

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**

**uspto**

# Patent Public Advisory Committee Quarterly Meeting

## PTAB Update

David P. Ruschke

Chief Administrative Patent Judge

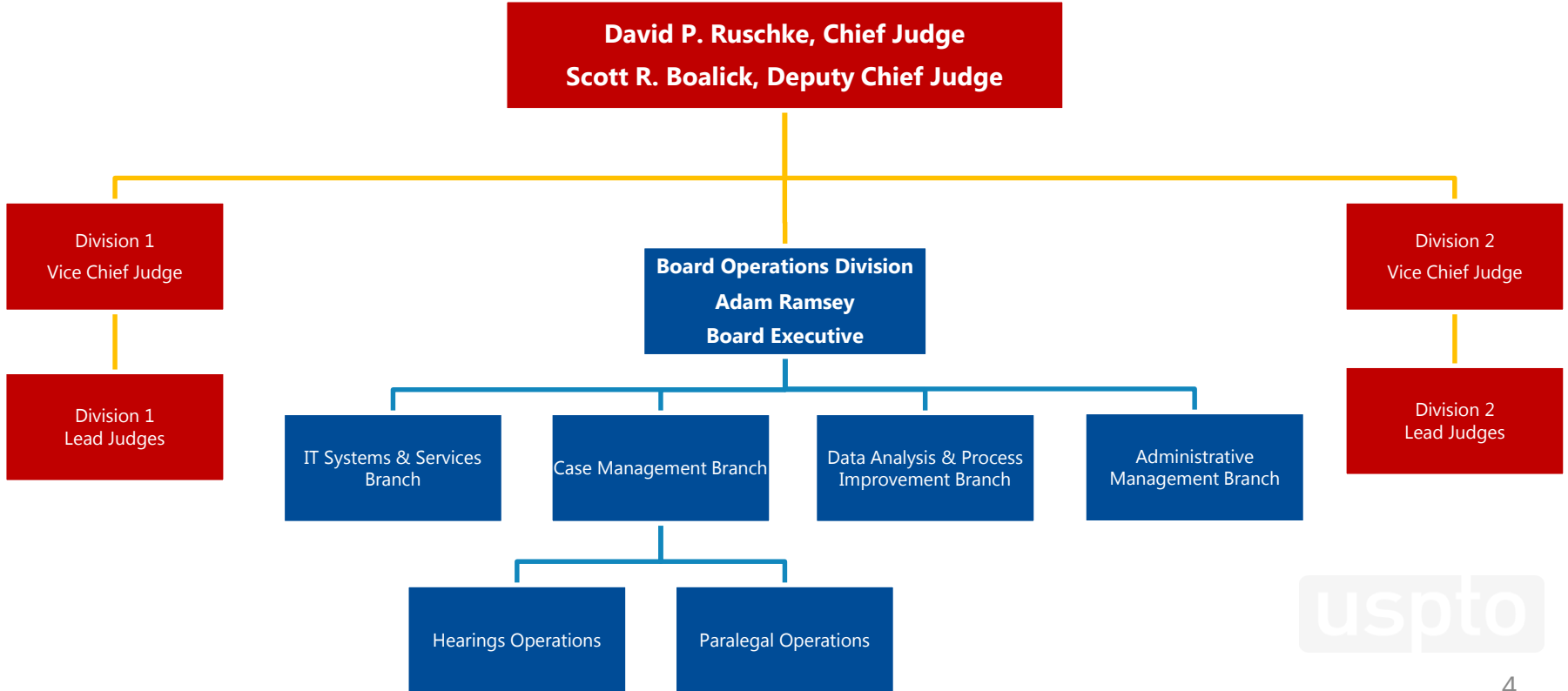
August 18, 2016

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# PTAB MANAGEMENT

# PTAB Management



Appeal, Interference, Reexamination, and Trial Statistics

# **PTAB STATISTICS**

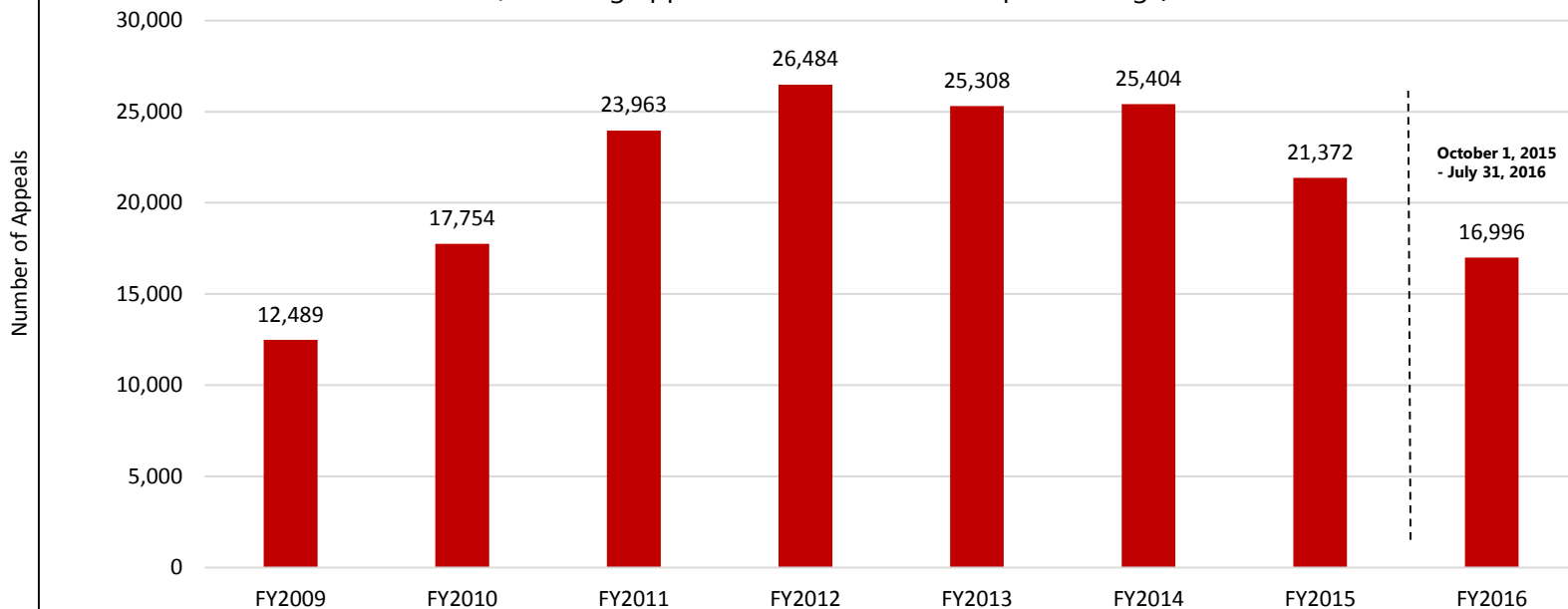
Ex Parte Appeal, Reexamination Appeal, Reissue Appeal, and Interference

# **APPEAL AND INTERFERENCE STATISTICS**



## Pending Ex Parte Appeals

(excluding appeals from reexamination proceedings)

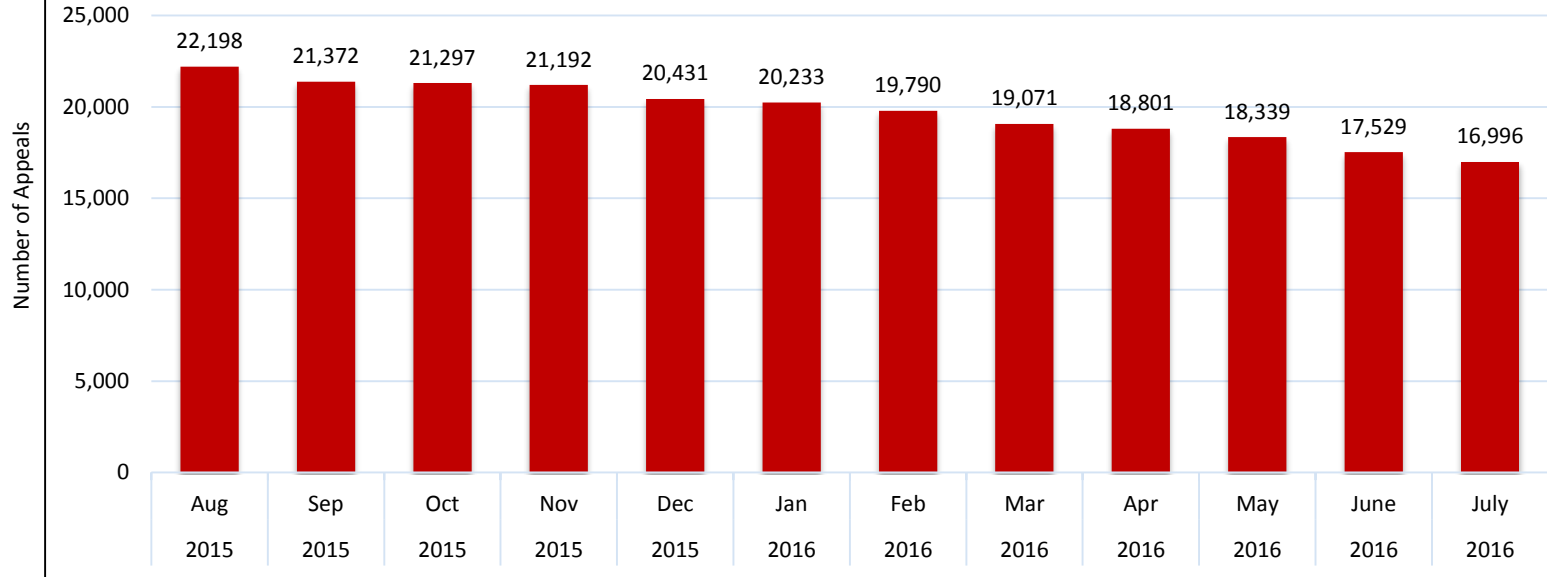


This graph shows the total number of ex parte appeals pending at the end of each fiscal year, excluding reexamination, reissue and supplemental examination appeals.

\* As a result of an internal audit the number of pending appeals for 9/30/2015 has been updated from 21,293 to 21,372.

