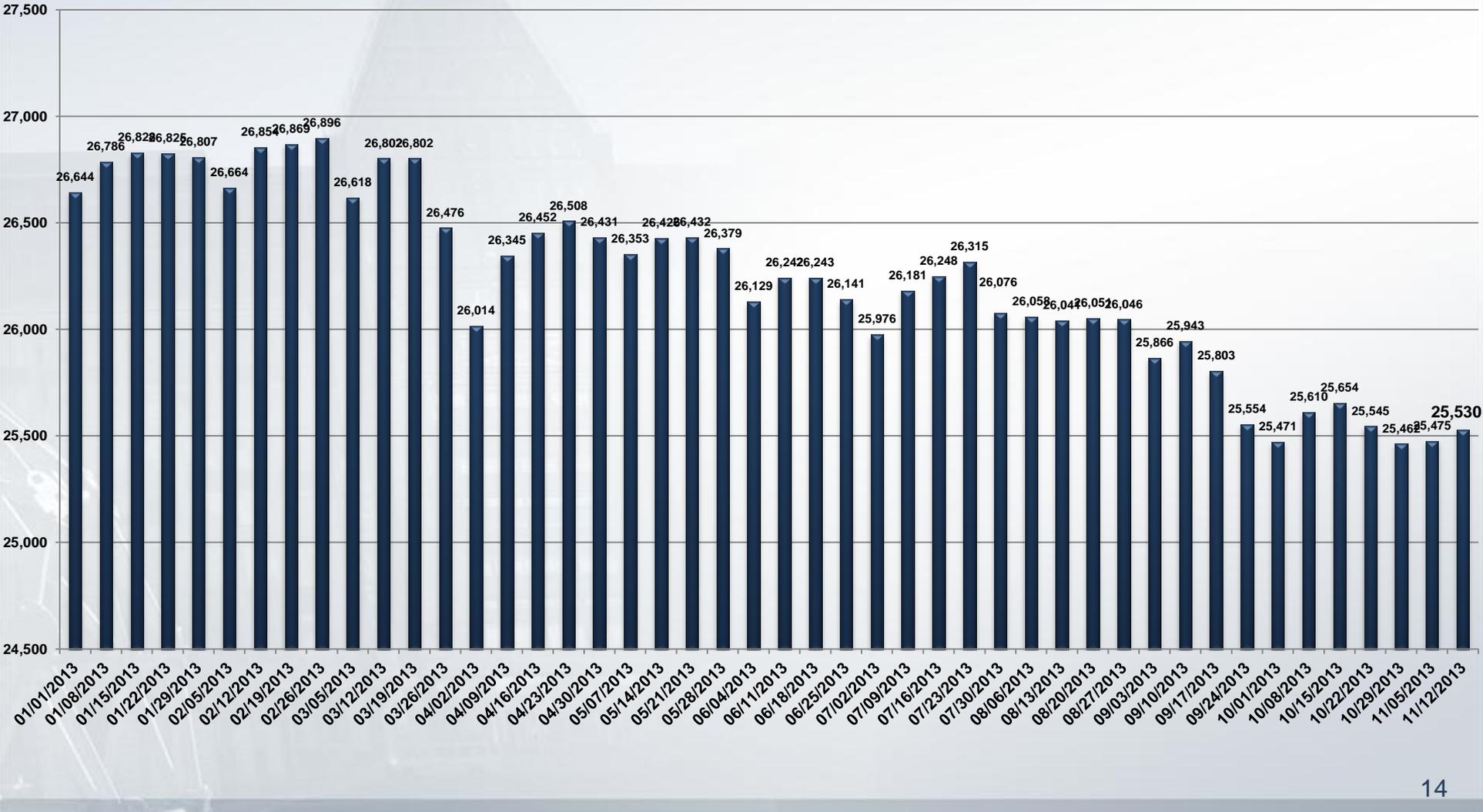


Board Backlog

- 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 continued in FY2013 and needs to continue in FY2014
 - Somewhat lower end-of-year intake for FY2012, FY2013, and beginning of FY2014
 - Extraordinary efforts by current Judges
- Trend can still be reversed if ex parte appeal intake and AIA intake grow slower than new hires



