

Explore PTAB Successes, Outcomes And Results With Docket Navigator & NYIPLA

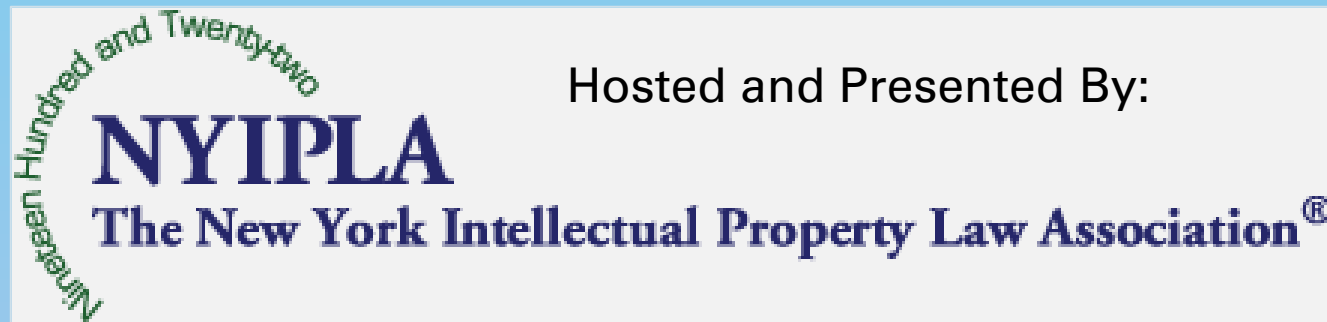
June 1, 2021 NYIPLA PTAB COMMITTEE MEETING

Presented By:

Co-Chair, Charley Macedo
Co-Chair, Ken Adamo
Coordinator, Chris Lisiewski

Special Guest:

Amy Towell



PTAB STATISTICS FROM



Agenda

- PETITIONS BEING FILED
- OUTCOMES AND DETERMINATIONS
- MOTION PRACTICE AT THE PTAB
- FEDERAL CIRCUIT REVIEW
- SUPREME COURT REVIEW
- QUESTIONS AND DISCUSSIONS



Nineteen Hundred and Twenty-two

NYIPLA

The New York Intellectual Property Law Association®

PTAB Committee

PETITIONS

Petitions filed by Trial Type (FY21 through Q2) (per USPTO)

PTAB Trial Statistics FY21 Q2 Outcome Roundup IPR, PGR, CBM

Patent Trial and Appeal Board
Fiscal Year 2021 2nd Quarter

UNITED STATES
PATENT AND TRADEMARK OFFICE



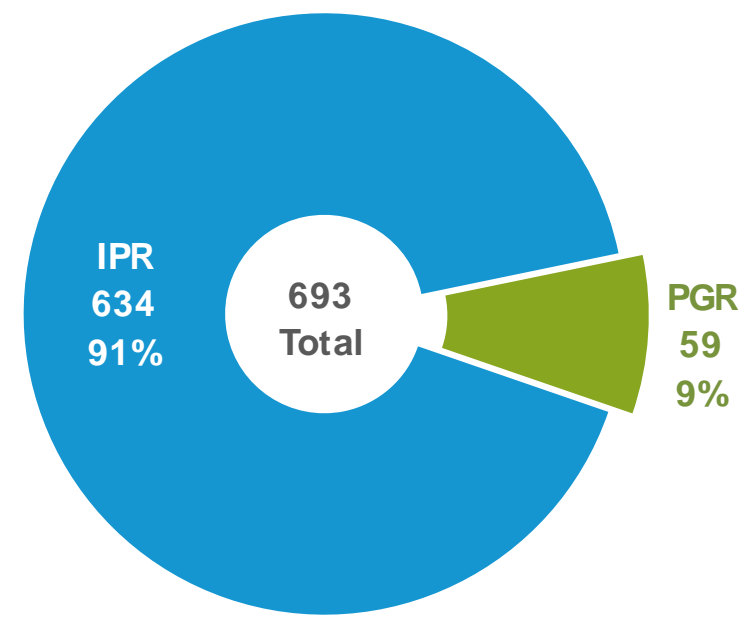
https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2021_q2_roundup_.pdf

Data provided by 

Petitions filed by Trial Type (FY21 through Q2) (per USPTO)

Petitions filed by trial type

(FY21 through Q2: Oct. 1, 2020 to Mar. 31, 2021)



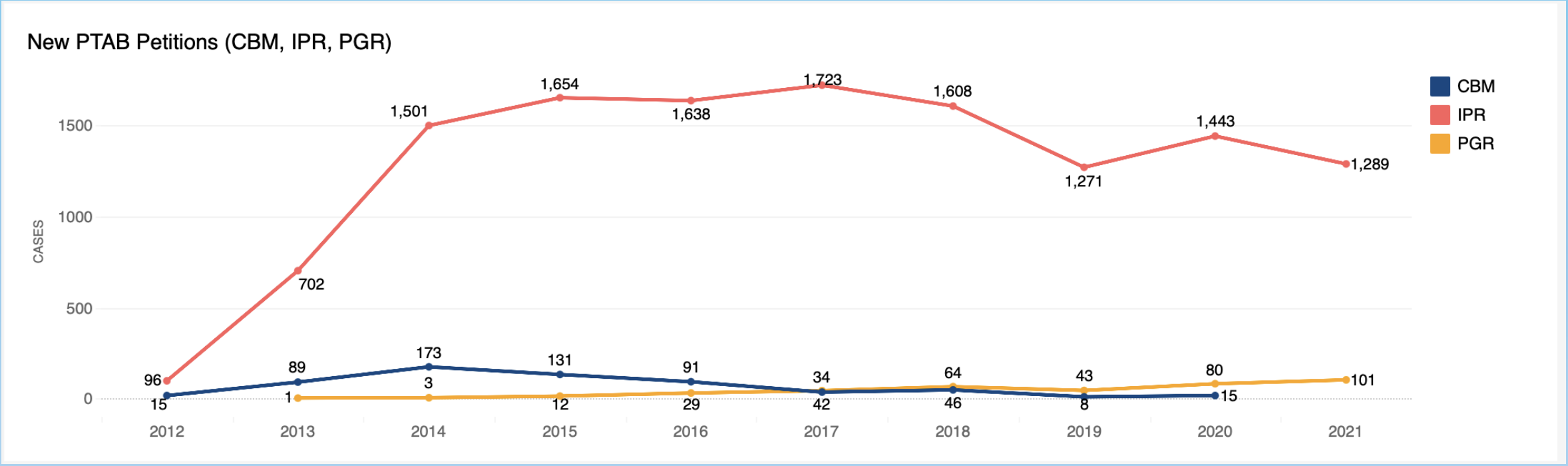
Trial types include Inter Partes Review (IPR), Post Grant Review (PGR), and Covered Business Method (CBM). The Office will not consider a CBM petition filed on or after September 16, 2020.



https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2021_q2_roundup_.pdf

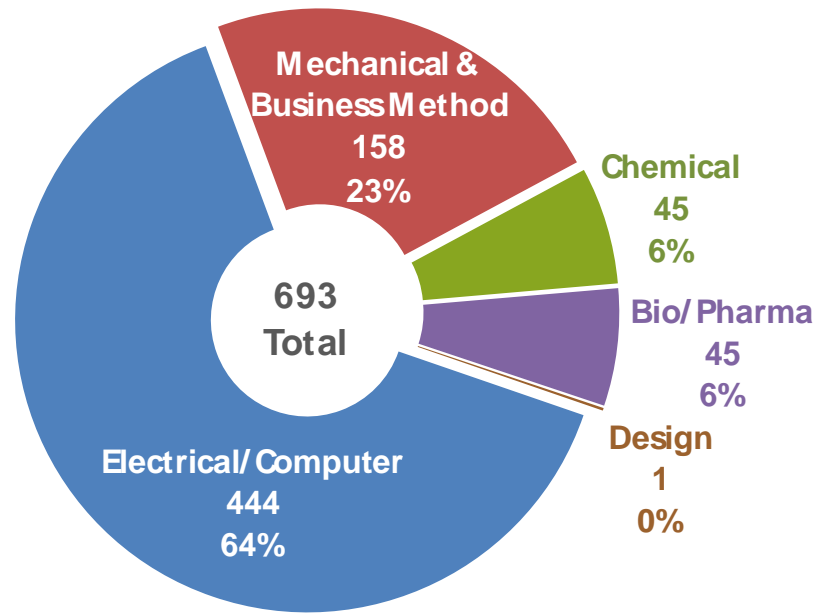
Data provided by **uspto**

NEW PTAB PETITIONS



Petitions filed by Technology (FY21 through Q2) (per USPTO)

Petitions filed by technology
(FY21 through Q2: Oct. 1, 2020 to Mar. 31, 2021)

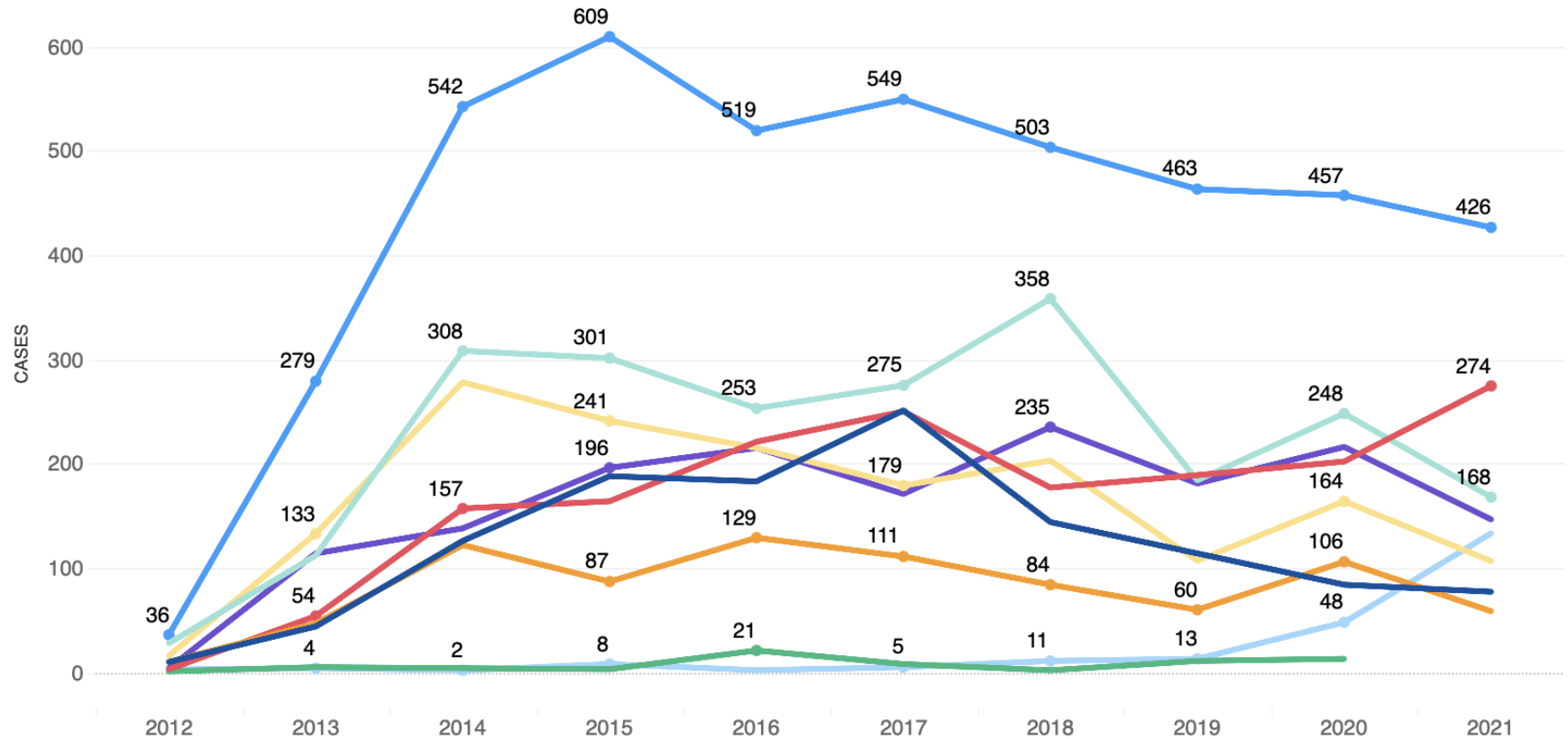


NEW PTAB PETITIONS BY TECH CODE

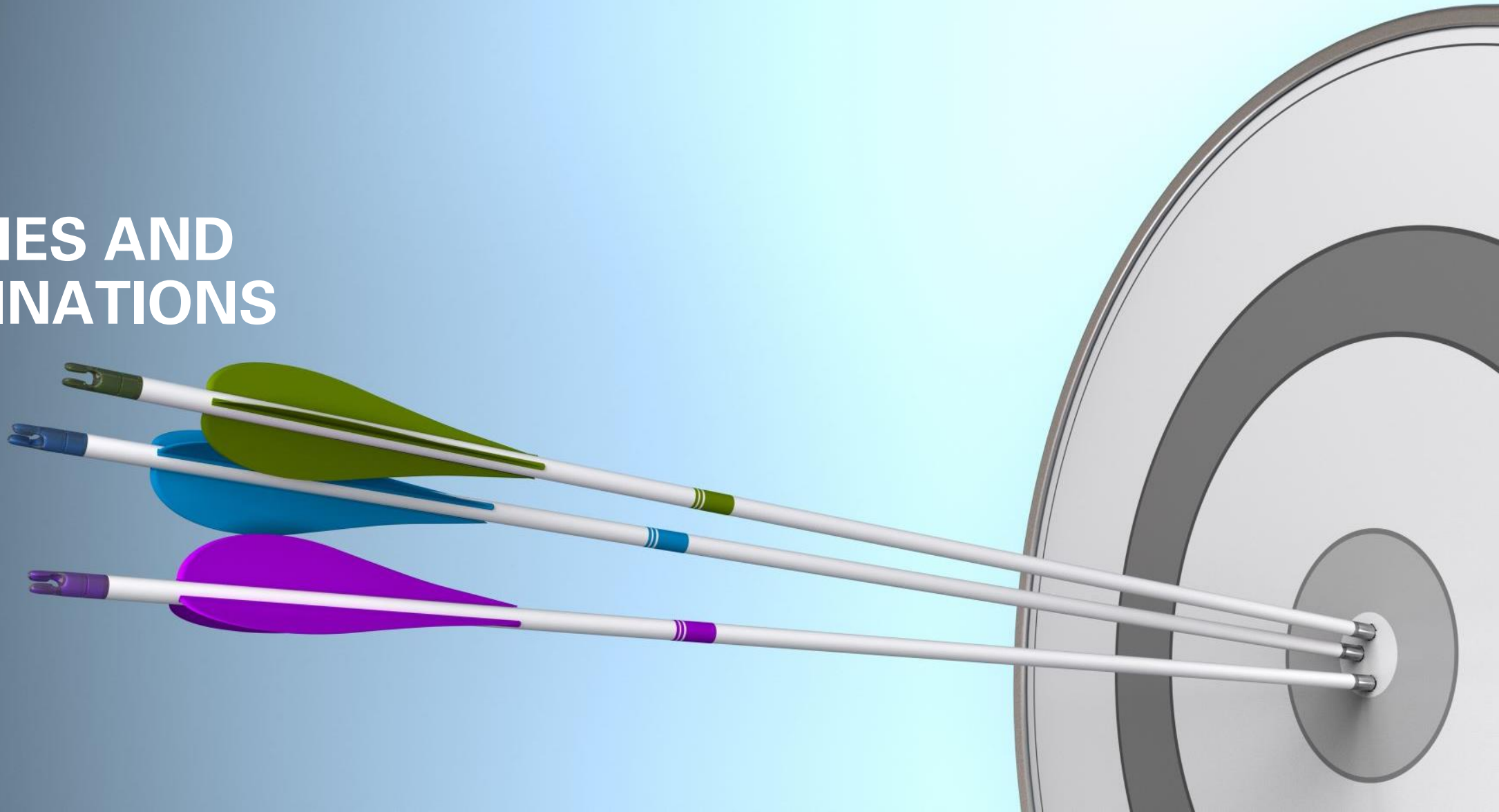
New PTAB Petitions by Tech Code

This chart shows the number of PTAB petitions by Technology Center that were filed in each year. Each Tech Code is represented by a different color. Tech Code 2700 (Communications and Information Systems) has been joined with Tech Codes 2100 (Computer Architecture and Software) and 2600 (Communications). For purposes of this chart, the joined colored bar includes all three.