## Total Ex Parte Inventory for the Past 12 Months

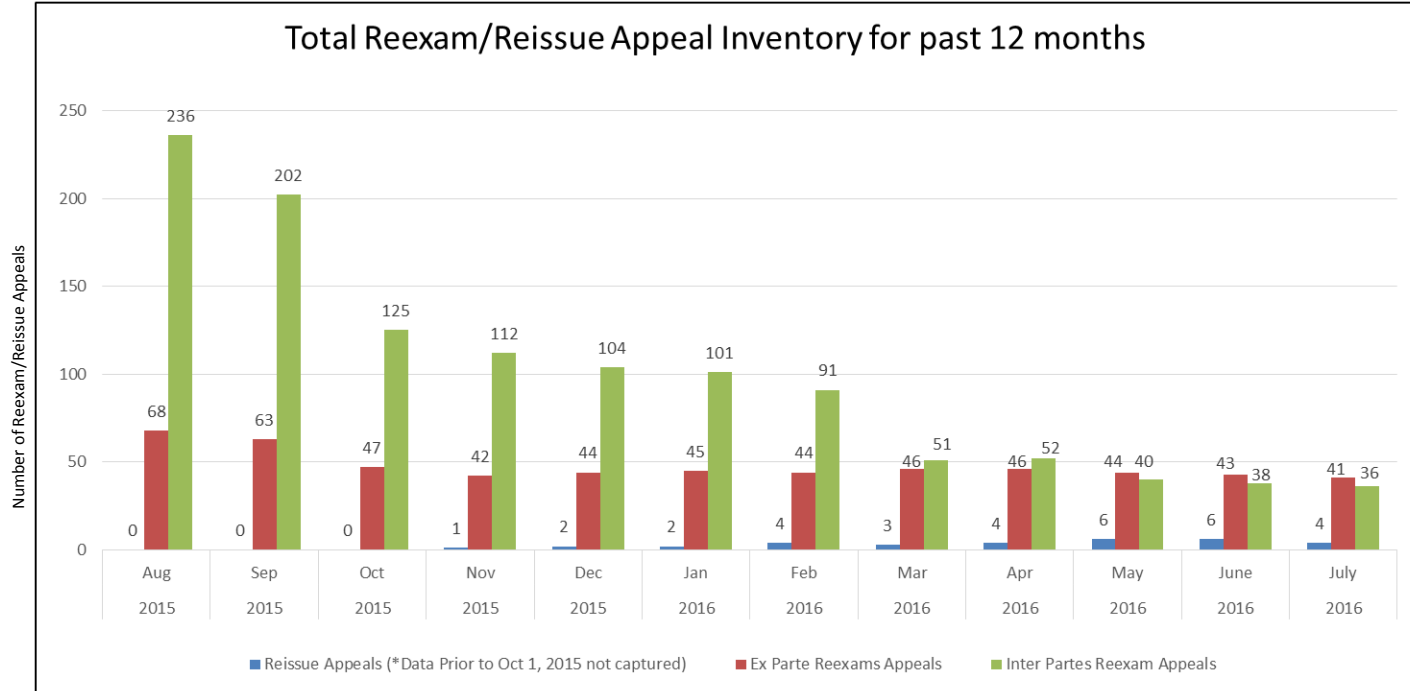
(excluding appeals from reexamination proceedings)



This graph shows the total number of ex parte appeals pending at the end of each month (for the past 12 months), excluding reexamination, reissue and supplemental examination appeals.

\* As a result of an internal audit the number of pending appeals for 9/30/2015 has been updated from 21,293 to 21,372.

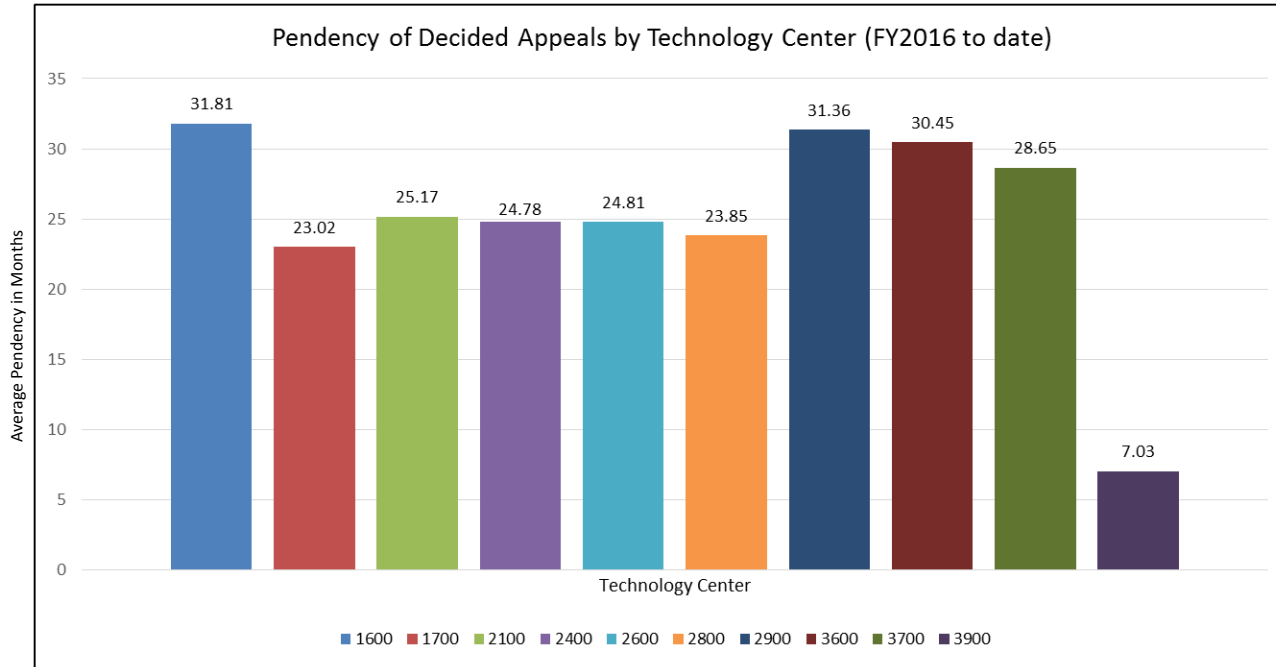




This graph shows the total number of reexam and reissue appeals pending at the end of each month (for the past 12 months). Excludes appeals originating from supplemental examinations.

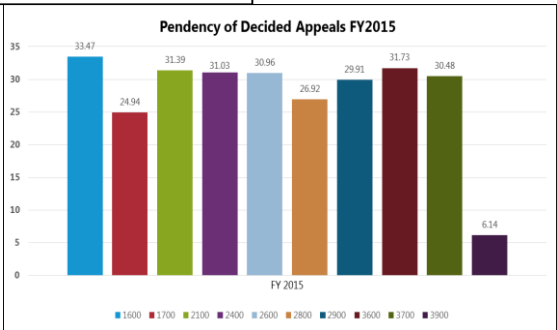
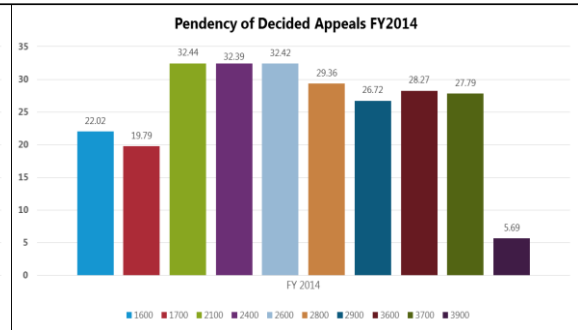
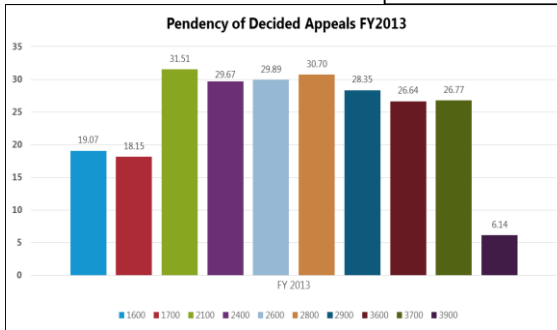
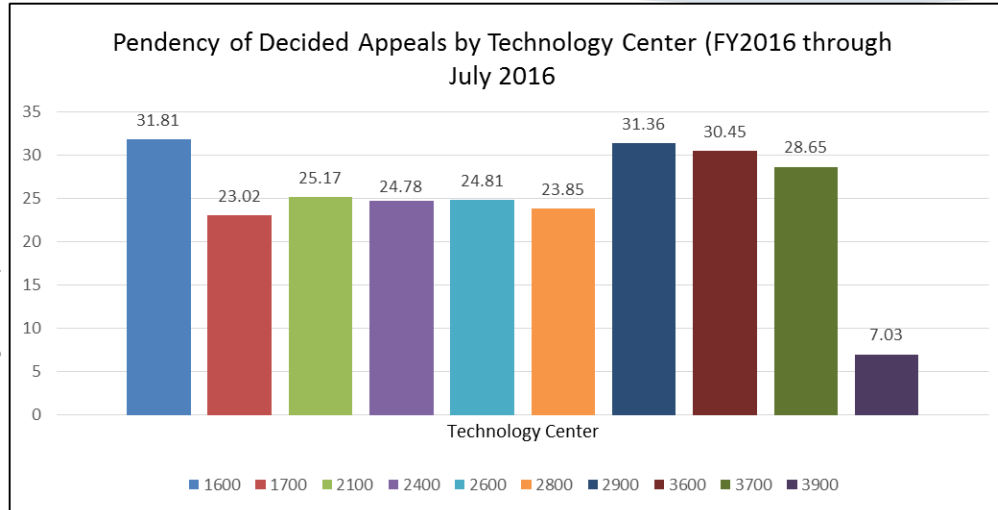
\*Note – Data does not include reissue appeals docketed prior to Oct 1, 2015.