Board Backlog





PTAB Receipts and Dispositions

Past Month

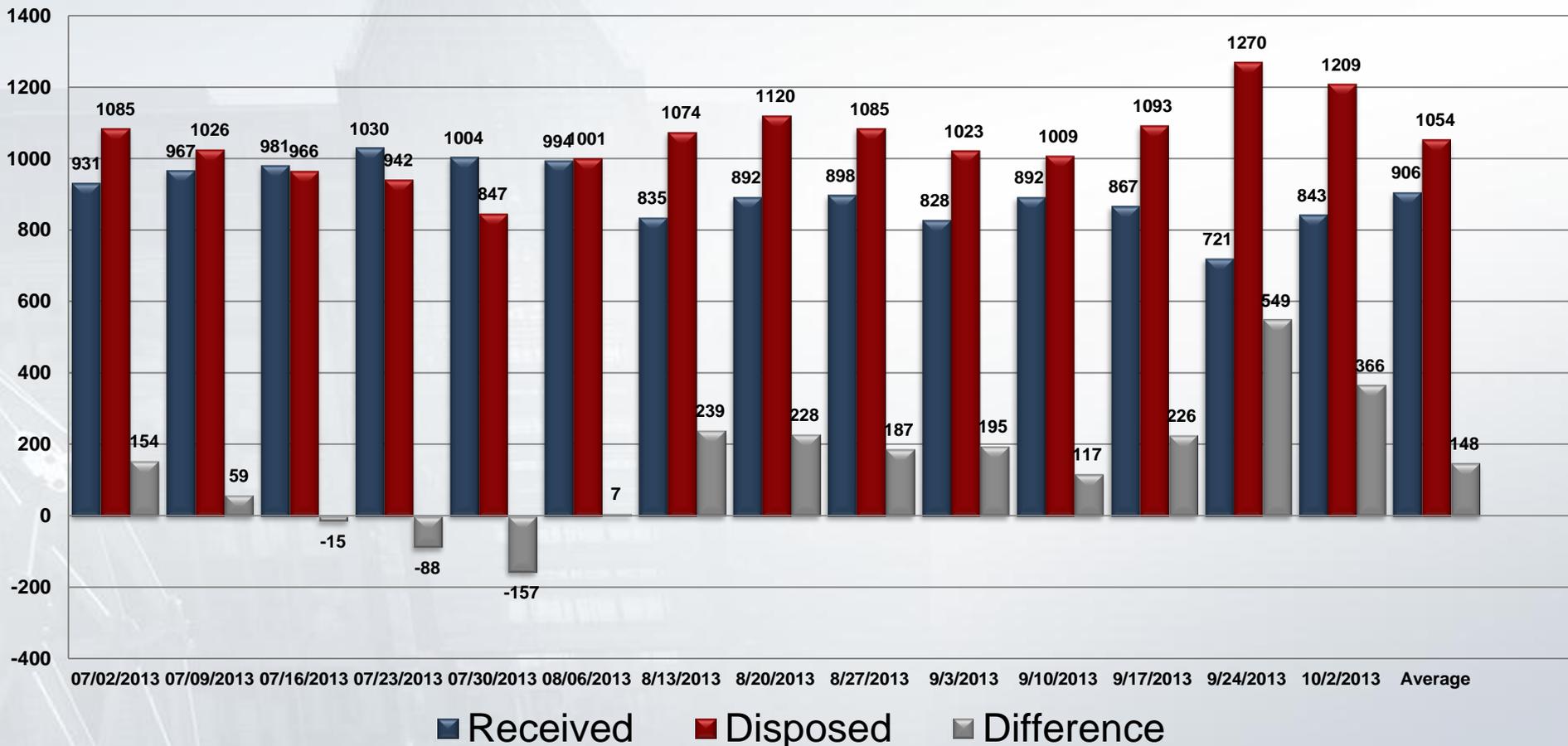
PTAB Receipts and Dispositions			
Period:	10/12/2013	thru	11/12/2013
Discipline	# Cases Received	# Cases Disposed	Difference (Disposed minus Received)
Biotech	37	48	11
Business Methods	46	69	23
Chemical	125	81	-44
Contested Cases	17	23	6
Design	4	1	-3
Electrical	315	401	86
Mechanical	154	228	74
Totals	698	851	153