- 1600 Biotechnology and Organic Che...
- 1700 Chemical and Materials Enginee...
- 2400 Networking, Multiplexing, Cable,...
- 2800 Semiconductors/Memory, Circuit...
- 2900 Design
- 3600 Transportation, Construction, El...
- 3700 Mechanical Engineering, Manuf...
- Computers, Communication, and e-co...
- Unclassified/Unknown

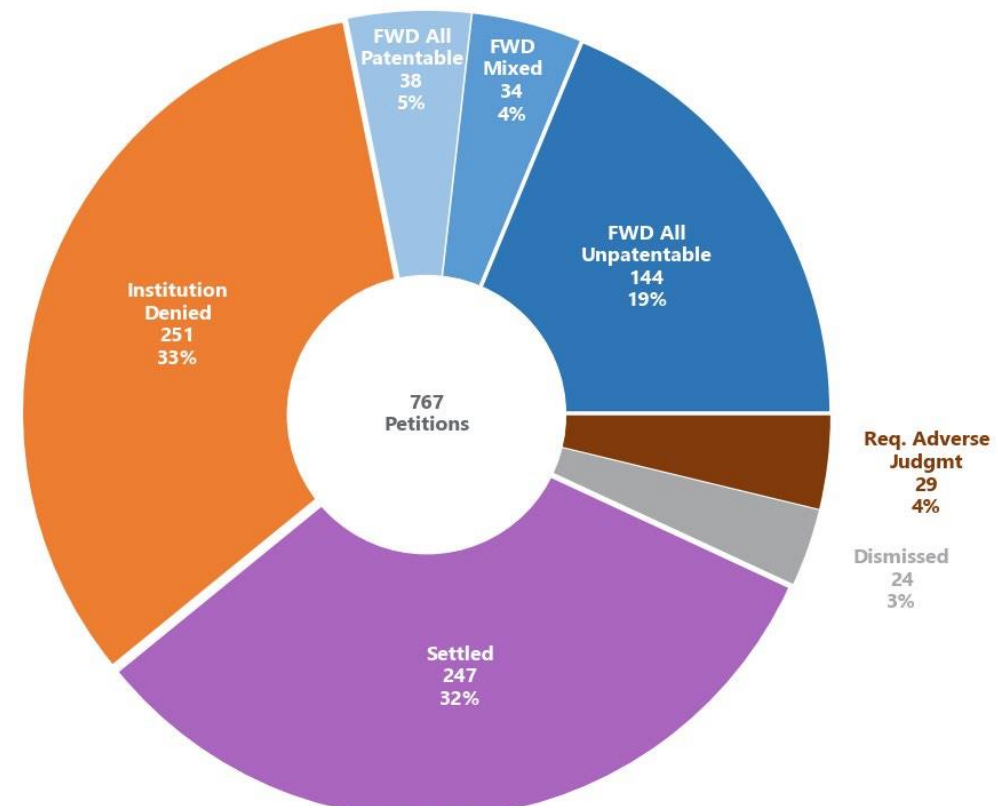


OUTCOMES AND DETERMINATIONS



Outcomes by Petition (FY21 through Q2) (Per USPTO)

Outcomes by petition
(FY21 through Q2: Oct. 1, 2020 to Mar. 31, 2021)

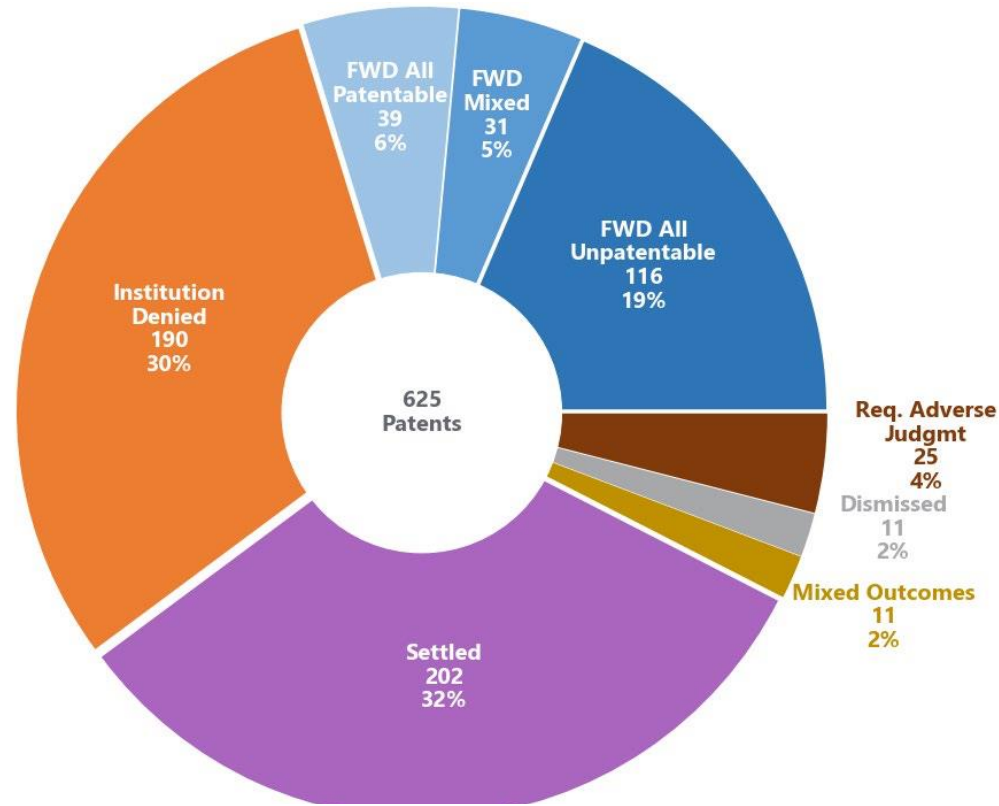


https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2021_q2_roundup_.pdf

Data provided by **uspto**

Outcomes by Patent (FY21 through Q2) (Per USPTO)

Outcomes by patent
 (FY21 through Q2: Oct. 1, 2020 to Mar. 31, 2021)



FWD patentability or unpatentability reported with respect to the claims at issue in the FWD.

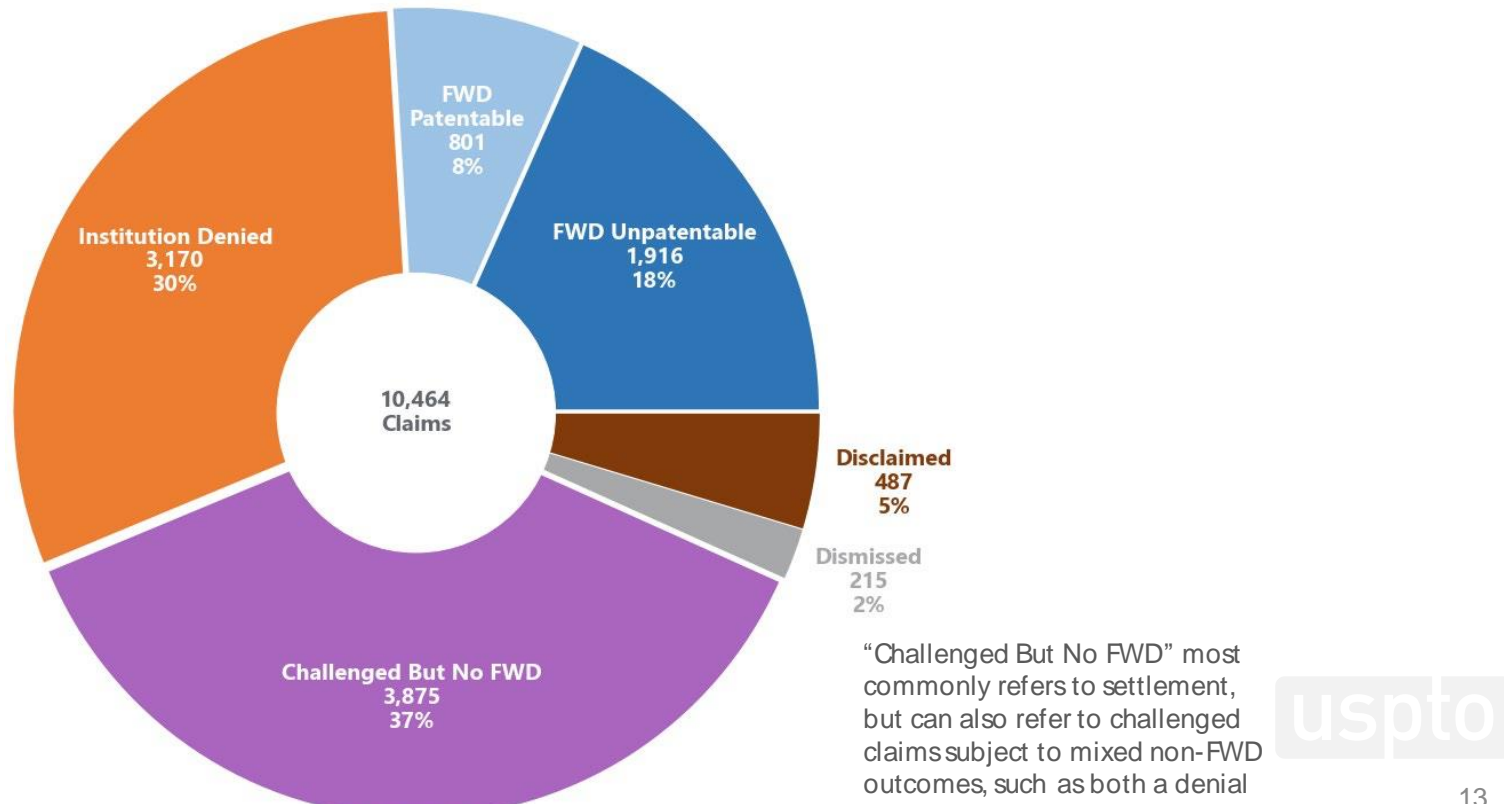
“Mixed Outcome” is shown for patents receiving more than one type of outcome from the list of: denied, settled, dismissed, and/or req. adverse judgement only.

A patent is listed in a FWD category if it ever received a FWD, regardless of other outcomes.



Outcomes by Challenged Claim (FY21 through Q2) (Per USPTO)

Outcomes by claim challenged
 (FY21 through Q2: Oct. 1, 2020 to Mar. 31, 2021)



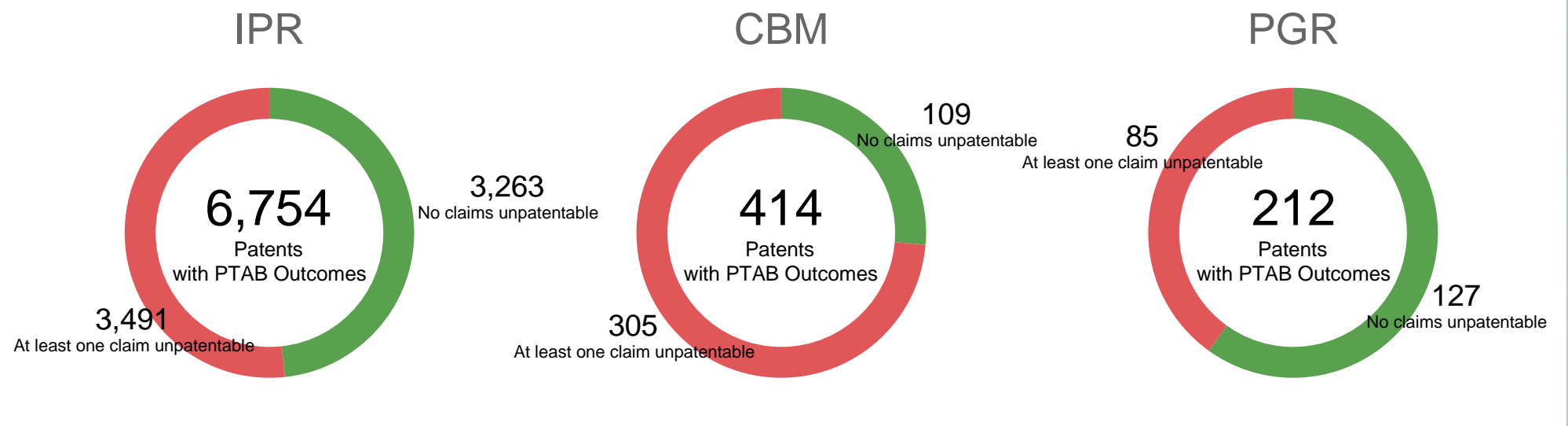
https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2021_q2_roundup_.pdf

Data provided by **uspto**

PETITION OUTCOMES (By Patent)

Petition Outcomes

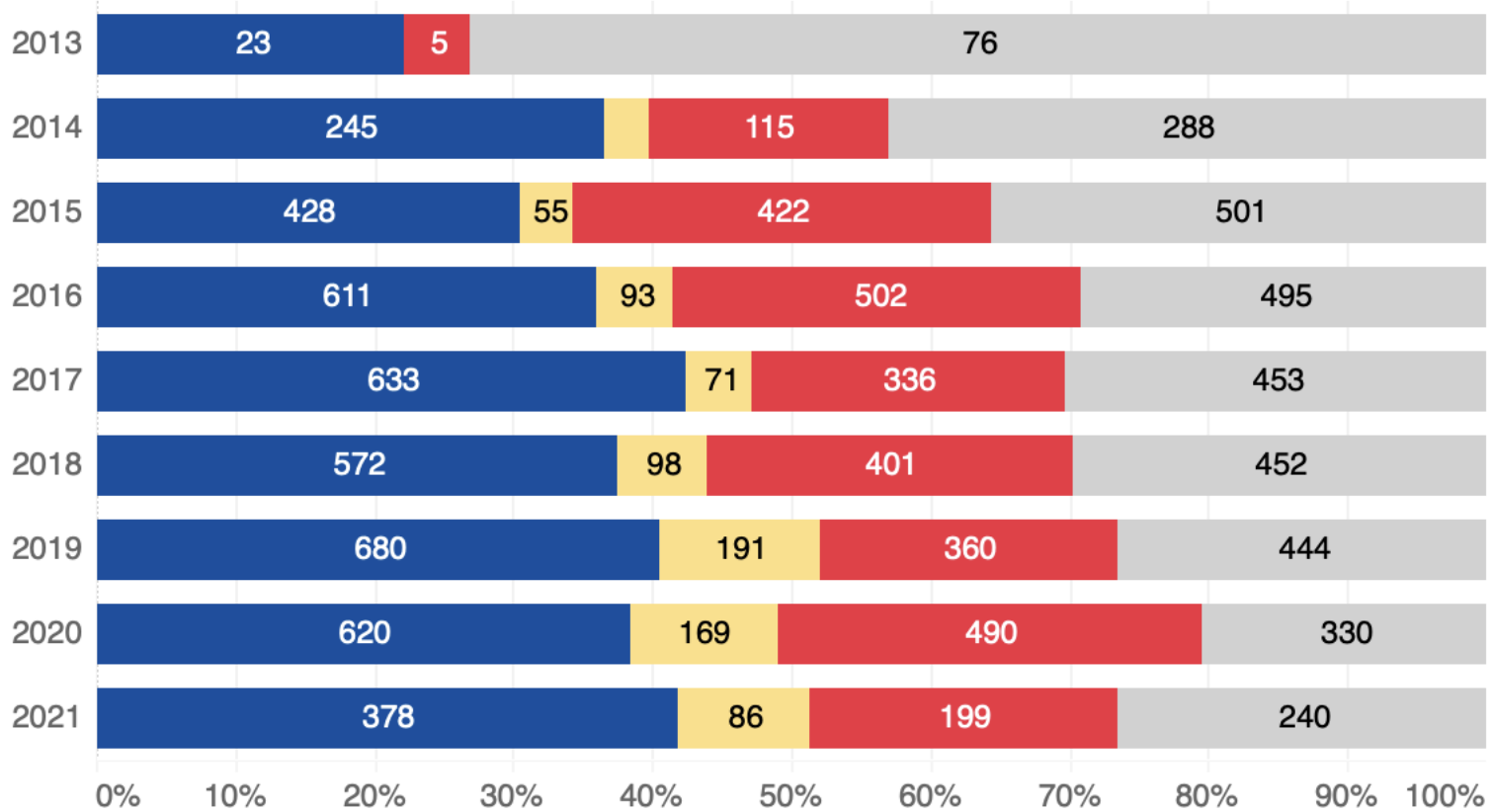
Data in these charts is aggregated across all petitions. In other words, a patent that loses a claim in any petition falls under "At least one claim unpatentable" even if those claims survived other petitions.



