

Patent Public Advisory Committee Quarterly Meeting

Patent Trial and Appeal Board Update



James Donald Smith
Chief Administrative Patent Judge
Patent Trial and Appeal Board
November 20, 2014



PTAB Leadership



Acting Deputy Chief Judge



ADCJ Scott Boalick



Board Executive



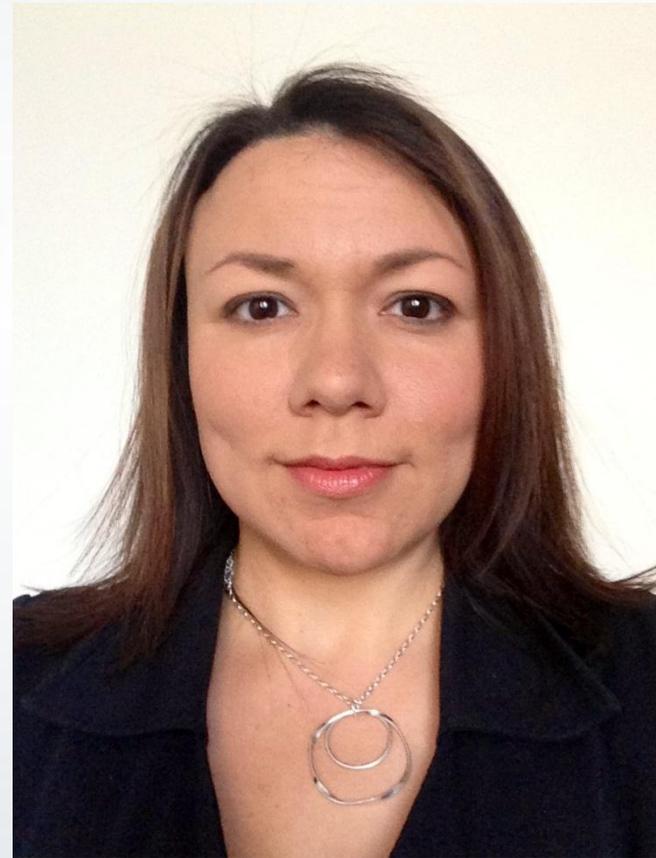
Board Executive Adam Ramsey



Acting Vice Chief Judges



AVCJ Barbara Benoît



AVCJ Miriam Quinn



Detroit Region Roadshows



Detroit Region Roadshows

November 5-19, 2014



Location	Date
Detroit, MI	11/05/2014
Chicago, IL	11/07/2014
Pittsburgh, PA	11/13/2014
Cleveland, OH	11/14/2014
Minneapolis, MN	11/17/2014
Milwaukee, WI	11/19/2014

- The United States Patent and Trademark Office hosted six free, publicly available roadshows in the Mid-Atlantic/Midwest Regions.
- The agenda focused on the AIA trials and included a State-of-the-Board address, interactive AIA trial instruction, and an AIA trial workshop.



AIA Trial Rulemaking Update



AIA Trial Feedback

- Nationwide listening tour conducted in April and May 2014
- Federal Register Request for Comments published in June 2014
 - <http://www.gpo.gov/fdsys/pkg/FR-2014-06-27/pdf/2014-15171.pdf>
- Comment period closed October 16, 2014
- 37 comments received and published on the PTAB website
 - http://www.uspto.gov/ip/boards/bpai/public_comments_ptab_aia_trial_rfc.jsp
 - Comments received from bar associations, corporations, and individuals



Topics for Comment

Claim construction	Discovery
Amendment practice	Oral hearing
Patent owner preliminary response	Extension of 1 year statutory period
Obviousness	Multiple proceedings
Real party in interest	General catch-all



Scope of Public Feedback

- A wide range of feedback was received
 - Non-rule specific comments
 - Comments directed to the seventeen questions posed for public input



Claims Construction Standard

- Advocating for the *Phillips* standard
- Advocating for the BRI standard
- Advocating no change to current practice with certain exceptions
 - where patent will expire or a terminal disclaimer is filed before final decision
 - where the ability to amend claims is no longer present
 - when the parties have each filed claim construction briefings in another tribunal



Motions to Amend

- Advocating less restrictive requirements
 - Page limit increase
 - Claim substitution
 - Burden of proof
- Advocating no change to current practice
- Advocating ending claim amendments



Additional Discovery

- Advocating for and against continued application of the *Garmin* factors
 - Especially the first *Garmin* factor (already in possession of evidence tending to show useful information will be uncovered)
- Advocating for changes to granting of additional discovery as to
 - Real Party in Interest
 - Objective Indicia of non-obviousness



Extension of 1-Year Period

- Advocating for rare extensions
 - good cause
 - unavoidable
- Advocating for six-month extension
 - a later-filed petition on the same patent that will not reach a final decision until after the first proceeding is concluded
 - due process and interest of justice



Next Steps

- PTO will review all comments and make proposal to revise existing rules and/or guidance
- PTO will issue a Federal Register Notice of Proposed Rulemaking and/or Guidance Changes
 - To be issued in Spring 2015
- Public will have 60 days to comment
- PTO will consider all comments and potentially issue final rules and/or guidance in Federal Register
 - Delayed effective date of 30 days