PTAB Receipts and Dispositions

Weekly: 07/02/2013 through 10/02/2013

Receipts & Dispositions Summary Report FY2013 – 4th Quarter

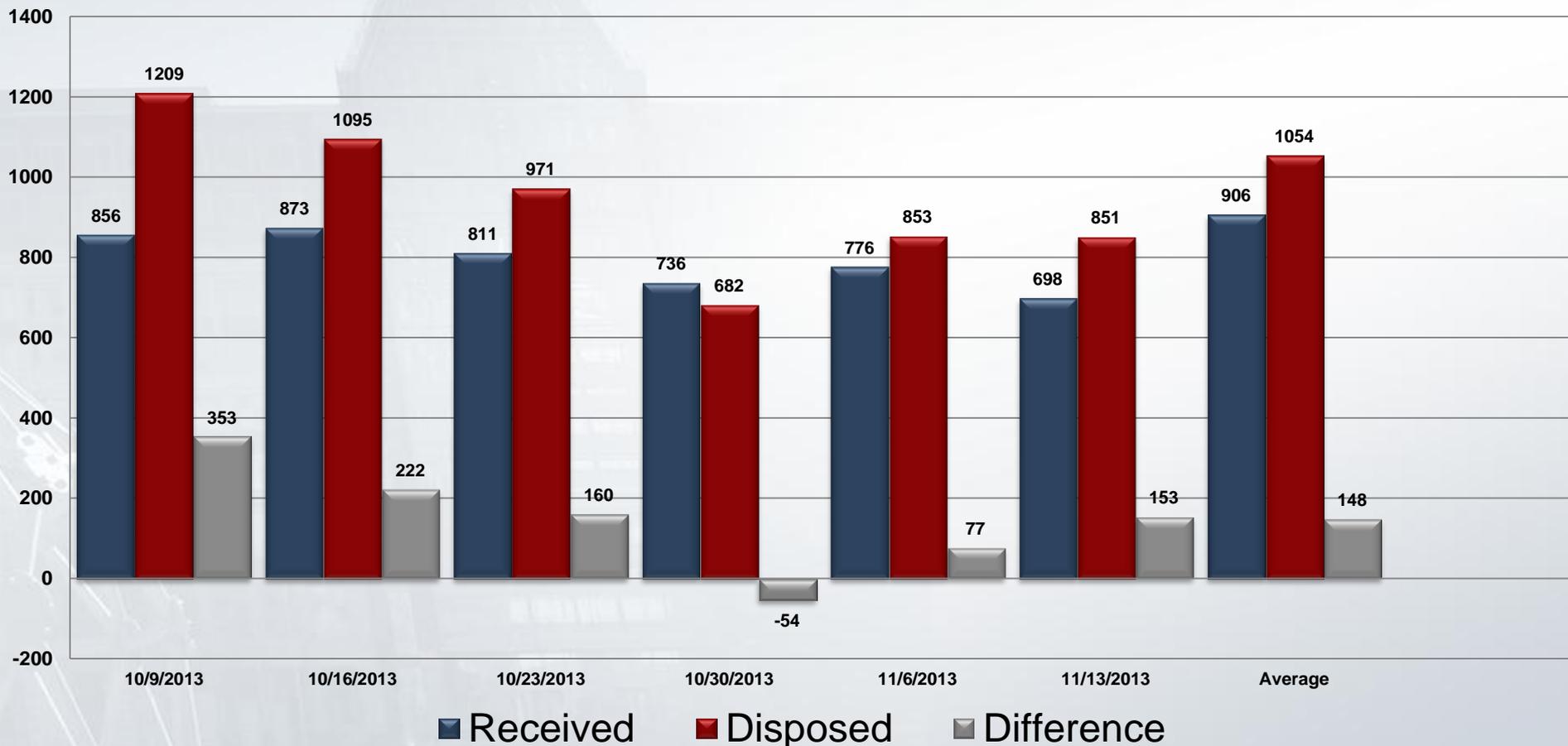




