FY19 PTAB outcome roundup

• Generally speaking regarding AIA petitions in FY2019:
  – one-third were denied
  – one-third settled or otherwise terminated
  – one-third resulted in a final written decision.

• AIA institution rate = about 63% (out of all decisions on institution).
FY19 PTAB outcome roundup

Considering all Outcomes in AIA Proceedings in FY2019:

– PTAB issued 551 final written decisions addressing 432 different patents.

– About 25% of challenged claims were found unpatentable by a preponderance of the evidence in final written decisions.

– Less than 40% of challenged patents were addressed in a final written decision at all.
Petitions filed by trial type

Trial types include Inter Partes Review (IPR), Post Grant Review (PGR), and Covered Business Method (CBM). The Office will not consider a CBM petition filed on or after September 16, 2020.
Petitions filed by technology

<table>
<thead>
<tr>
<th>Technology</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electrical/Computer</td>
<td>933</td>
<td>64%</td>
</tr>
<tr>
<td>Mechanical &amp; Business Method</td>
<td>343</td>
<td>23%</td>
</tr>
<tr>
<td>Chemical</td>
<td>53</td>
<td>4%</td>
</tr>
<tr>
<td>Bio/Pharma</td>
<td>132</td>
<td>9%</td>
</tr>
<tr>
<td>Design</td>
<td>3</td>
<td>0%</td>
</tr>
</tbody>
</table>

Total: 1,464
The Office will not consider a CBM petition filed on or after September 16, 2020.
Institution rates by petition

Institution rate is calculated by dividing petitions instituted by decisions on institution (i.e., petitions instituted plus petitions denied). The outcomes of decisions on institution responsive to requests for rehearing are excluded.
A patent is “instituted” if any petition challenging that patent is instituted. A patent is “denied” if no petitions challenging that patent are instituted. Patents that have not received a Decision on Institution are not included in this data set.

- **by Patent**
  - FY15: 75%
  - FY16: 73%
  - FY17: 69%
  - FY18: 67%
  - FY19: 70%

- **by Petition**
  - FY15: 68%
  - FY16: 67%
  - FY17: 63%
  - FY18: 60%
  - FY19: 63%
Institution rate for each technology is calculated by dividing petitions instituted by decisions on institution (i.e., petitions instituted plus petitions denied). The outcomes of decisions on institution responsive to requests for rehearing are excluded.
Settlement rate is calculated by dividing total settlements by concluded proceedings in each fiscal year (i.e., denied institution, settled, dismissed, requested adverse judgment, and final written decision), excluding joined cases.
Outcomes by petition

- Institution Denied: 511 (31%)
- Settled: 502 (31%)
- FWD All Patentable: 118 (7%)
- FWD All Unpatentable: 303 (18%)
- FWD Mixed: 130 (8%)
- Req. Adverse Judgmt: 36 (2%)
- Dismissed: 41 (3%)

FWD patentability or unpatentability reported with respect to the claims at issue in the FWD. Joined cases are excluded.
FWD patentability or unpatentability reported with respect to the claims at issue in the FWD. “Mixed Outcome” is shown for patents receiving more than one type of outcome from the list of: denied, settled, dismissed, and/or req. adverse judgement only. A patent is listed in a FWD category if it ever received a FWD, regardless of other outcomes.
Outcomes by claim challenged

- Institution Denied: 6,642 (33%)
- FWD Patentable: 2,146 (10%)
- FWD Unpatentable: 5,039 (25%)
- Challenged But No FWD: 5,419 (27%)
- Disclaimed: 584 (3%)
- Dismissed: 359 (2%)
"No DI" and "No FWD" means the claim was challenged but not addressed in a DI/FWD, e.g., due to settlement.

25% of challenged claims and 47% of instituted claims were found unpatentable by a preponderance of the evidence in FY19.
The area inside each circle is scaled to the number of patents in the category.
Appendix

This presentation, as well as appendices are available on PTAB’s statistics webpage:

Appendix A: Parallel Proceedings Study
– A report on interaction between parallel proceedings at the USPTO (e.g., AIA proceedings, reexam, and re-issue) involving issued patents.
– Originally presented April 2019.

Appendix B: Orange Book / Biologics Study
– A report on AIA trials involving petitions challenging Orange Book listed patents and biologic patents. The report also includes a study on district court pharmaceutical litigation.
– Originally presented July 2019.

Appendix C: Methodology for FY19 Roundup Statistics
– Technical details of the methodology used in generating the FY19 Outcome Roundup.
Questions? Comments? Suggestions?

We welcome your feedback.

Please direct questions, comments, or suggestions relating to this presentation, or other statistical or data-related matters to:
PTABStatisticsQuestions@USPTO.GOV

Please direct comments, questions, or suggestions relating to AIA proceedings in general to:
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