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Inter Partes Review: Current Thinking on What, When, Why, and How Much

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**Inter Partes Review:
Current Thinking on What, When,
Why, and How Much**

Sept. 27, 2016

Panelists: Hon. Peter Chen, Christen
Dubois, Prof. Brian Love, Andrew Lagatta,
and Mansi Shah



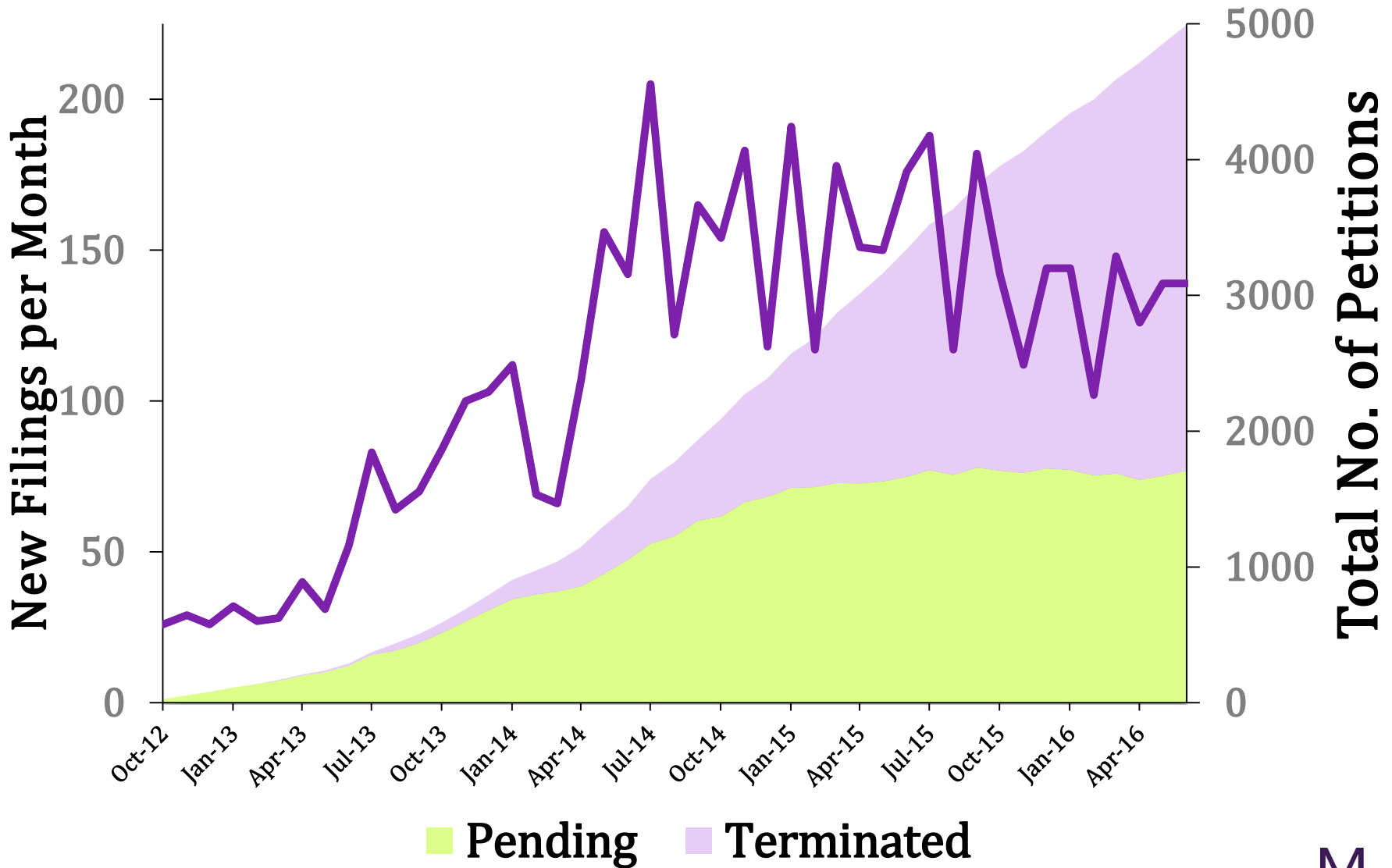
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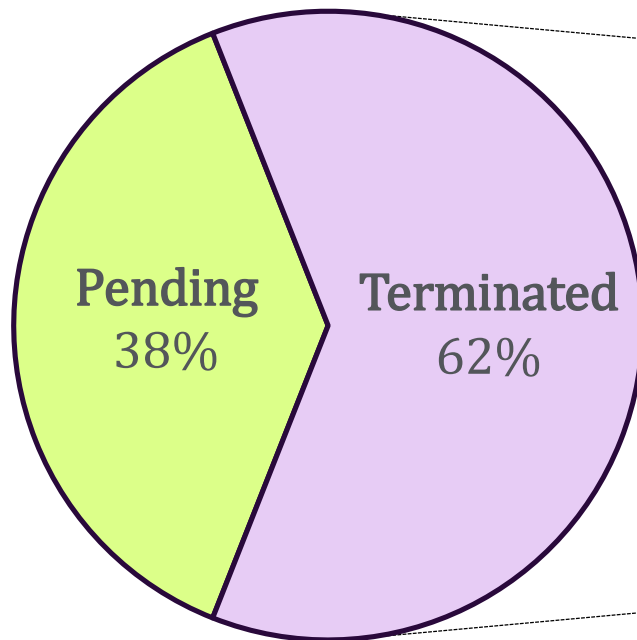
PTAB Docket