Board Hiring

- APJ Hiring
- Patent Attorney Hiring
- Support Staff Hiring



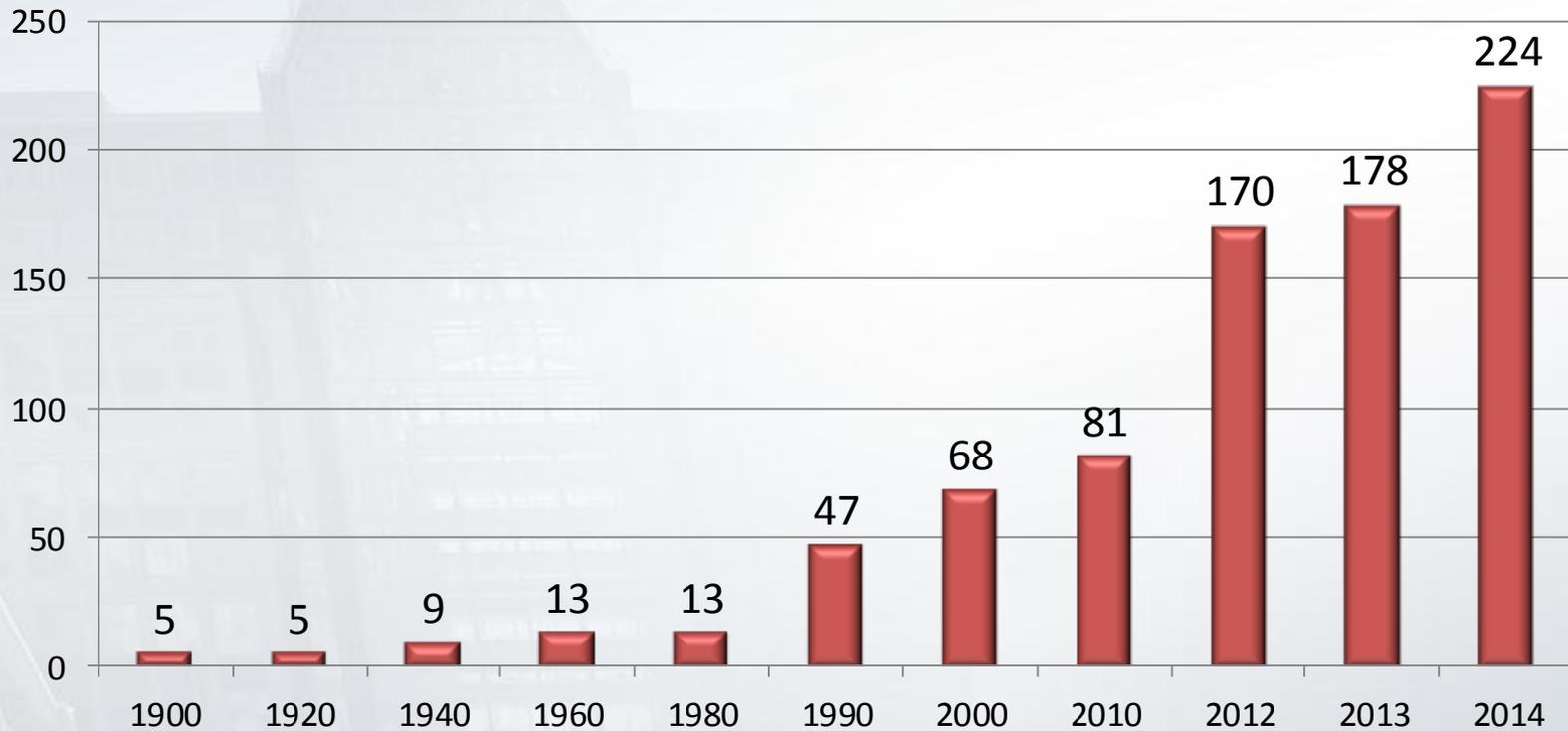
APJ Hiring



Judge Members of the Board

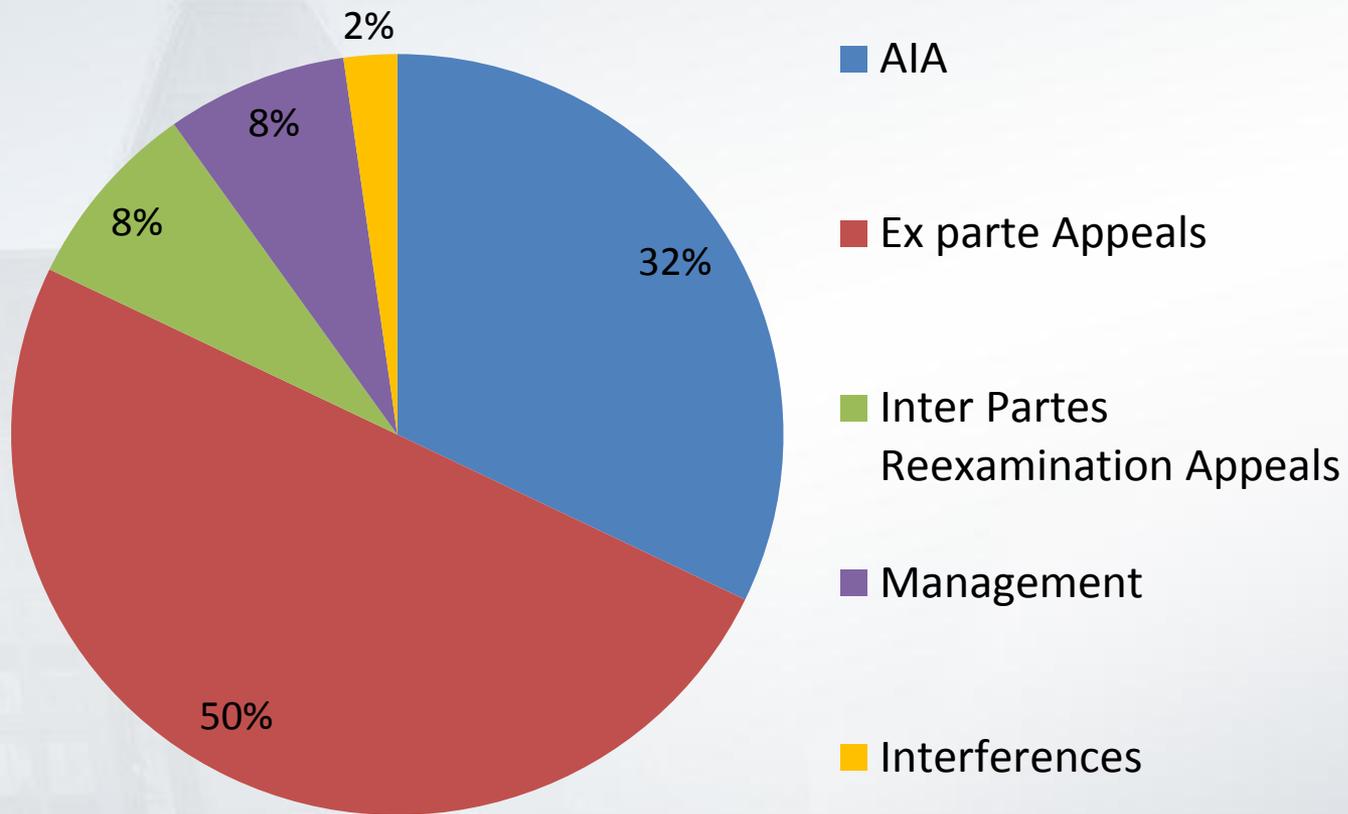
As of November 17, 2014

Judges





Allocation of Judges

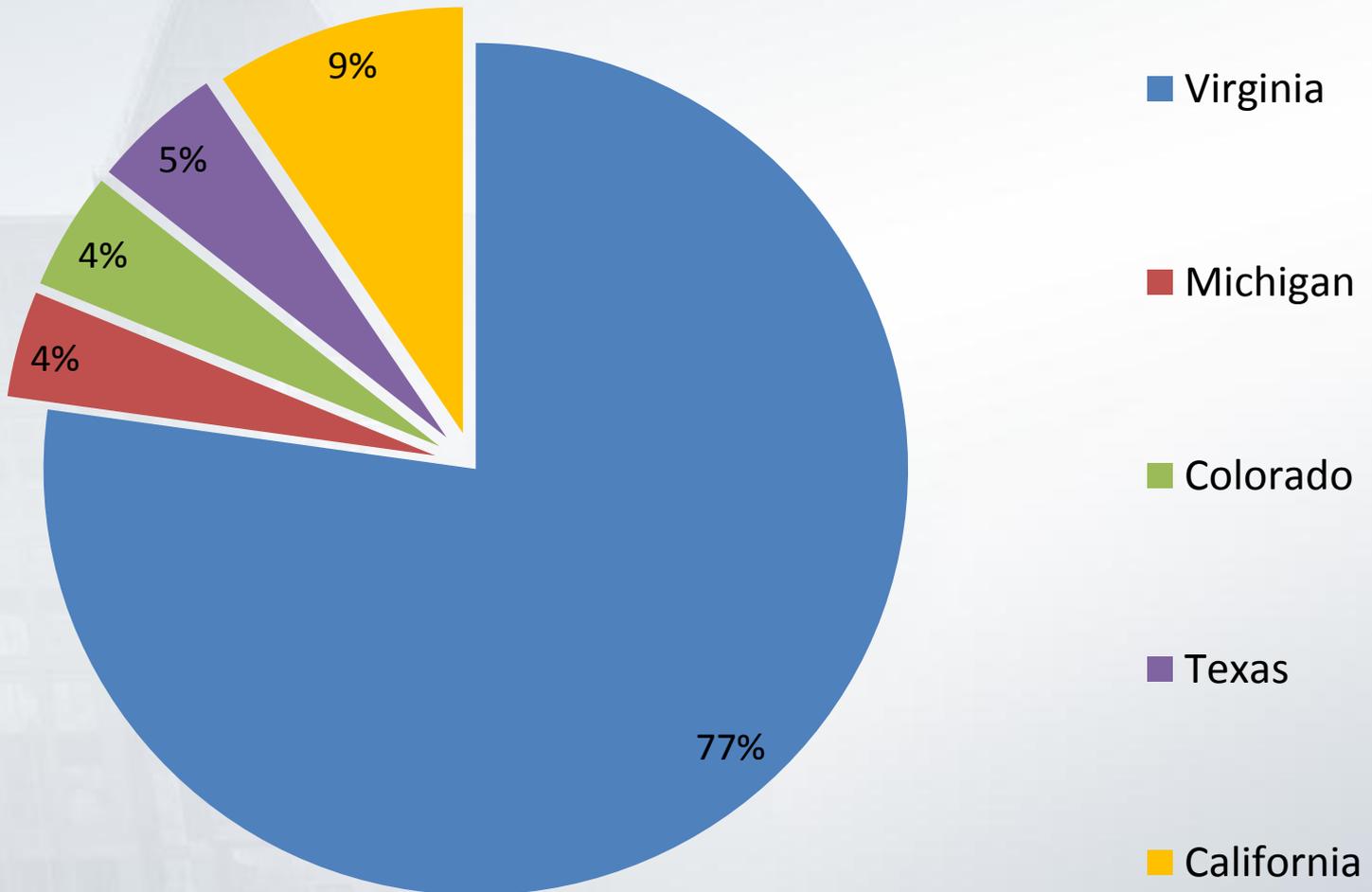


* As of November 17, 2014



