

# HARNESSING PATENT OFFICE LITIGATION



VOLUME VIII

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



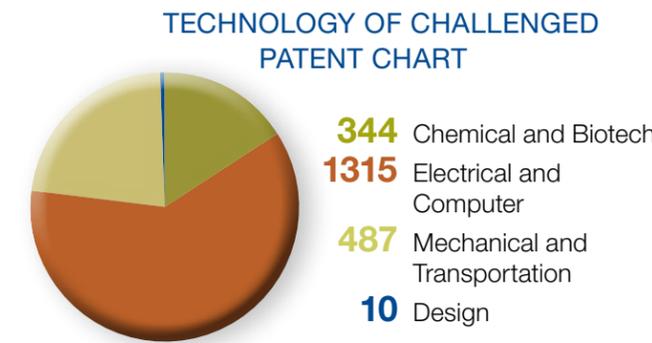
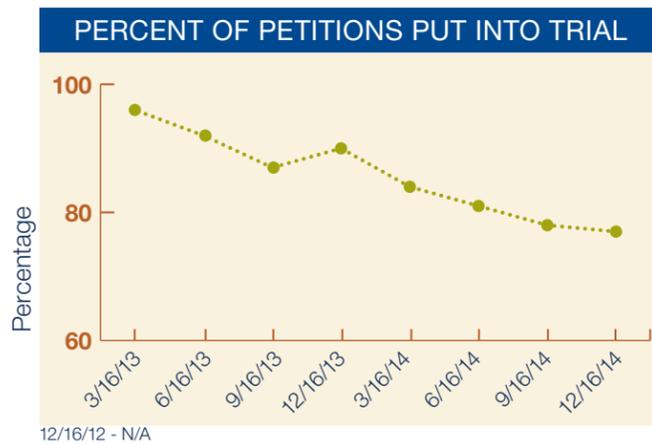
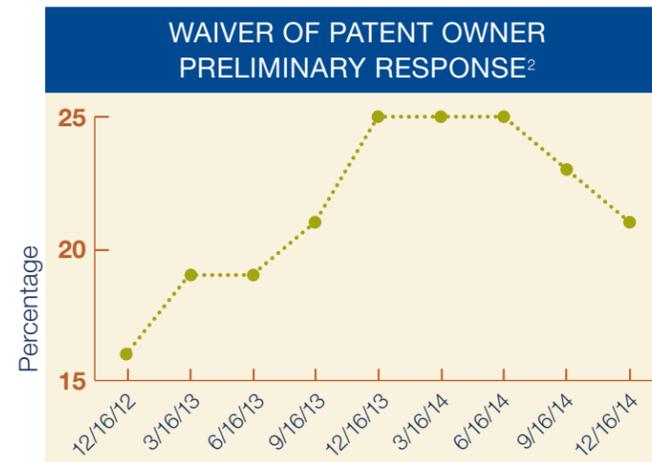
9|16|2012 to 12|16|2014

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While the initial Final Written Decisions were decided 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 80.9%. 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 expensive, District Court litigation.

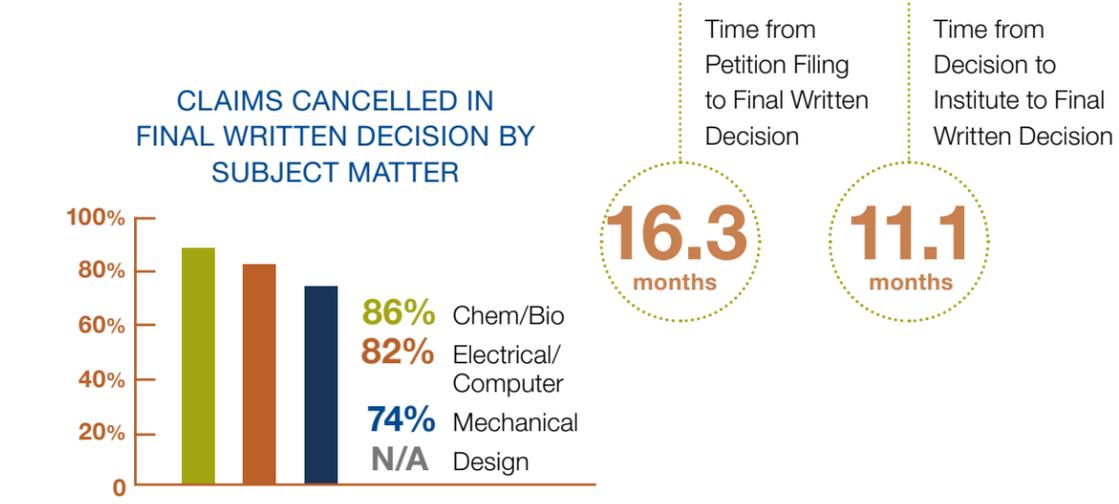
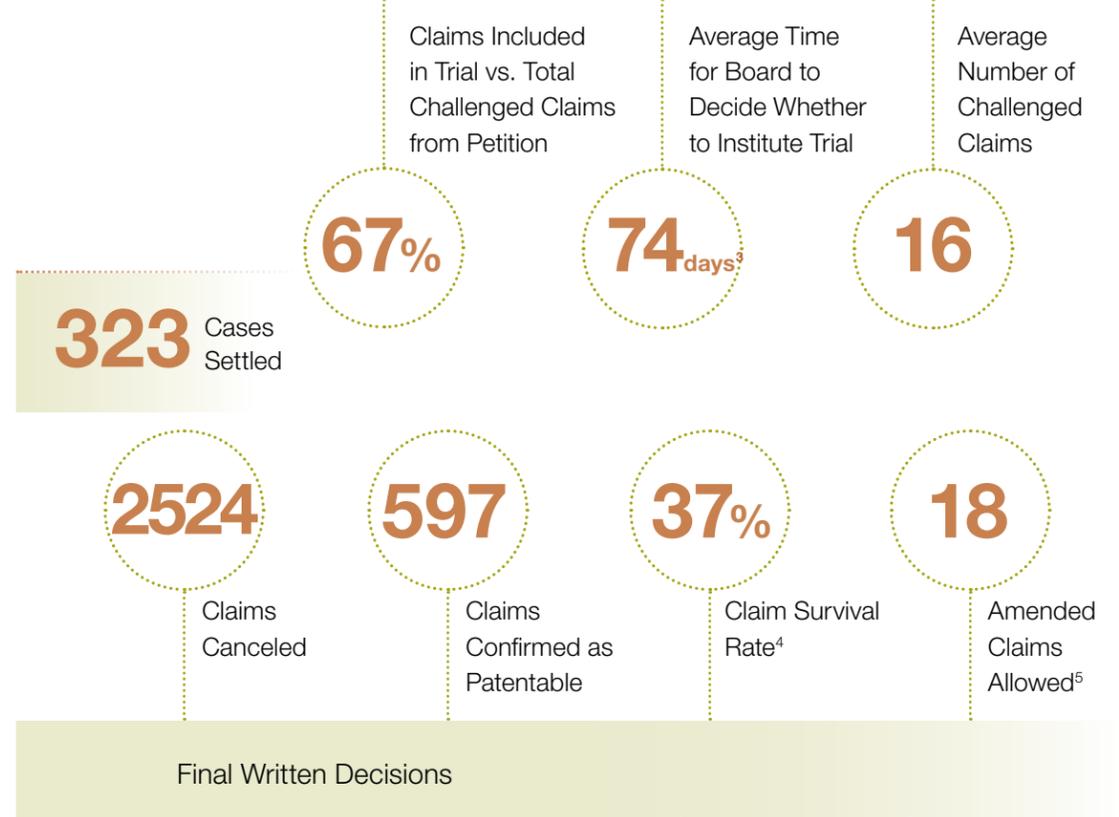
**PRELIMINARY STAGE** Preliminary Stage of the Proceedings (Petition Filing through PTAB Trial Initiation Decision)