PTAB Receipts and Dispositions

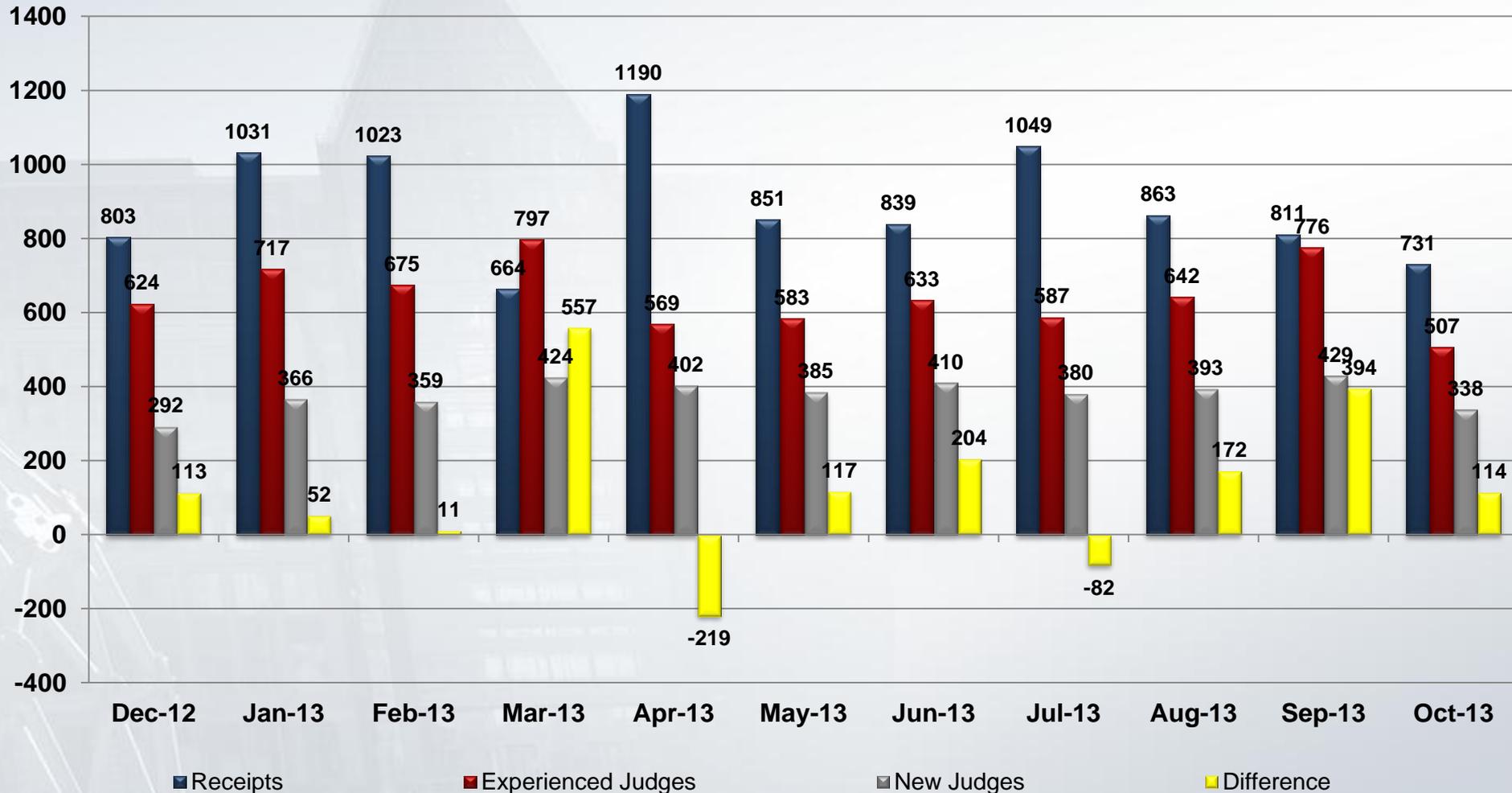
Weekly: 10/09/2013 through 11/13/2013