PTAB Office Location Demographics

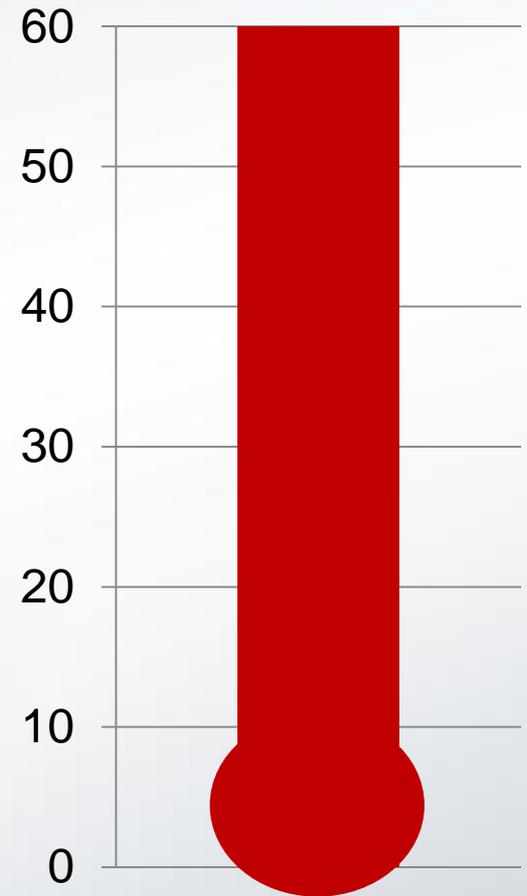
as of November 17, 2014





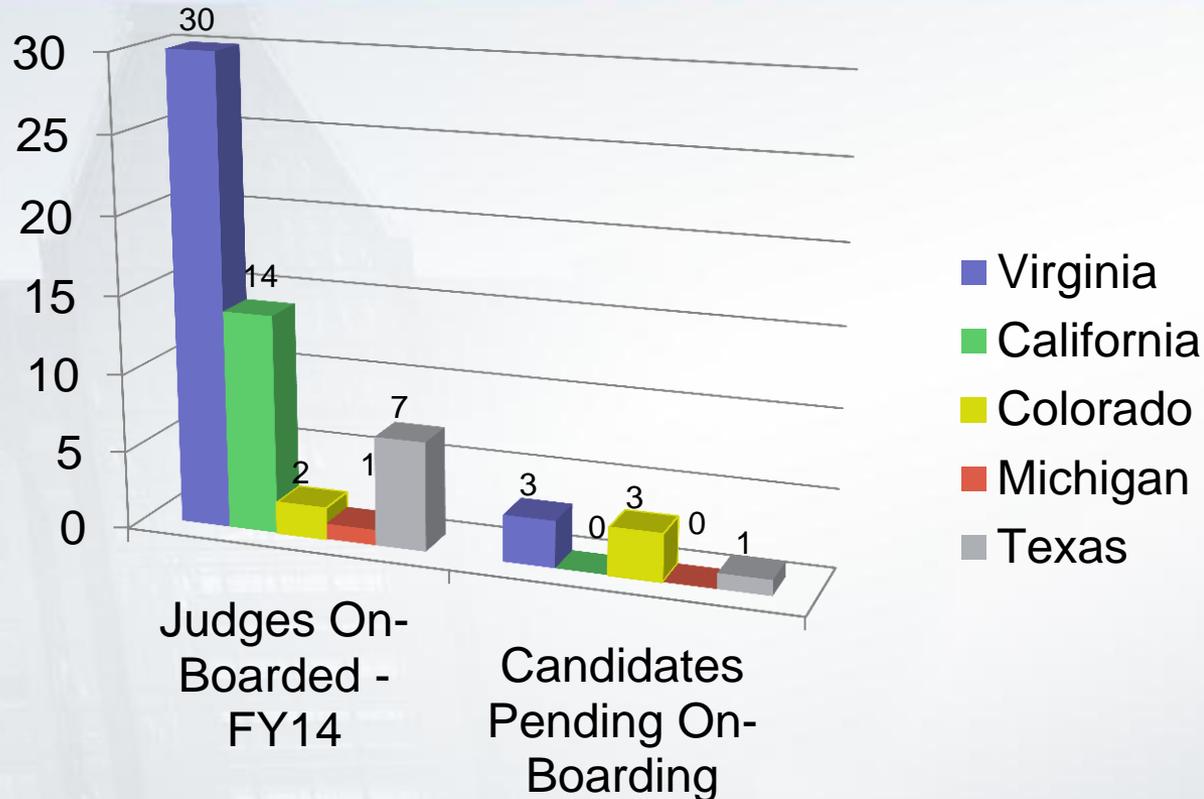
FY 2014 APJ Hiring

61/60





Sixty in Six Snapshot (as of November 17, 2014)



Number of interviews conducted in FY2014: 192

Current Vacancy Announcement Open Through November 28, 2014

Point of Contact: Isis Thomas, Office of Human Resources



APJ Positions

- Goal is to add 60 more judges by October 2015
- Detroit-based APJ announcement open on USAJOBS
 - Relocation expenses may be available
- APJ announcement open on USAJOBS for all other locations
- Both announcements close on November 28, 2014