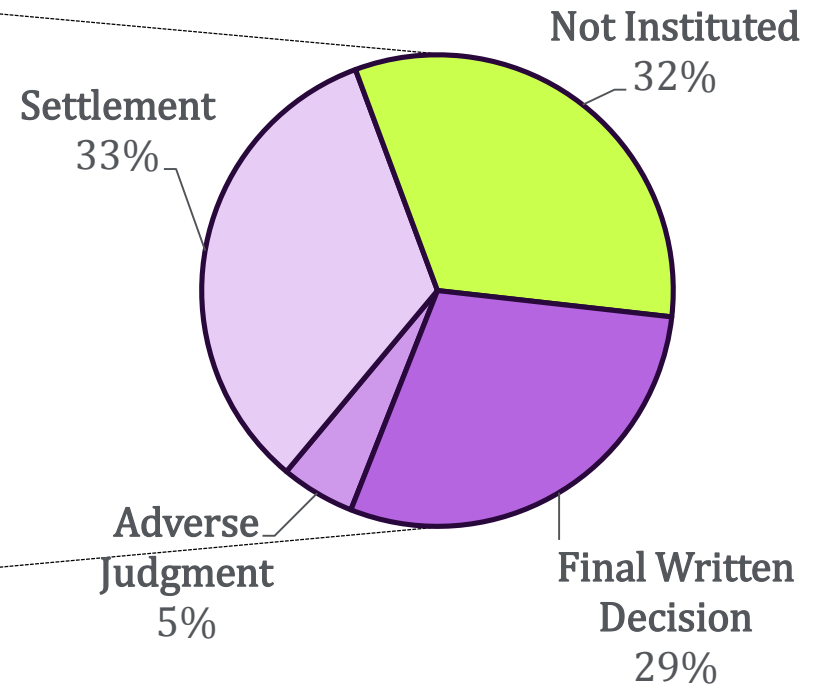
Source: Unified Patents

Overall Outcomes

All Cases

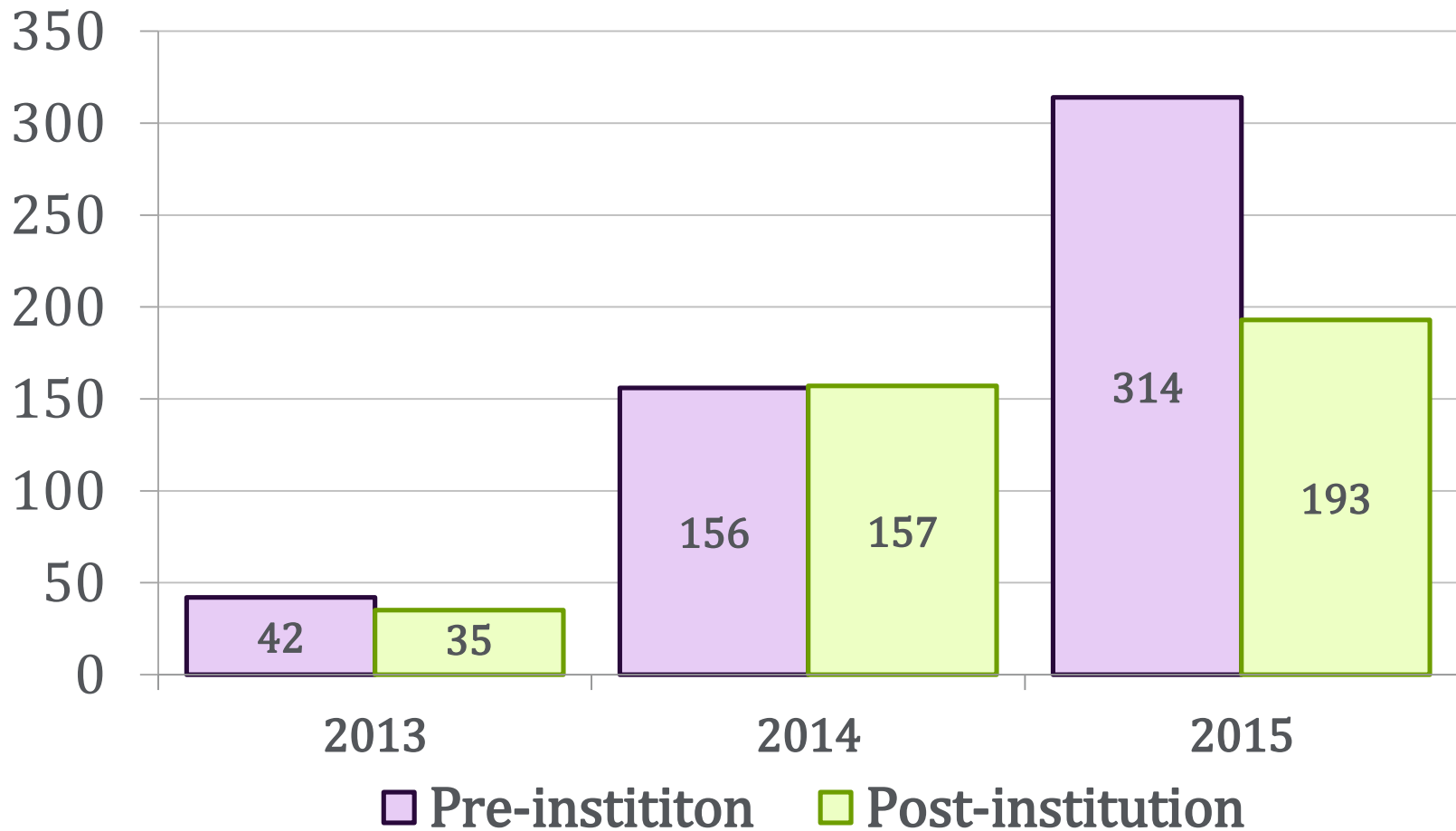


Terminated Cases



Source: Unified Patents

