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PTAB Trial Statistics

FY19 End of Year Outcome Roundup

IPR, PGR, CBM

APPENDIX

Patent Trial and Appeal Board

Fiscal Year 2019

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Appendix Contents

This appendix, as well the main presentation, is available on PTAB's statistics webpage:

<https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/statistics>

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.

FY19 PTAB Outcome Roundup Takeaways

- 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).
- 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.

Please see main document for details.

What's New?

- **PTAB updated its regularly-issued statistics presentations to show outcomes on a by-petition, by-patent, and by-claim basis.**
 - In this process, PTAB performed a thorough manual and computer-aided review of its data, upgraded its data integrity verifications, and corrected any data errors found during this process.
 - Outcome reporting will now proceed on a quarterly basis in slide decks called “outcome roundups.”
- **The prior “waterfall” outcome slide is retired in favor of an easier-to-read pie chart. Accordingly, the prior outcome pie charts now include the “dismissed” category so that each type of case disposition is represented in the chart.**
- **The previously-shown FY19 outcome roundup (from a Board Side chat) is being replaced with this version, to maintain formatting consistency with future roundups.**

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:

PTABAIATrialSuggestions@USPTO.GOV



Want to Know More About PTAB?

Please visit our website.

<https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board>

PTAB AIA Trials Website:

<https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/trials>

PTAB Statistics Website (updated monthly):

<https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/statistics>

PTAB Databases and Open Data (updated daily):

<https://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/ptab-it-systems>



Parallel proceedings study

[Originally Presented at a Boardside Chat in April 2019]

Appendix A

Purpose

- Explore the interaction between parallel proceedings at the USPTO (e.g., AIA proceedings, reexamination, and reissue) involving issued patents.
- Determine how many patents had overlapping proceedings, and if so, what was the timing between the proceedings.
- Attempt to identify trends in the use of the proceedings by the parties.

Methodology

- This study was conducted in collaboration with the Central Reexamination Unit (CRU).
- The statistics depict data from the start of AIA filings (September 16, 2012) through mid-year FY18 (March 31, 2018).
- The study covered any corresponding reissue or reexam filed through mid-year FY18 (March 31, 2018) for the challenged patents.
- We analyzed 5,056 patents challenged in the AIA proceedings and any corresponding reissue and reexam for those challenged patents.

Reissues and “reexams”

A reissue is an application to correct an error in an *unexpired patent*.

- The reissue applicant is the *original patentee*, or the current patent owner, if there has been an assignment.

In this study, we refer to the following as “reexams”:

- Ex parte reexaminations (“EP reexams”)

Who can request an EP reexam? Anyone, including the patent owner, except those barred by estoppel provisions.

When can an EP reexam be filed? Any time during the patent’s period of enforceability.

- Inter partes reexaminations (before September 16, 2012) (“IP reexams”)

Who was able to request an IP reexam? Any third party requester.

When was an IP reexam able to be filed? Any time during the patent’s period of enforceability (for a patent issued from an original application filed on or after November 29, 1999).

- Supplemental examinations (“SEs”)

Who can request an SE? A patent owner.

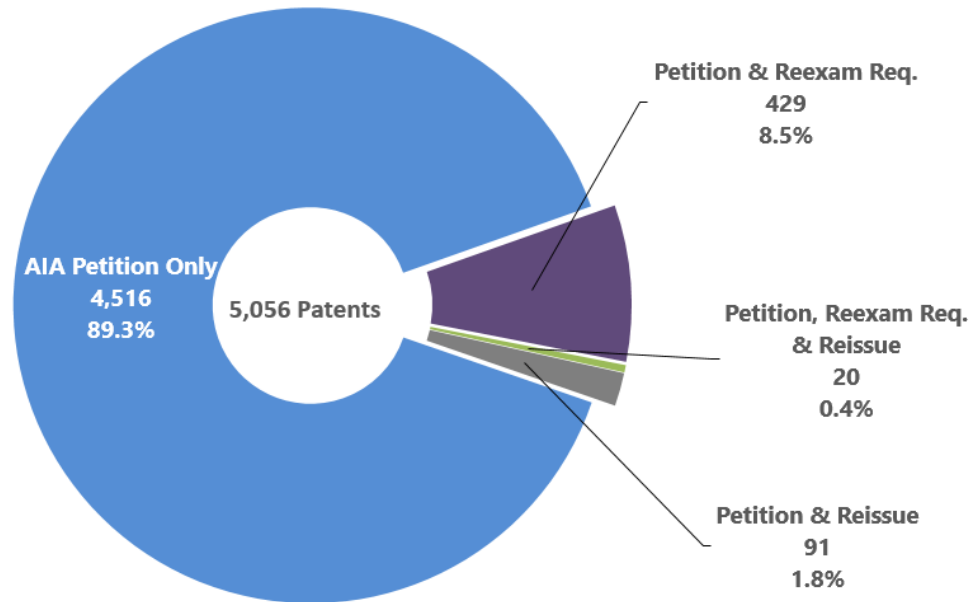
When can an SE be filed? Any time during the patent’s period of enforceability.

Summary

- 89% of patents challenged in AIA proceedings have not had any associated reexams or reissues.
- Decrease from FY12 to mid-year FY18 in percentage of patents that have received both:
 - Reexam request and/or reissue application
 - AIA petition
- In 71.5% of all patents that had both reexam request and an AIA petition, the reexam request was filed before the AIA petition.
- In 70.3% of all patents that had both reissue and an AIA petition, the reissue application was filed on or after the AIA petition.
- There were about four times as many patents that had an AIA petition and a reexam request as patents that had an AIA petition and a reissue.

Patents with a reexam request or reissue and challenged in AIA proceeding

(As of mid-year FY18: Sept. 16, 2012 – Apr. 1, 2018)





Patents with a **reexam** request and challenged in AIA proceeding

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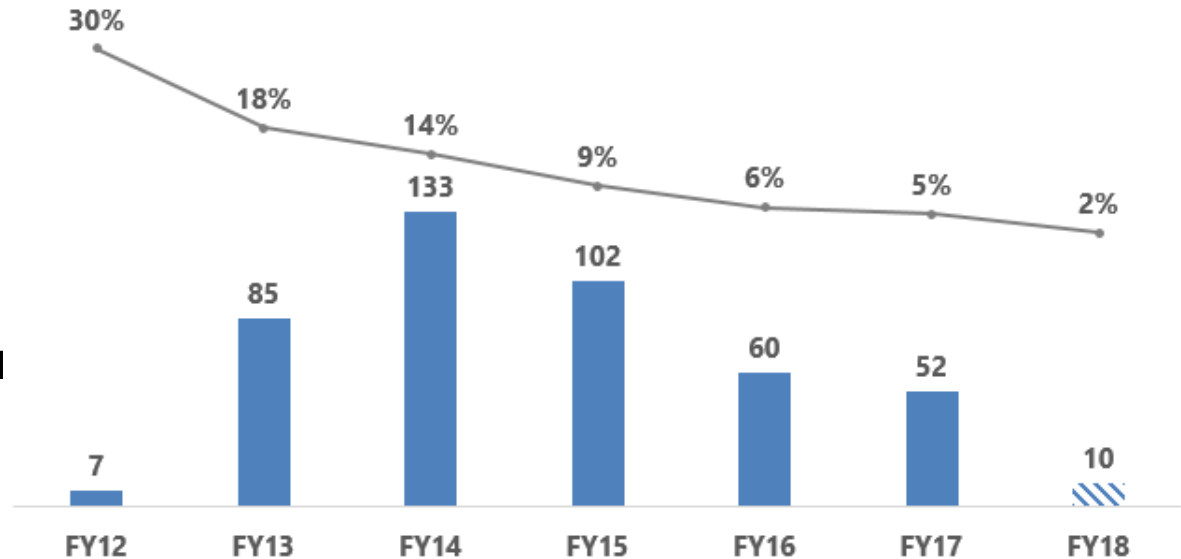
How has the percentage of patents challenged in an AIA proceeding also having corresponding reexam changed over time?