Receipts & Dispositions Summary Report FY2014 – 1st Quarter to date





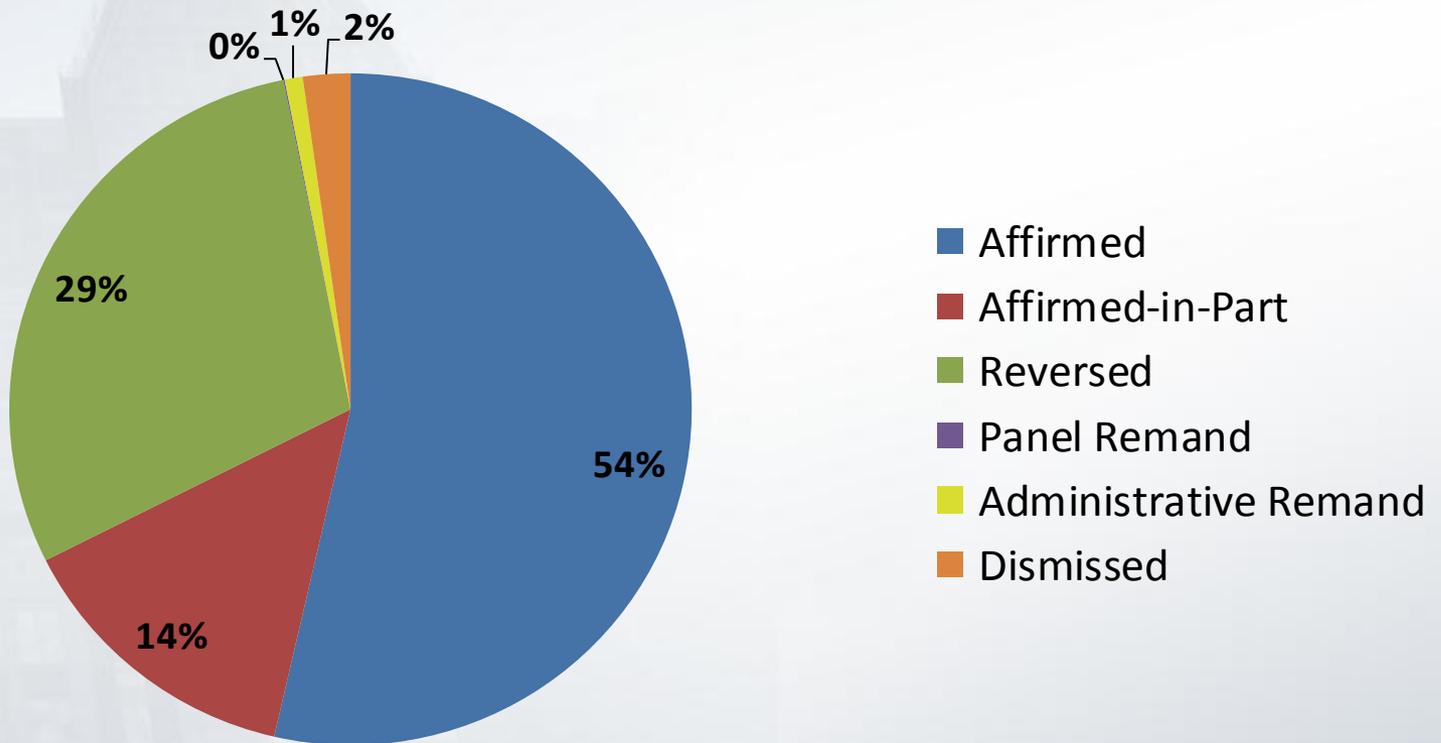
Monthly Receipts and Dispositions – New Judge Comparison