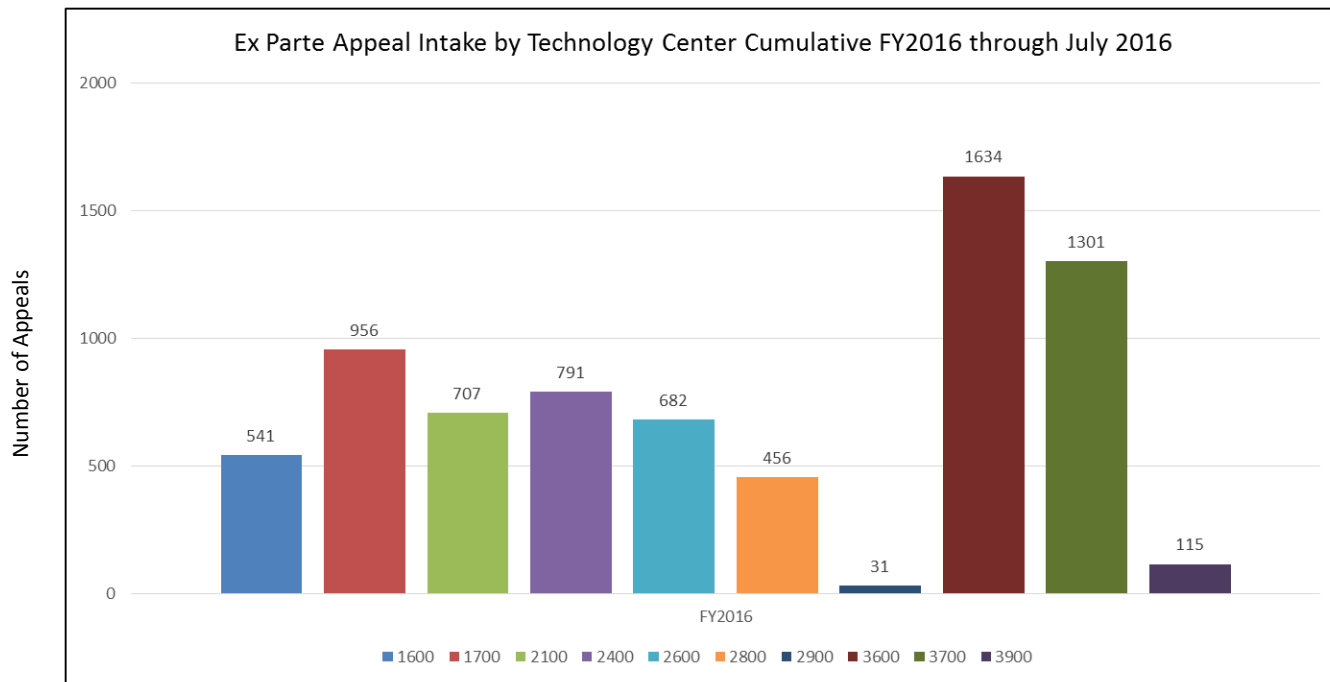
This bar chart shows Average Pendency of Decided Appeals by Technology Center for Appeals Decided in FY2016 to date (October 1, 2015 through July 31, 2016). Pendency is measured from date of PTAB docketing (assignment of appeal number) to date of Decision.





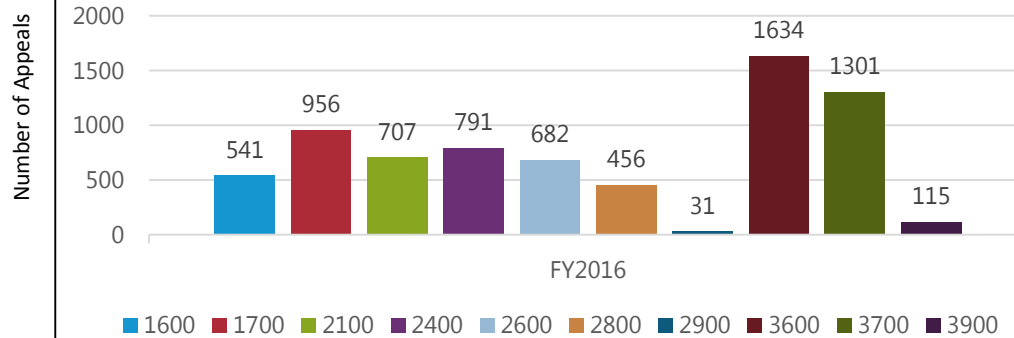
These bar charts show Average Pendency of Decided Appeals by Technology Center for Appeals Decided in the past three fiscal years (FY2013, FY2014, FY2015) as compared to the current fiscal year. Pendency is measured from date of PTAB docketing (assignment of appeal number) to date of Decision.



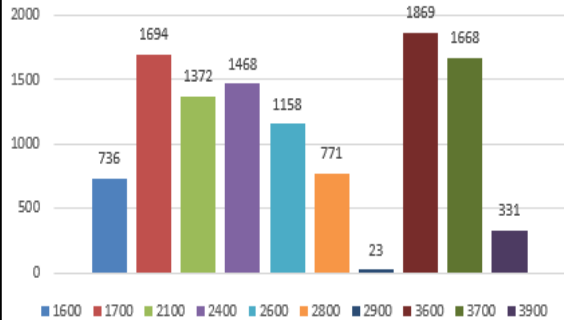


This slide shows the number of appeals the Board has received from each Tech Center for this fiscal year (through the end of July 2016).

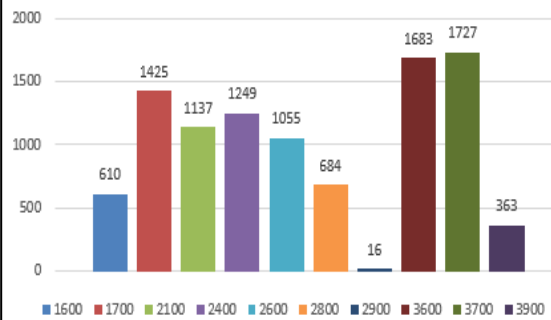
## Ex Parte Appeal Intake by Technology Center Cumulative FY2016 through July 2016



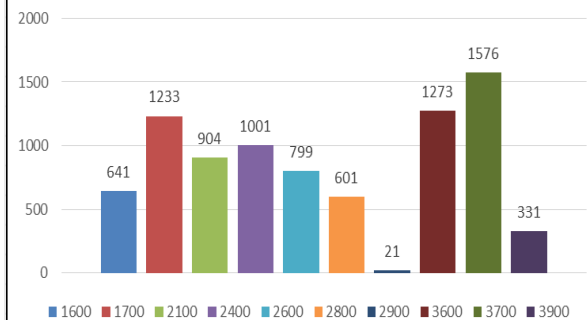
### Ex parte Appeal Intake by Technology Center FY2013



### Ex parte Appeal Intake by Technology Center FY2014

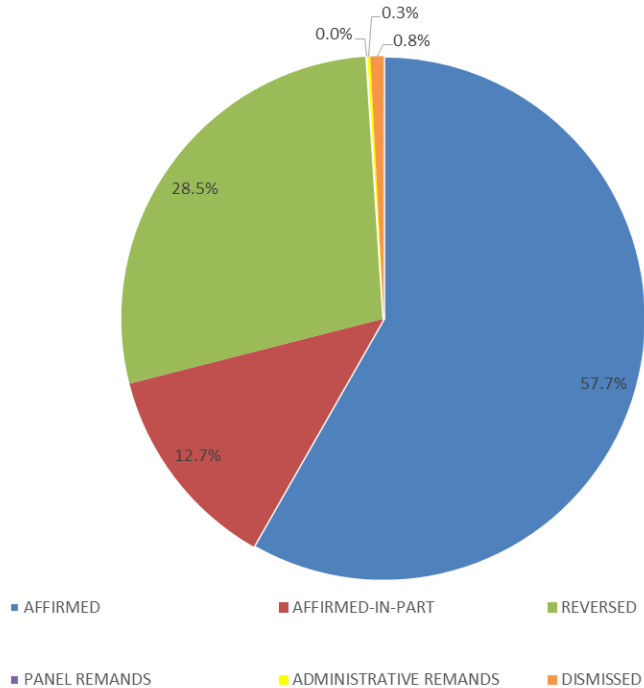


### Ex parte Appeal Intake by Technology Center FY2015

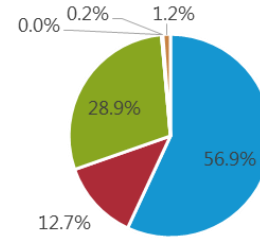


This slide shows the number of appeals the Board received from each Technology Center for the prior three fiscal years as compared to the current fiscal year.

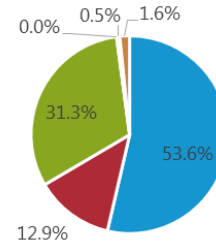
## Outcomes in Appeals in FY2016 (Cumulative through 7/31/2016)



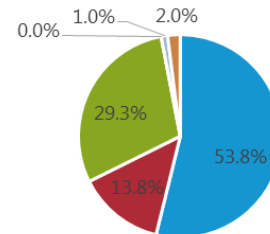
## Outcomes in Appeals in FY2015

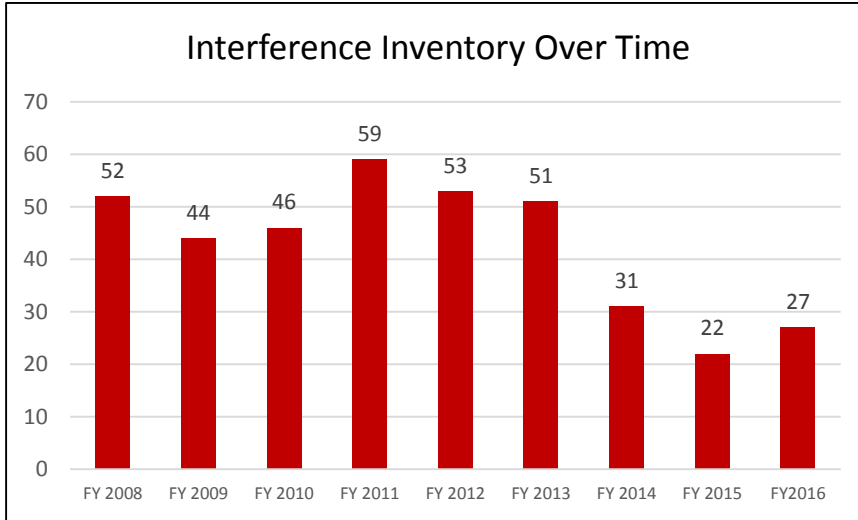


## Outcomes in Appeals in FY2014

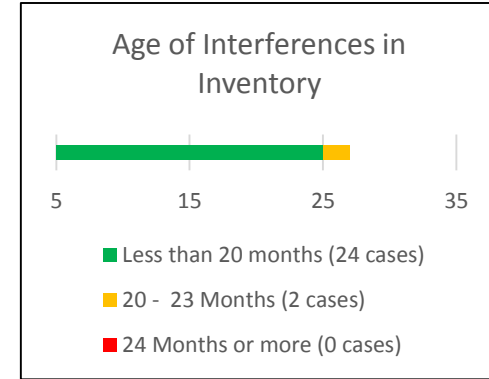


## Outcomes in Appeals in FY2013





This graph shows the number of Interferences pending at the end of each prior fiscal year and the current number in inventory this fiscal year.



This graph shows July 2016 dashboard information about pendency (number of cases in each status of green, yellow, or red).