Patents with a reexam request and challenged in AIA proceeding

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)

Percentage of All Patents Challenged in AIA Proceedings

Patents with a Reexam Request and Challenged in AIA Proceedings



When was the **reexam filed
in relation to the AIA
proceeding milestones?**

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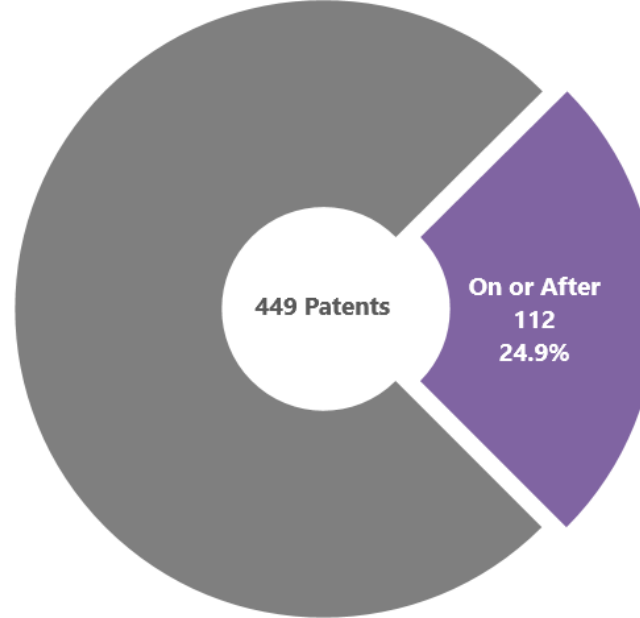
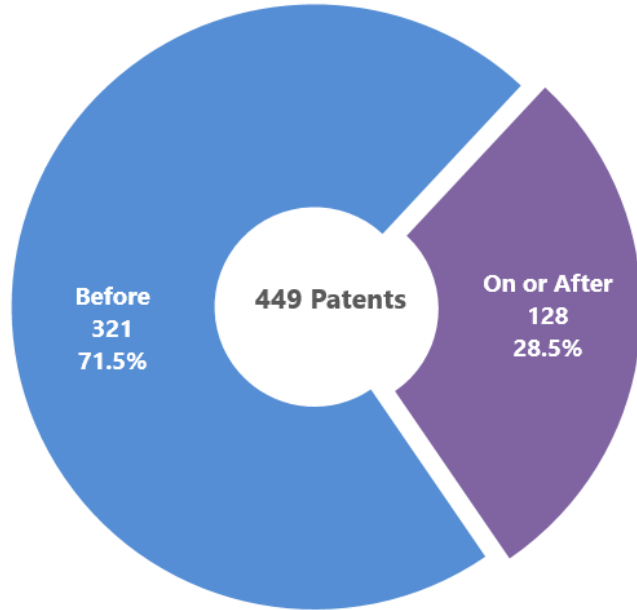


Was the first reexam filed on or after...

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)

...the filing date of the first AIA petition?

...the date of the first decision on institution?



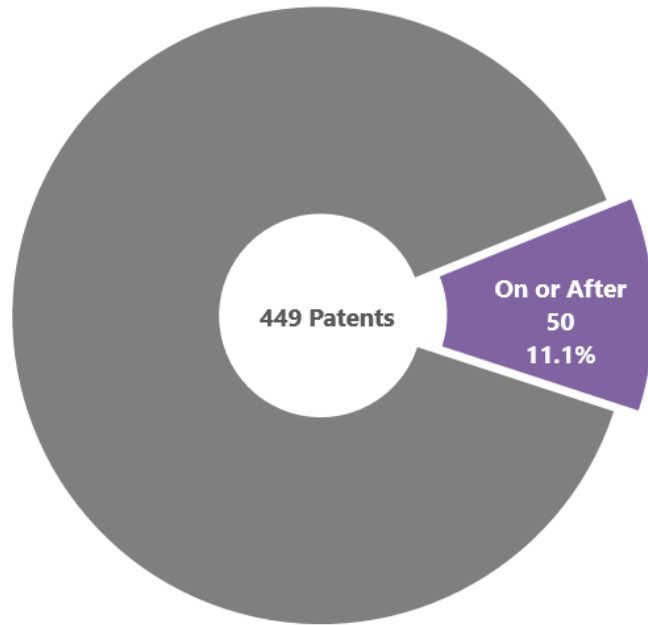
409 of the 449 patents have had at least one decision on institution in any AIA proceeding.

273 of the 449 patents have had at least one petition instituted.

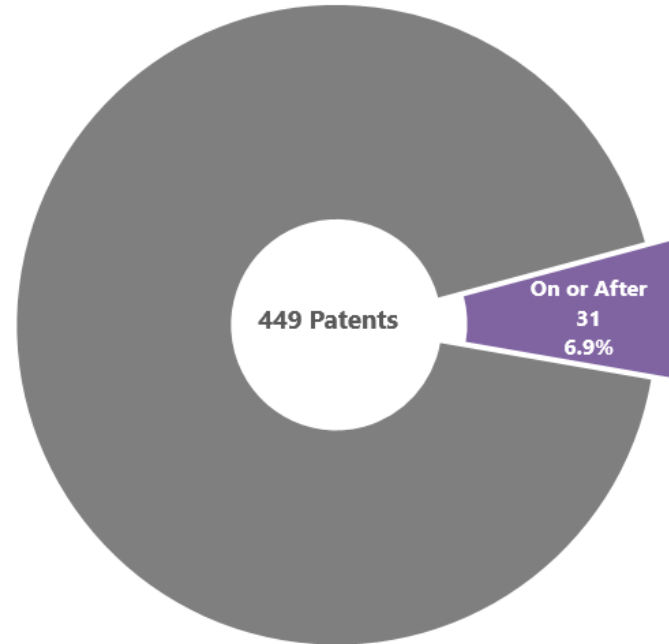
Was the first reexam filed on or after...

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)

...the date that the first AIA proceeding terminated?



...the date of the first final written decision issued?



179 of the 449 patents have had a final written decision in any AIA proceeding.

Termination means that the proceeding concluded for any reason including request for adverse judgment, settlement, or final written decision.



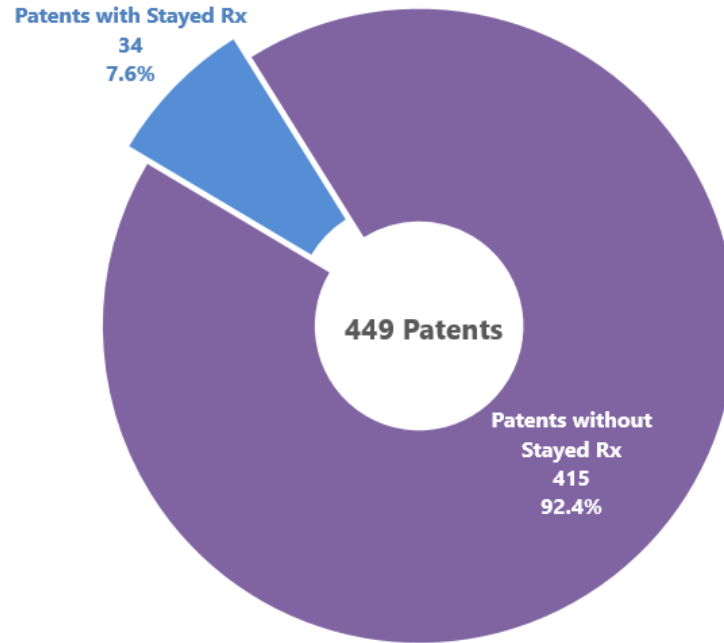
If the reexam is filed, how often is the reexam stayed?

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Percent of patents with reexams stayed

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)





Patents with a **reissue** and challenged in AIA proceeding

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How has the percentage of patents challenged in AIA proceeding also having a corresponding **reissue changed over time?**

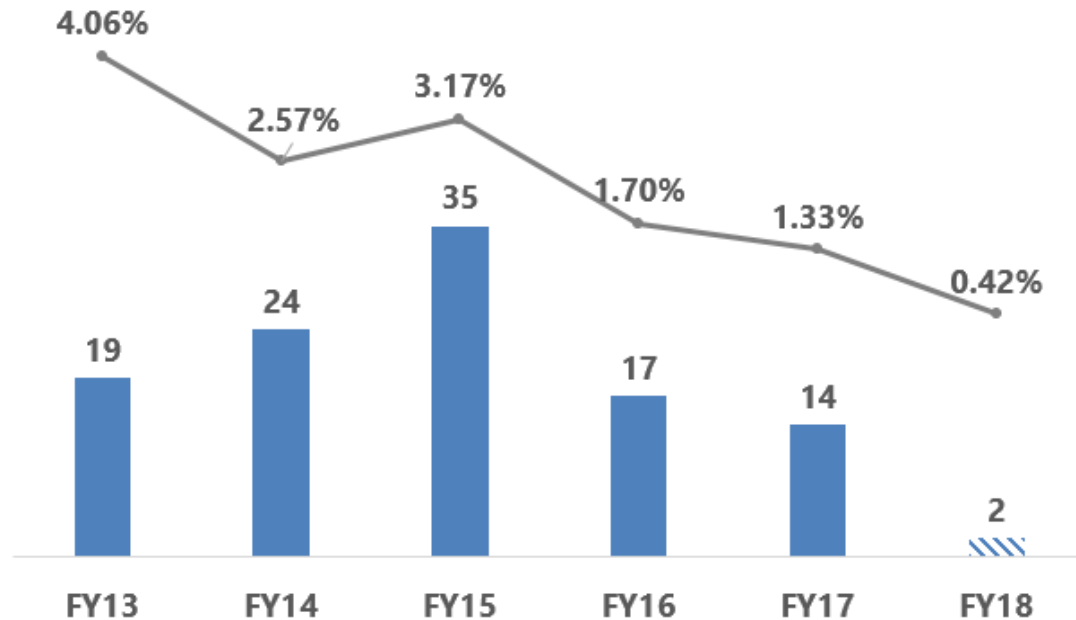
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Patents with a reissue and challenged in AIA proceeding

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)

Percentage of all patents
Challenged in
AIA proceedings



Patents with a
reissue and an
AIA petition

When is the **reissue** filed
in relation to the AIA
proceeding milestones?