Patent Attorney Hiring



Patent Attorney Positions

- Seeking 3 Supervisory Patent Attorneys
 - Selections to be made this month
- During FY 2015, PTAB is planning to hire 30-45 patent attorneys
- Patent attorney announcement to be posted on USAJOBs soon
- Goals of patent attorney program:
 - Assist judges with cases to increase overall Board output capacity
 - Serve as a pipeline for future judges



FY 2015 PTAB Support Staff Hiring



Support Staff Positions

- Completed FY 2015 PTAB hires:
 - Acquisition Program Specialist (GS-13)
 - Management Information Specialist (GS-14)
 - Management & Program Analyst (GS-13)
- Pending FY 2015 PTAB hires:
 - Administrative Officer (GS- 14/15)
 - Management & Program Analyst (GS-14)
 - Management Analyst (GS-13)
 - Management Information Specialist (GS-13/14)
 - Outreach Public Affairs Specialist (GS-13)
 - Confidential Assistant to the Chief Judge (GS-11)
 - Paralegals (GS-11 (backfills))
 - Data Analyst (GS-12)
 - Administrative Management Specialists (GS-7/9)
 - Support Services Assistants (GS-7)



AIA Statistics



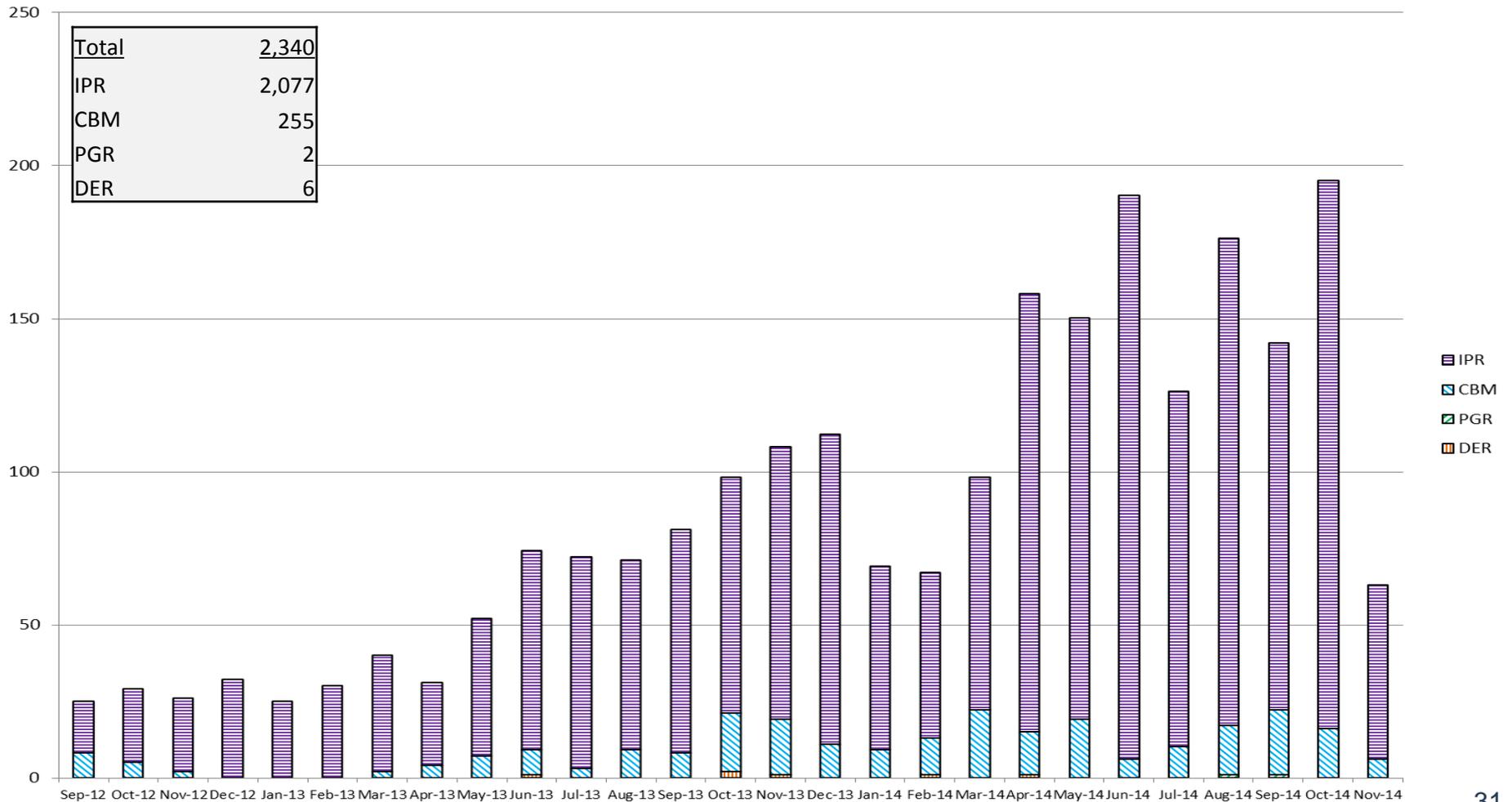
Comparison by Technology Center of FY 2014 AIA Filings v. Patent Grants

TC	AIA Filings	Patent Grants
1600	90	24,669
1700	107	31,863
2100	188	24,422
2400	114	30,983
2600	223	40,445
2800	289	70,281
2900	3	22452
3600	226	38,160
3700	156	42,931
Other	98	176
Total	1494	326382



AIA Progress (as of November 13, 2014)