PTAB OUTCOMES (BY YEAR)

PTAB Outcomes

These charts show the Outcomes of PTAB proceedings as a percentage of all such outcomes in proceedings that terminated in the same year.



Date of Case Termination
 2/12/2013 12/31/2021

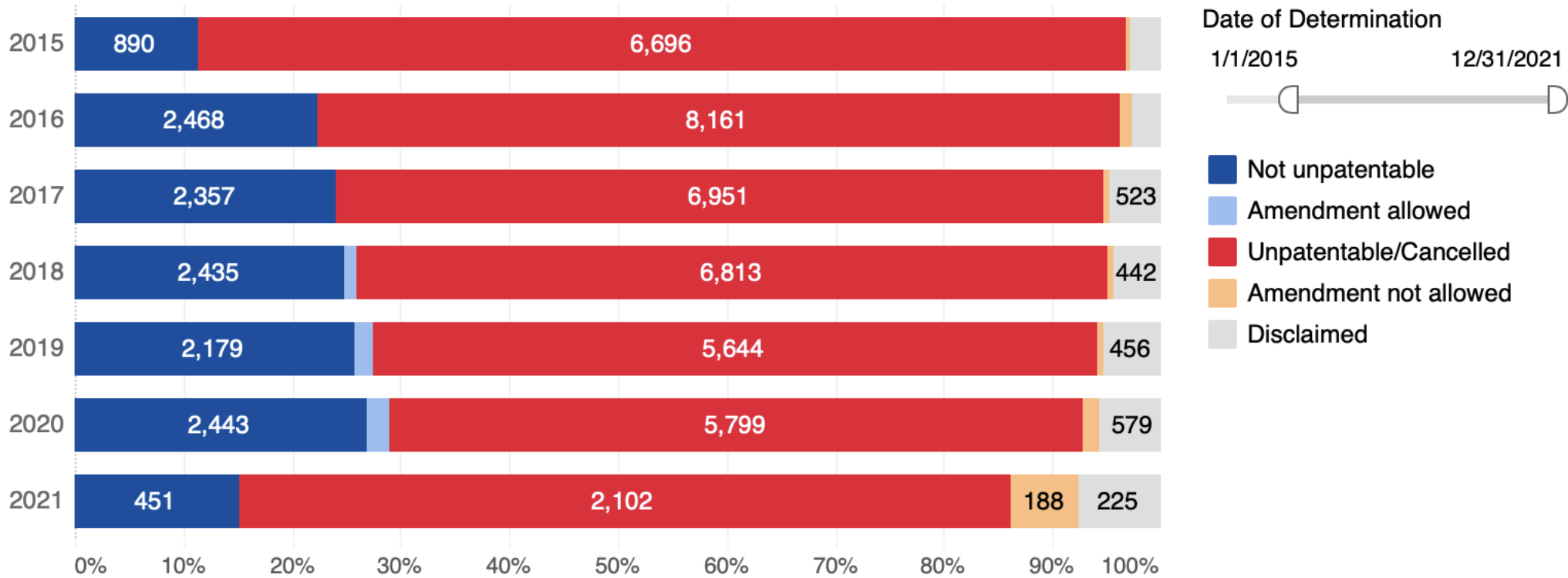
Legend:

- Settled/Dismissed
- Patent Challenger Won
- Mixed
- Patentee Won

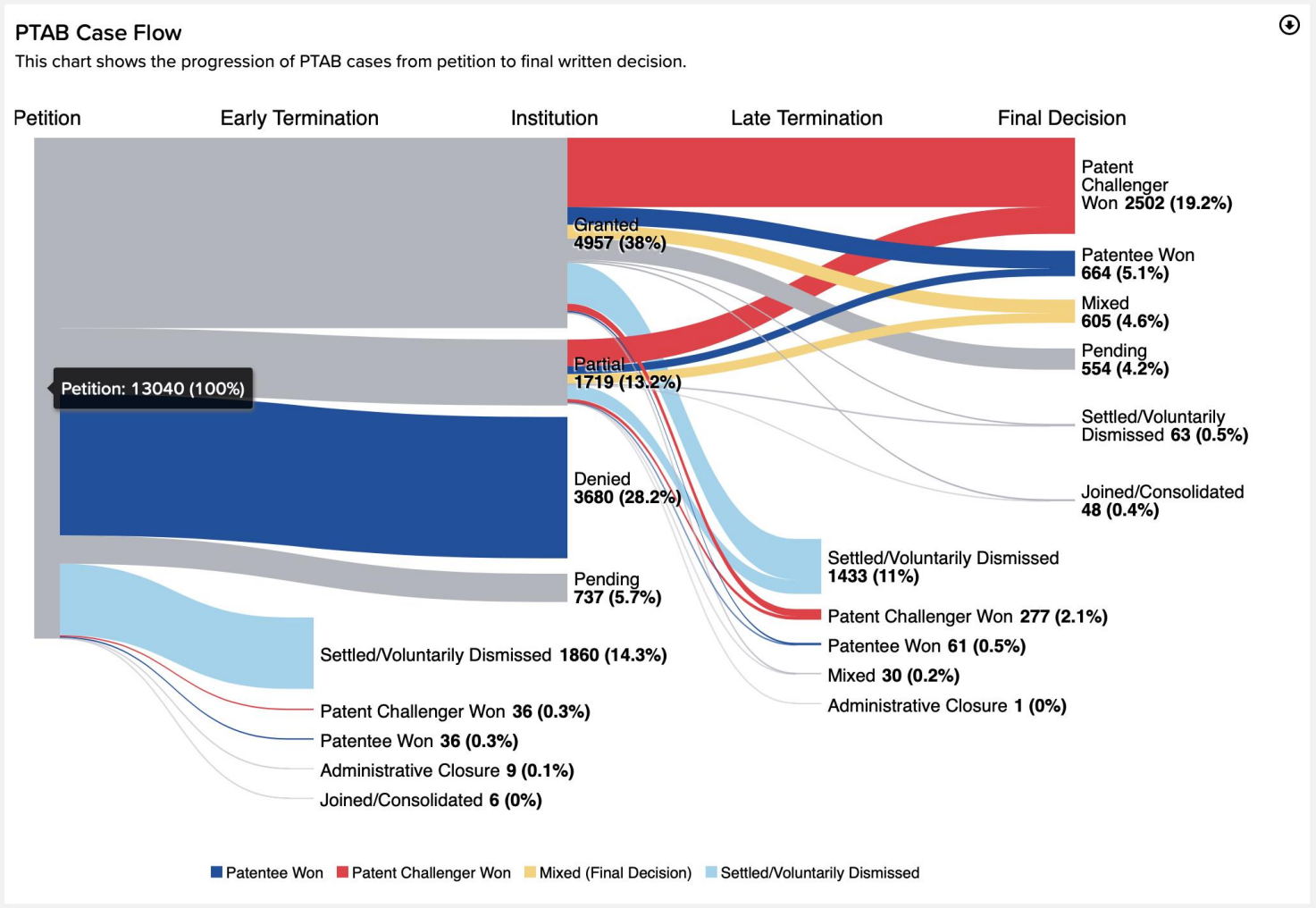
PTAB DETERMINATIONS BY PATENT CLAIMS

Determinations of Claims in Final Written Decisions

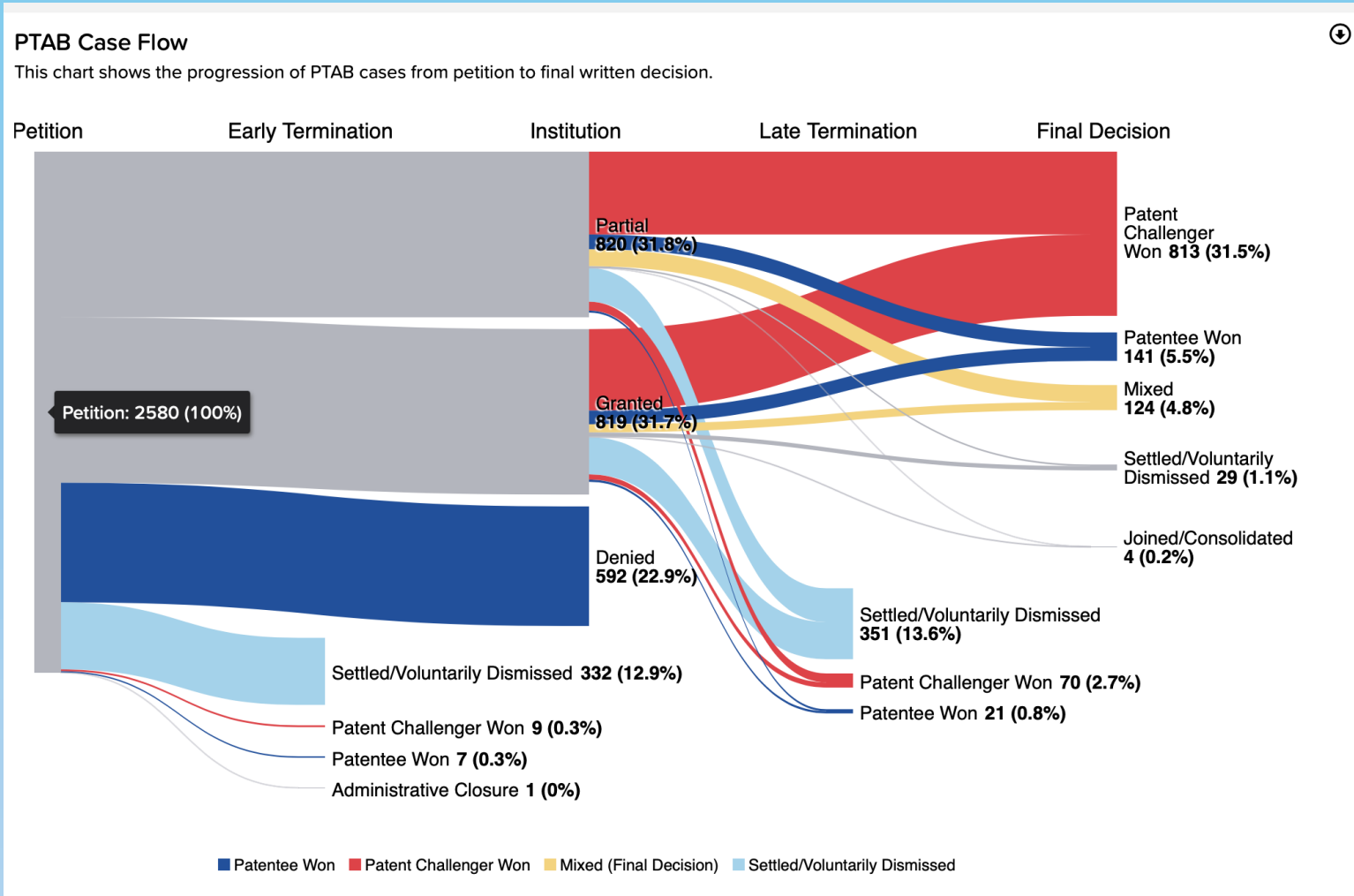
These charts show the number of claims deemed unpatentable or not unpatentable in PTAB Final Written Decisions.



PTAB CASE FLOW (OVERALL)



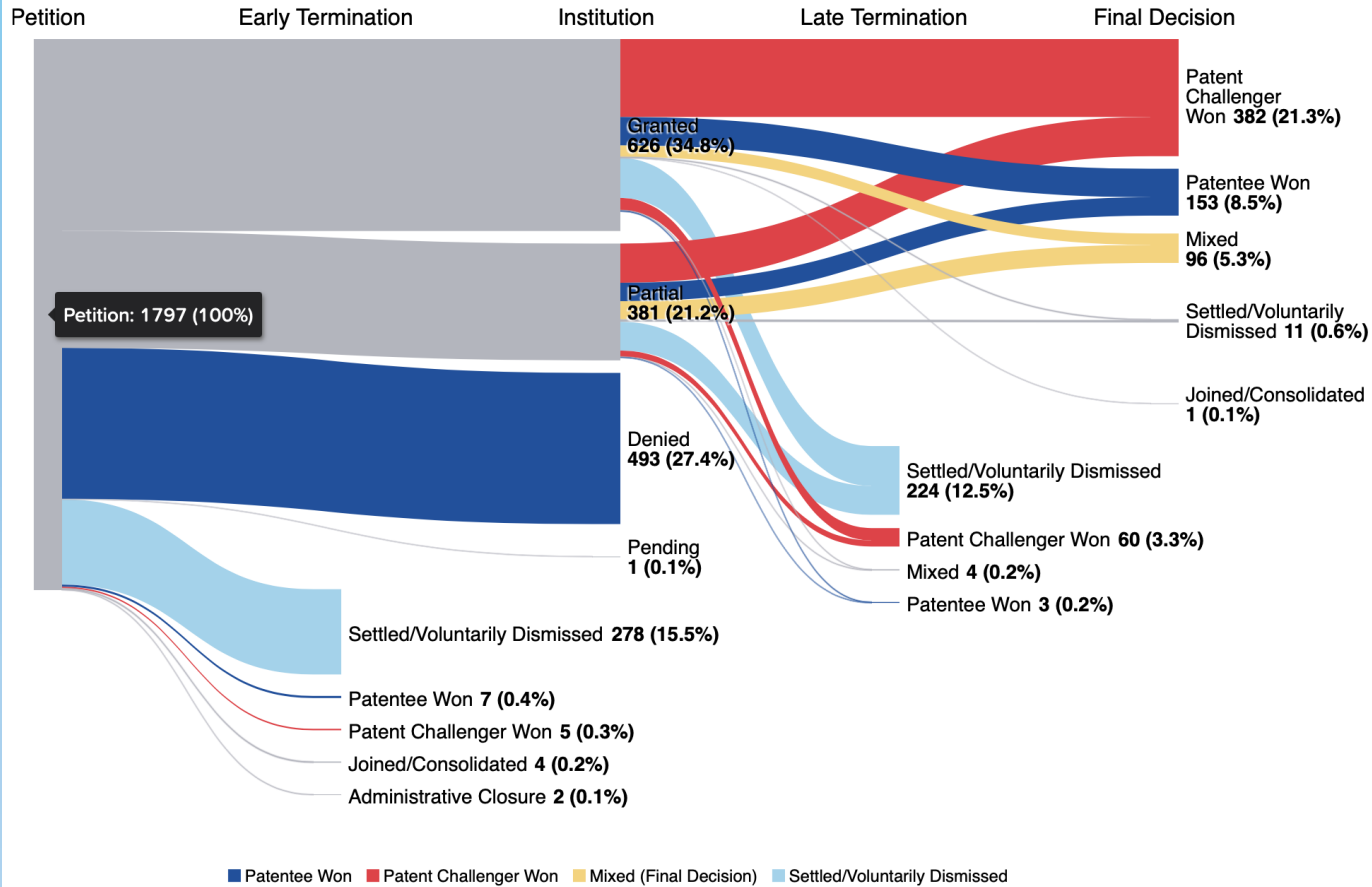
PTAB CASE FLOW (FILED BEFORE DEC. 31, 2014)



PTAB CASE FLOW (FILED IN 2015)