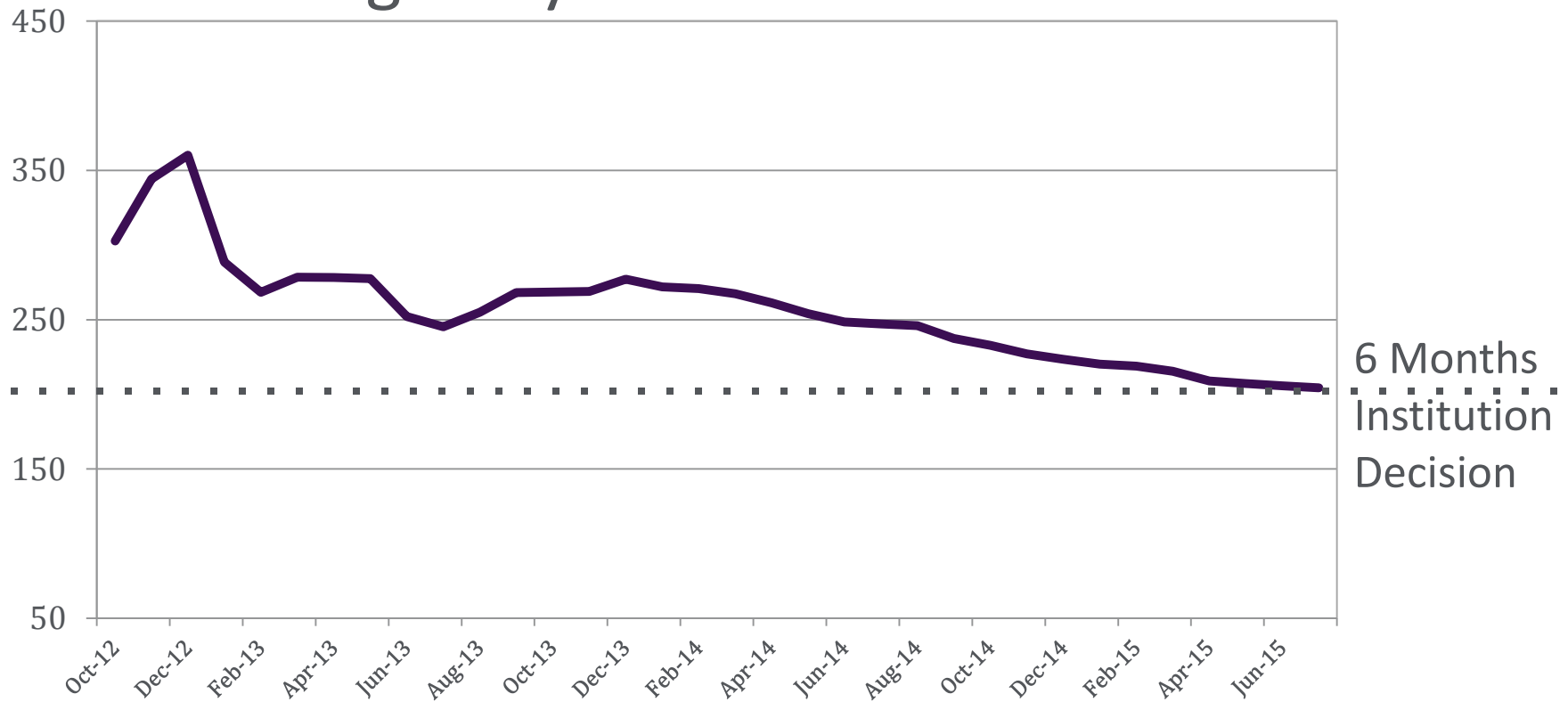
Settlement



Source: Unified Patents

Settlement

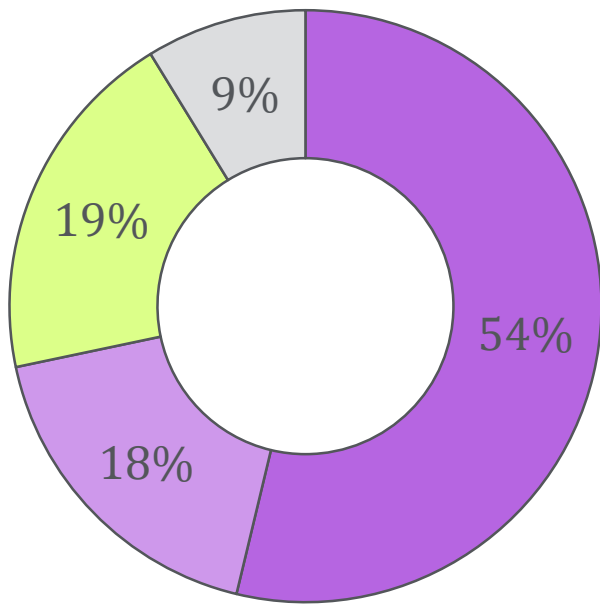
Average Days to Settlement



Source: Unified Patents

