

HARNESSING PATENT OFFICE LITIGATION



VOLUME XIII

A Look at Forty Two
Months of *Inter Partes*
Review Proceedings Before
the United States Patent
and Trademark Office



9|16|2012 to 3|16|2016

HARNESS
DICKEY

Welcome to **Harness Dickey's** Report on Litigation Practice before the United States Patent Office. Created by the America Invents Act, *Inter Partes* Review proceedings have already changed the face of patent litigation. Lower cost, lower burden of proof to invalidate, broader claim scope, among other advantages to patent challengers,

means that there may be no greater opportunity and true reform to come from the America Invents Act than these post-grant proceedings. Our periodic Report will provide insight based on the over 100 characteristics of these proceedings that we are tracking. Our analysis can also be followed at IPR-PGR.com.

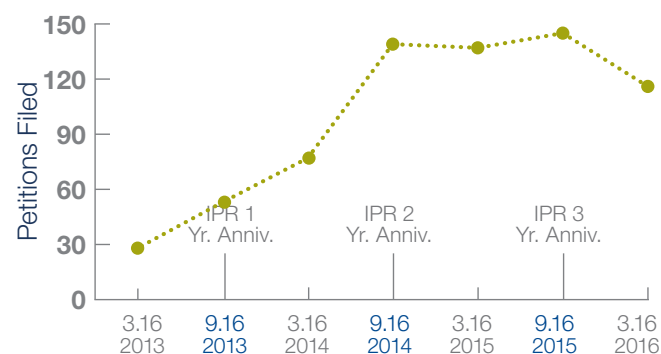
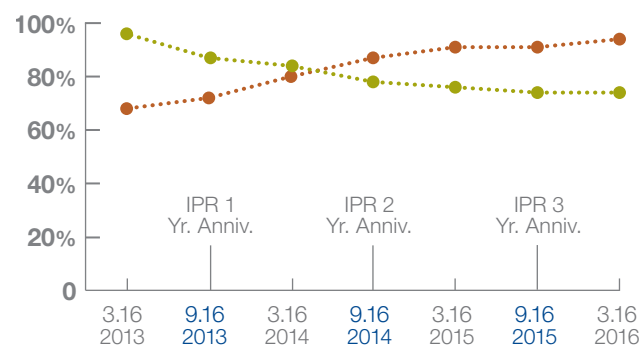
83%

CLAIMS CANCELED IN FINAL WRITTEN DECISION

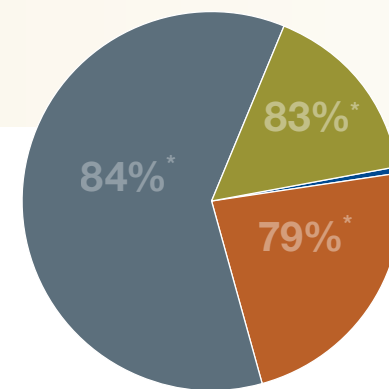
While the initial Final Written Decisions were decidedly in favor of Petitioners (a 96.4% cancellation rate as of March 16, 2014), more recent decisions have increasingly sided with Patent Owners, bringing down the total number of canceled claims to 83%. Critics of IPR proceedings try to argue the various ways in which the proceedings are skewed toward Petitioners. It is becoming increasingly clear, however, that the *Inter Partes* Review process has added an efficient and cost-effective avenue to test the patentability of patent claims outside of expensive District Court litigation.

WELCOME

PRELIMINARY STAGE Preliminary Stage of the Proceedings (Petition Filing through PTAB Trial Initiation Decision)