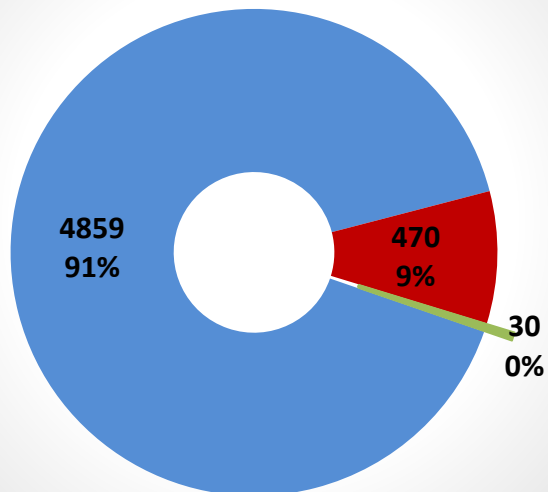
Post Grant Proceedings

# **TRIAL STATISTICS**



## 5359 Total AIA Petitions\*

Cumulative from 09/16/2012



■ Total IPR Petitions ■ Total CBM Petitions  
■ Total PGR Petitions

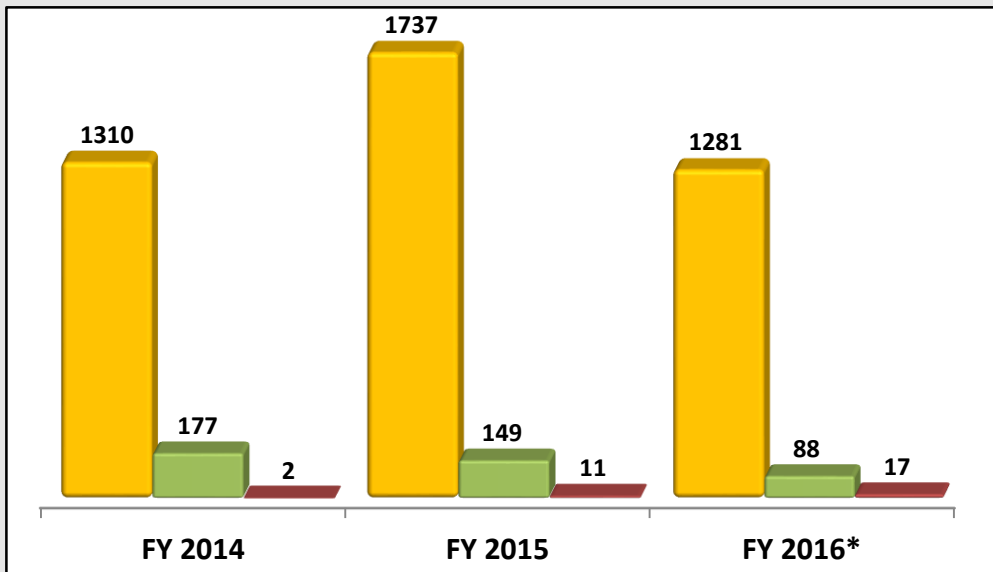
### **Narrative:**

This pie chart shows the total number of cumulative AIA petitions filed to date broken out by trial type (i.e., IPR, CBM, and PGR).

**\*Data current as of: 7/31/2016**

## Number of AIA Petitions Filed by Fiscal Year by Type

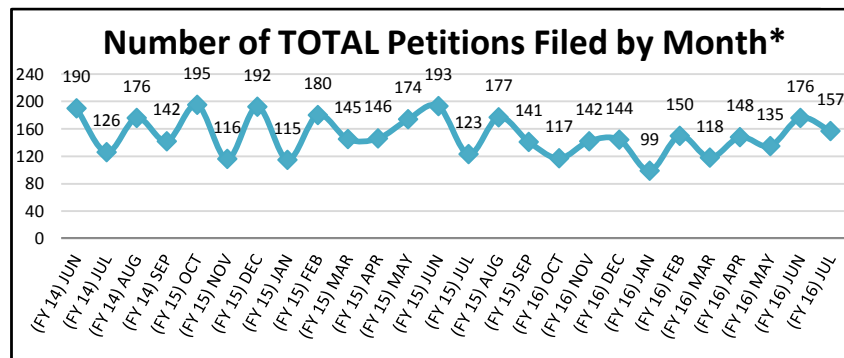
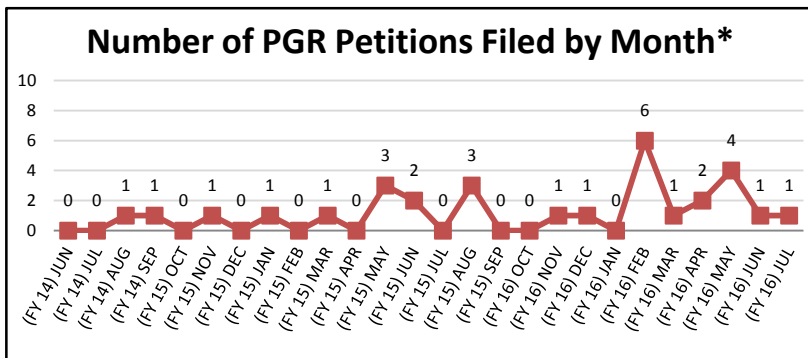
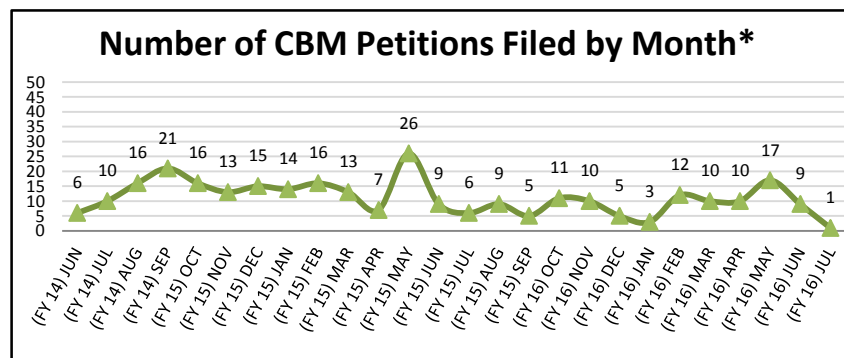
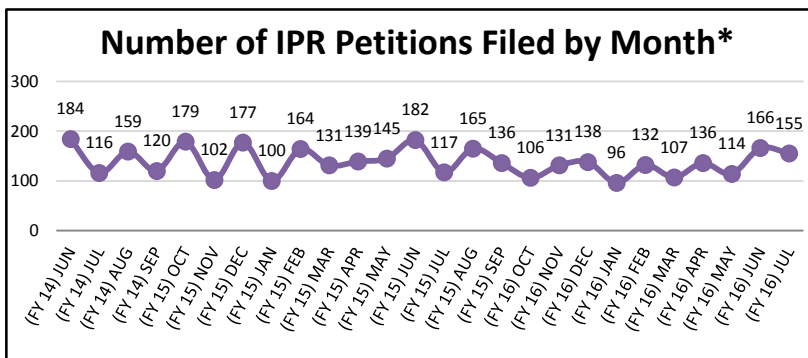
■ IPR   ■ CBM   ■ PGR



### Narrative:

This bar graph depicts the number of AIA petitions filed each fiscal year, with each bar showing the filings for that fiscal year by trial type (i.e., IPR, CBM, and PGR).

**\*Data current as of: 7/31/2016**



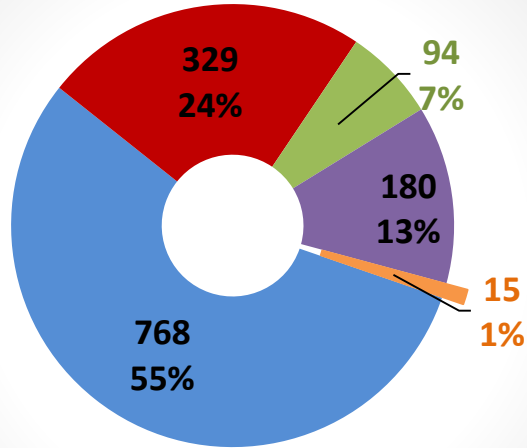
**Narrative:**

These line graphs display the number of IPR, CBM, and PGR petitions filed each month and the total number of all petitions filed each month from the effective date of the AIA trial provisions.

\*Data current as of: 7/31/2016



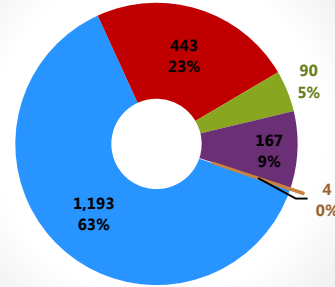
### 1386 Total AIA Petitions in FY 16\* (Technology Breakdown)



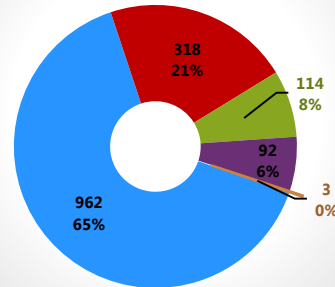
- Electrical/Computer - TCs 2100, 2400, 2600, 2800
- Mechanical/Business Method - TCs 3600, 3700
- Chemical - TC 1700
- Bio/Pharma - TC 1600
- Design - TC 2900

\*Data current as of: 7/31/2016

### 1897 Total AIA Petitions in FY 15\* (Technology Breakdown)



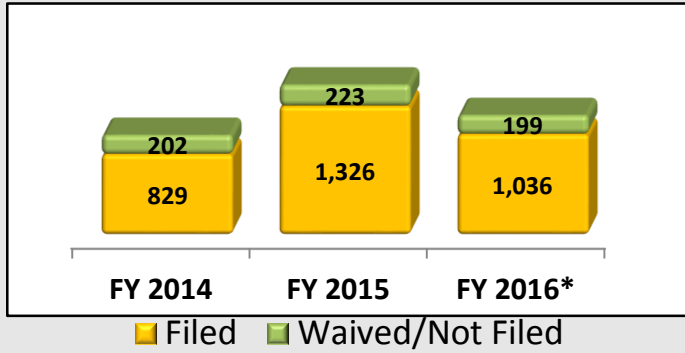
### 1489 Total AIA Petitions in FY 14\* (Technology Breakdown)



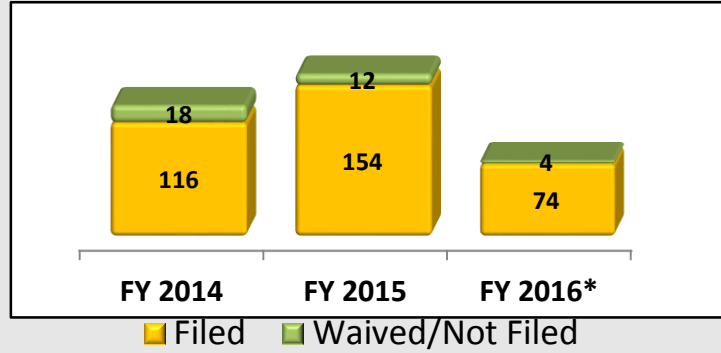
### Narrative:

This pie chart shows the total number of AIA petitions filed in the current fiscal year to date as well as the number and percentage of these petitions broken down by technology.