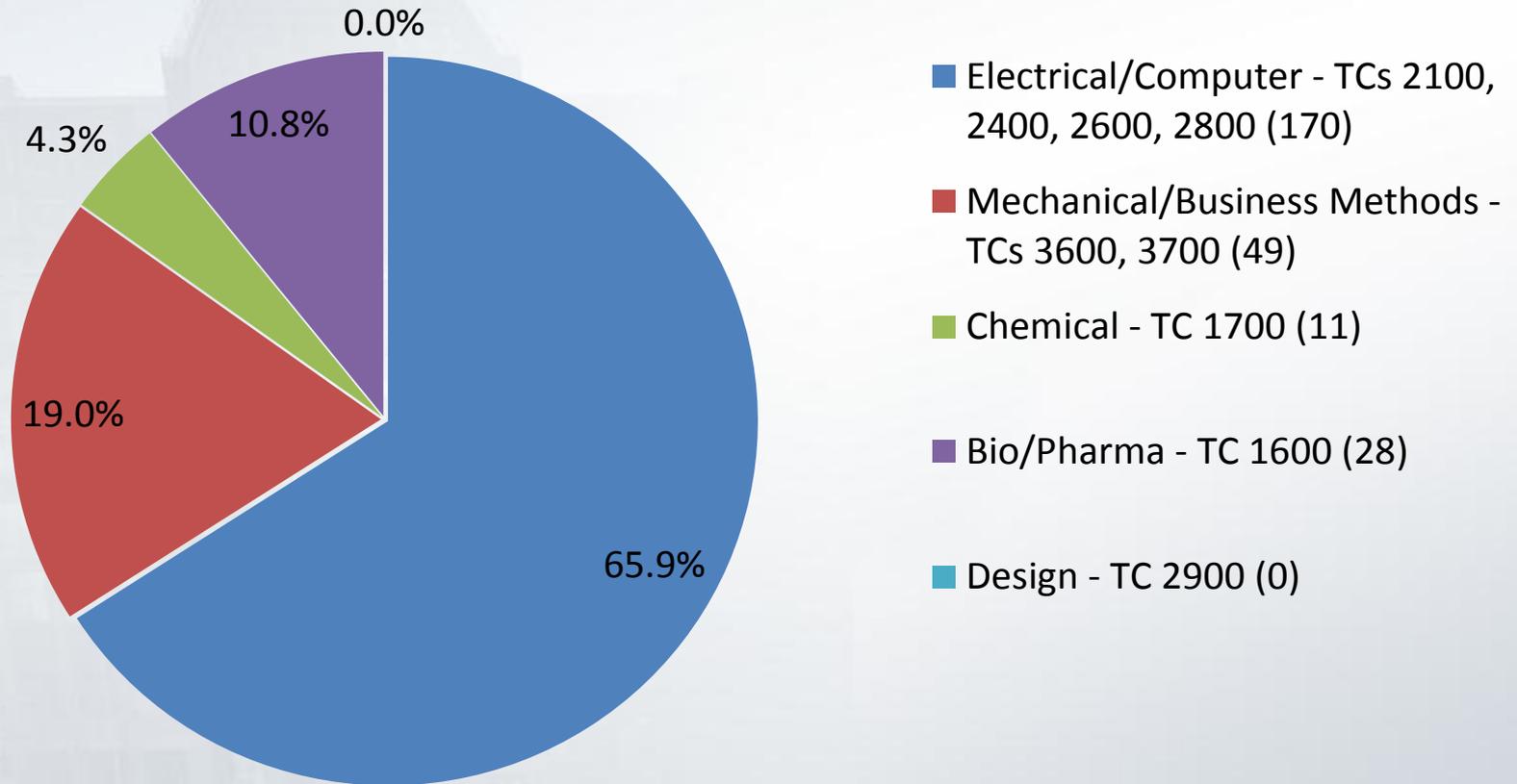
- AIA Monthly Filings





AIA Progress (for FY15 through November 13, 2014)

- AIA Petition Technology Breakdown





AIA Progress (as of November 13, 2014)

- Cumulative Patent Owner Preliminary Responses

	Filed	Waived
IPR	1,230	280
CBM	163	22
PGR	1	-



AIA Progress (as of November 13, 2014)

- AIA Petition Dispositions

		Trials Instituted	Joinders	Percent Instituted	Denials	Total No. of Decisions on Institution
IPR	FY13	167	10+	87%	26	203
	FY14	557	15+	75%	193	765
	FY15	97	50+	85%	25	172
CBM	FY13	14	-	82%	3	17
	FY14	91	1+	75%	30	122
	FY15	7	-	70%	3	10
DER	FY14	-	-	0%	3	3