Institution Decisions

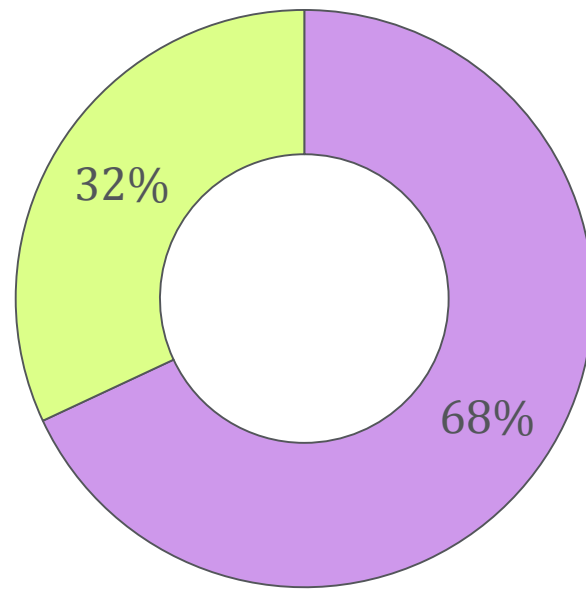
Case-Level Outcomes



■ All Claims Instituted

■ Mixed Results

Claim-Level Outcomes
(on the Merits)