Decisions by Type: FY2013

Decisions





Size of the Backlog for the Past 17 Quarters

Appeals



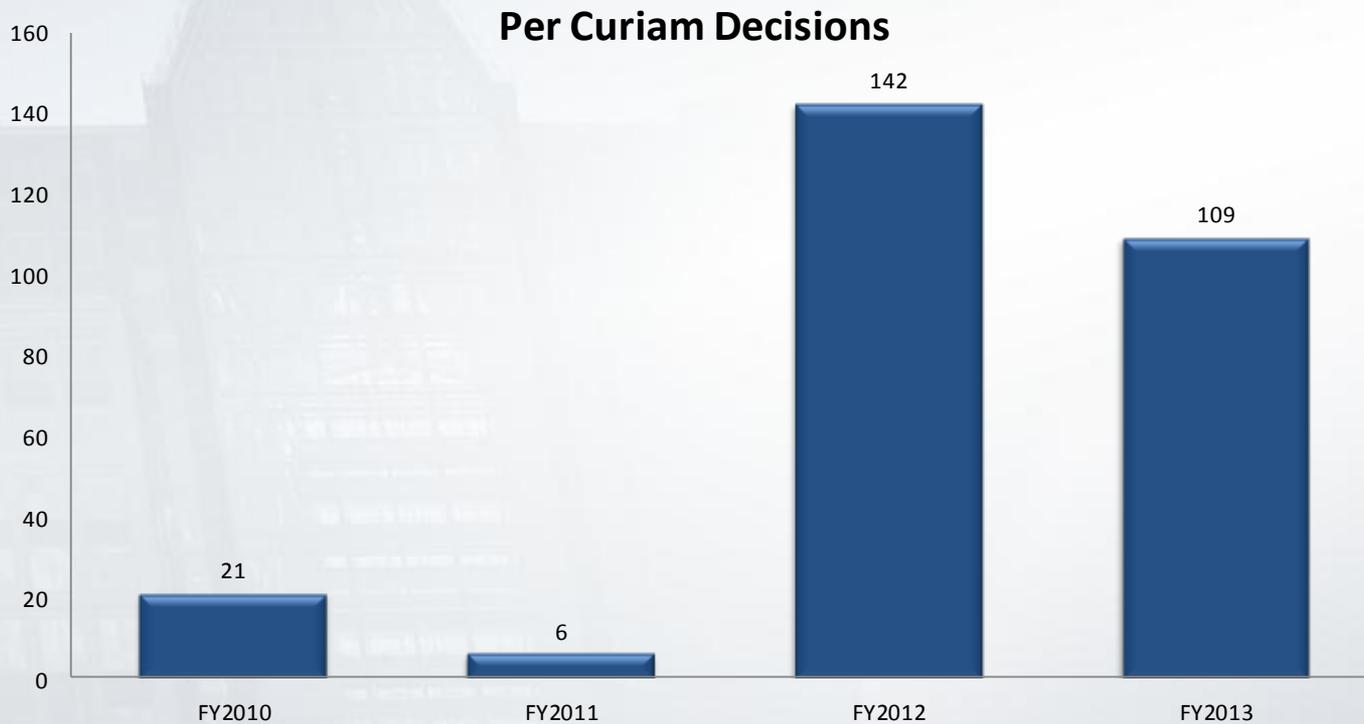


Decisions Adopting Persuasive Arguments Made in the Record

- 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





Outcomes at the Federal Circuit

	FY2012	FY2013	Total
Affirmances	67	46	113
Reversals	4	4	8
Remands	10	7	17
Dismissals	12	14	26
Total	93	71	164



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 Trial Proceedings Statistics



AIA Progress

(as of November 7, 2013)