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



**TOP 6 IPR FILERS**

69		57	
57		47	
40		33	



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

<sup>2</sup> As Patent Owners have come to realize that substantive attacks on a Petition are less successful without expert testimony, they have waived the Preliminary Patent Owner Response in increasing numbers.

<sup>3</sup> As the PTAB's workload has steadily increased, the time to a Decision to Initiate has gradually climbed, as well. While the Board has statutorily been provided with three months to make that decision, it is taking about three weeks less than the full statutory allotment to come to a Decision to Initiate.

<sup>4</sup> Percent of claims that were confirmed as patentable in a Decision to Institute or Final Written Decision.

<sup>5</sup> A total of one motion to amend has been granted through December 16, 2014.

# 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<sup>6</sup>

NORTHERN DISTRICT OF GEORGIA	100%
EASTERN DISTRICT OF PENNSYLVANIA	100%
NORTHERN DISTRICT OF ILLINOIS	86%
WESTERN DISTRICT OF TENNESSEE	83%
NORTHERN DISTRICT OF CALIFORNIA	82%

## COURTS WITH LOWEST WIN RATE FOR MOTIONS TO STAY<sup>6</sup>

DISTRICT OF NEW JERSEY	0%
EASTERN DISTRICT OF TEXAS	18%
EASTERN DISTRICT OF MICHIGAN	25%
NORTHERN DISTRICT OF NEW YORK	25%
MIDDLE DISTRICT OF FLORIDA	30%

<sup>6</sup> For district courts with four or more decisions on motions to stay

## HARNESS DICKEY HAS DEMONSTRATED EXPERTISE IN PATENT OFFICE LITIGATION

Harness Dickey has developed the expertise to handle the specialized *Inter Partes* Review (and Post Grant Review) proceedings. That expertise shows in the results we are achieving for our clients. Please contact us at [ipr-pgr@hdp.com](mailto:ipr-pgr@hdp.com) with any questions or to discuss our expertise, including a more complete array of statistics than presented here.

*Microsoft Corp. v. Proxyconn, Inc.* (IPR2012-00026; IPR2013-00109); *LKQ Corp. v. Clearlamp, LLC* (IPR2013-00020); *Athena Automation Ltd. v. Husky Injection Molding Sys., Ltd.* (IPR2013-00167; IPR2013-00169, IPR2013-00290); *Bomtech Elect. Co., Ltd. v. MT. Derm GmbH* (IPR2014-00137; IPR2014-00138); *Heartland Tanning, Inc. v. Sunless, Inc.* (IPR2014-00018); *Laird Tech., Inc. v. GrafTech Int'l Holdings, Inc.* (IPR2014-00023; IPR2014-00024; IPR2014-00025); *Histologics, LLC v. CDx Diag., Inc.* (IPR2014-00779); *Webasto Roof Sys., Inc. v. UUSI, LLC* (IPR2014-00648; IPR2014-00649; IPR2014-00650); *Brose North Am. V. UUSI, LLC* (IPR2014-00416; IPR2014-00417); *Positec USA, Inc. v. Black & Decker, Inc.* (IPR2013-00502); *Plant Science, Inc. v. The Andersons Agriservices, Inc.* (IPR2014-00939; IPR2014-00940; IPR2014-00941); *HTC Corp. v. FlashPoint Tech., Inc.* (IPR2014-00902; IPR2014-00903; IPR2014-00934; IPR2014-01249; IPR2014-01460)

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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](mailto:ipr-pgr@hdp.com).