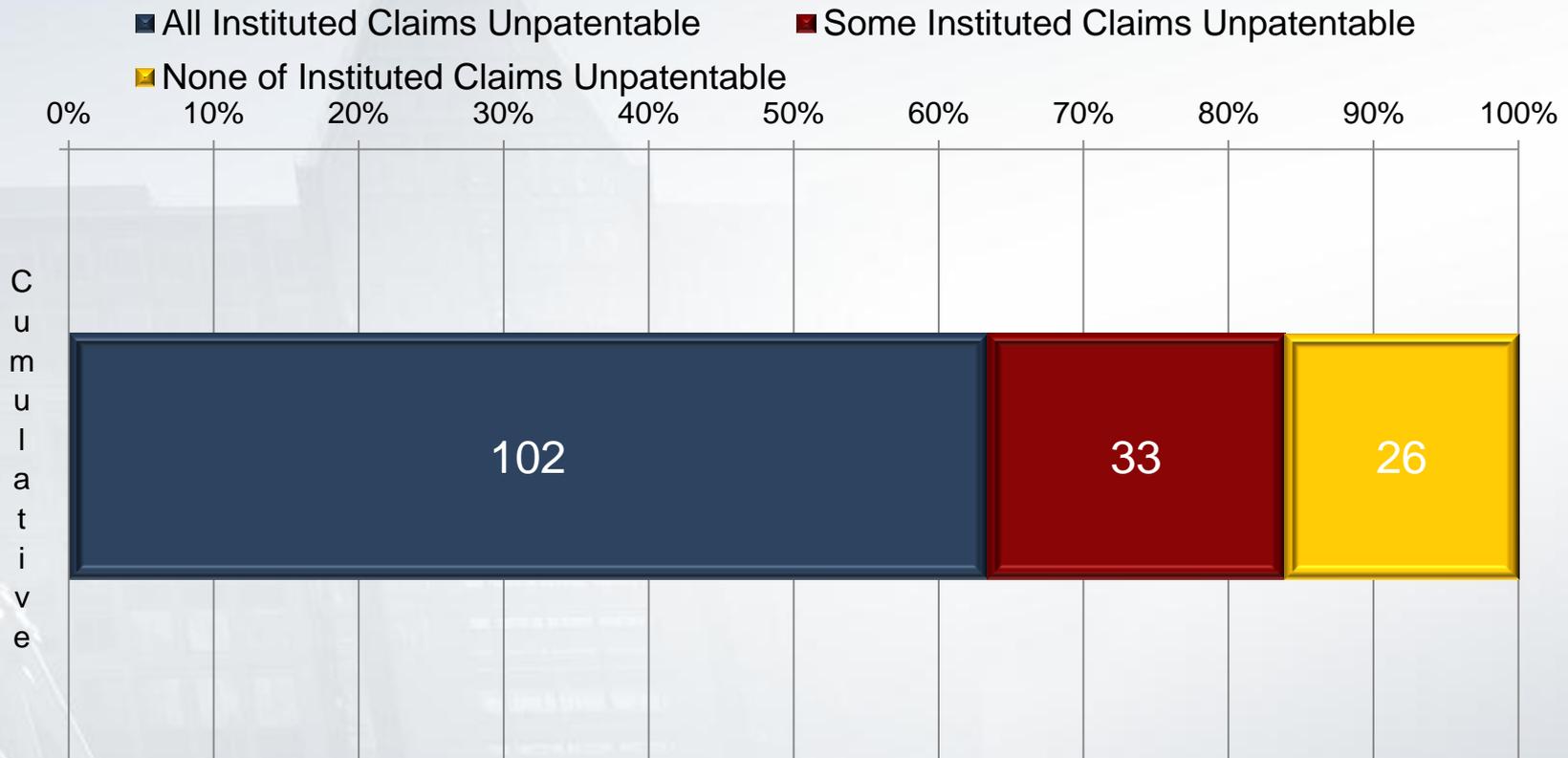
AIA Progress (as of November 13, 2014)

- AIA Final Dispositions

		Settlements	Adverse Judgments	Final Written Decisions
IPR	FY13	38	2	0
	FY14	210	39	130
	FY15	30	4	31
CBM	FY13	3	0	1
	FY14	27	3	13
	FY15	6	-	3



Final Written Decisions in IPRs (As of 11/13/2014)