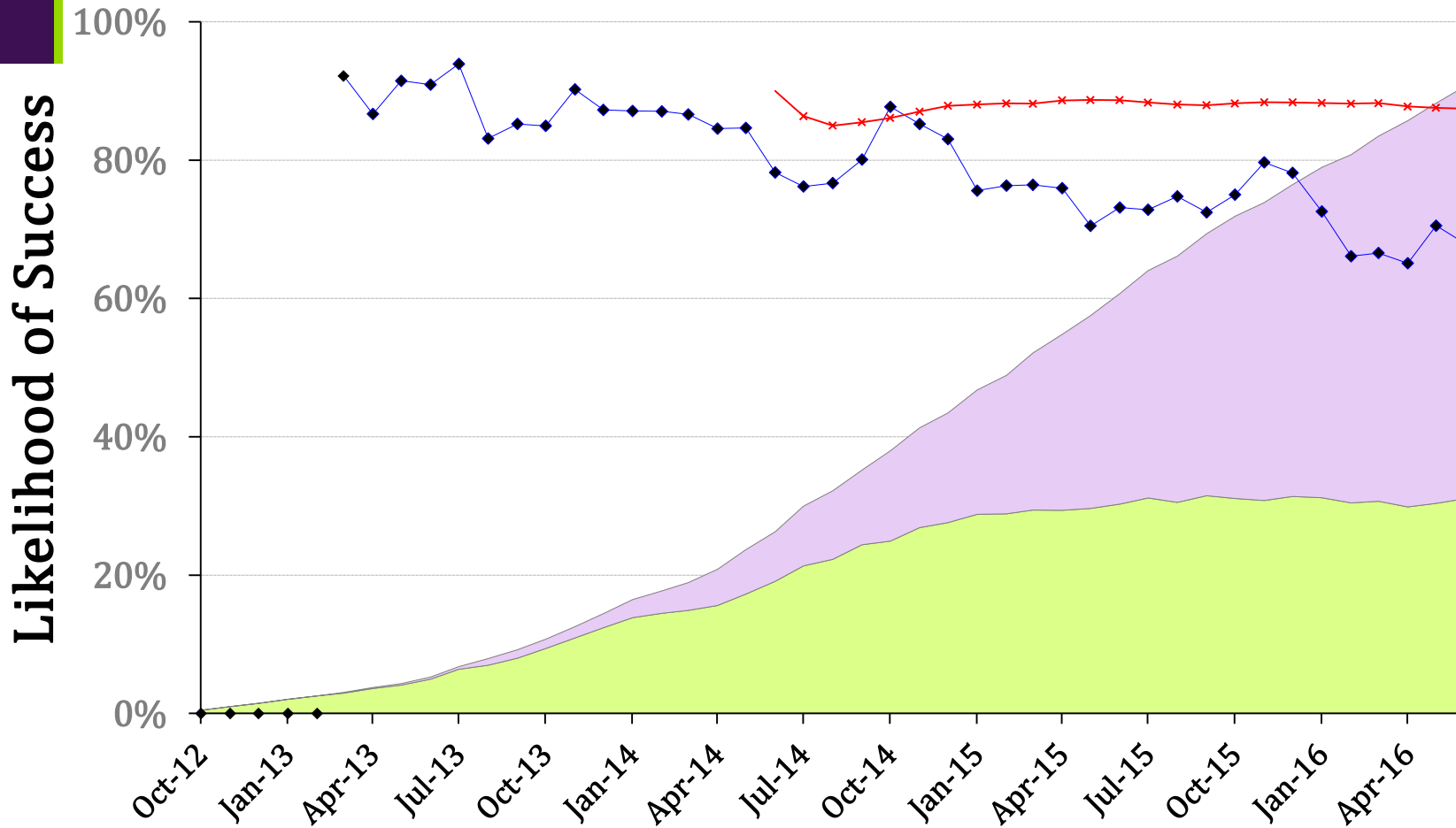


■ Instituted ■ Denied

Source: Unified Patents