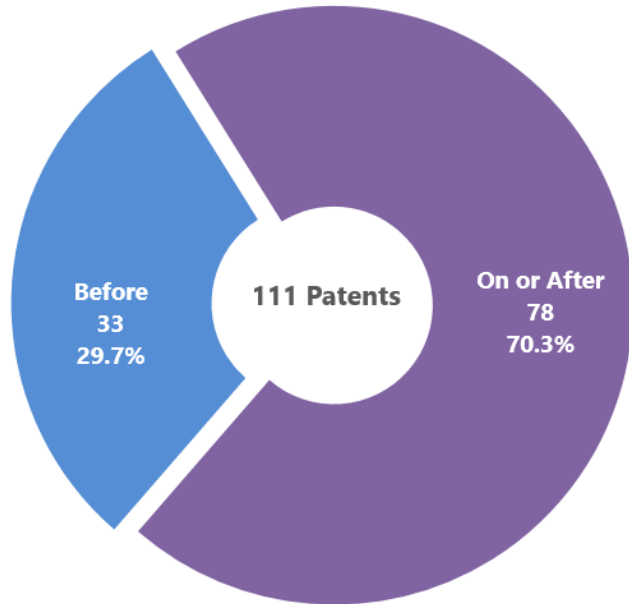
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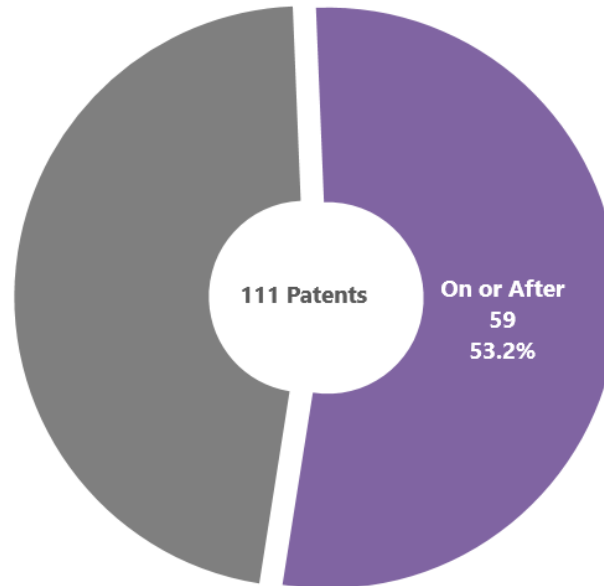
Was the reissue filed on or after...

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)

...the filing date of the first AIA petition?



...the date of the first decision on institution?



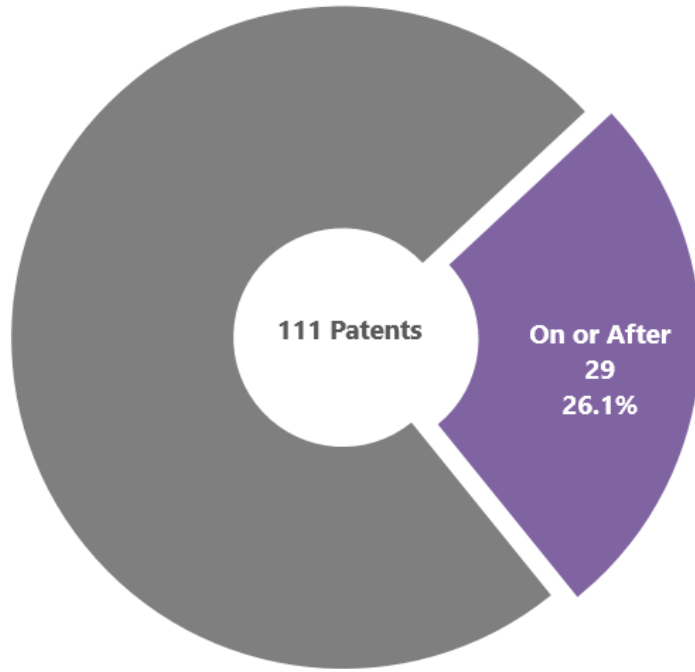
101 of the 111 patents have had a decision on institution in any AIA proceeding.

90 of the 111 patents have had at least one petition instituted.

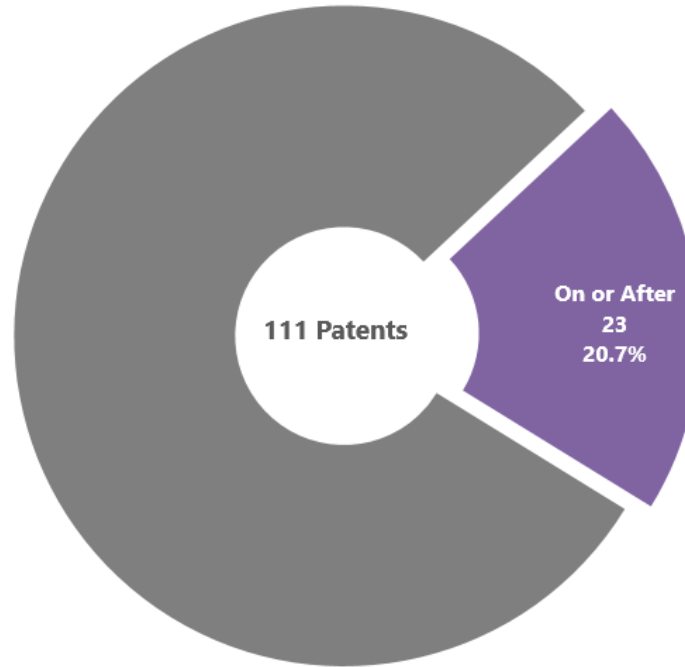
Was the reissue filed on or after...

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)

...the date that the first AIA proceeding terminated?



...the date of the first final written decision issued?



64 of the 111 patents have had a final written decision in any AIA proceeding.

Termination means that the proceeding concluded for any reason including request for adverse judgement, settlement, or final written decision.



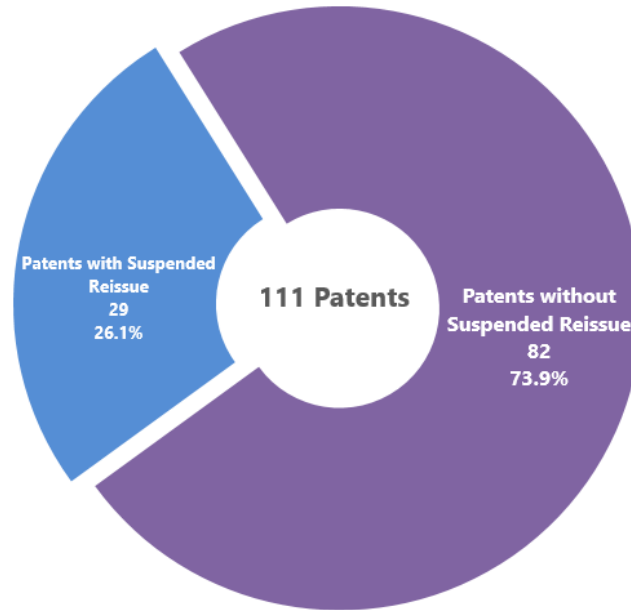
If a reissue is filed, how often is the reissue suspended/stayed?