- Number of AIA Petitions

Total	IPR	CBM	DER
709	627	78	4

- AIA Petition Technology Breakdown

Technology	Number of Petitions	Percentage
Electrical/Computer	496	70.0%
Mechanical	103	14.6%
Chemical	59	8.3%
Bio/Pharma	45	6.3%
Design	6	0.8%

- Number of Patent Owner Preliminary Responses

	Filed	Waived
IPR	303	80
CBM	34	2

- AIA Trials Instituted/Settlements/Final Written Decisions

	Instituted Trials	Denials	Joinders	Total Number of Decisions on Institution	Settlements	Final Written Decisions
IPR	192	31	10	233	48	3
CBM	18	5		23	4	1



AIA Petitions Filed and Hearings Scheduled (as of October 23, 2013)

Month	Petitions Filed			AIA Hearing Sessions Scheduled	
	IPR	CBM	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		
July 2013	69	3			
August 2013	62	9		1	1
September 2013	73	8			
October 2013	68	17		4	3(6)
November 2013				7(9)	1
December 2013				9(18)	1
January 2014				16(22)	
February 2014				11(19)	1
March 2014				10(16)	
April 2014				9(16)	
May 2014				13(17)	1(2)
June 2014				9(16)	(1)
TOTAL	599	73	1	89(138)	9(14)

(#) - 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
- **PTAB 563**
- Central District of California 514
- Northern District of California 260

* FY 2012 data used for District Courts

PTAB data is September 16, 2012 to September 30, 2013



Number of Patent Trials

- FY 2012 Nationally – 139 Trials
- FY 2013 PTAB – 181 Trials instituted
- FY 2013 PTAB – 41 settlements
- FY 2014 PTAB – 29 Trials instituted to date
- FY 2014 PTAB – 11 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)

At risk	Average, all costs, per party
< \$1M	\$916,000
\$1–25M	\$2,769,000
> \$25M	\$6,018,000