PTAB Case Flow

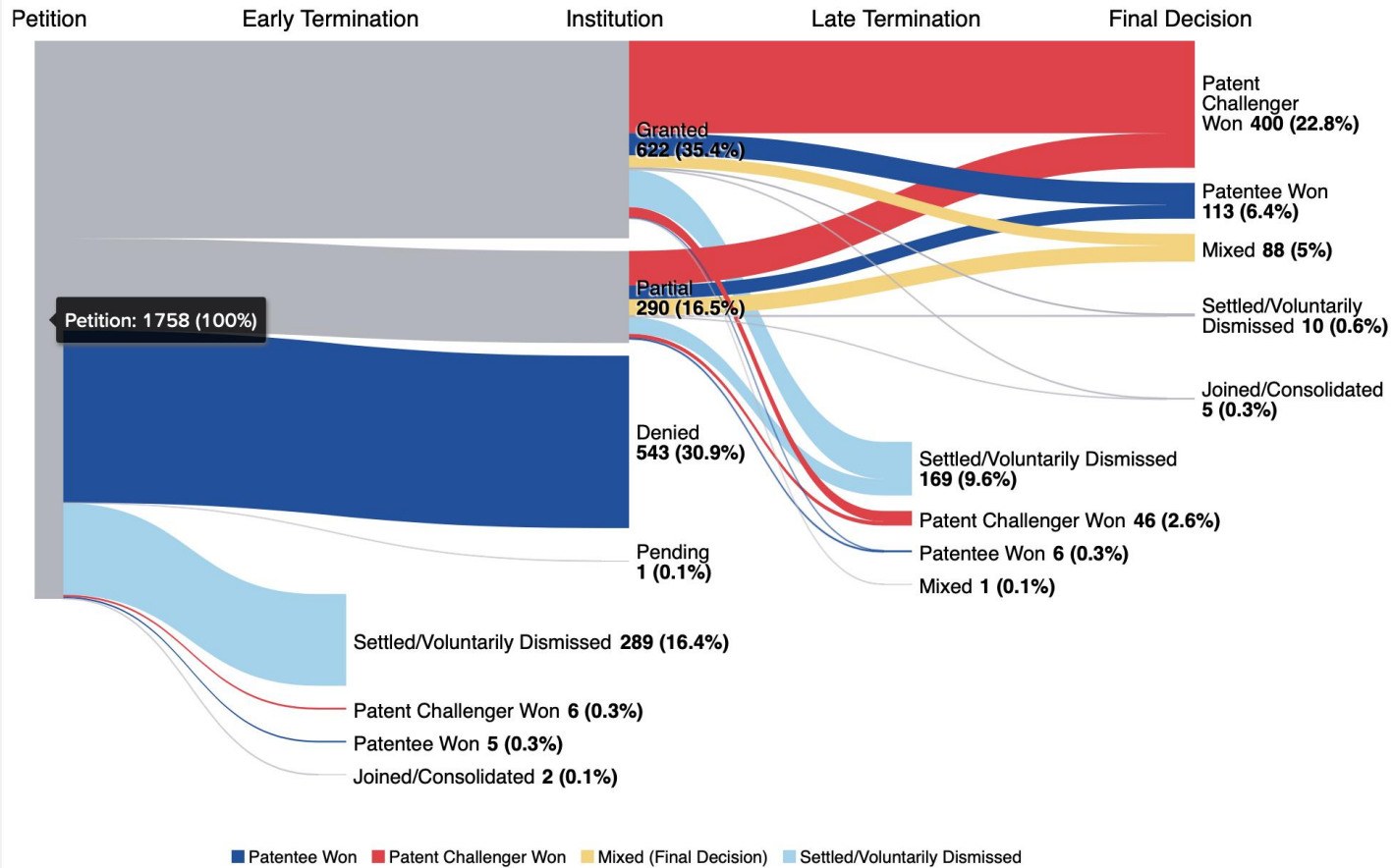
This chart shows the progression of PTAB cases from petition to final written decision.



PTAB CASE FLOW (FILED IN 2016)

PTAB Case Flow

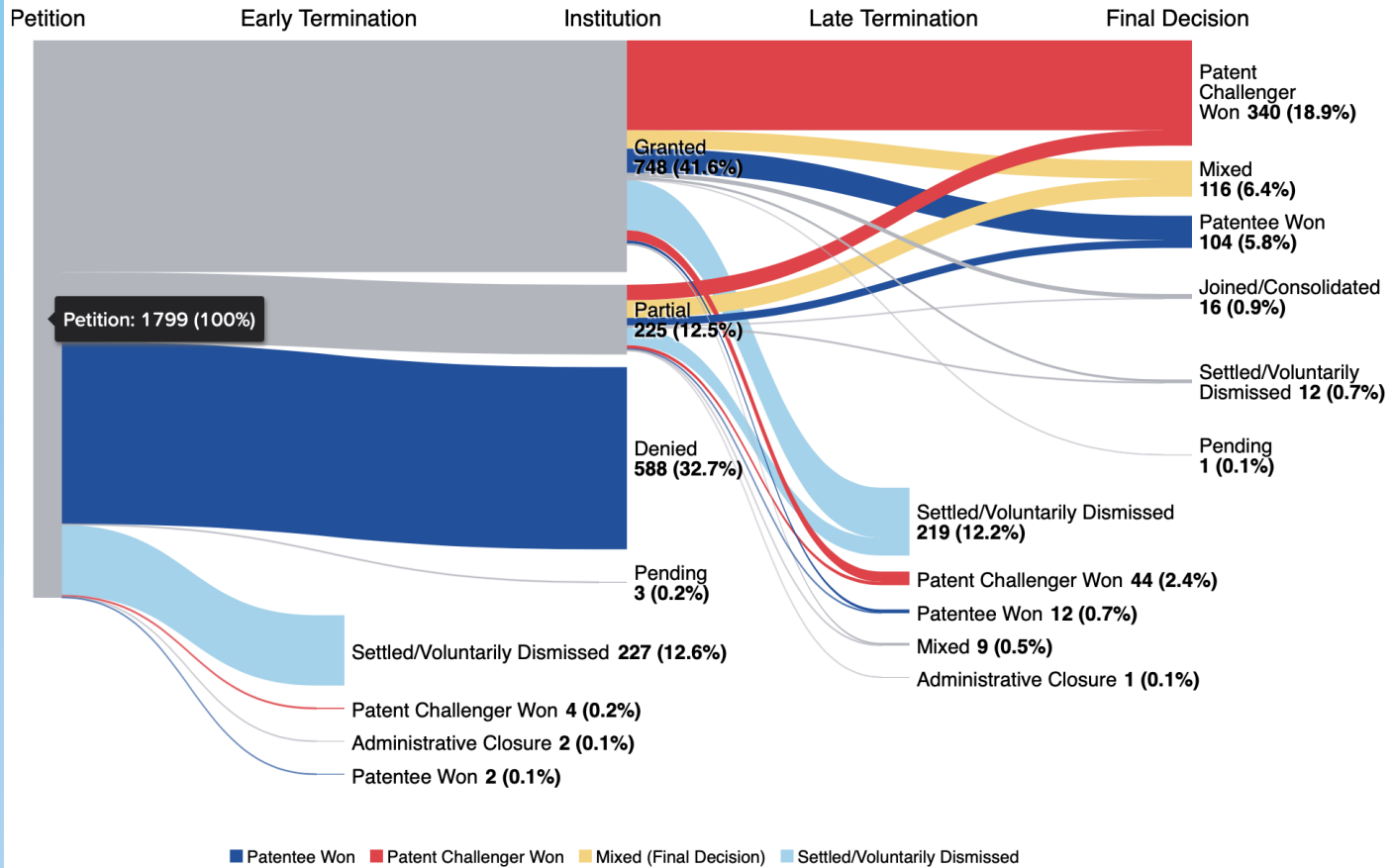
This chart shows the progression of PTAB cases from petition to final written decision.



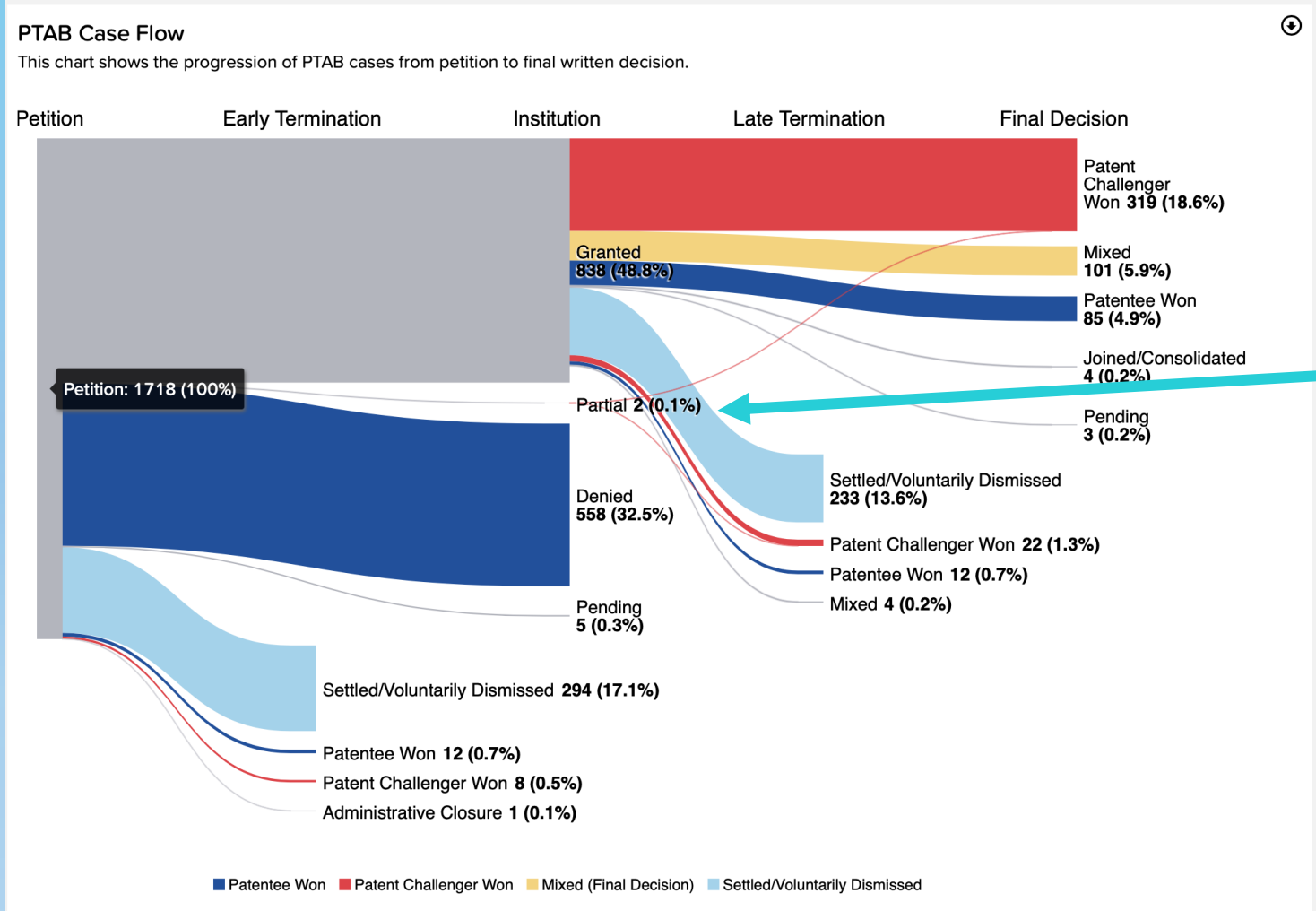
PTAB CASE FLOW (FILED IN 2017)

PTAB Case Flow

This chart shows the progression of PTAB cases from petition to final written decision.



PTAB CASE FLOW (FILED IN 2018)

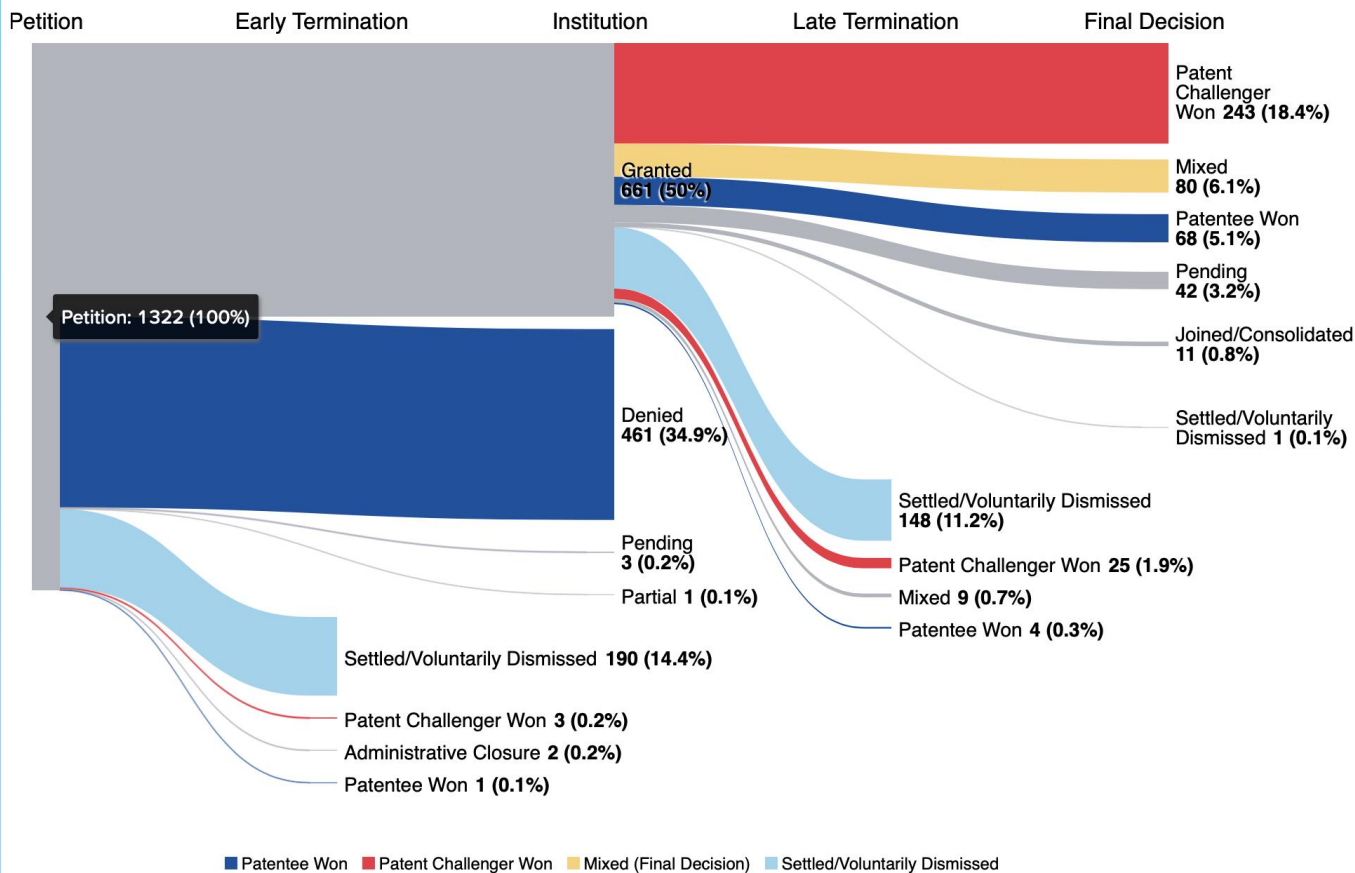


SAS Inst. Inc. v. Icanu
(Decided by SCOTUS on Apr. 24, 2018)

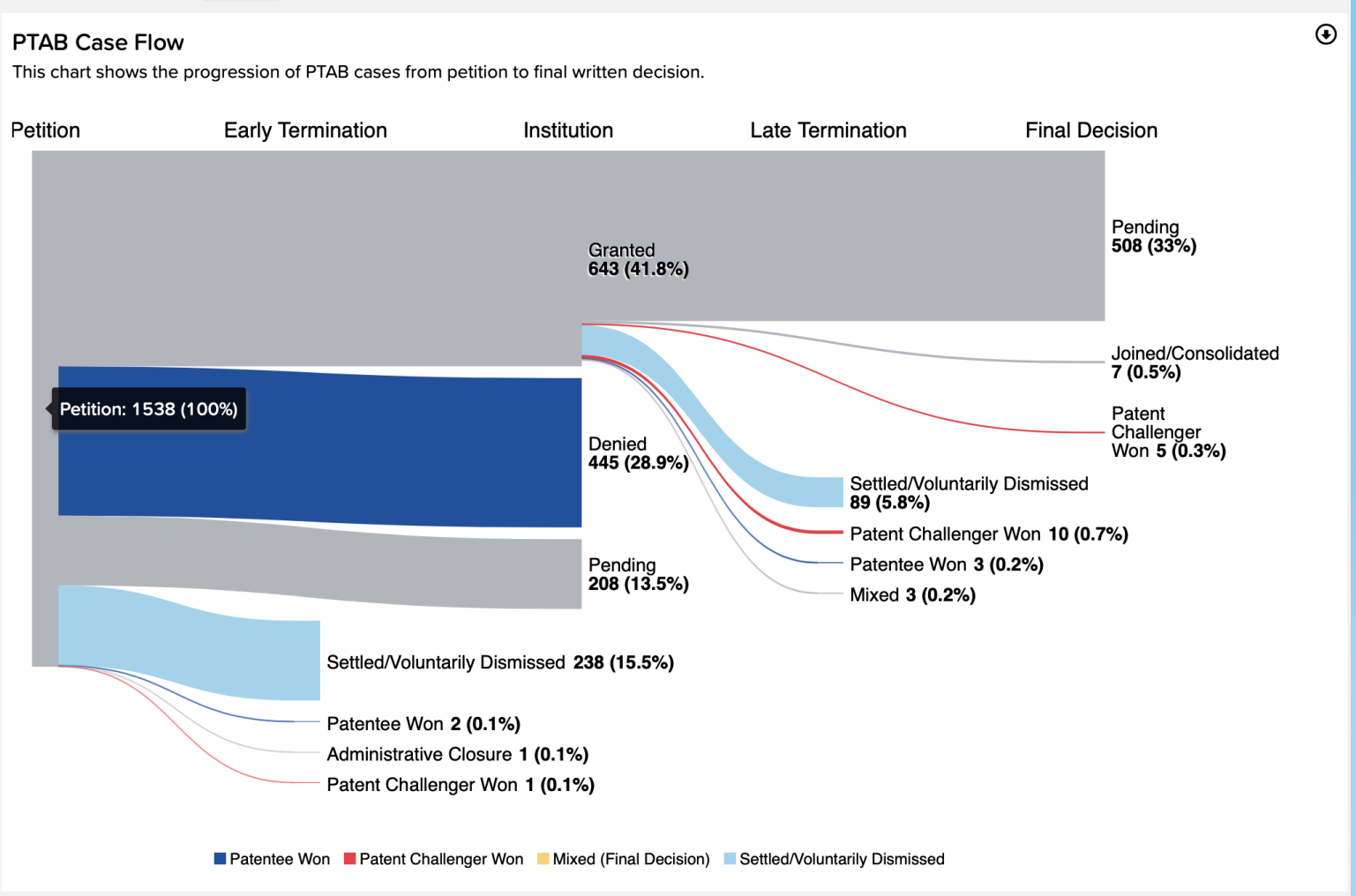
PTAB CASE FLOW (FILED IN 2019)