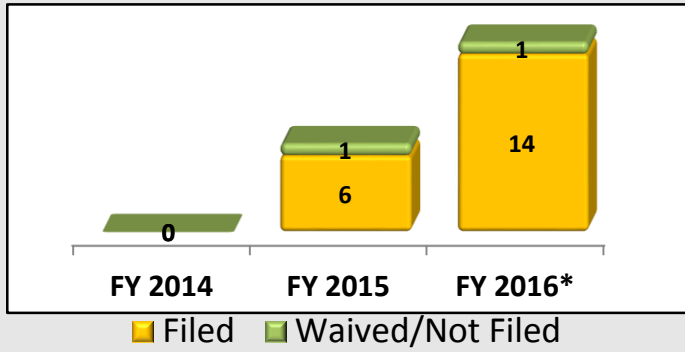
**IPR - Number of Patent Owner Preliminary Responses by Fiscal Year**



**CBM - Number of Patent Owner Preliminary Responses by Fiscal Year**



**PGR - Number of Patent Owner Preliminary Responses by Fiscal Year**



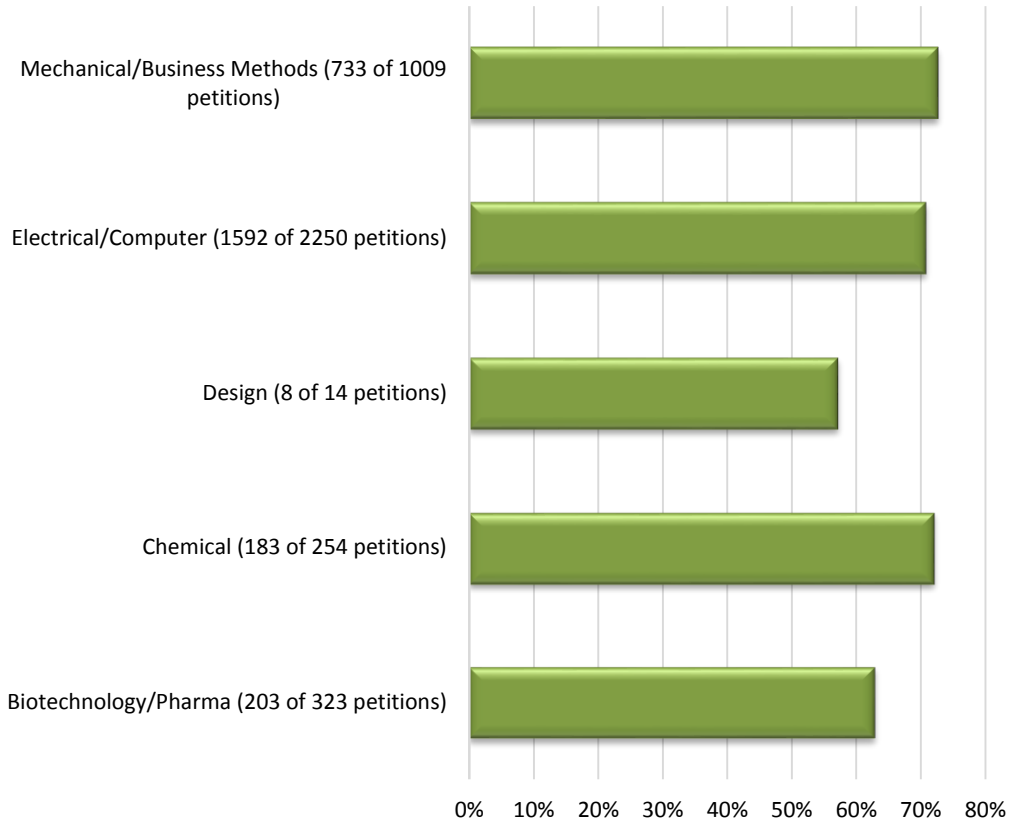
**Narrative:**

These three sets of bar graphs show the number of patent owner preliminary responses filed and waived/not filed each fiscal year in IPR, CBM, and PGR proceedings.

**\*Data current as of: 7/31/2016**



## Percent of Petitions Instituted, by Technology

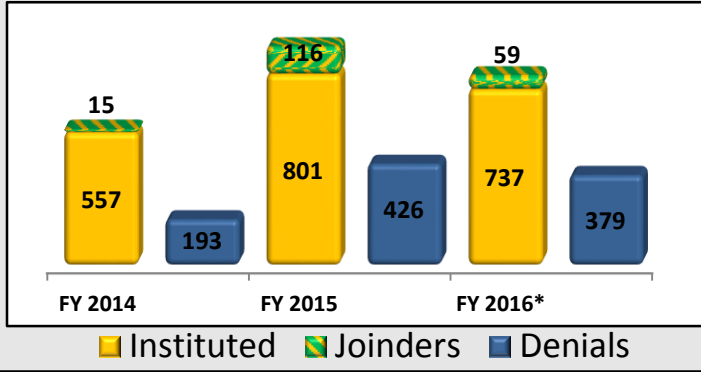


### Narrative:

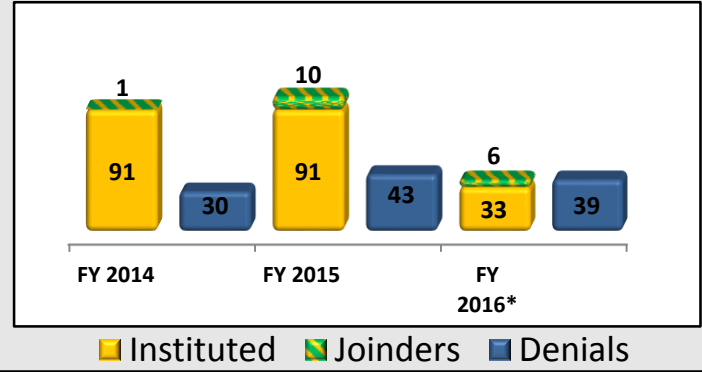
This chart shows the percentage of petitions instituted of all decisions on petition, by technology area.

**\*Data current as of: 7/31/2016**

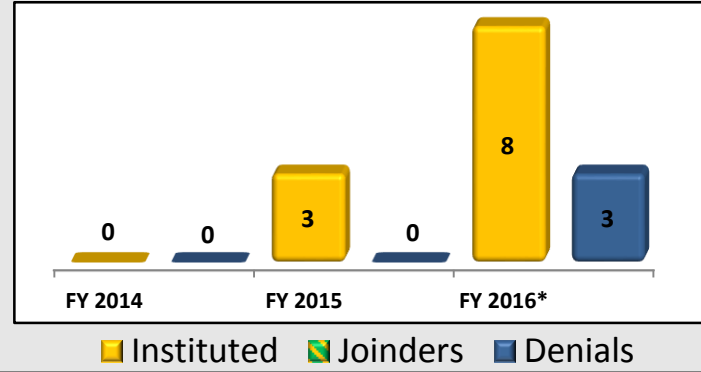
**IPR - Number of Decisions On Institution Per Fiscal Year by Outcome**



**CBM - Number of Decisions On Institution Per Fiscal Year by Outcome**



**PGR - Number of Decisions On Institution Per Fiscal Year by Outcome**



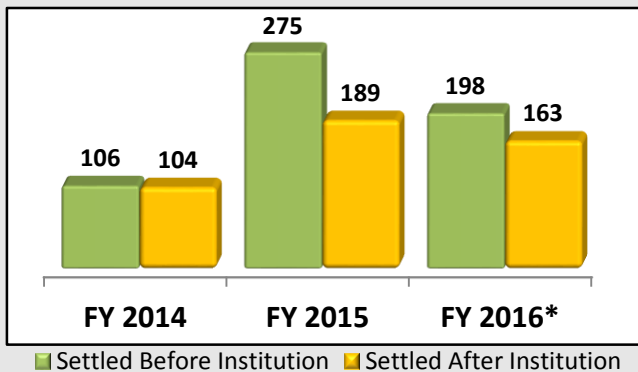
**Narrative:**

These three sets of bar graphs show the number of decisions on institution by fiscal year broken out by trials instituted (including joinders) and trials denied in IPR, CBM, and PGR proceedings. A trial that is instituted in part is counted as an institution in these bar graphs.