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Percent of patents with reissues suspended/stayed

(As of mid-year FY18: Sept. 16, 2012 to Apr. 1, 2018)



These suspensions/stays can be instituted by either the examiner or PTAB.

Recap

- 89% of patents challenged in AIA proceedings have not had any associated reexams or reissues.
- Decrease from FY 12 to mid-year FY19 in percentage of challenged patents that have received both:
 - Reexam request and/or reissue application
 - AIA petition
- In 71.5% of all patents that had both reexam request and an AIA petition, the reexam request was filed before the AIA petition.
- In 70.3% of all patents that had both reissue and an AIA petition, the reissue application was filed on or after the AIA petition.
- There were about four times as many patents that had an AIA petition and a reexam request as patents that had an AIA petition and a reissue.

Orange book / biologics study

[Originally Presented at a Boardside Chat in July 2019]

Appendix B

What are Orange Book patents?

- Short-hand for patents covering FDA-approved drug products that are listed in the publication Approved Drug Products With Therapeutic Equivalence Evaluations (commonly known as the Orange Book)
- These patents are governed under the provisions of the Hatch-Waxman Act, which created an abbreviated regulatory approval pathway for generic drug products

What is the Hatch-Waxman Act?

- Allows a generic company to secure quicker FDA approval without repeating expensive and lengthy clinical trials that were conducted on the brand drug
- In exchange, the generic company must certify to the FDA that:
 - The generic version of the approved drug will not infringe with any patents that the branded pharmaceutical company has listed in the Orange Book; or
 - That the patents the branded pharmaceutical company has listed in the Orange Book are not infringed and/or invalid

What are biologic patents?

- Biologic patents are different than Orange Book drug patents
 - Biologics are large, complex molecules, such as vaccines, made from natural sources
 - Drugs typically are small molecules made through chemical synthesis
- Due to the difference, biologics are governed under a different statutory scheme than drugs—The Biologics Price Competition and Innovation Act of 2009 (BPCIA)
- The BPCIA created an abbreviated regulatory approval pathway for biological products shown to be “biosimilar” or interchangeable with an FDA-approved biological product

What is the BPCIA?

- A company producing a biosimilar product can secure FDA approval without repeating all the studies and clinical trials that were conducted on the biologic product
- Provides a statutory scheme for resolving patent disputes related to biosimilar products, that can include an information exchange regarding patents with which the biosimilar product may infringe
- The information exchange may result in litigation after the biosimilar applicant provides notice that it will commercially market the biosimilar product
- Patents covering FDA-approved biologic products are not listed in a publication; however, FDA produces a "Purple Book," which lists FDA-licensed biological products (including biosimilar products)

Methodology

- PTAB classified an AIA petition as challenging an Orange Book-listed patent by comparing the petition's filing date with data from the FDA's electronic Orange Book indicating when the patent was listed
- PTAB manually identified biologic patents as any patent potentially covering a Purple Book-listed product and any non-Orange Book-listed patent directed to treating a disease or condition
- The litigation referenced in this study is limited to litigation that the parties to a particular AIA proceeding identified in their papers and in the notice of a district court patent suit filed with the office under 35 U.S.C. § 290
- Statistics depict data through November 30, 2018

Overview of findings from AIA proceeding study

- 2% of all AIA petitions challenge biologic patents
- 5% of all AIA petitions challenge Orange Book patents
- The institution rate for biologic patents (50%) is lower than for Orange Book patents (64%)
- But Orange Book patents have a greater chance of claims being upheld in a final written decision

Overview of findings from litigation study

Biologics:

- Most biologic AIA petitions (65%) were filed before any litigation started
- Most challenged biologic patents (53%) were not asserted in district court litigation
- Most of those patents did not have litigation between patent owner and petitioner (71%)

Overview of findings from litigation study

Orange Book:

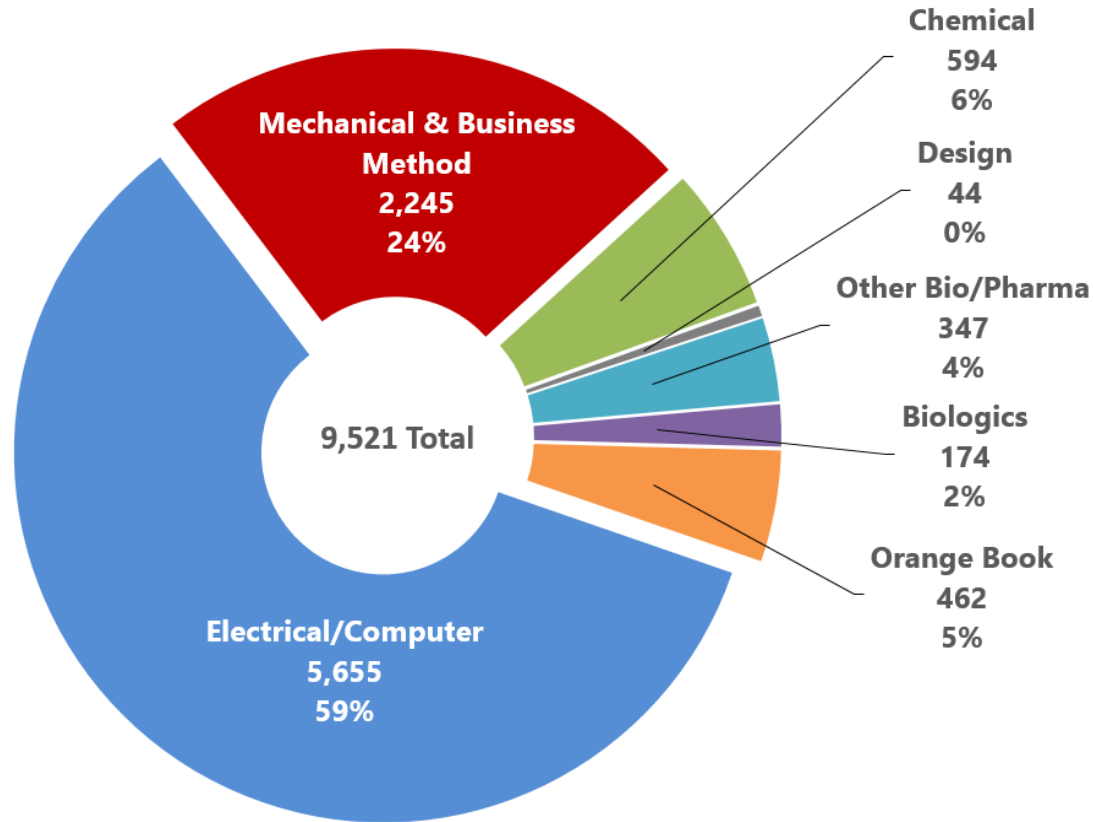
- Most Orange Book AIA petitions (95%) were filed after litigation started
- Most challenged Orange Book patents (91%) were asserted in district court litigation
- Most of those patents had litigation between patent owner and petitioner (66%)
- Most of those patents had an AIA petition filed during that litigation (96%)

AIA proceedings

What are the filing trends for AIA petitions challenging Orange Book-listed and biologic patents?