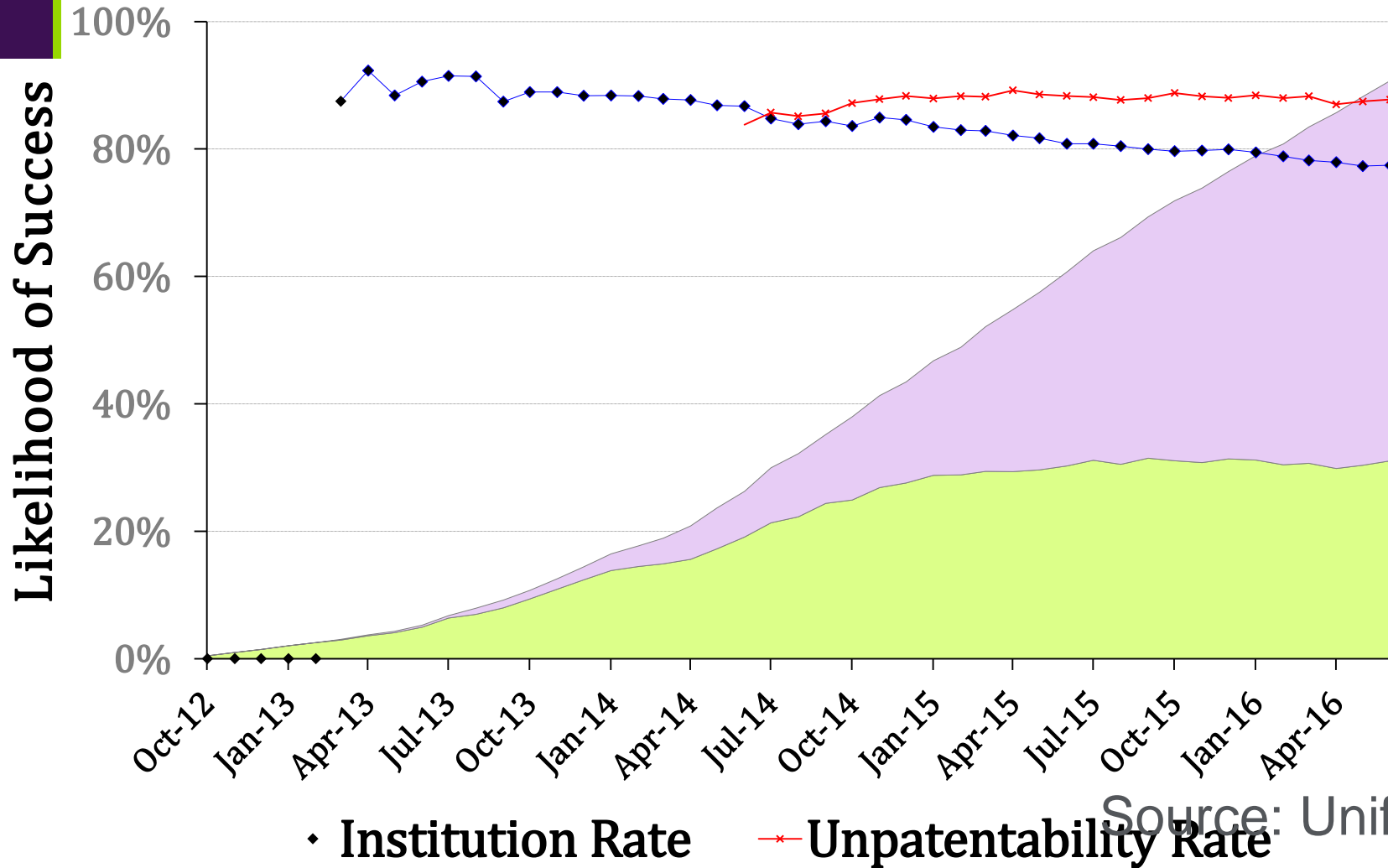
Institution & Cancellation Rates Over Time (3 Mo. Avg.)