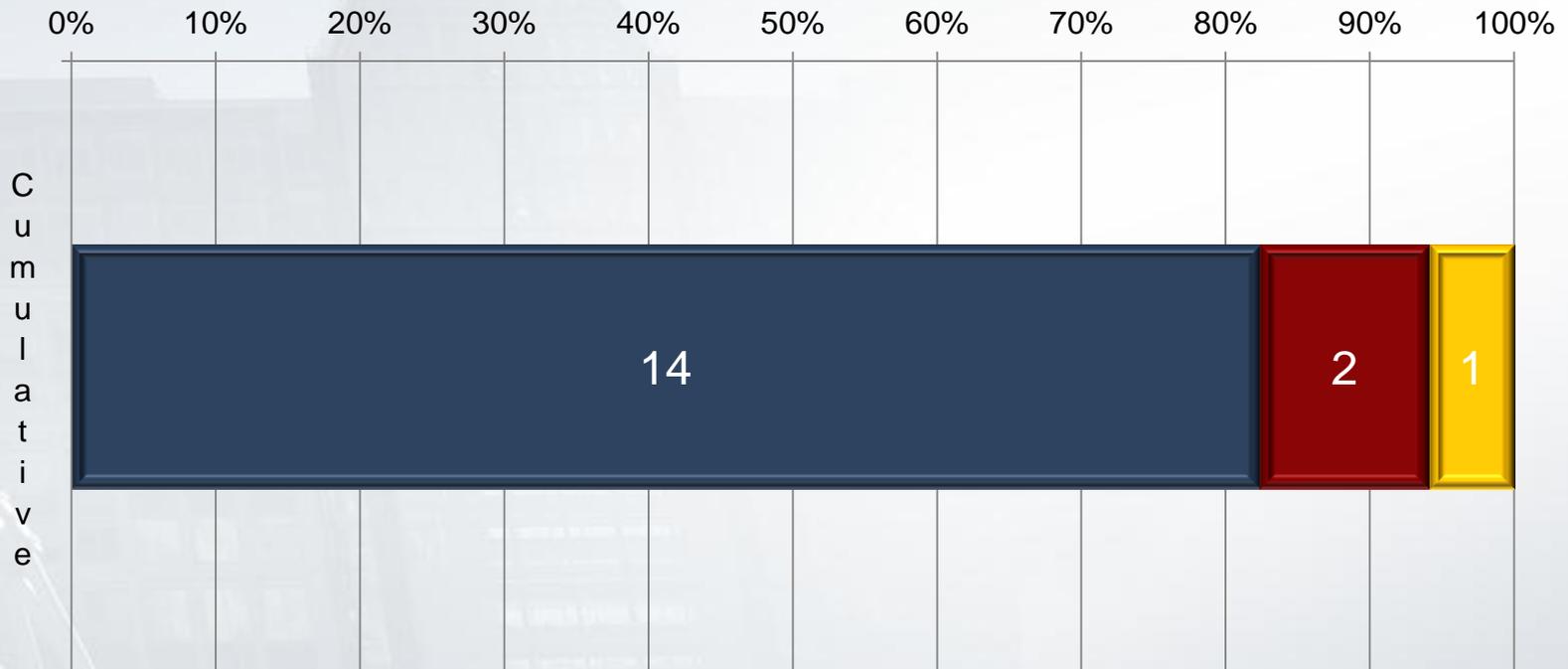


*IPR (161 Final Written Decisions)



Final Written Decisions in CBMs (As of 11/13/2014)

- All Instituted Claims Unpatentable
- Some Instituted Claims Unpatentable
- None of Instituted Claims Unpatentable



*CBM (17 Final Written Decisions)



Appeals Statistics



Board Inventory (FY 2014)

(excluding appeals from reexamination proceedings)

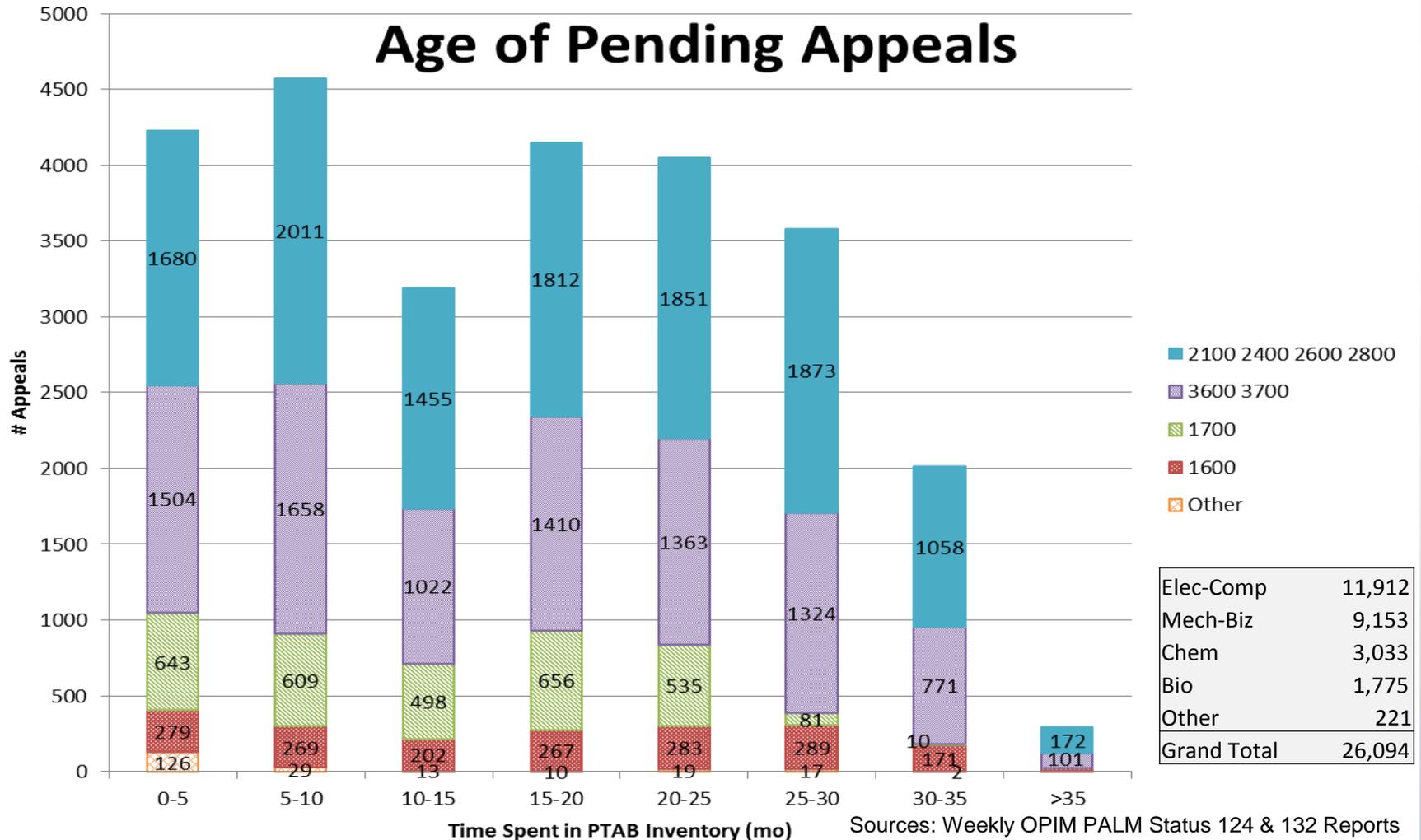
Ex Parte Appeal Inventory





Pending Ex Parte Appeals

Age and Technology Center Origin





Questions and Comments?

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Chief Administrative Patent Judge

Patent Trial and Appeal Board

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