- PERCENT OF PETITIONS PUT INTO TRIAL
- PETITIONS SUPPORTED BY EXPERT DECLARATIONS¹
- PETITIONS FILED PER MONTH

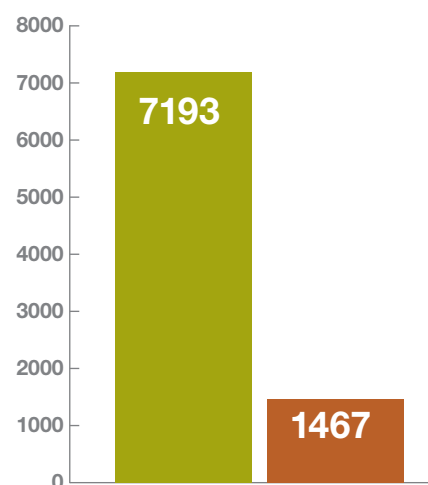
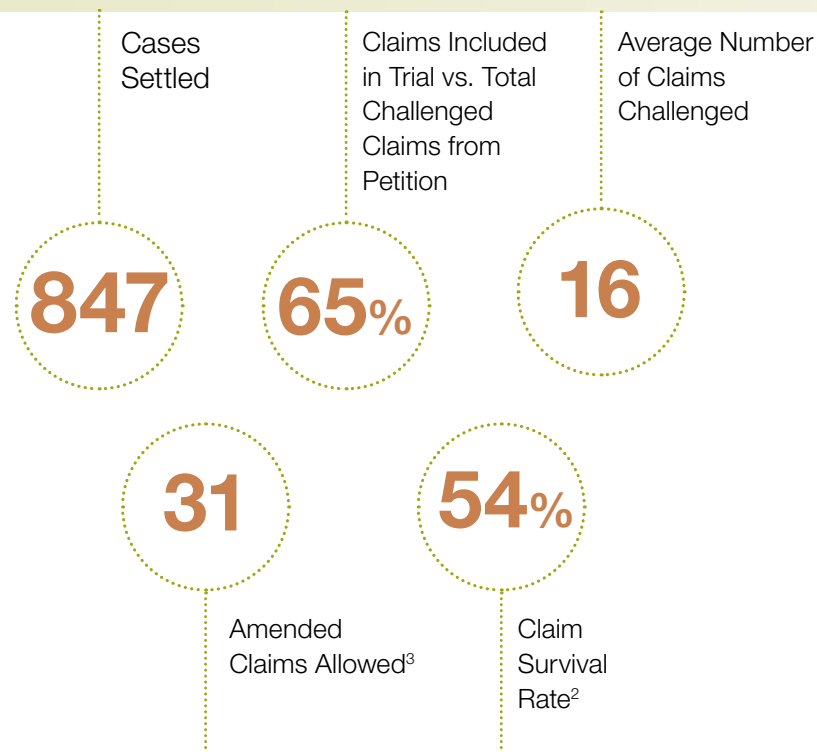


TECHNOLOGY OF CHALLENGED PATENTS CHART
 664 Chemical and Biotech
 17 Design
 957 Mechanical and Transportation
 2498 Electrical and Computer

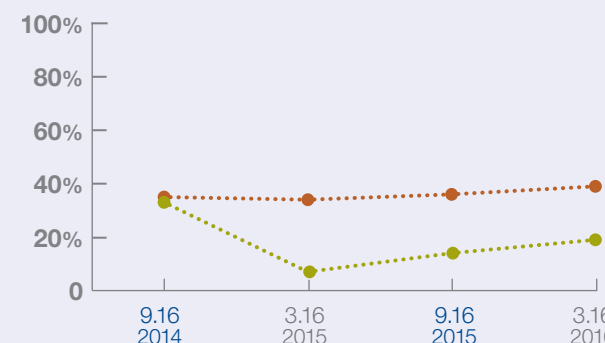
TOP 6 IPR FILERS

190	
124	
85	
81	
76	
54	

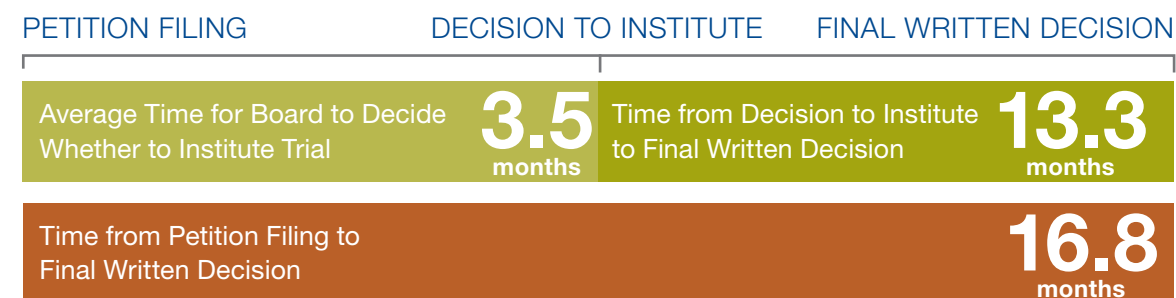
TRIAL STAGE Trial Stage of the Proceedings (PTAB Trial Initiation Decision through Final Written Decision)



- CLAIMS CANCELED AT FINAL WRITTEN DECISION
- CLAIMS CONFIRMED AS PATENTABLE



- CLAIM SURVIVAL RATE AT FINAL WRITTEN DECISION
- CLAIM SURVIVAL RATE AT INSTITUTION DECISION



¹ Over time, Petitioners have come to recognize that their Petitions must be supported by hard evidence in the form of expert testimony.