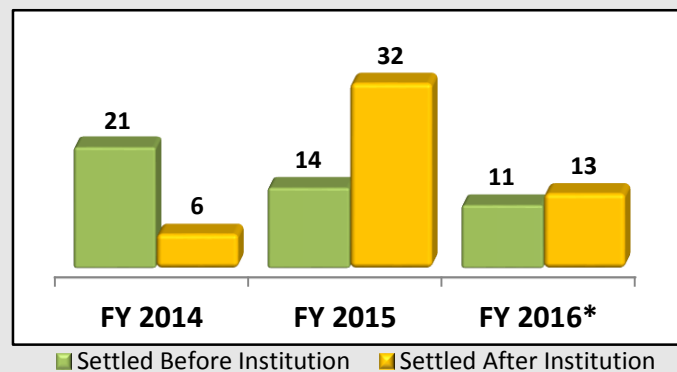
**\*Data current as of: 7/31/2016**



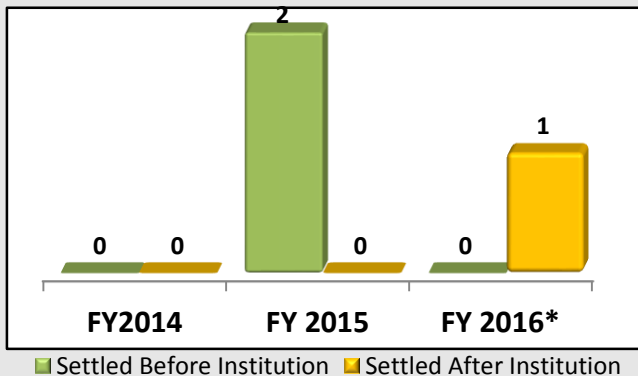
## IPR - Settlements



## CBM - Settlements



## PGR - Settlements



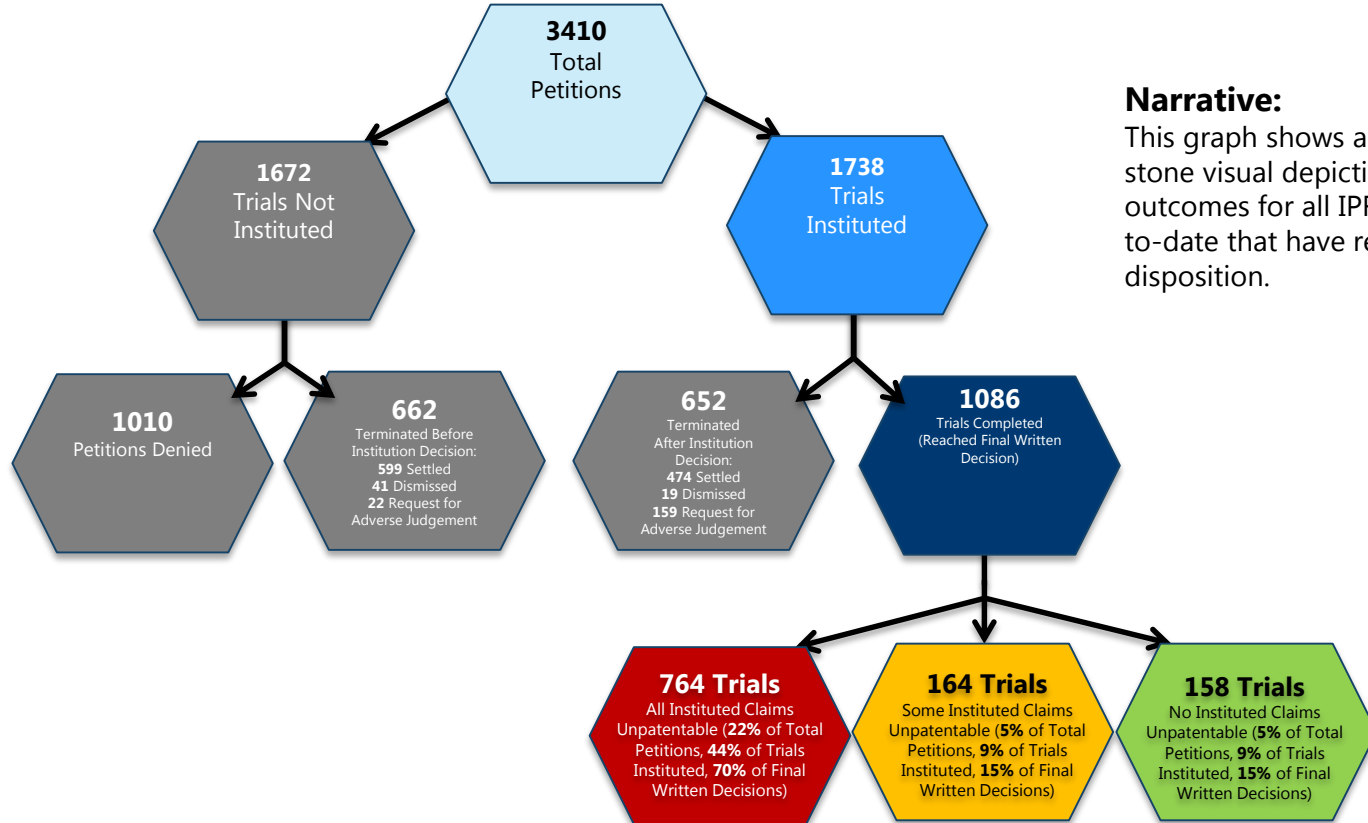
### Narrative:

These three sets of bar graphs show settlements in AIA trials broken down by settlements that occurred prior to institution and settlements that occurred after institution in IPR, CBM, and PGR proceedings.

**\*Data current as of: 7/31/2016**



# Disposition of IPR Petitions Completed to Date\*

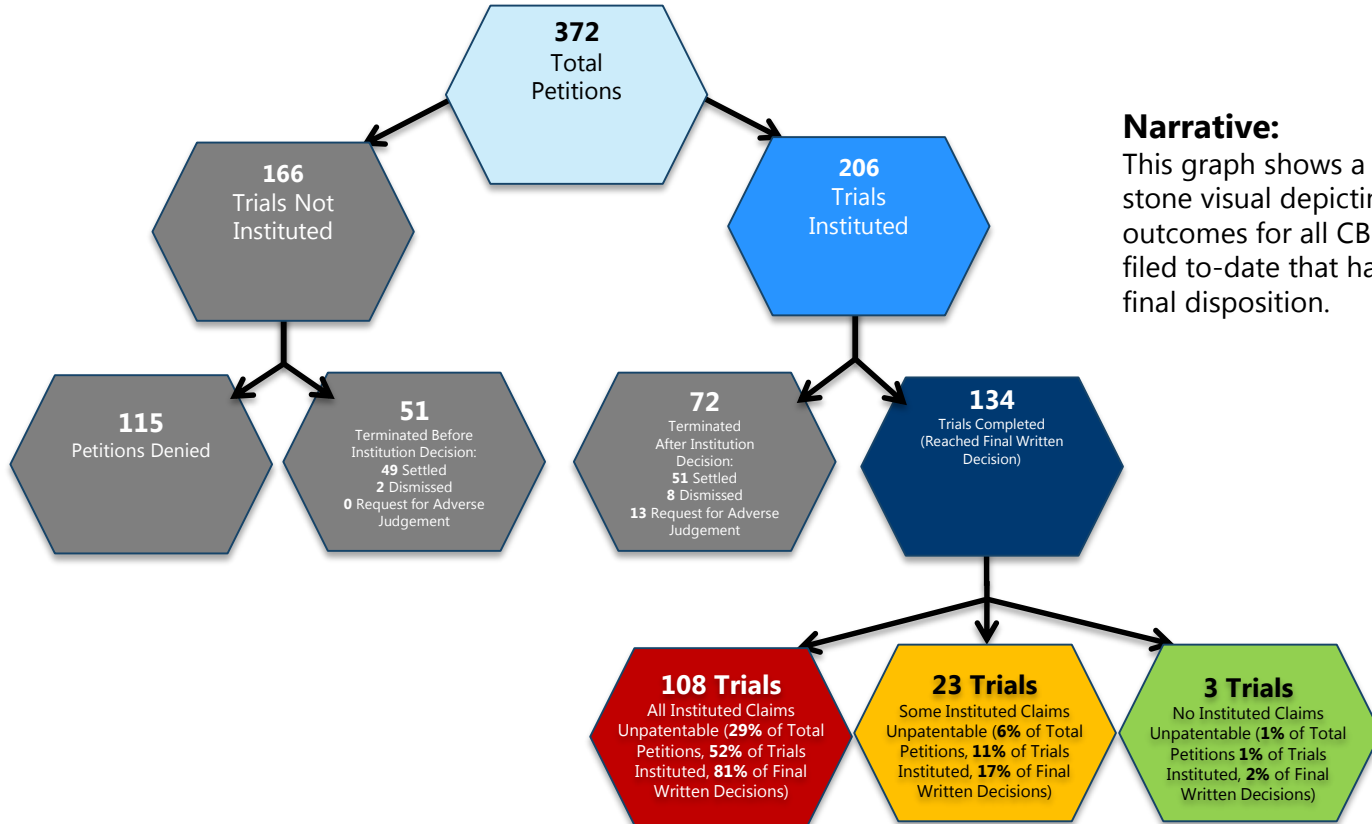


## Narrative:

This graph shows a stepping stone visual depicting the outcomes for all IPR petitions filed to-date that have reached a final disposition.

\*Data current as of: 7/31/2016

# Disposition of CBM Petitions Completed to Date\*

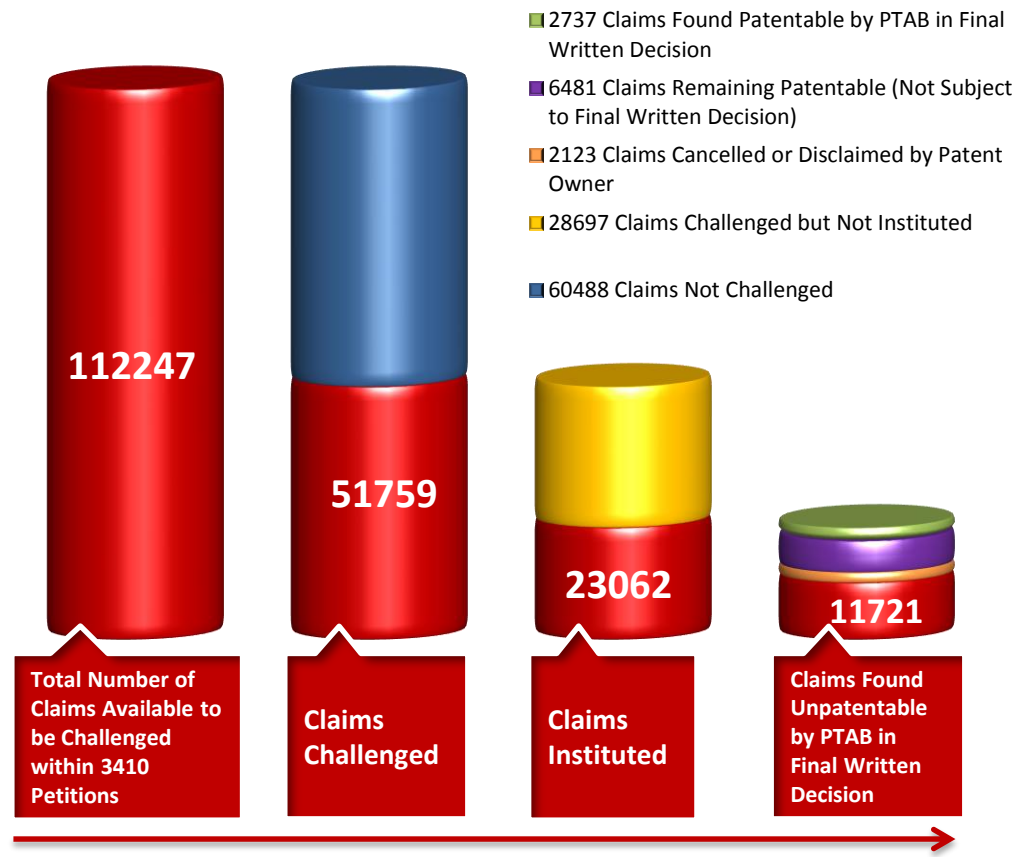


## Narrative:

This graph shows a stepping stone visual depicting the outcomes for all CBM petitions filed to-date that have reached a final disposition.