AIA Petitions filed by technology

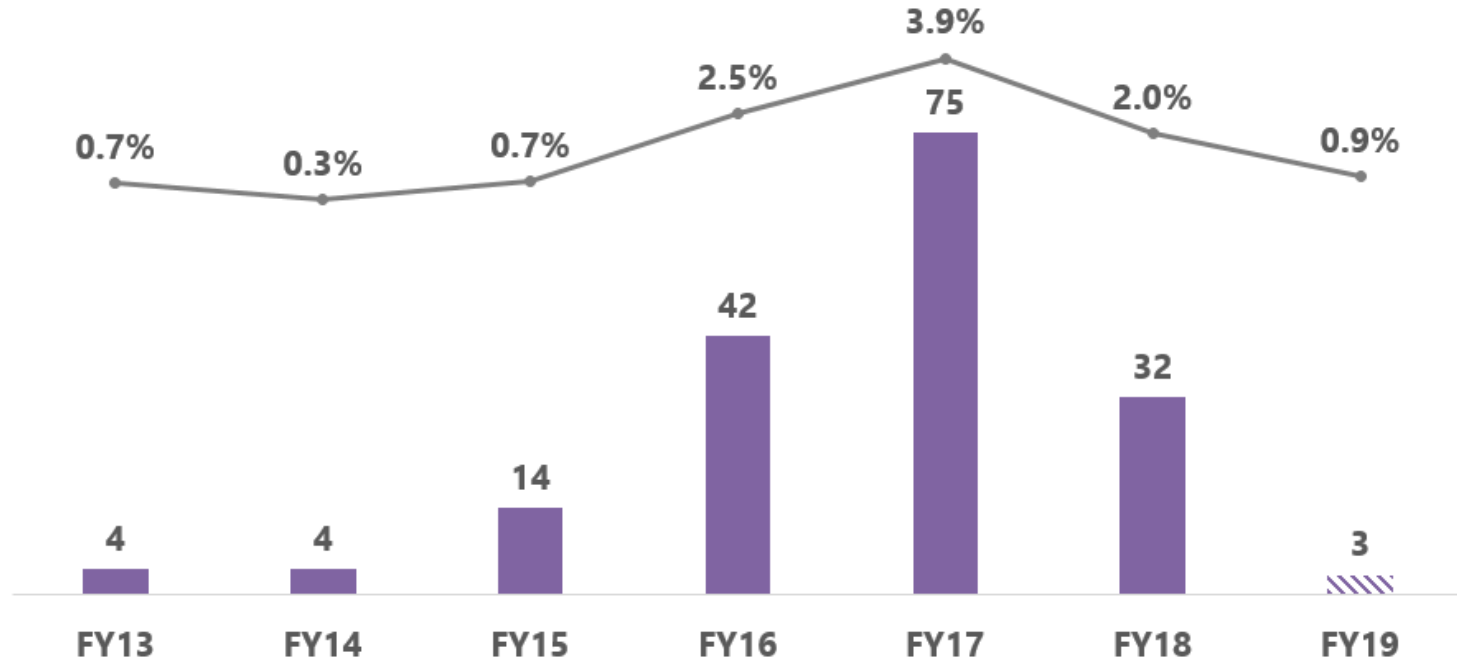
(Sept. 16, 2012 to Nov. 30, 2018)



Includes all trial types.

AIA Petitions challenging biologic patents

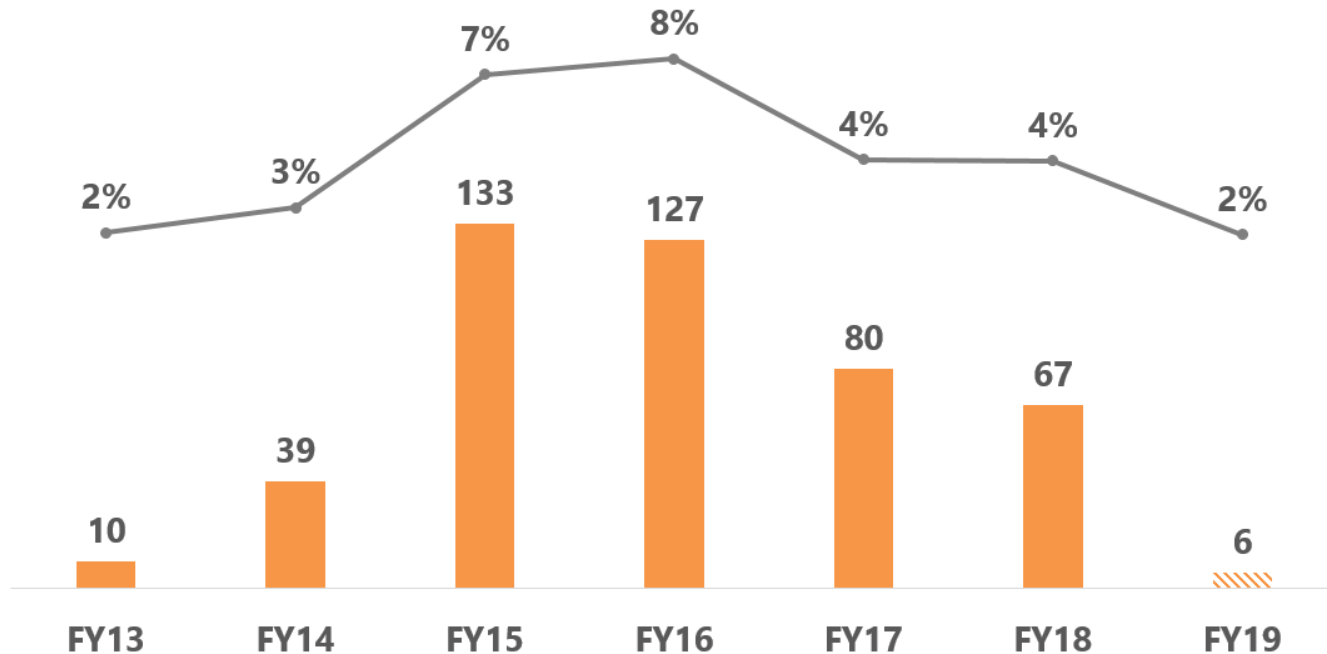
(Sept. 16, 2012 to Nov. 30, 2018)



No petitions challenging biologic patents were filed in FY12.

AIA Petitions challenging Orange Book patents

(Sept. 16, 2012 to Nov. 30, 2018)

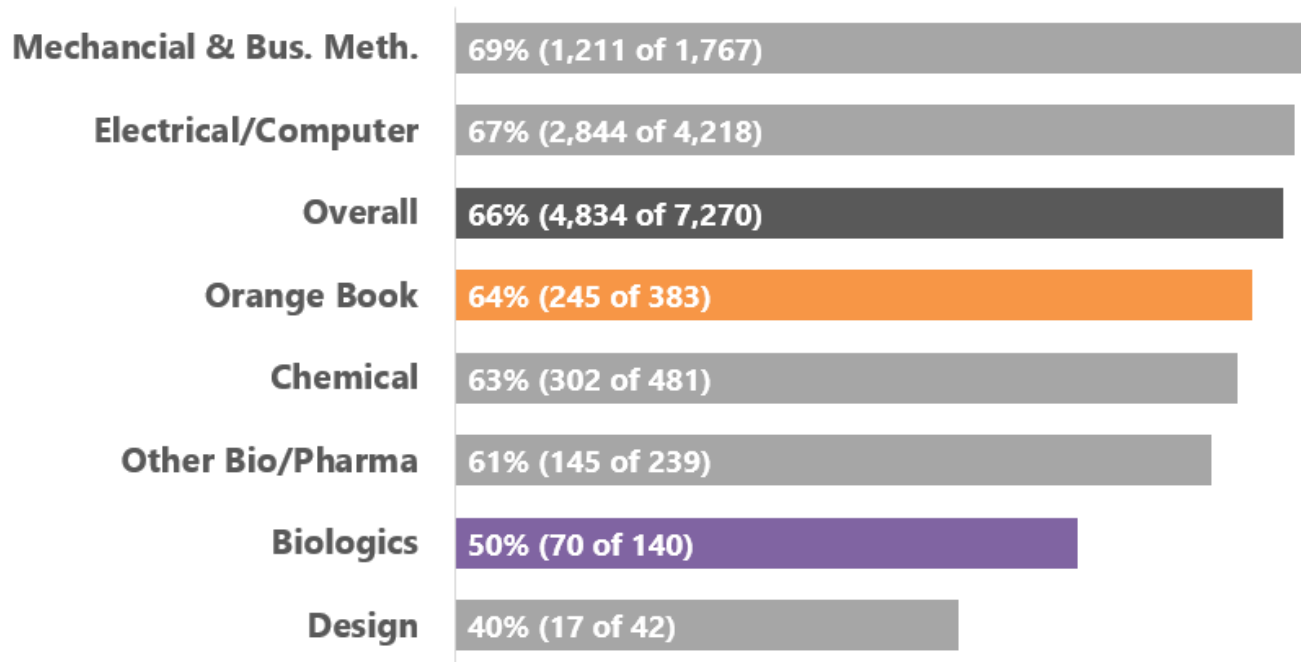


No petitions challenging Orange-Book-listed patents were filed in FY12.