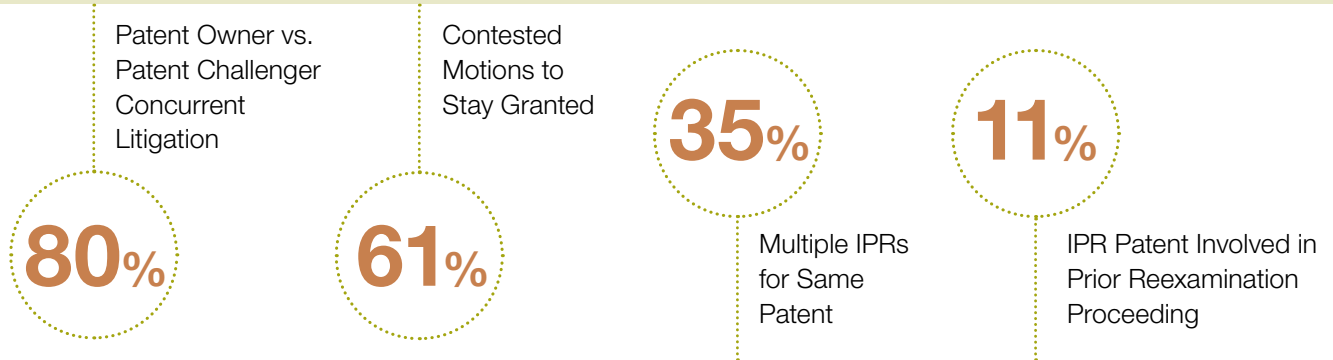
² Percent of claims that were confirmed as patentable in a Decision to Institute or Final Written Decision.

³ A total of six motions to amend have been granted through March 16, 2016.

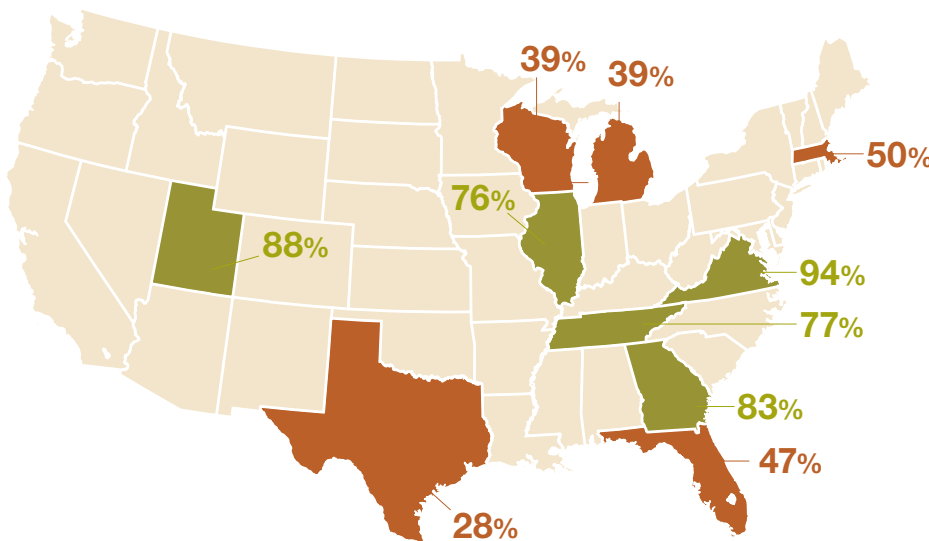
* Claims Canceled in Final Written Decision

CONCURRENT PROCEEDINGS

Litigation and other Administrative Proceedings Involving the Patent-At-Issue



Increasingly, and to get around the PTAB's onerous Motion to Amend requirements, Patent Owners are filing concurrent reissue or reexamination proceedings to offer a more robust substitute claim set.



COURTS WITH HIGHEST WIN RATE FOR MOTIONS TO STAY ⁴

Eastern District of Virginia	94%
District of Utah	88%
Northern District of Georgia	83%
Western District of Tennessee	77%
Northern District of Illinois	76%

COURTS WITH LOWEST WIN RATE FOR MOTIONS TO STAY ⁴

Eastern District of Texas	28%
Eastern District of Wisconsin	39%
Eastern District of Michigan	39%
Middle District of Florida	47%
District of Massachusetts	50%

⁴ For district courts with seven or more decisions on motions to stay

HARNESS DICKEY SABERMETRICS

We offer an Unmatched and Unique Statistical Advantage.

Harness Dickey clients benefit from the Firm's expansive and ongoing statistical analysis of IPR decisions. We have analyzed the reasons why a Petition has not succeeded (either at the Decision to Institute or Final Written Decision stage). In this way, as a Petitioner, we can "pressure test" a draft Petition against this data to ensure the highest possible level of success. As a Patent Owner, we evaluate a Petition against this data to determine the best avenues for attacking the Petition, including the identification of key cases that support our argument. In an advanced analysis, we can learn by judge or by subject matter what are the most common mistakes made in Petitions. In short, Harness Dickey clients take advantage of enhanced metrics to give them the highest chance of success in *Inter Partes* review proceedings. Please contact us for more details. – IPR-PGR@hdp.com.



We have traveled the world to provide seminars regarding *Inter Partes* Review proceedings to companies, law firms, and other organizations. Interested in having us visit for a presentation? Please email us at ipr-pgr@hdp.com.

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