PTAB Case Flow

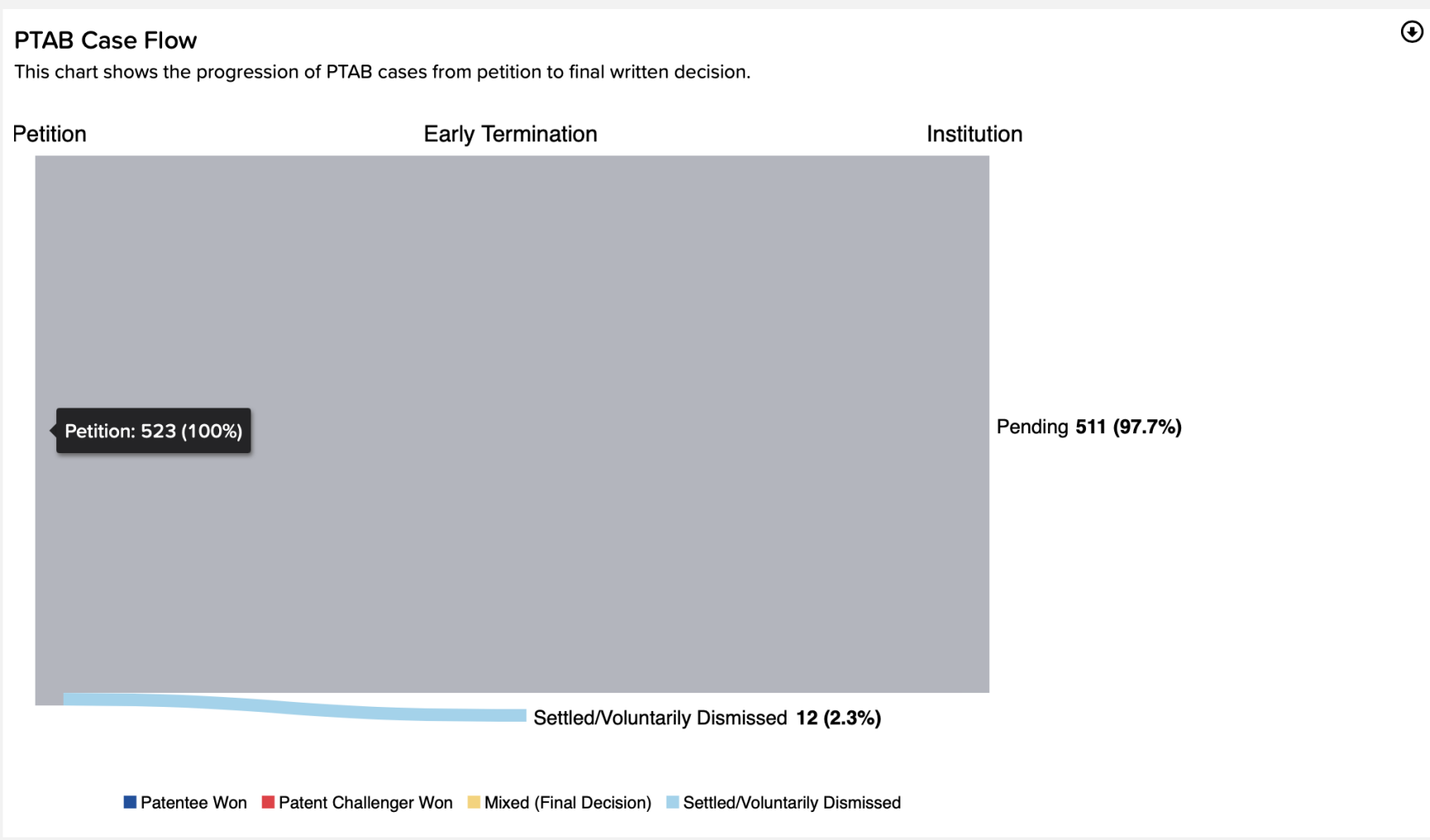
This chart shows the progression of PTAB cases from petition to final written decision.



PTAB CASE FLOW (FILED IN 2020)



PTAB CASE FLOW (FILED IN 2021)



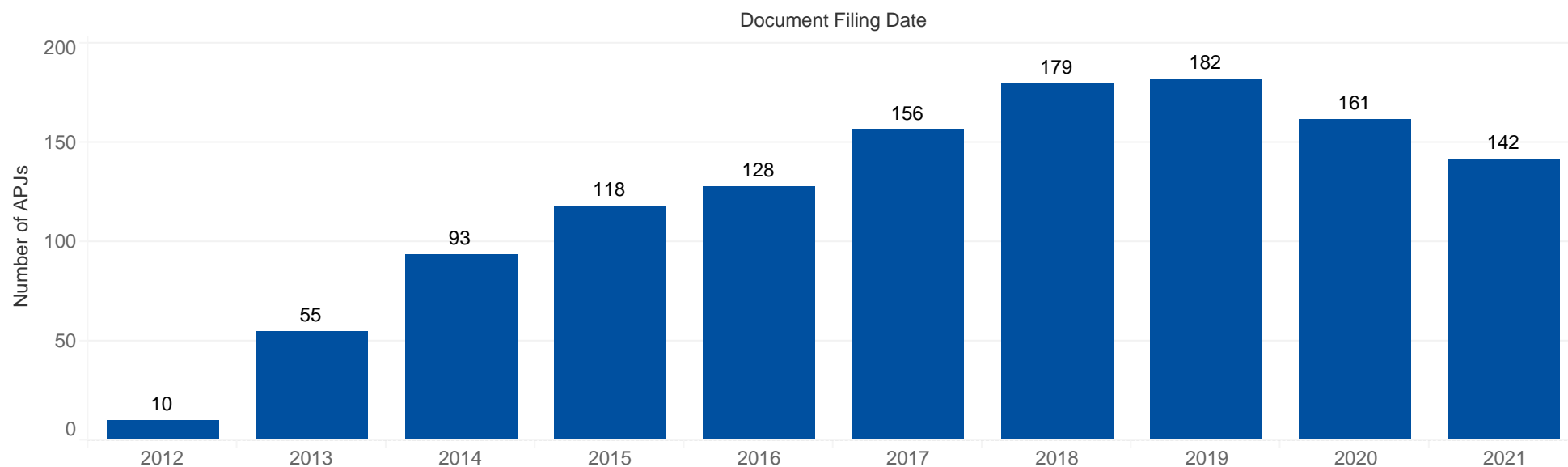
PTAB CASE FLOW

PTAB Case Outcomes by Year of Petition

| | Petition Date | | | | | | | | | | All |
|-------------------------------|---------------|------|------|------|------|------|------|------|------|------|-------|
| | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | |
| Mixed | 12 | 39 | 79 | 106 | 99 | 138 | 133 | 101 | 23 | | 730 |
| Patent Challenger Won | 48 | 312 | 534 | 452 | 461 | 395 | 352 | 276 | 22 | | 2,852 |
| Patentee Won | 20 | 217 | 502 | 634 | 637 | 667 | 625 | 512 | 424 | | 4,238 |
| Settled/ Voluntarily Dis.. | 31 | 217 | 478 | 525 | 475 | 477 | 538 | 346 | 327 | 12 | 3,426 |
| Pending | | | | | | 4 | 8 | 43 | 716 | 511 | 1,282 |

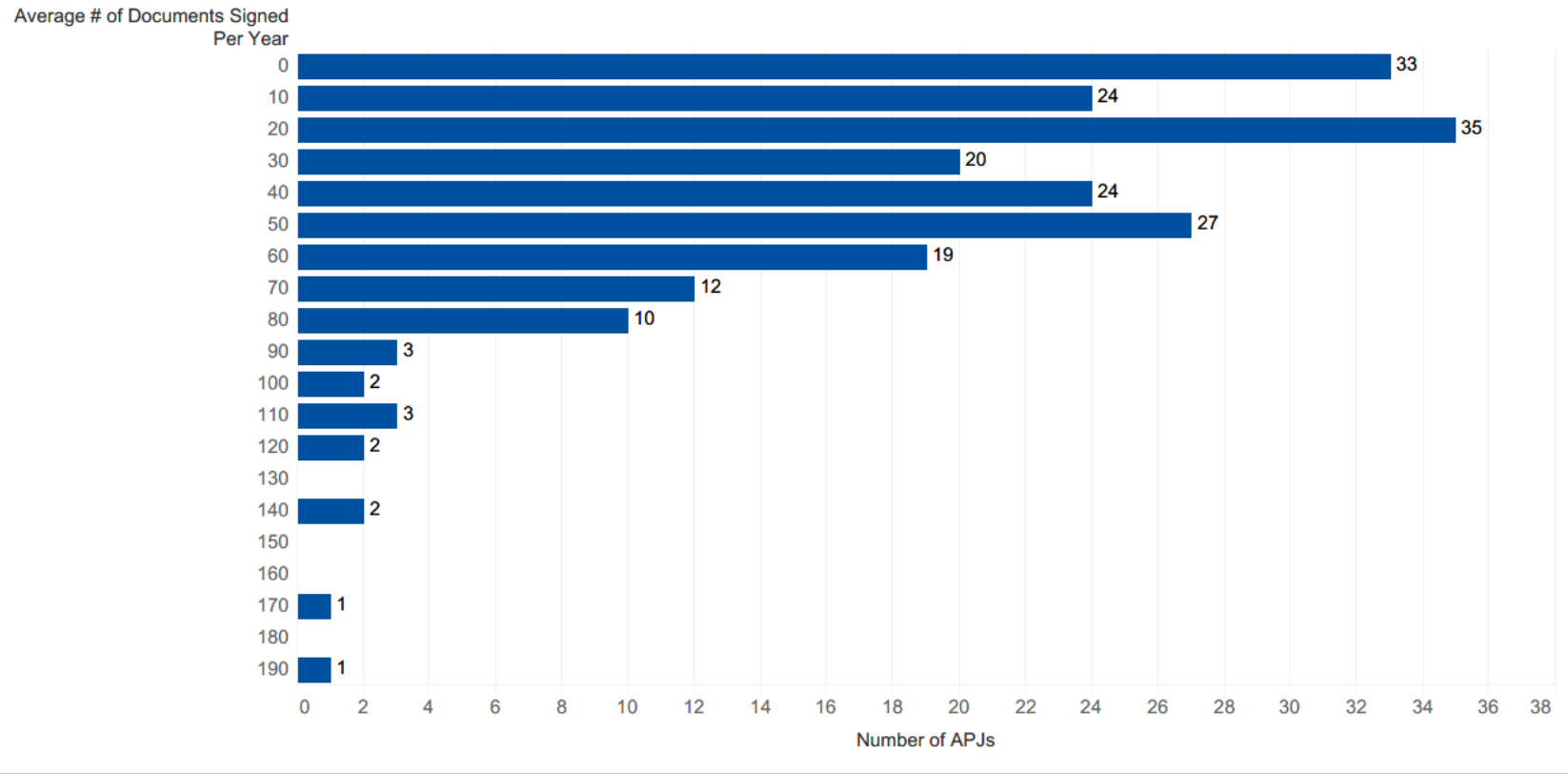
PTAB APJs Involved

Number of APJs who signed at least one document in a given year



PTAB APJs Involved

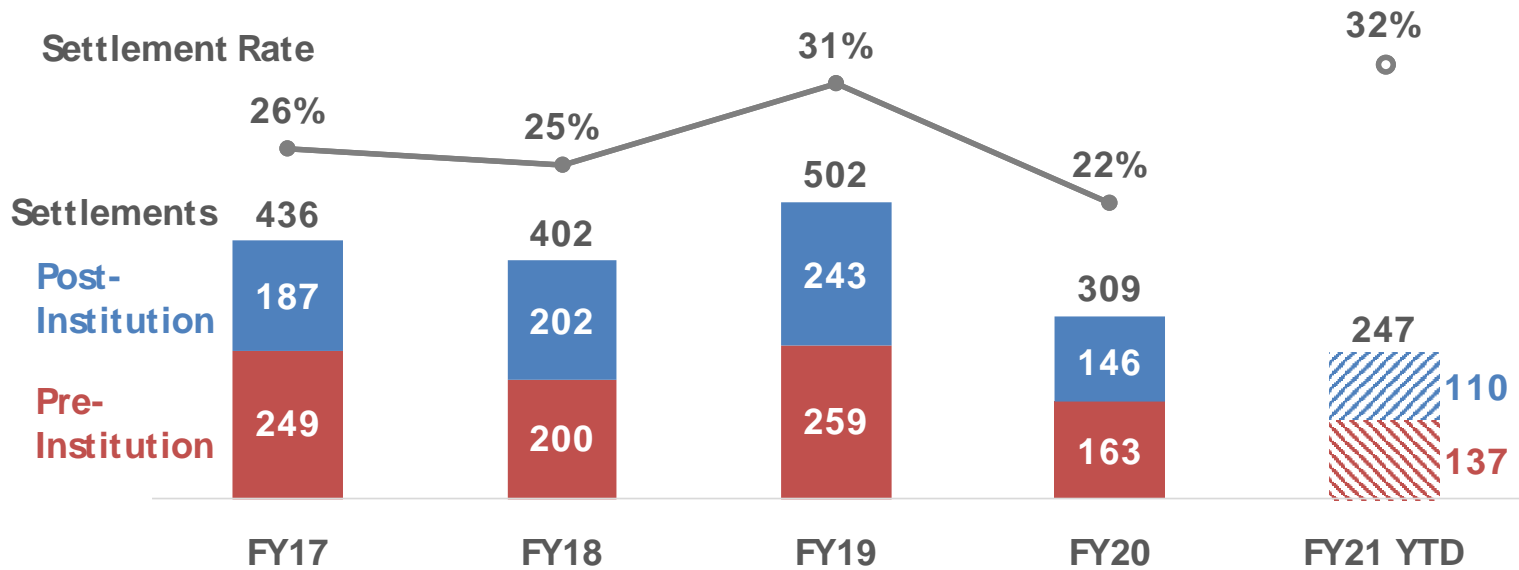
How many APJs sign How Many Documents?