**How does the institution rate for
AIA petitions challenging
Orange Book-listed or biologic
patents compare to other
technologies?**

Institution rates by technology

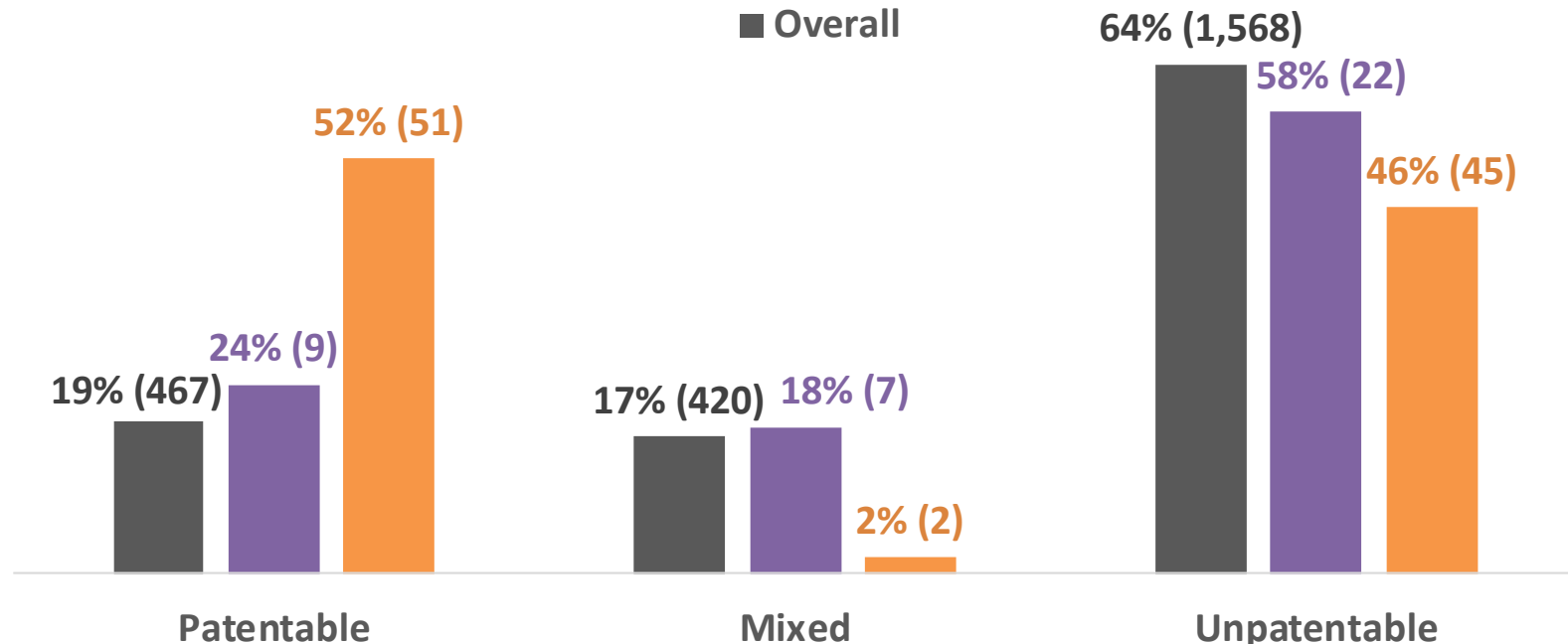
(Sept. 16, 2012 to Nov. 30, 2018)



**What are the outcomes of
challenges to Orange Book-listed or
biologic patents?**

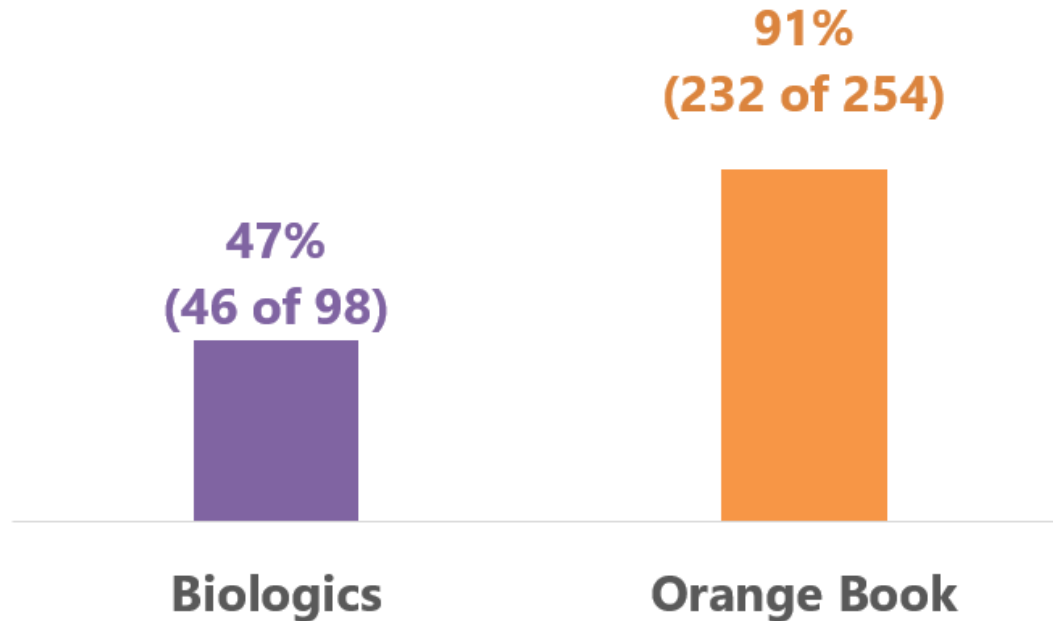
Status of instituted claims in final written decisions

(Sept. 16, 2012 to Nov. 30, 2018)



Litigation study

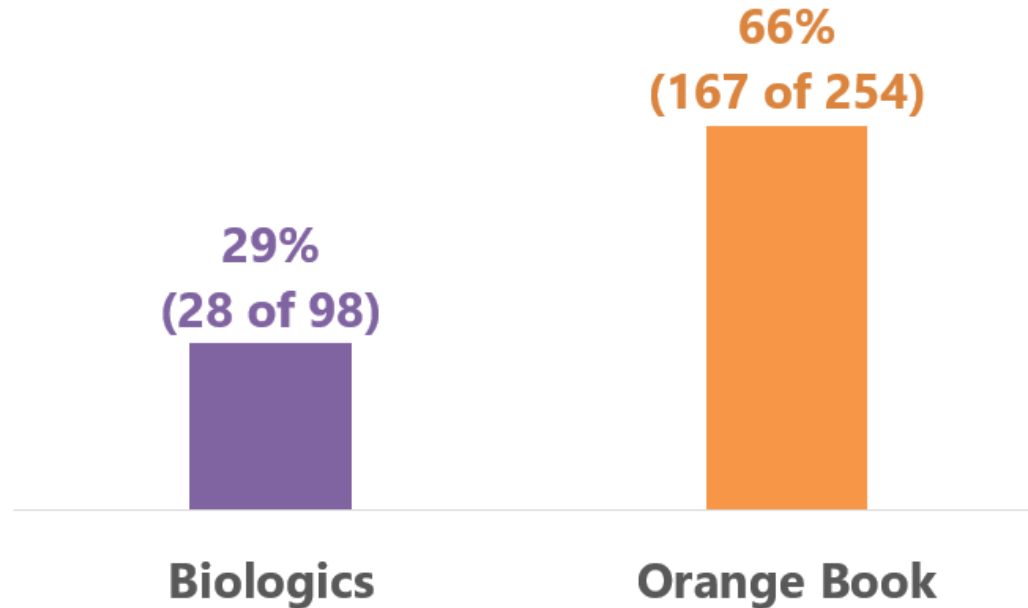
What percent of patents challenged in AIA proceedings have been involved in any district court litigation? (Sept. 16, 2012 to Nov. 30, 2018)



The litigation in this study is limited to litigation that the parties to a particular AIA proceeding identified in their papers and in the notice of patent suit filed with the office under 35 U.S.C. § 290

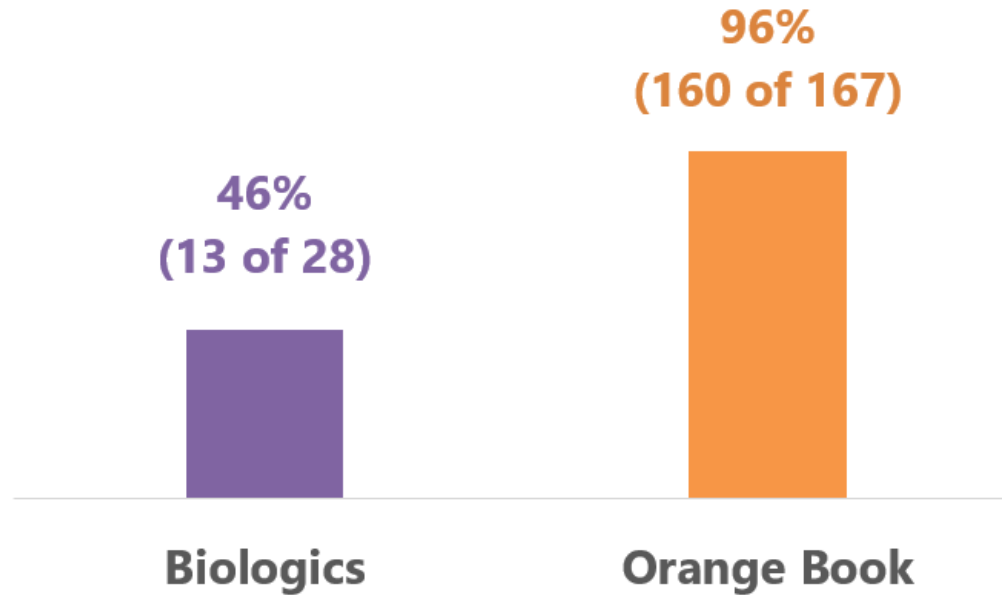
What percent of patents challenged in AIA proceedings had district court litigation between the petitioner and patent owner?