\*Data current as of: 7/31/2016

## IPR Petitions Terminated to Date\*



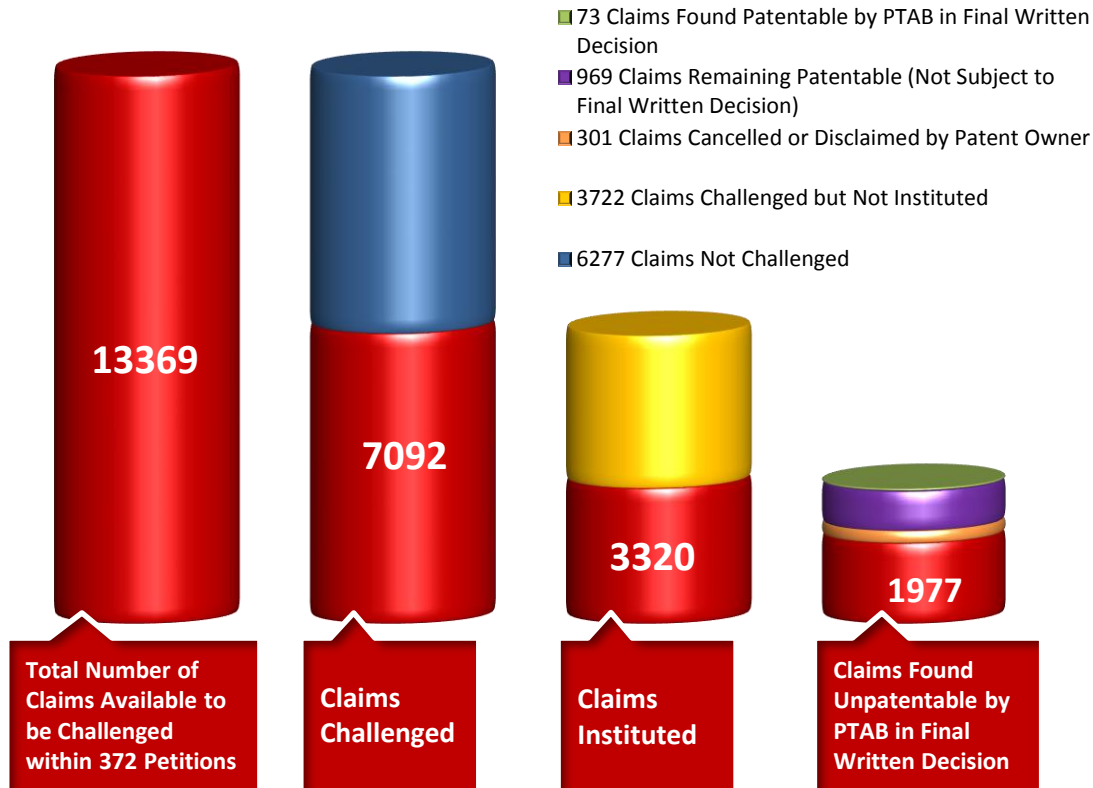
### **Narrative:**

This visual contains four cylinders. The first cylinder shows the total number of claims available to be challenged in the IPR petitions filed. The second cylinder shows the number of claims actually challenged and not challenged. The third cylinder shows the number of claims on which trial was instituted and not instituted. The fourth cylinder shows the total number claims found unpatentable in a final written decision, the number of claims canceled or disclaimed by patent owner after institution, the number of claims remaining patentable (not subject to a final written decision), and the number of claims found patentable by the PTAB.

**Note:** "Completed" petitions include terminations (before or after a decision on institution) due to settlement, request for adverse judgment, or dismissal; final written decisions; and decisions denying institution.

\*Data current as of: 7/31/2016

## CBM Petitions Terminated to Date\*



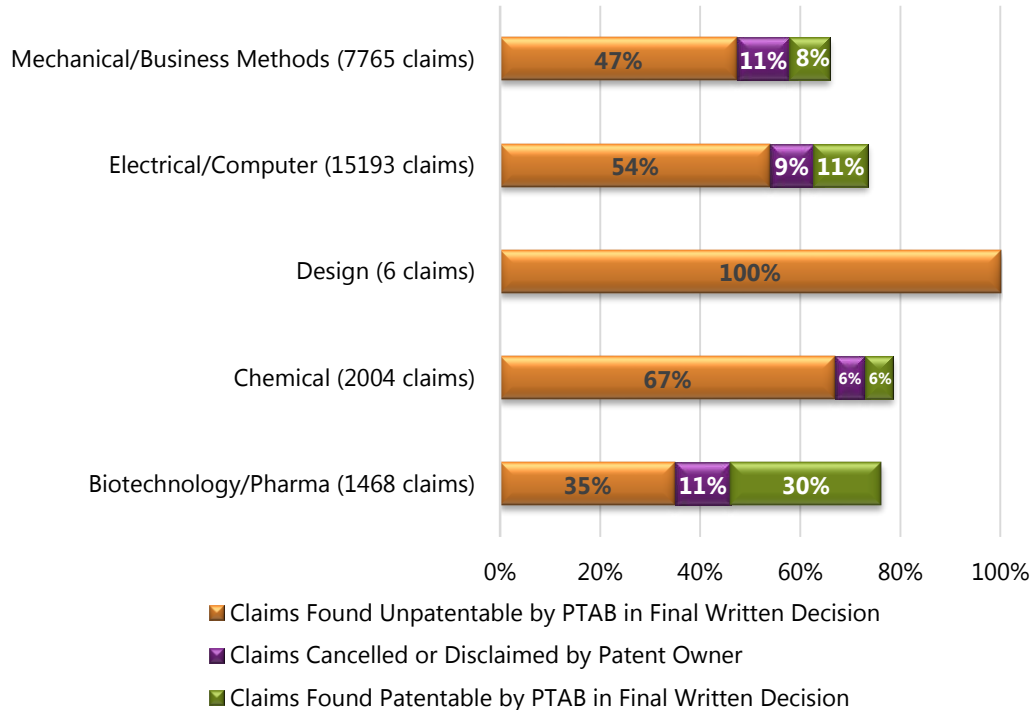
### **Narrative:**

This visual contains four cylinders. The first cylinder shows the total number of claims available to be challenged in the CBM petitions filed. The second cylinder shows the number of claims actually challenged and not challenged. The third cylinder shows the number of claims on which trial was instituted and not instituted. The fourth cylinder shows the total number claims found unpatentable in a final written decision, the number of claims canceled or disclaimed by patent owner after institution, the number of claims remaining patentable (not subject to a final written decision), and the number of claims found patentable by the PTAB.

**Note:** "Completed" petitions include terminations (before or after a decision on institution) due to settlement, request for adverse judgment, or dismissal; final written decisions; and decisions denying institution.

**\*Data current as of: 7/31/2016**

## Trial Outcomes for Instituted Claims, by Technology



### Narrative:

This chart shows claim outcomes for instituted trials, by technology area.

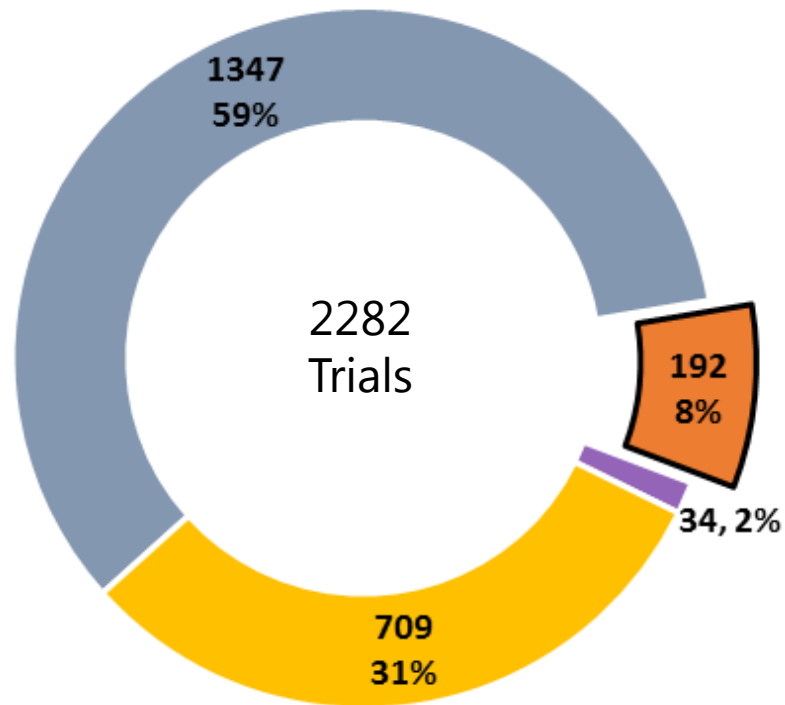
**Note:** Claims involved in instituted trials that settle or are dismissed are not depicted. Accordingly, a bar may not add up to 100%.