Settlements (per USPTO)

Settlements

(FY17 to FY21 through Q2: Oct. 1, 2016 to Mar. 31, 2021)

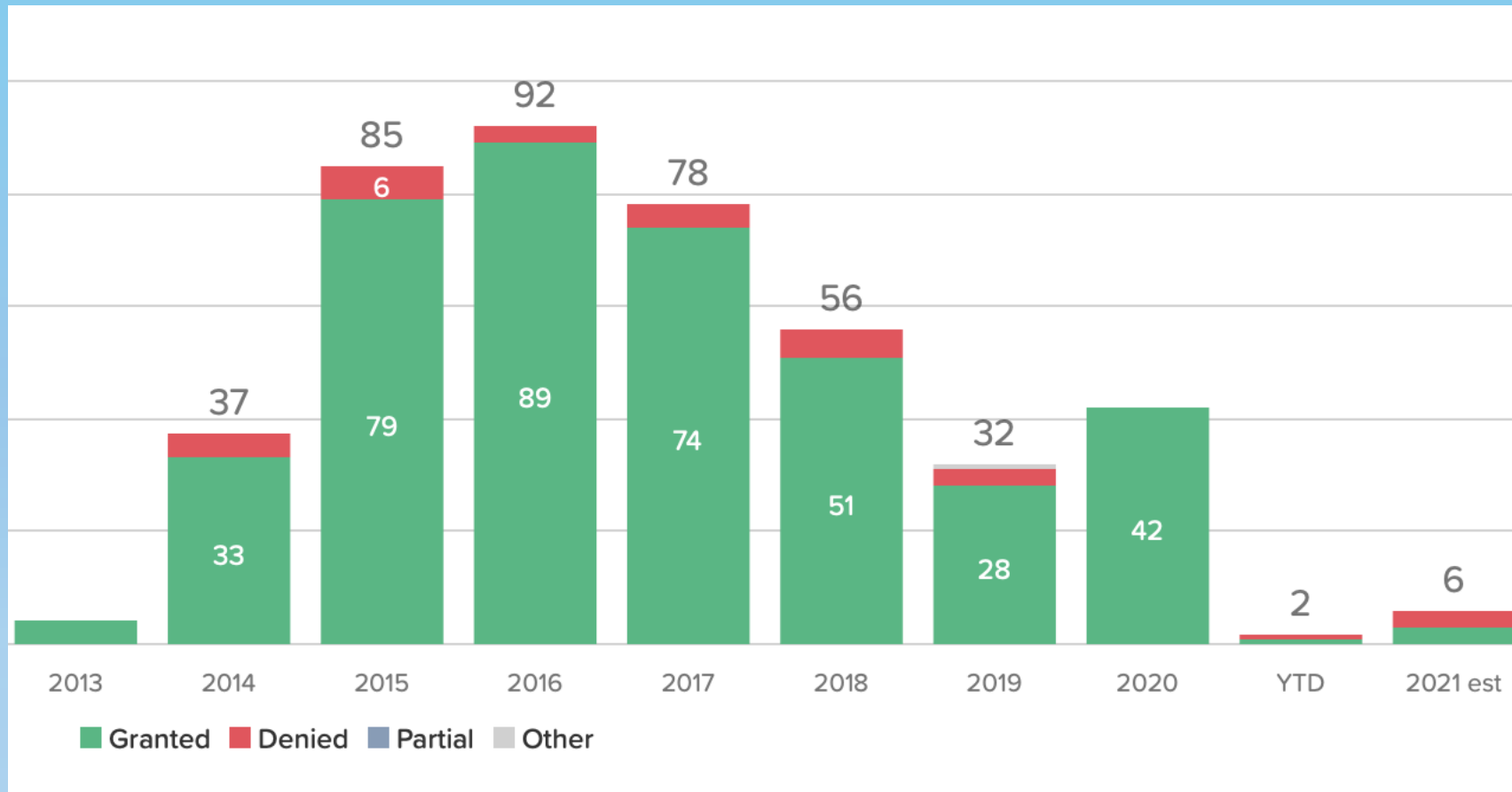


Settlement rate is calculated by dividing total settlements by concluded proceedings in each fiscal year (i.e., denied institution, settled, dismissed, requested adverse judgment, and final written decision), excluding joined cases.



https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2021_q2_roundup_.pdf

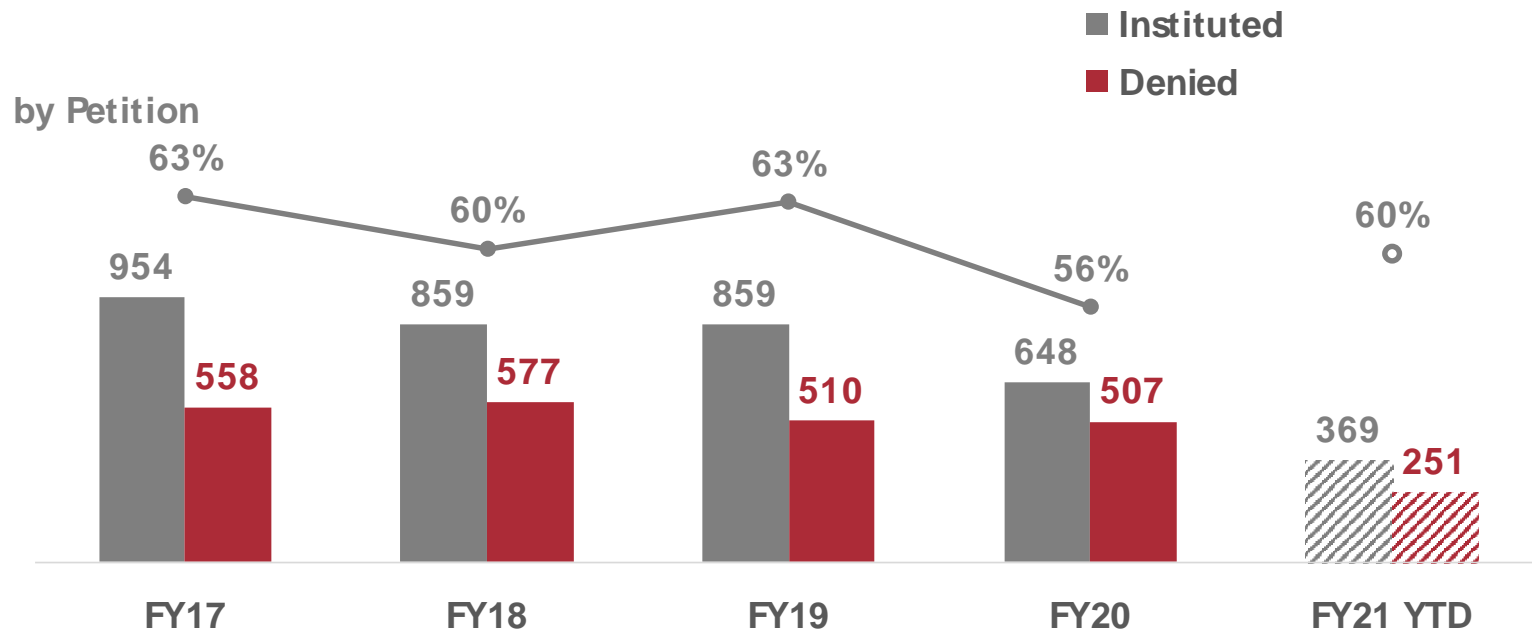
REQUESTS FOR ADVERSE JUDGMENTS (BY YEAR)



Institution Rates by Petition (per USPTO)

Institution rates by petition

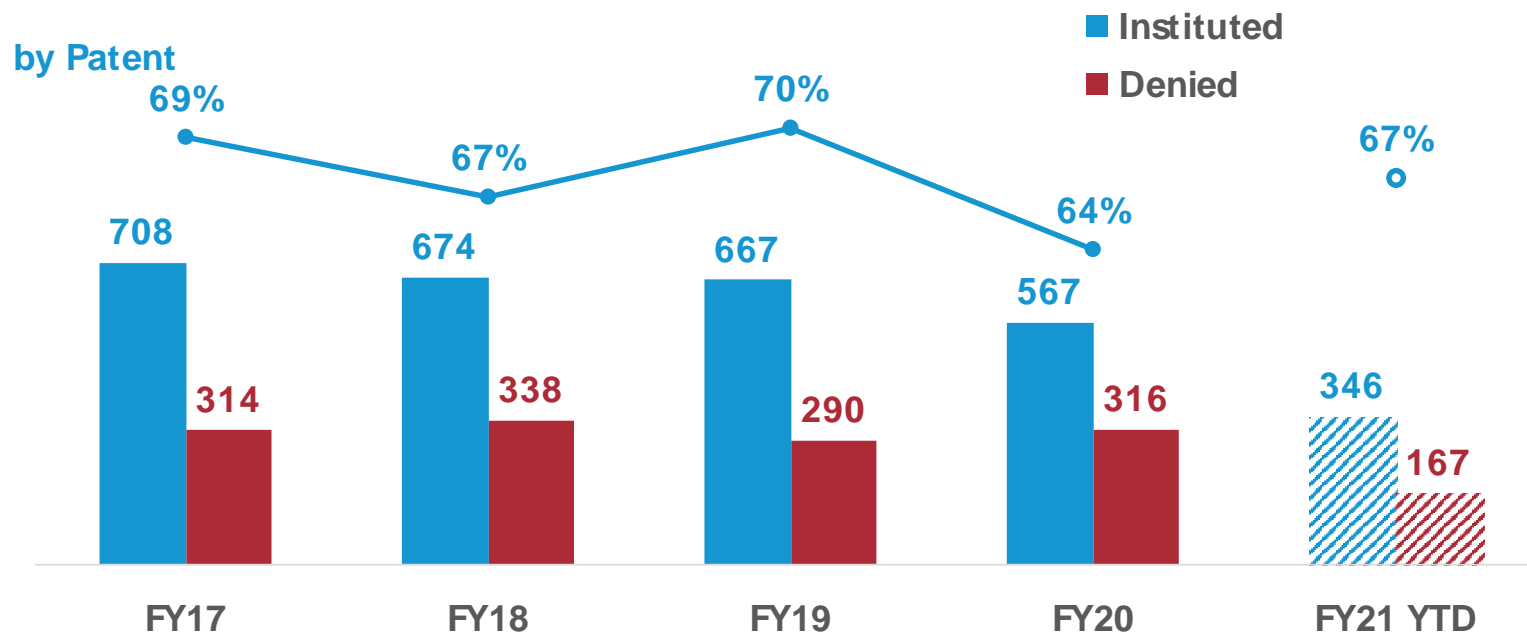
(FY17 to FY21 through Q2: Oct. 1, 2016 to Mar. 31, 2021)



Institution Rates by Petition (per USPTO)

Institution rates by patent

(FY17 to FY21 through Q2: Oct. 1, 2016 to Mar. 31, 2021)



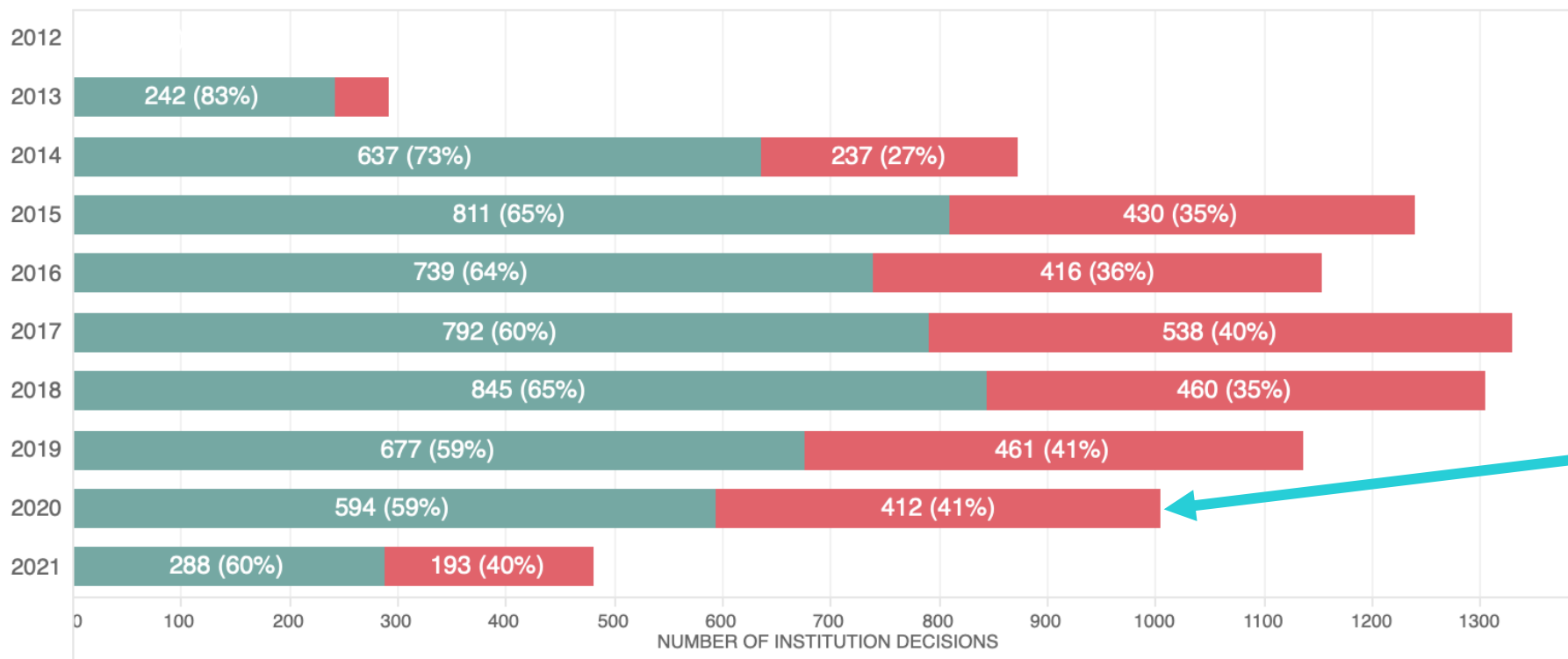
https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2021_q2_roundup_.pdf

INSTITUTIONS

Overall Patent Institution Rate by Year

This chart shows the overall rate at which patents were granted or denied institution. If at least one claim was granted institution, that institution will appear as "Granted" in this chart.

■ Granted ■ Denied



Dec. 22, 2020 – PTAB declares Fintiv Factors Precedential

INSTITUTIONS (BY GROUND – ALL)

Institutions by Ground per Year

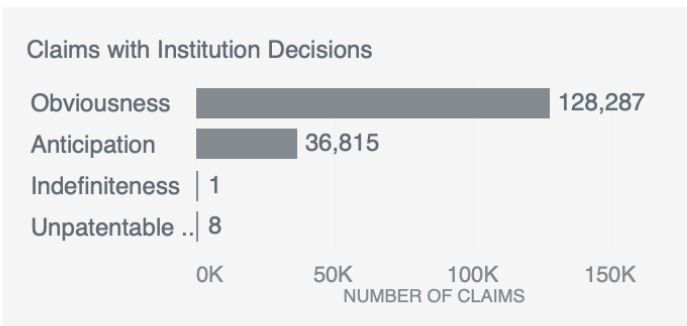
This chart shows the results of PTAB Institution decisions for individual patent claims challenged in a PTAB petition on obviousness (35 U.S.C. § 103) grounds. Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

Net Grants/Denials: Net Grants/Denials are visualized with a shaded inner bar. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that year. When the shaded bar appears below the midline, it means more claims were denied institution than granted that year, and its size measures the difference.