(Sept. 16, 2012 to Nov. 30, 2018)

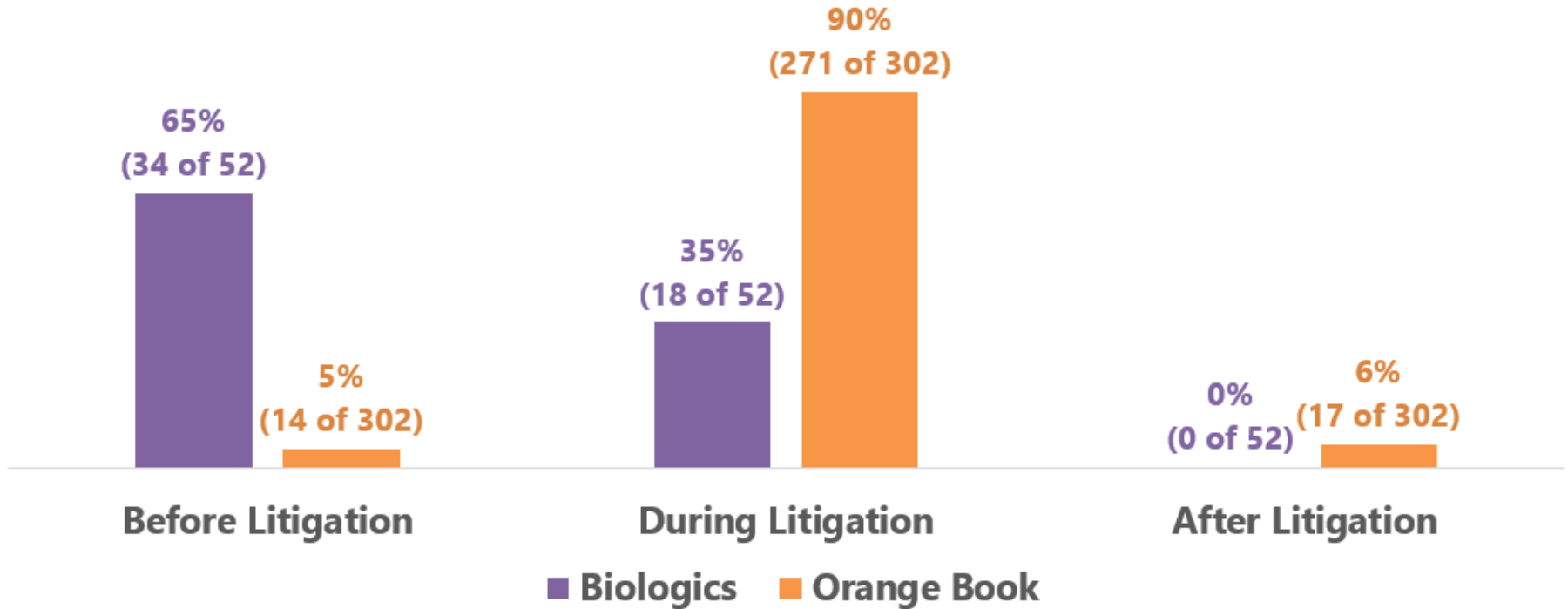


What percent of those patents had an AIA petition filed during district court litigation between the petitioner and patent owner?

(Sept. 16, 2012 to Nov. 30, 2018)



When were AIA petitions filed relative to corresponding district court litigation? (Sept. 16, 2012 to Nov. 30, 2018)



FY19 Outcome Roundup Methodology

The following pages provide an in-depth explanation of the methodology and data used to create the AIA trial statistics in this deck.

Appendix C

General notes & methodology

- Common acronyms: Decision on Institution (DI); Final Written Decision (FWD); Request for Adverse Judgment (RAJ); Fiscal Year (FY).
- Inter partes reviews (IPR), covered business method reviews (CBM), and post grant reviews (PGR) were considered. Derivations were not considered.
- The dataset includes the status of all petitions, patents, and claims as of the last date reported on the slide. For example, FY19 datasets display the outcome of the petition, patent, or claim as of close of business on 9/30/2019.
- Percentages are rounded to improve readability. Rounding is made according to traditional convention, where the digit to be rounded off is inspected and if between 0 and 4, round down, and if between 5 and 9, round up.
- Because of rounding, percentages may not always add up exactly to 100%. If a numbers are rounded to add up to 100%, the convention is followed where the number closest to being rounded is rounded.

Methodology – Institution Rates

Institution rates by petition, institution rates by patent

- Methodology information is provided on the corresponding slides.
- Institution rates by patent for a given year are the institution rates for those patents as of the end of the reported fiscal year.
 - Example 1: if a patent is challenged in FY17 and its petition is denied, that patent is counted as a denial in FY17.
 - Example 2: if the patent in example 1 is challenged again in FY19 and its petition is instituted, that patent is counted as an institution in FY19, but still counts as a denial in FY17.
 - Example 3: if a patent is challenged in FY17 and its petition is instituted, that patent is counted as an institution in FY17. If that same patent is challenged again in FY19 and its petition is denied, that patent is counted as an institution in FY19 because it has already had an institution in the past. It also still counts as an institution in FY17.
- Due to this methodology, reported institutions by patent are slightly higher than the actual number of institutions in a given year.
- Mathematically, the institution rate by patent must always be higher than by petition. The rates are not equal because different petitioners may file a petition against a patent, or a single petitioner may file more than one petition to use different art or to address large claim sets, for example. The more often a second or third, etc. petition is not instituted, the more divergent the by-petition rate becomes.
- Institution rates by petition consider joinders but do not consider rehearing outcomes. PTAB has not been considering rehearing outcomes when reporting institution rates in order to prevent historically provided numbers from fluctuating and to obviate the need to update historical slide decks (notwithstanding, there are very few granted rehearings, so the numbers would only change by a few, if any, in a year).
- Institution rates by patent consider joinders and rehearing outcomes. Rehearing outcomes are considered in the year they occur, and the institution rate calculation uses the year of the rehearing outcome. Thus, a patent may be denied in FY19 and instituted in FY20 if a rehearing request decided in FY20 flips the outcome of the petition (or vice versa), which would shift it from being considered in the calculation from FY19 to FY20. Motions for joinder are granted to join a case to an already instituted case, thus joinders do not affect a patent's institution status, only which year(s) a patent is listed as having an institution. For example, a petition grant in FY19 and then a joinder grant to the earlier petition in FY20 would result in the patent being listed as an institution in both FYs.



Methodology – Petition Outcomes

Outcomes in FY19, by Petition

- This pie chart graphic displays the results for each petition that reached an outcome in FY19.
- “Outcomes” are defined as the names of events that end an AIA proceeding. The outcomes consist of: FWD, Settled, Dismissed, RAJ, and Denied. These outcomes may also be referred to as “terminations” or “dispositions.” Note that an RAJ may be requested by either the petitioner or the patent owner.
- Pending cases have not reached an outcome and are by definition excluded. Joined cases mirror the outcome of the case to which they are joined and are excluded to avoid double counting.
- The graphic (as well as those similar graphics that follow) breaks out FWDs into three categories.
 - “FWD All Patentable” means that all of the claims addressed by PTAB in the FWD were found patentable, and none of the claims addressed by PTAB were found unpatentable.
 - “FWD Mixed” means that PTAB found at least one claim patentable as well as at least one claim unpatentable in the FWD.
 - “FWD All Unpatentable” means that all of the claims addressed by PTAB in the FWD were found unpatentable, and none of the claims addressed by PTAB was found patentable.
 - Claims that were originally challenged but not before PTAB in the FWD do not factor into the categorization (e.g., claims disclaimed, canceled, or otherwise withdrawn from the proceeding).
 - In this way, the FWD categorization represents PTAB’s ruling on the claim based on the evidence presented to it and evaluated in the FWD.
- Results of rehearings within the FY are considered. For example, if a case is initially denied in FY19, but then instituted on rehearing in FY20, then the case is counted as denied in FY19. If that case were denied on rehearing in FY20, it would still be counted as denied only in FY19. If a case was instituted in FY19, but denied on rehearing in FY20, it would count as a denial in FY20. In this way, the institution counts in this graphic may differ slightly than those in the Institution Rates chart, because that chart does not consider outcomes on rehearing, for the reasons explained in the notes for that chart (e.g., to prevent prior rates from fluctuating). Here, decisions on rehearing that occur in the subject FY are considered because it is an outcome that happened in the FY.

