

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Patent Trial and Appeal Board Multiple Petitions Study

Fiscal Years 2021-2022 Update

Appendix

July 2023

(Data from Oct. 1, 2014, through Sept. 30, 2022)



UNITED STATES  
PATENT AND TRADEMARK OFFICE ®

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# Glossary / Abbreviations

- **Attempt:** For serial petitions, an attempt is either a single serial petition or a group of two or more serial petitions. For parallel petitions, an attempt is a group of parallel petitions filed within 90 days of each other.
- **CBM:** Covered business method review.
- **Challenge:** One or more petitions filed by a single petitioner challenging one or more claims of a patent.
- **FY:** Fiscal Year. For the United States federal government, the fiscal year starts on October 1 of the calendar year before the fiscal year and ends September 30 of the fiscal year.
- **Institution:** A decision by the PTAB to begin a trial proceeding as requested through a petition.
- **IPR:** *Inter partes* review.
- **ITC:** International Trade Commission.

# Glossary / Abbreviations (*cont.*)

- **Joined Petition:** A petition, filed with a motion for joinder, that results in the petitioner being joined as a party to an existing IPR or PGR.
- **Parallel Petition:** A petition for an IPR or PGR proceeding at the PTAB filed by a petitioner challenging one or more claims of a patent within 90 days of the petitioner filing another petition challenging one or more claims of the same patent. All petitions filed within the same 90 day window are considered parallel petitions, regardless of the order of filing.
- **Petition:** A petitioner's filed request for an IPR or PGR proceeding at the PTAB filed by a petitioner challenging one or more claims of a patent.
- **PGR:** post grant review.
- **PTAB:** Patent Trial and Appeal Board.
- **Serial Petition:** A petition for an IPR or PGR proceeding at the PTAB filed by a petitioner challenging one or more claims of a patent more than 90 days after the petitioner filed a previous petition challenging one or more claims of the same patent. The first petition and any petitions filed within 90 days of the first petition are not serial petitions even when serial petitions are filed more than 90 days after the first petition is filed.
- **USPTO:** United States Patent and Trademark Office.



# Methodology

## Challenges

The total number of challenges in each fiscal year is determined by looking at how many times a particular petitioner challenged claims of a particular patent. Challenges that have not yet received a decision on institution are excluded. The fiscal year is calculated from the decision on institution date unless a request for rehearing resulted in a decision denying institution changing to a decision on institution , in which case the date of the decision on request for the rehearing is used.

# Methodology

## Serial Petitions

A serial petition is defined as any petition filed more than 90 days after the earliest petition by the same petitioner challenging the same patent. This definition excludes the earliest petition and any petition filed within 90 days of the earliest petition. Attempts are determined as the total number of challenges by one petitioner to one patent in the fiscal year, as described in the methodology for challenges. The number of institutions of trials based on one or more serial petitions is determined. These numbers do not include institution on the earliest-filed petition or on petitions filed within 90 days of the earliest-filed petition. Trials instituted on more than one serial petition in a fiscal year are only counted once for purposes of the bar graph of Figure 2.

# Methodology

## Parallel Petitions

A parallel petition is defined as any petition filed within 90 days by the same petitioner challenging the same patent. This definition does not depend on the order of the petitions. Moreover, it is possible for a petition to be both a parallel petition (i.e., filed within 90 days of another petition by the same petitioner challenging the same patent) and a serial petition (i.e., filed more than 90 days after the earliest-filed petition by the same petitioner challenging the same patent). Attempts are determined as the total number of groups of parallel petitions filed by one petitioner challenging the claims of one patent in the fiscal year, as described in the methodology for challenges. The number of times multiple trials are instituted based on multiple petitions within a group of parallel petitions is determined. Trials instituted on more than one parallel petition in a group of parallel petitions are counted once for purposes of the bar graph of Figure 4.



# Methodology

## Qualitative Analysis

PTAB personnel reviewed decisions to institute based on either serial petitions or on more than one parallel petition to ascertain the reasons for such institution. Other parts of the record, including but not limited to petitions, patent owner responses, and ranking of petitions, were reviewed as well as the discretion of each reviewer. Both common and unusual reasons for institution were identified and are summarized.