Reexamination Statistics



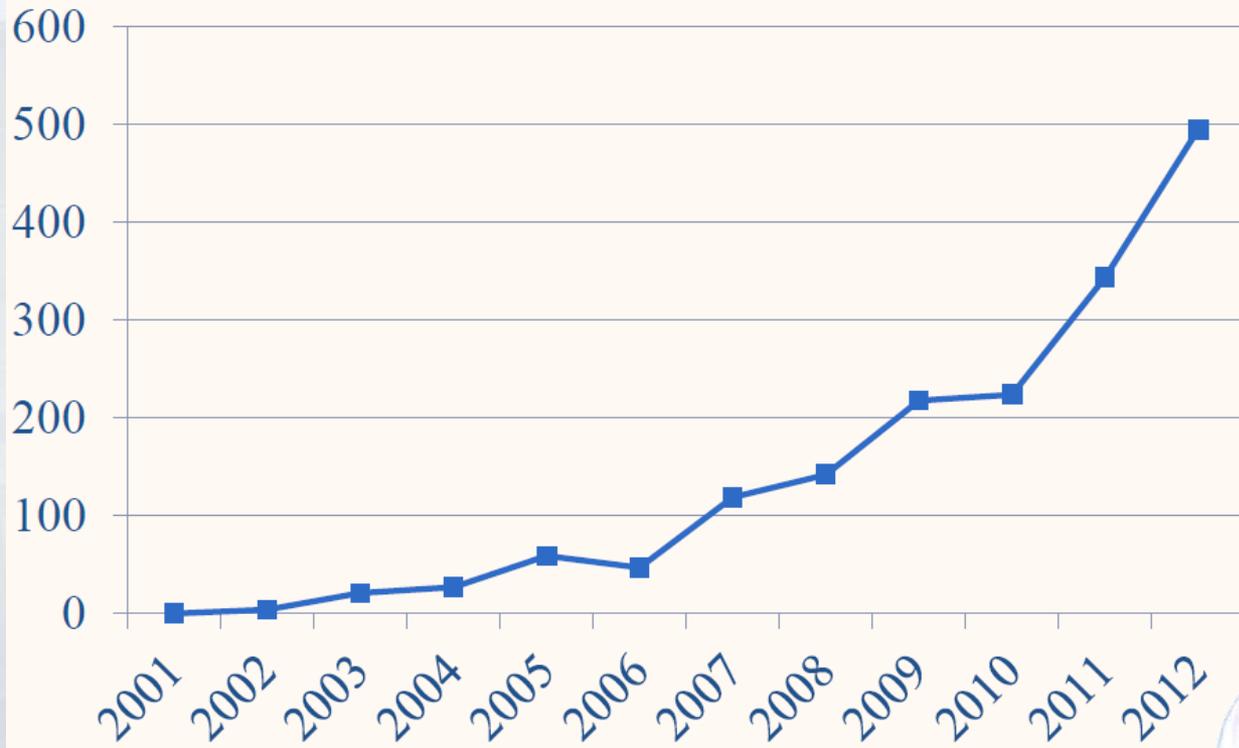
Inter Partes Reexamination Statistics

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

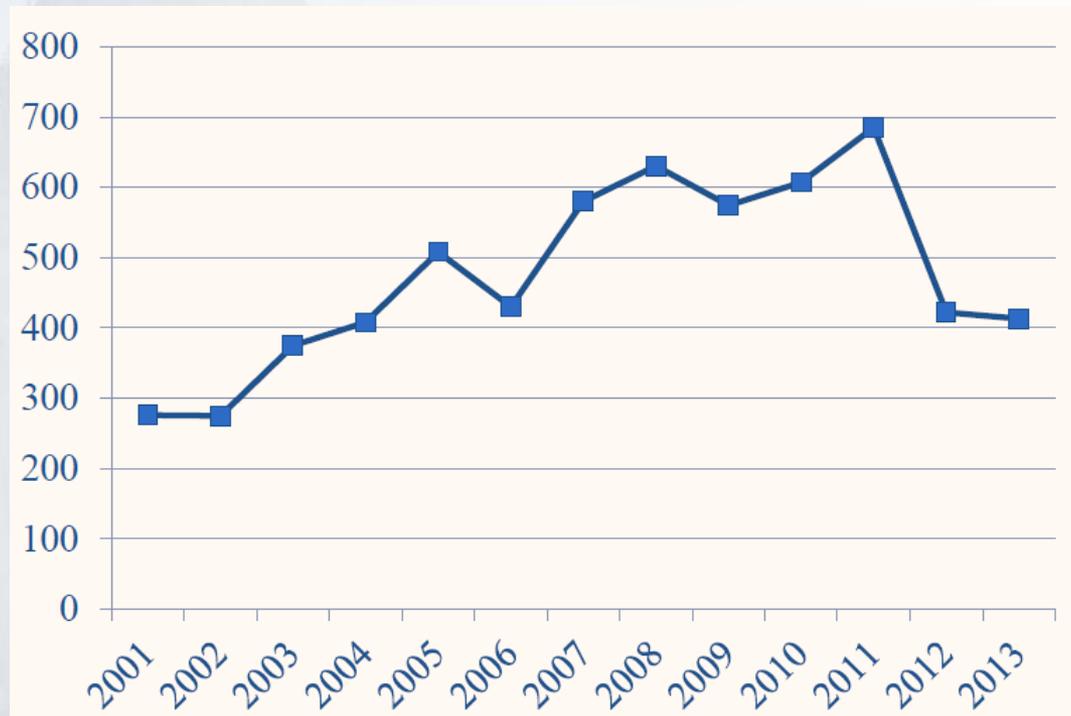
*Data through 3rd quarter

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	239	114	116
Docketed	72	113	53	56
Inventory	113	134	66	74



Projected Reexamination Wave(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 Wave(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 significant 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	181	102
2014*	24	8
2014**	145-260	100-110
2015**	115-240	90-110

*Data through October 31, 2013

**Projected



Questions and Comments?

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Patent Trial and Appeal Board

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