Methodology – Patent Outcomes

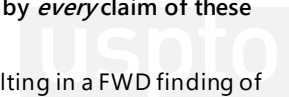
Outcomes in FY19, by Patent

- This pie chart graphic displays the overall results for each patent that saw an outcome (defined above) in one of its petitions in FY19.
- First, each patent that had a petition reach an outcome in the FY was identified (i.e., the petition outcomes shown in the “by petition” pie chart).
- Then, the outcomes of all of the petitions ever challenging that patent as of the end of the FY were considered in order to determine a net outcome for that patent as of the end of the FY. Outcomes occurring after the end of the FY were not considered.
- Outcome categories by patent mirror the outcomes categories by petition. However, because it is possible that there may be more than one petition challenging a patent, potentially in different FYs, and not all of the petitions challenging a patent may have the same outcome, outcomes by patent are an aggregate or net outcome.
- If there is one petition or each petition challenging a patent had the same outcome, then that is the outcome for the patent.
- If there is more than one petition, and any petition had a FWD outcome, then the patent outcome is FWD, even if the FWD happened in an earlier FY.
- If there is more than one petition, and there are a mixture of different outcome types, then the outcome is “mixed outcomes.” Note that the mix of outcome category does not include FWDs, per the prior rule.
- To further breakout the FWD category, the net claim outcome of all claims challenged in all of the FWDs addressing that patent were considered. FWD categorization methodology was described above in the “by petition” slide discussion. To determine the net outcome of a claim by patent, please refer to the methodology for the “by claim” slide discussion, to follow. In a nutshell, if a claim is ever found unpatentable, the claim is listed as unpatentable, and if a claim is found patentable and never found unpatentable, the claim is counted as patentable. Thus, if a claim was both found patentable and unpatentable, it will be counted as unpatentable.
- Pending cases are excluded because pending cases have no outcome.
- Joined cases do not have an affect as their outcome mirrors that of the case to which they are joined.
- Results on rehearing requests of decisions on institution are considered, as was explained in the “by petition” slide discussion above.
- Note that, by following the above rules for patent outcome categorization, the outcome listed in the pie chart for this FY for a given patent may not be an outcome the patent saw in this FY. For example, if a patent saw an FWD in FY18 and a denial of institution in FY19, it would be represented as an FWD outcome in FY19, even though the FWD event occurred in FY18, because the chart shows the *net outcome*, as defined above, of the patent as of the end of the FY. Thus, the number of patents seeing an FWD in this FY is not necessarily the same as the number shown in the pie chart (please refer to the circles chart to see # of patents seeing a FWD in this FY).

Methodology – Claim Challenged Outcomes

Outcomes in FY19, by Claim

- This pie chart graphic displays the by-claim results for each patent that reached an outcome in the FY. Thus, the results shown are for the claims of the patents from the “by patent” slide, i.e., all claims of all patents having a proceeding reach an outcome in the FY.
- For each of those patents, the underlying proceedings were analyzed to capture claim-by-claim outcome information. Each claim in the patent was noted and then considered individually for whether the claim ultimately was: denied, dismissed, found unpatentable, found patentable, disclaimed, or otherwise challenged but without reaching an FWD.
 - “Unpatentable” and “patentable” mean *PTAB found* the claim unpatentable or patentable *in a FWD* on the merits of petitioner’s ground, i.e., under 35 U.S.C. 318(a).
 - “Disclaimed” means the *patent owner* requested adverse judgment on, disclaimed, or otherwise canceled the claim. Often called “RAJ” for brevity.
 - A claim was “denied” if it was denied in every ground of every petition challenging the claim.
 - A claim was “dismissed” if it was dismissed in every petition challenging the claim.
 - A claim was “Challenged But No FWD” if it was challenged but did not fall into one of the above categories. For example, if it saw both a denial and a dismissal. Or, most commonly, the cases involving the claim settled.
- If a claim saw multiple outcomes, the following precedence was used: unpatentable > disclaimed > patentable.
- The outcome reported for a given claim of a given patent is assigned to one and only one of these categories.
 - Example 1: if a claim has been found unpatentable and patentable in two different proceedings, then the claim is listed as unpatentable.
 - Example 2: if a patent owner expressly cancels a claim in a motion to amend, that is categorized as a “disclaimer.” If a patent owner merely moves to amend a claim, that is not considered a cancellation/disclaimer.
 - Note 1: if a patent owner first expressly cancels a claim in a first proceeding, and in a parallel but later-addressed proceeding PTAB notes that the claim is unpatentable due to the cancellation, the claim is recorded as “disclaimed” because PTAB never found the claim unpatentable on the merits. Conversely, if a claim is found unpatentable, and in a later proceeding patent owner cancels the claim due to it previously being found unpatentable, the claim is considered unpatentable because patent owner is considered to have canceled the claim due to the previous finding of unpatentability.
 - Note 2: the claims proposed in motions to amend (MTA) are not considered because claims in MTAs are new claims. Thus, if MTA claim 31 is proposed to substitute for issued and challenged claim 1, only the results of claim 1 are reported, regardless of what happens to MTA claim 31. Please refer to one of PTAB’s MTA statistics presentations for more information about the outcomes of the proposed claims in a MTA.
- The results shown are the net claim results for the *patents* as of the end of the FY. The results listed consider the net outcome seen by *every* claim of these patents at PTAB up to the end of the FY, even if the outcomes happened in a prior FY.
 - Example: a patent has two claims. Claim 1 was challenged in two petitions, the first petition denied in FY18 and the second resulting in a FWD finding of patentable in FY19. Claim 2 was challenged in one petition denied in FY20. Because the patent had an outcome in FY20 (the denial of claim 2), all of the patent’s claims will be represented in the FY20 by-claim pie chart. Claim 1 will be in the “FWD Patentable” category because the patentable outcome takes precedence over a challenged but not instituted (here, denied) outcome. Claim 2 will be shown in the “Institution Denied” pie category.



Methodology – Claim Bar Chart, Circles Chart

Claim Outcomes Slide (bar chart)

- This graphic shows the outcome of all claims of all patents seeing an outcome at PTAB in the FY.
- The data has the same general categorization and methodology as the “by claim challenged” slide, but with more granularity. Please refer to that slide’s methodology discussion for more detail.
 - The Claim Outcomes Slide explicitly shows how many claims were disclaimed pre- or post-institution.
 - The “No DI” category shows claims that never were addressed in a DI (e.g., due to settlement, dismissal, or petitioner’s RAJ prior to issuance of a DI).
 - The “No FWD” category shows claims that were instituted but never were addressed in a FWD (e.g., due to settlement, dismissal, or petitioner’s RAJ after institution but prior to issuance of a FWD).

“All Patents, Fiscal Year 2019:” Slide (circles graphic)

- This graphic uses the size of circles to show the number of PTAB proceedings relative to the number of patents at large.
- The 3.6 million patent number is an estimate of the number of unexpired patents existing during FY19. The estimate was obtained by starting with a list of all patents issued and calculating the projected expiration date, then observing which patents would not have expired prior to the start of FY19. The projected expiration date was calculated by considering the grant date, continuity data, payment of maintenance fees, and any patent term adjustment given. Data on terminal disclaimers, findings of invalidity in district court, and findings of unpatentability at the USPTO were not available and/or not accounted for, but together would not be large enough to affect the two significant digits reported in the 3.6 million number.
- New Patent Grants includes all utility, design, reissue, and plant patents issued during FY19 by the USPTO.
- Note that the number of patents challenged in this FY will be different than the number of patents receiving an outcome in this FY, because of the time it takes from petition filing to outcome is often more than 1 year. Similarly, the number of patents receiving a FWD this year (shown here) will be different from the number of patents whose *net* outcome as of the end of the FY is FWD (shown in the pies), for the reasons explained in the by-patent methodology slide (e.g., the by-patent outcome considers all outcomes, even in prior FYs).