# Methodology

## Overall Trends

A simplified analysis was performed for calculating overall trends. With this analysis, the number of petitions filed against each patent is calculated, regardless of the date each petition was filed. The petition filing date is used to determine which challenged patents to report in the overall trends.

# Caveats and Important Changes

- Petition data received after analysis has been performed can affect reported numbers. For this analysis, petition data available as of December 31, 2022, was used to minimize future revisions to parallel petitions data. Serial petitions data may be subject to future revision.
- Previous analyses may be affected by a change in the method used to determine the total challenges to a patent.
  - The original method, used in a Boardside chat (12/10/2020), included determining the total challenges by adding up the number of serial petitions, parallel petitions, and single petitions in each FY. Sometimes a petition would be counted more than once for a given fiscal year (e.g., if it fell into one or more categories of a parallel, serial, and/or single). The fiscal year was determined by the decision to institute date, not the filing date. So in some cases, petitions in a family of serial or parallel petitions crossed FY boundaries and were counted as a challenge for two FYs in the challenges column, but only once in the attempt or instituted column.
  - In the updated method, the number of challenges is the number of times one petitioner challenged one patent in a fiscal year, only looking at those challenges that received a decision to institute. The fiscal year is calculated from the decision to institute date unless there was a request for rehearing decision that granted a request for rehearing of a decision denying institution, in which case the date of the request for rehearing was used.

# Data Tables

Table 1:  
Serial petitions: attempts per FY  
(FY15 to FY22: Oct. 1, 2014 to Sept. 30, 2022)

<b>FY</b>	<b>Attempts</b>	<b>Percent of all challenges</b>
2015	99	9.0%
2016	89	7.7%
2017	86	7.8%
2018	63	5.6%
2019	22	2.2%
2020	21	2.3%
2021	14	1.4%
2022	17	1.7%

Table 2:  
Serial petitions: instituted trials on one or more serial petitions per FY  
(FY15 to FY22: Oct. 1, 2014 to Sept. 30, 2022)

<b>FY</b>	<b>Institutions</b>	<b>Percent of all challenges</b>
2015	42	3.8%
2016	46	4.0%
2017	24	2.4%
2018	18	1.6%
2019	8	0.8%
2020	7	0.8%
2021	7	0.7%
2022	3	0.3%

# Data Tables

Table 3:  
Parallel petitions: attempts per FY  
(FY15 to FY22: Oct. 1, 2014 to Sept. 30, 2022)

<b>FY</b>	<b>Attempts</b>	<b>Percent of all challenges</b>
2015	163	15%
2016	171	15%
2017	203	18%
2018	182	16%
2019	206	20%
2020	146	16%
2021	137	13%
2022	76	7%

Table 4:  
Parallel petitions: multiple instituted trials on parallel petitions per FY  
(FY15 to FY22: Oct. 1, 2014 to Sept. 30, 2022)

<b>FY</b>	<b>Institutions</b>	<b>Percent of all challenges</b>
2015	95	8.6%
2016	93	8.0%
2017	93	8.4%
2018	89	8.0%
2019	112	11.1%
2020	43	4.7%
2021	35	3.4%
2022	35	3.4%

# Data Tables

Table 5:

Single and multiple petitions from any challenger, overall trends, fiscal years 2015 (October 1, 2014, to September 30, 2015) and 2022 (October 1, 2021, to September 30, 2022).

Due to rounding, percentages may not add up to 100%.

	<b>FY2015</b>	<b>FY2022</b>
<b>One Petition</b>	66%	72%
<b>Two Petitions</b>	21%	18%
<b>Three Petitions</b>	7%	5%
<b>Four or More Petitions</b>	7%	4%

# Questions / Comments?

Questions and comments may be submitted to [PTABStatisticsQuestions@uspto.gov](mailto:PTABStatisticsQuestions@uspto.gov).

This is an appendix to the main presentation. This appendix, the main presentation, and more can be found on the PTAB statistics website: [www.uspto.gov/patents/ptab/statistics](http://www.uspto.gov/patents/ptab/statistics).