**\*Data current as of: 7/31/2016**

# PTAB AMENDMENT PRACTICE

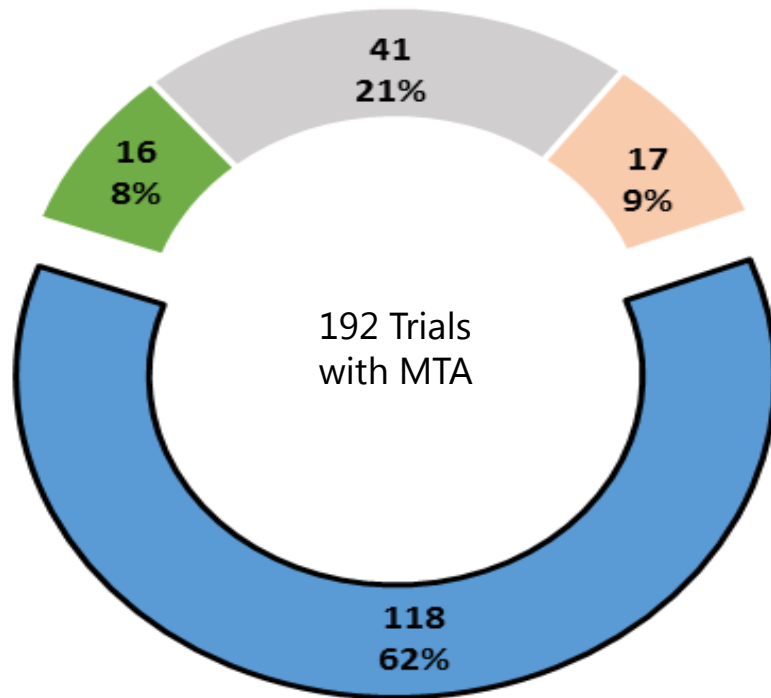
# Number of Motions to Amend Filed

- Completed Trials w/o MTA
- Completed Trials with MTA
- Pending Trials with MTA
- Pending Trials w/o MTA



Data current as of: 4/30/2016

# Subsequent Developments of Motions to Amend

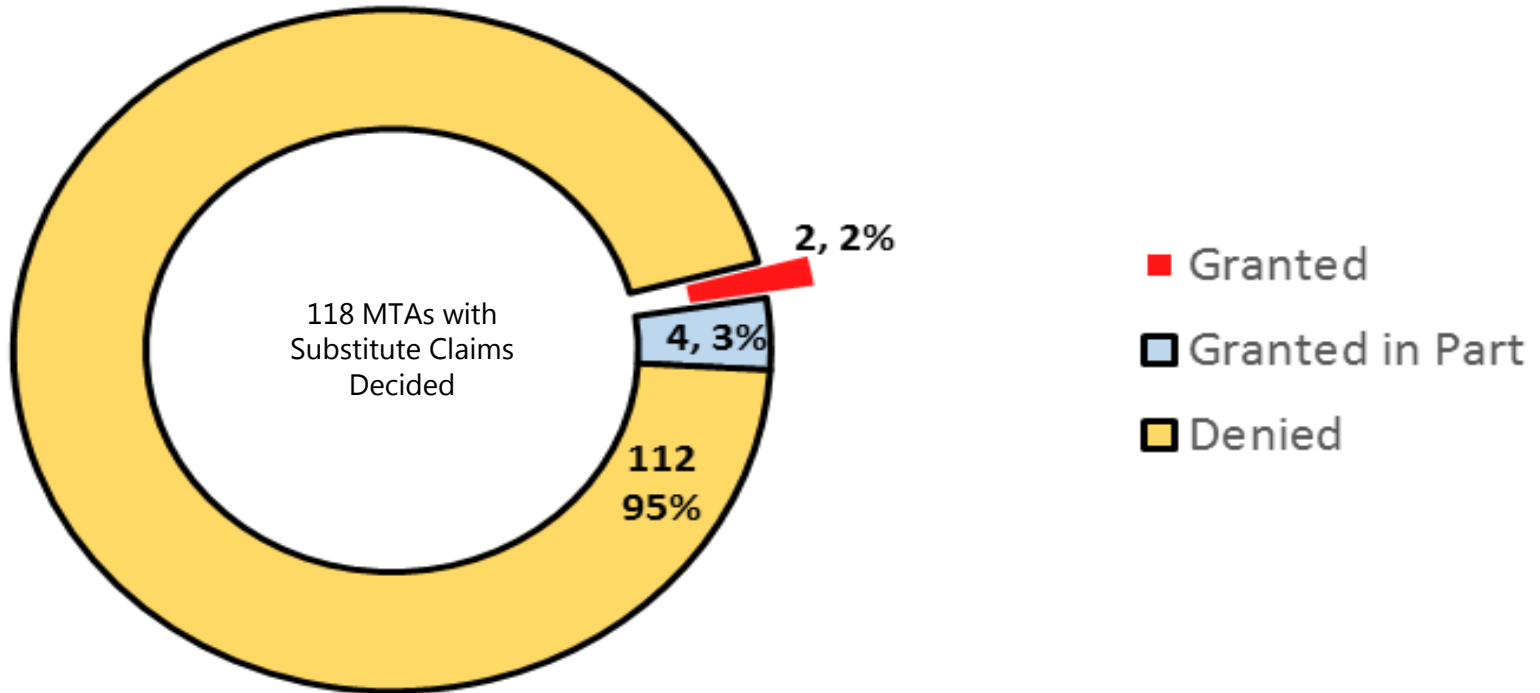


- Moot b/c Claims Patentable
- MTA Withdrawn or Case Settled, Req. Adv. J, or Dismissed
- MTA Solely to Cancel Claims
- MTA Substitute Claims Decided

Data current as of: 4/30/2016



# Outcomes of Motions to Amend Decided on the Merits



Data current as of: 4/30/2016

## Reasons Provided for Denying Entry of Substitute Claims\*

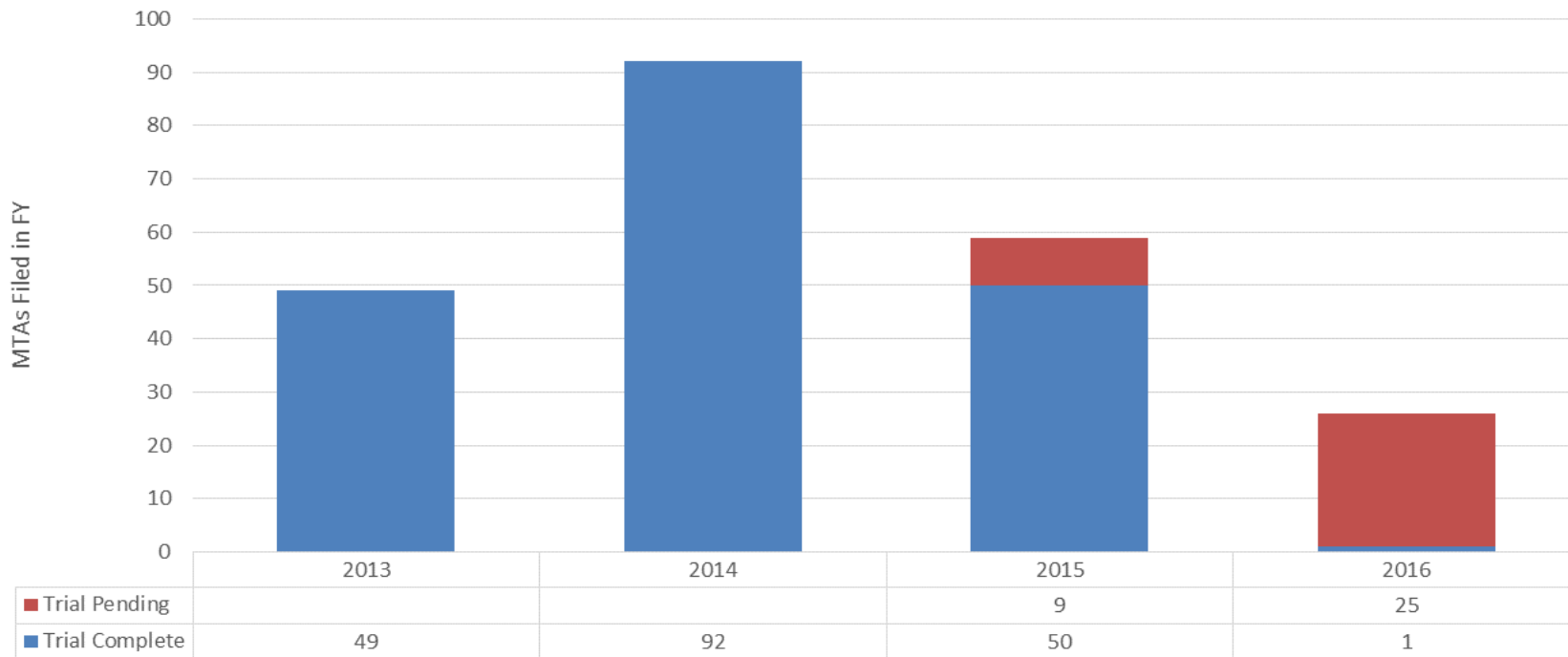
	<i>Reason Given</i>	<i># of Cases</i>	<i>Pct</i>
<b><i>Reasons Based on 35 U.S.C.:</i></b>			
101	Non-Statutory Subject Matter	7	6%
112(a)	Written Description	9	8%
112(b)	Definiteness	1	1%
102/103	Anticipated / Obvious Over Art of Record	41	35%
316(d)(3)	Claims Enlarge Scope of Patent	6	5%
316(d)(1)(B)	Unreasonable # Substitute Claims	3	3%
	Multiple Statutory Reasons Given**	27	23%
<b><i>Reasons Based on Procedure:</i></b>			
	Cases Where Only Procedural Reasons Given	22	19%
	<i>Totals:</i>	<i>116</i>	<i>100%</i>

\* 116 MTAs requesting entry of substitute claims have been denied in whole or in part.

\*\* Of the "Multiple Statutory Reasons Given" trials, 24 of the 27 trials included "Anticipated/Obvious" as a reason.

Data current as of: 4/30/2016

# Number of Motions to Amend Filed by FY



Data for FY2016 are from October 1, 2015 – April 30, 2016.

**PTAB END TO END (PTAB E2E)**

# PTAB End to End (PTAB E2E)

- PTAB E2E was opened to the public on 7/11 for Inter Partes Review (IPR), Post Grant Review (PGR), and Covered Business Methods (CBM) AIA Trial types.
- Included interfacing with the USPTO Next Generation financial system (FPNG) for paying fees.
- Deployments:
  - Four incremental deployments to address known defects for PTAB E2E were deployed into production on 7/17, 7/23, 7/27, and 8/6.
  - Future deployments are targeted for 8/27 and monthly after that to continue and resolve known issues and address feedback from the users.
  - Bulk access to PTAB data through the USPTO Open Data Portal is targeted for deployment on 9/9.
  - Derivation AIA Trial types are targeted for migration in FY17 which will facilitate the decommissioning of the legacy Patent Review Processing System (PRPS).
  - Appeals and Interferences are planned to start development in FY17 and have core capabilities deployed in FY18.

# PTAB End to End (PTAB E2E)

- Since going live with PTAB E2E, over 140 petitions have been filed.
- PTAB E2E system link, user manual, FAQ, and quick reference guide are available on the USPTO website PTAB Page  
<http://www.uspto.gov/ptab>
- Customer support available Monday-Friday from 8 AM until 6 PM ET at 571-272-7822.
- Send comments about the PTAB E2E system to  
[PTABE2EADMIN@uspto.gov](mailto:PTABE2EADMIN@uspto.gov).

# Questions and Comments

**David P. Ruschke**

Chief Administrative Patent Judge

(571) 272-9797

[David.Ruschke@USPTO.GOV](mailto:David.Ruschke@USPTO.GOV)

