FY20 PTAB outcome roundup

• Generally speaking regarding AIA petitions in FY2020:
  – one-third were denied
  – one-third settled or otherwise terminated
  – one-third resulted in a final written decision.

• AIA institution rate = about 56% (out of all decisions on institution).
FY20 PTAB outcome roundup

Considering all Outcomes in AIA Proceedings in FY2020:

– PTAB issued **508 final written decisions** addressing **413 different patents**.

– Less than **30% 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.
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
(FY20: Oct. 1, 2019 to Sept. 30, 2020)

- **Electrical/Computer**: 921 (61%)
- **Mechanical & Business Method**: 396 (26%)
- **Chemical**: 98 (7%)
- **Bio/Pharma**: 78 (5%)
- **Design**: 20 (1%)

Total: 1,513
Petitions filed by month
(Sept. 2020 and Previous 12 Months: Sept. 1, 2019 to Sept. 30, 2020)

(1,429 IPRs in FY20)

The Office will not consider a CBM petition filed on or after September 16, 2020.
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.
Institution rates by patent and by petition
(FY16 to FY20: Oct. 1, 2015 to Sept. 30, 2020)
Institution rates by technology (FY20: Oct. 1, 2019 to Sept. 30, 2020)

- Bio/Pharma: 48%
- Chemical: 59%
- Design: 14%
- Electrical/Computer: 58%
- Mechanical & Business Method: 55%

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
(FY20: Oct. 1, 2019 to Sept. 30, 2020)

- Institution Denied: 504 (36%)
- Settled: 309 (22%)
- FWD All Patentable: 88 (6%)
- FWD Mixed: 103 (7%)
- FWD All Unpatentable: 317 (22%)
- Req. Adverse Judgmt: 58 (4%)
- Dismissed: 36 (3%)

FWD patentability or unpatentability reported with respect to the claims at issue in the FWD. Joined cases are excluded.
Outcomes by patent
(FY20: Oct. 1, 2019 to Sept. 30, 2020)

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
(FY20: Oct. 1, 2019 to Sept. 30, 2020)

- Institution Denied: 6,659 (37%)
- Challenged But No FWD: 3,270 (18%)
- FWD Patentable: 1,852 (10%)
- FWD Unpatentable: 5,125 (29%)
- Disclaimed: 775 (4%)
- Dismissed: 338 (2%)
*"No DI" and "No FWD" means the claim was challenged but not addressed in a DI/FWD, e.g., due to settlement.

28% of challenged claims and 53% of instituted claims were found unpatentable by a preponderance of the evidence in FY20.
All patents, fiscal year 2020:

- Patents (~3,820,000)
  - New Patent Grants (399,055)
    - Patents Challenged at PTAB (1,193)
      - Patents Receiving a Final Written Decision at PTAB (413)
      - Patents Losing One or More Claims in an FWD (345)
        - Patents Losing All Claims in the Patent in an FWD (111)

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: Motion to Amend Study (Installment 6, through March 31, 2020)
– A report on the outcomes of pre-pilot motions to amend in AIA trials and some limited data for motions to amend filed under the Office’s pilot program.
– Originally published in July 2020.

Appendix B: Trial statistics by patent and by claims
– A report providing various AIA trial statistics, including results by petition, by patent, and by claim; also includes an update on multiple petitions.
– Originally presented in June 2020.

Appendix C: Methodology for FY20 Roundup Statistics
– Technical details of the methodology used in generating the FY20 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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