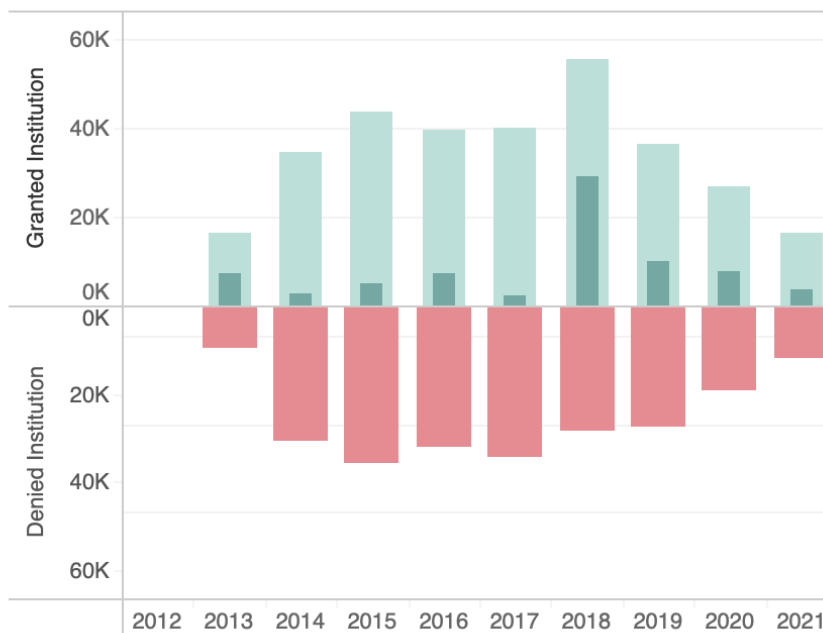
Unpatentability Grounds

- (All)
- Anticipation
- Enablement (§112 ¶1 aka 112(a))
- Indefiniteness
- Narrowing Dependent Claims
- Obviousness
- Ornamentality

- Total Granted
- Net Granted
- Total Denied
- Net Denied



All



INSTITUTIONS (OBVIOUSNESS)

Institutions by Ground per Year

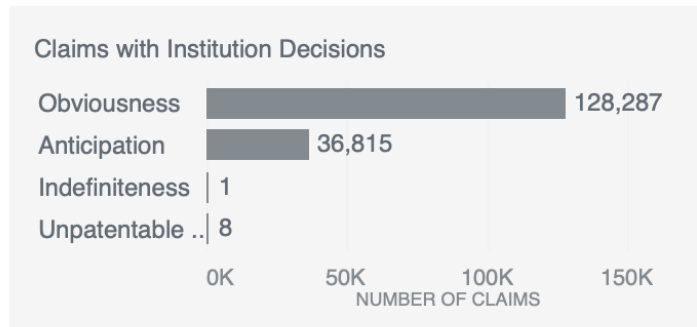
This chart shows the results of PTAB Institution decisions for individual patent claims challenged in a PTAB petition on obviousness (35 U.S.C. § 103) grounds. Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

Net Grants/Denials: Net Grants/Denials are visualized with a shaded inner bar. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that year. When the shaded bar appears below the midline, it means more claims were denied institution than granted that year, and its size measures the difference.

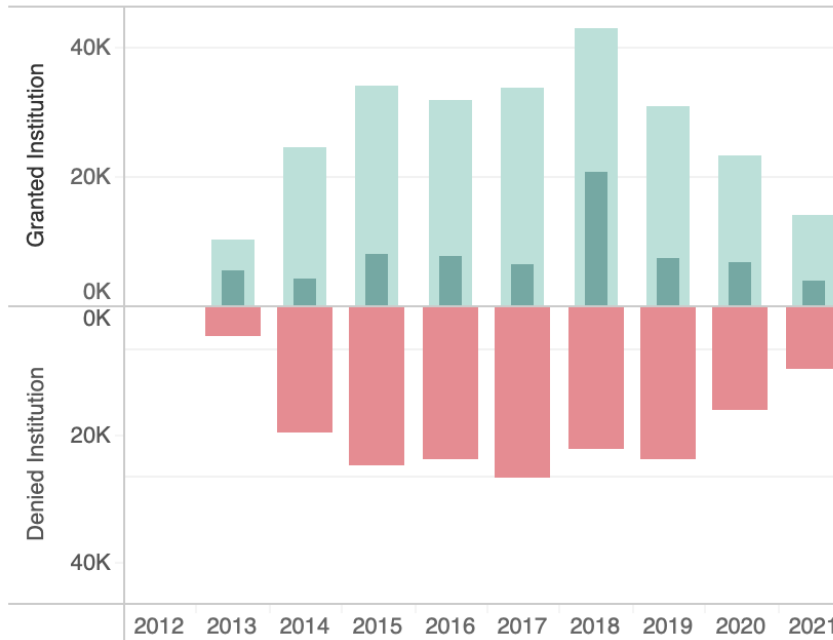
Unpatentability Grounds

- (All)
- Anticipation
- Enablement (§112 ¶1 aka 112(a))
- Indefiniteness
- Narrowing Dependent Claims
- Obviousness
- Ornamentality

- Total Granted
- Net Granted
- Total Denied
- Net Denied



Obviousness



INSTITUTIONS (ANTICIPATION)

Institutions by Ground per Year

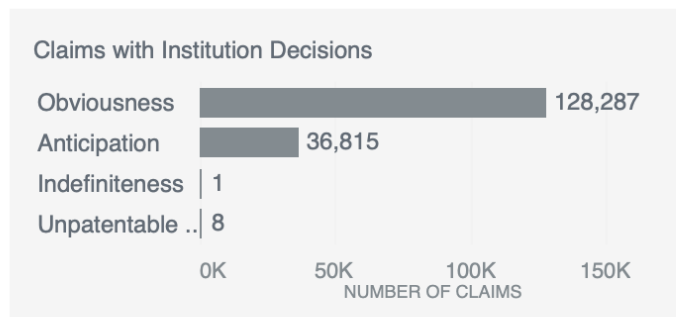
This chart shows the results of PTAB Institution decisions for individual patent claims challenged in a PTAB petition on obviousness (35 U.S.C. § 103) grounds. Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

Net Grants/Denials: Net Grants/Denials are visualized with a shaded inner bar. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that year. When the shaded bar appears below the midline, it means more claims were denied institution than granted that year, and its size measures the difference.

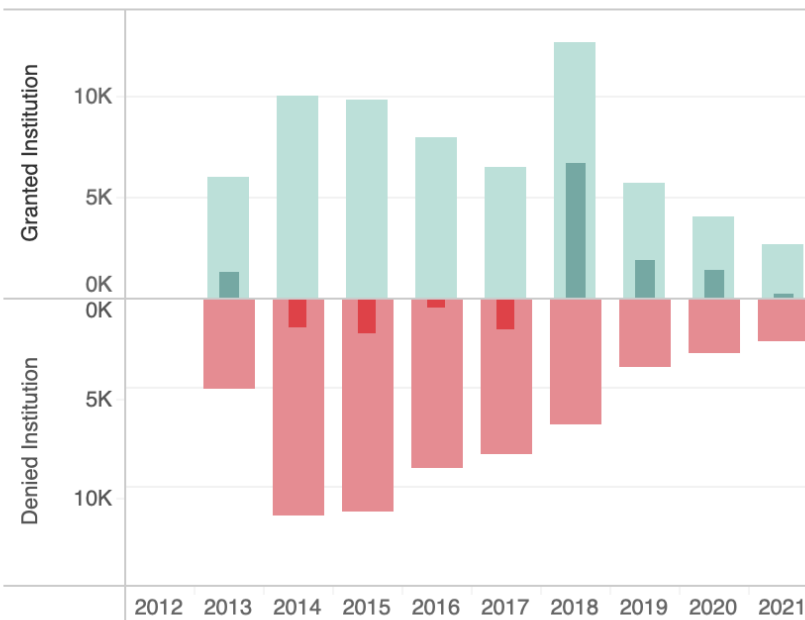
Unpatentability Grounds

- (All)
- Anticipation
- Enablement (§112 ¶1 aka 112(a))
- Indefiniteness
- Narrowing Dependent Claims
- Obviousness
- Ornamentality

- Total Granted
- Net Granted
- Total Denied
- Net Denied



Anticipation



INSTITUTIONS (INDEFINITENESS)

Institutions by Ground per Year

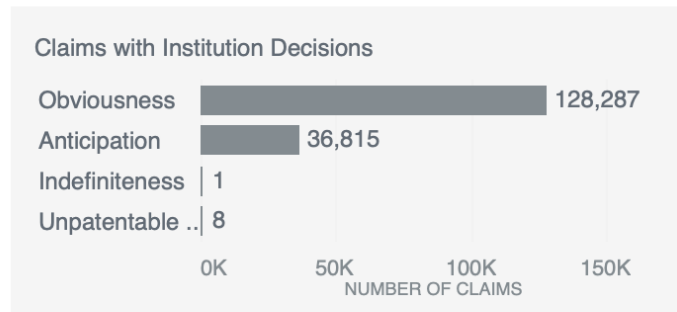
This chart shows the results of PTAB Institution decisions for individual patent claims challenged in a PTAB petition on obviousness (35 U.S.C. § 103) grounds. Bars above the midline show the number of claims in which review was granted, bars below the midline show the number of claims in which review was denied.

Net Grants/Denials: Net Grants/Denials are visualized with a shaded inner bar. When the Net Grants/Denials line appears above the midline, it means more claims were granted institution of review than denied that year. When the shaded bar appears below the midline, it means more claims were denied institution than granted that year, and its size measures the difference.

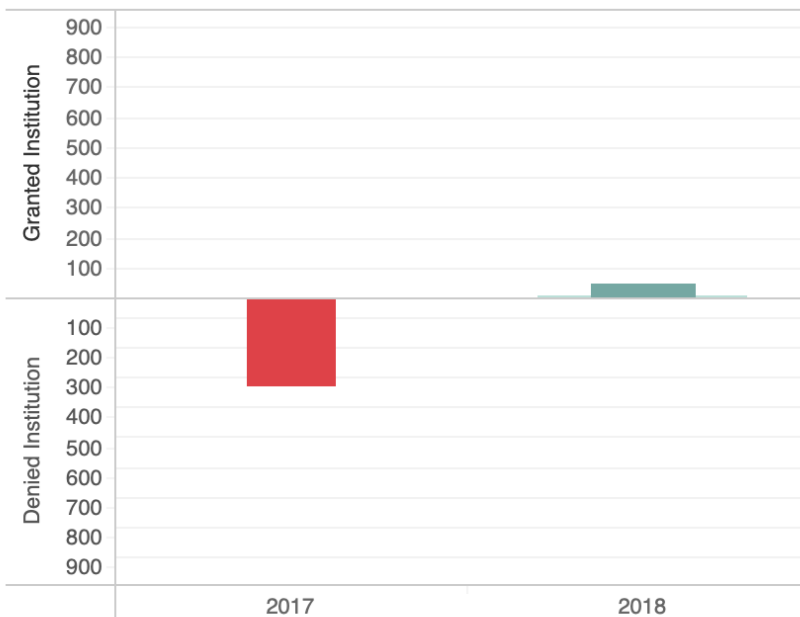
Unpatentability Grounds

- (All)
- Anticipation
- Enablement (§112 ¶1 aka 112(a))
- Indefiniteness
- Narrowing Dependent Claims
- Obviousness
- Ornamentality

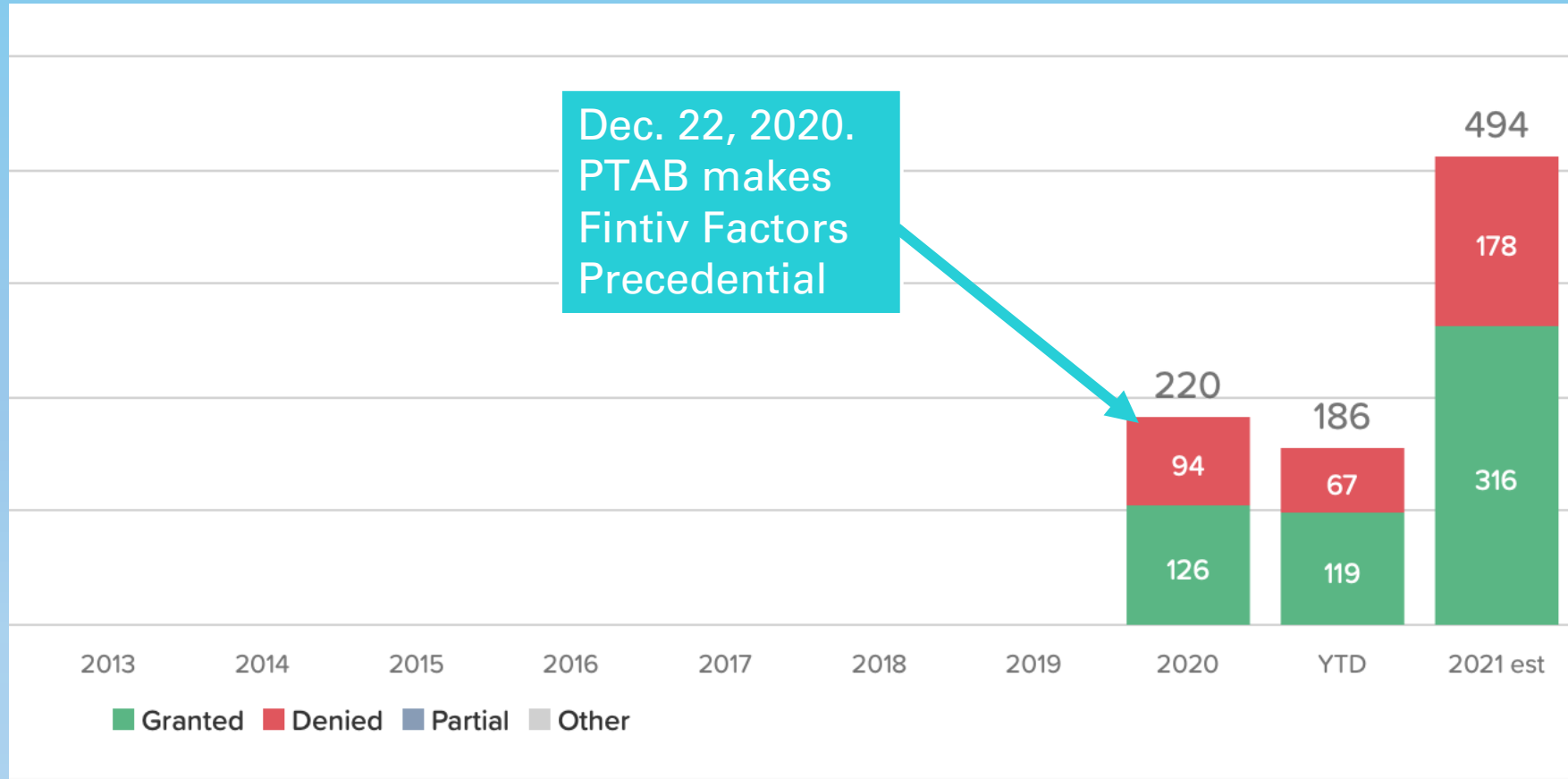
- Total Granted
- Net Granted
- Total Denied
- Net Denied



Indefiniteness



INSTITUTIONS (DISCRETION)



MOTIONS



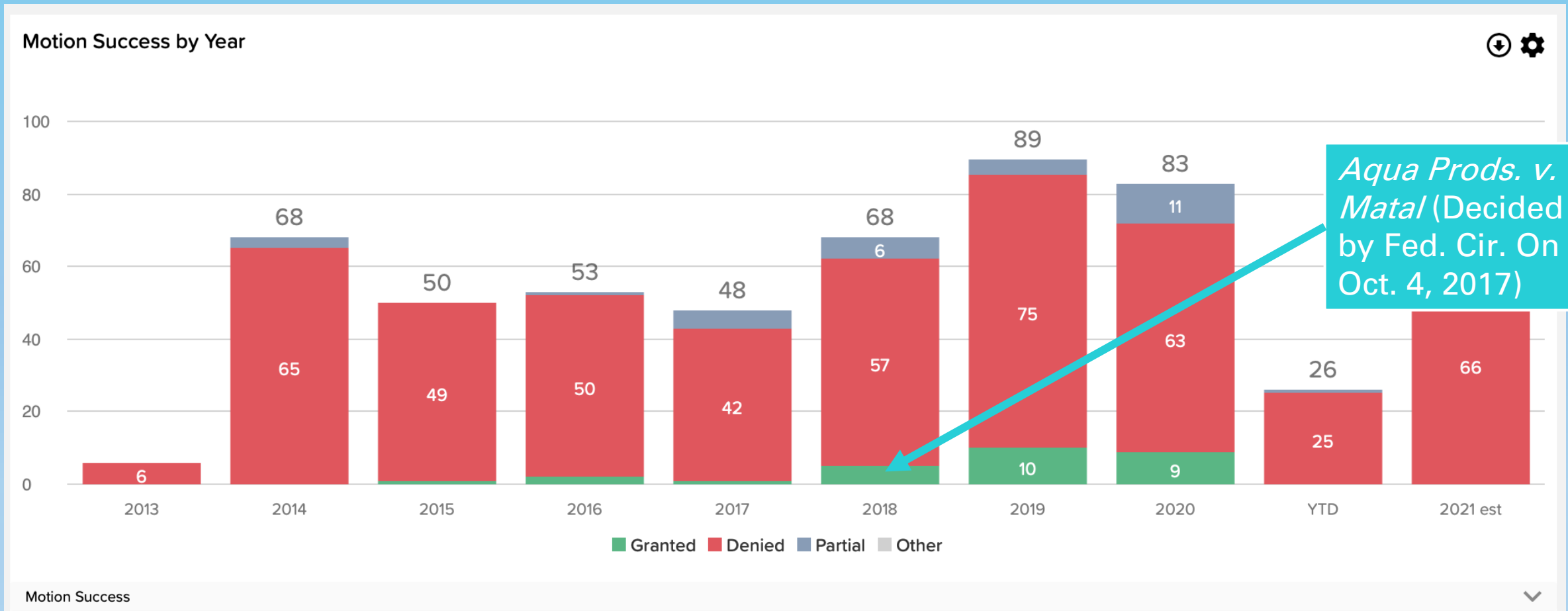
REQUEST FOR REHEARING (AT PTAB)



REQUEST FOR REHEARING (AT PTAB)

| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | YTD | 2021 est |
|---------|------|------|------|------|------|------|------|------|-----|----------|
| Granted | 4 | 3 | 10 | 8 | 5 | 12 | 8 | 10 | 0 | |
| Denied | 63 | 182 | 204 | 193 | 186 | 187 | 108 | 139 | 42 | 111 |
| Partial | 3 | 10 | 8 | 4 | 6 | 3 | 0 | 0 | 0 | |
| Other | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | |
| Total | 70 | 195 | 222 | 206 | 197 | 202 | 116 | 149 | 42 | 111 |

MOTIONS TO AMEND (AT PTAB)



MOTIONS TO AMEND (AT PTAB)

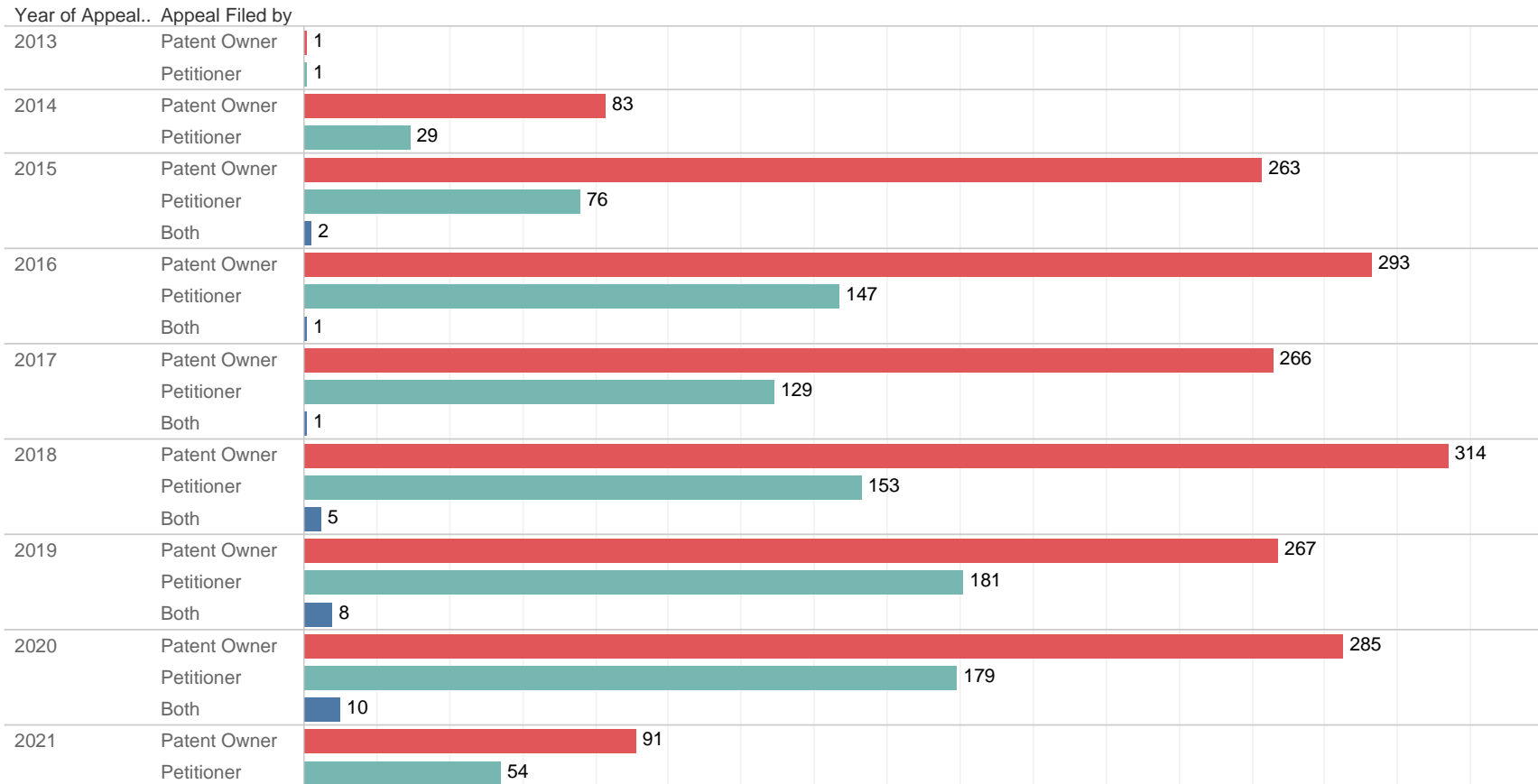
| | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | YTD | 2021 est |
|---------|------|------|------|------|------|------|------|------|-----|----------|
| Granted | 0 | 0 | 1 | 2 | 1 | 5 | 10 | 9 | 0 | |
| Denied | 6 | 65 | 49 | 50 | 42 | 57 | 75 | 63 | 25 | 66 |
| Partial | 0 | 3 | 0 | 1 | 5 | 6 | 4 | 11 | 1 | 3 |
| Other | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Total | 6 | 68 | 50 | 53 | 48 | 68 | 89 | 83 | 26 | 69 |

FEDERAL CIRCUIT REVIEW



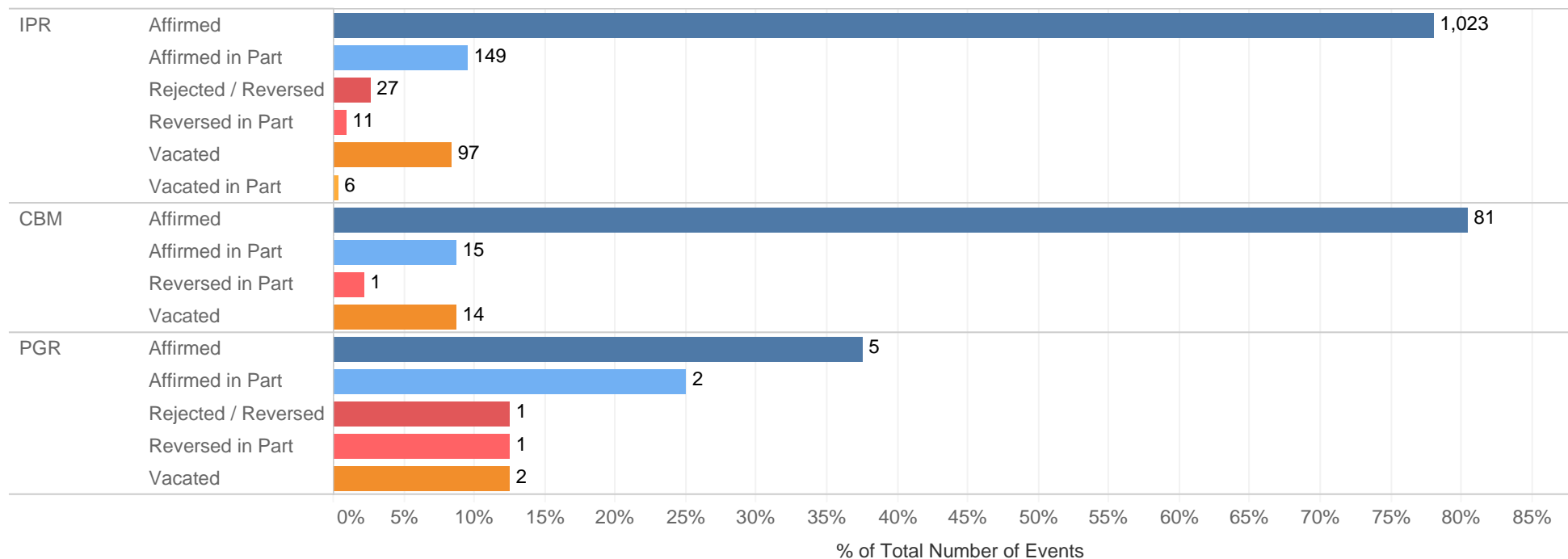
Federal Circuit (PTAB Appeals)

PTAB Appeal Filing Breakdown



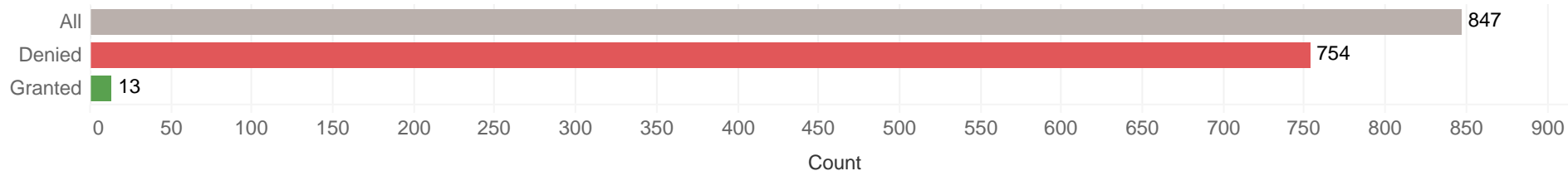
Federal Circuit (Results of Appeal from PTAB)

Results of PTAB Appeals



Federal Circuit (En Banc Hearings of PTAB Appeals)

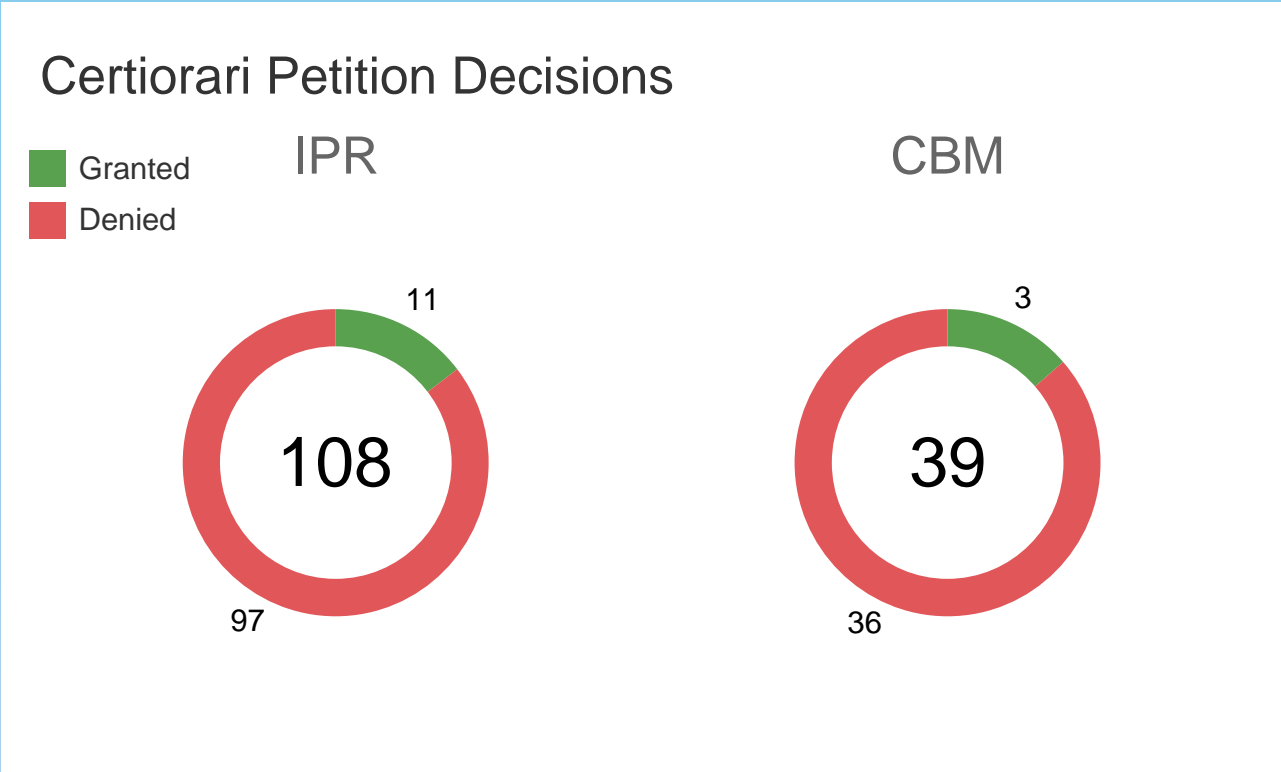
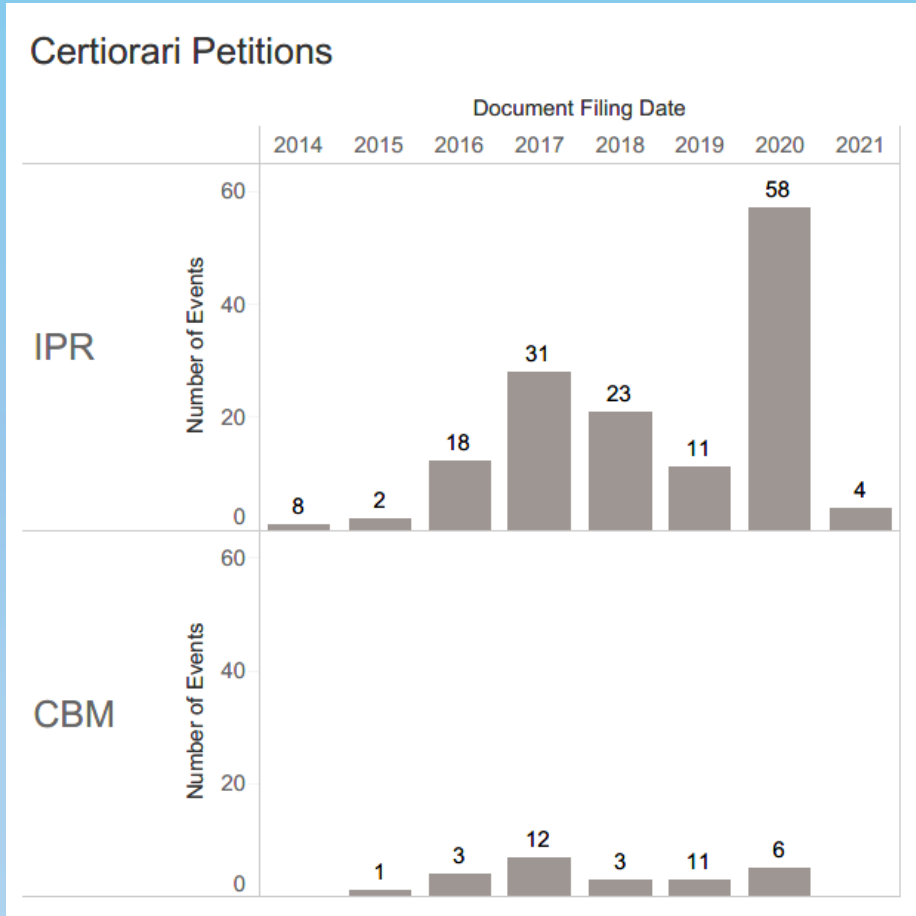
En Banc Hearings



A photograph of a grand, classical building's entrance, featuring a wide set of marble steps leading up to a row of tall, fluted columns. The scene is brightly lit, highlighting the texture of the stone.

SUPREME COURT REVIEW

SCOTUS Review



Key SCOTUS Cases involving IPRs

- *Cuozzo Speed Techns. LLC v. Lee*, 136 S.Ct. 2131 (2016)
- *SAS Inst. Inc. v. Icanu*, 138 S.Ct. 1348 (2018)
 - *Gramm v. Deere & Co* (GVR in light of SAS)
- *Oil States Energy v. Greene's Energy Group*, 138 S.Ct. 1365 (2018)
- *Return Mail v. U.S. Postal Services*, 139 S.Ct. 1853 (2019)
- *Thryv, Inc. v. Click-to-Call Techn., LP*, 140 S.Ct. 1367 (2020)
 - *Emerson Elec. Co. v. Sipco, LLC* (GVR in light of *Thryv*)
 - *Atlanta Gas Light Co. v. Bennett Regul. Guards* (GVR in light of *Thryv*)
 - *Superiour Communs. Inc. v. Volstar* (GVR in light of *Thryv*)
- *Arthrex v. Smith & Nephew* (argued)

QUESTIONS

??????