◆ Institution Rate

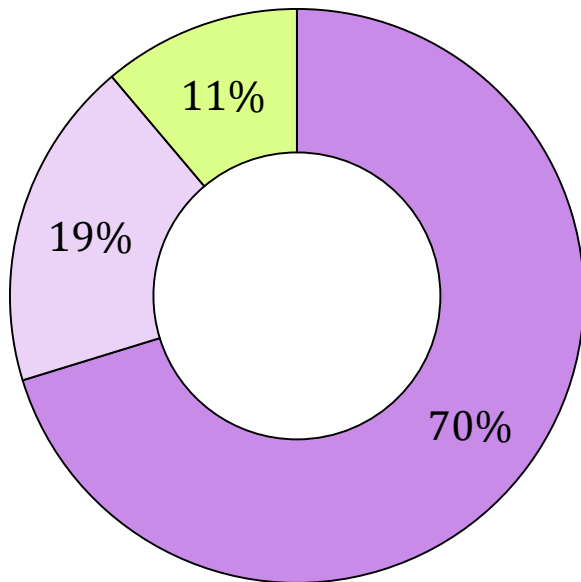
✕ Unpatentability Rate

Institution & Cancellation Rates Over Time (Cumul. Avg.)



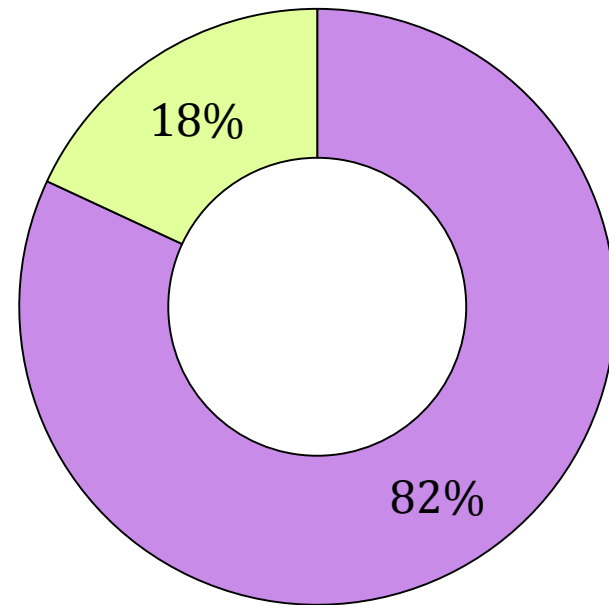
Final Written Decisions

Case-Level Outcomes



- All Claims Unpatentable
- Mixed Results
- All Claims Patentable

Claim-Level Outcomes
(on the Merits)

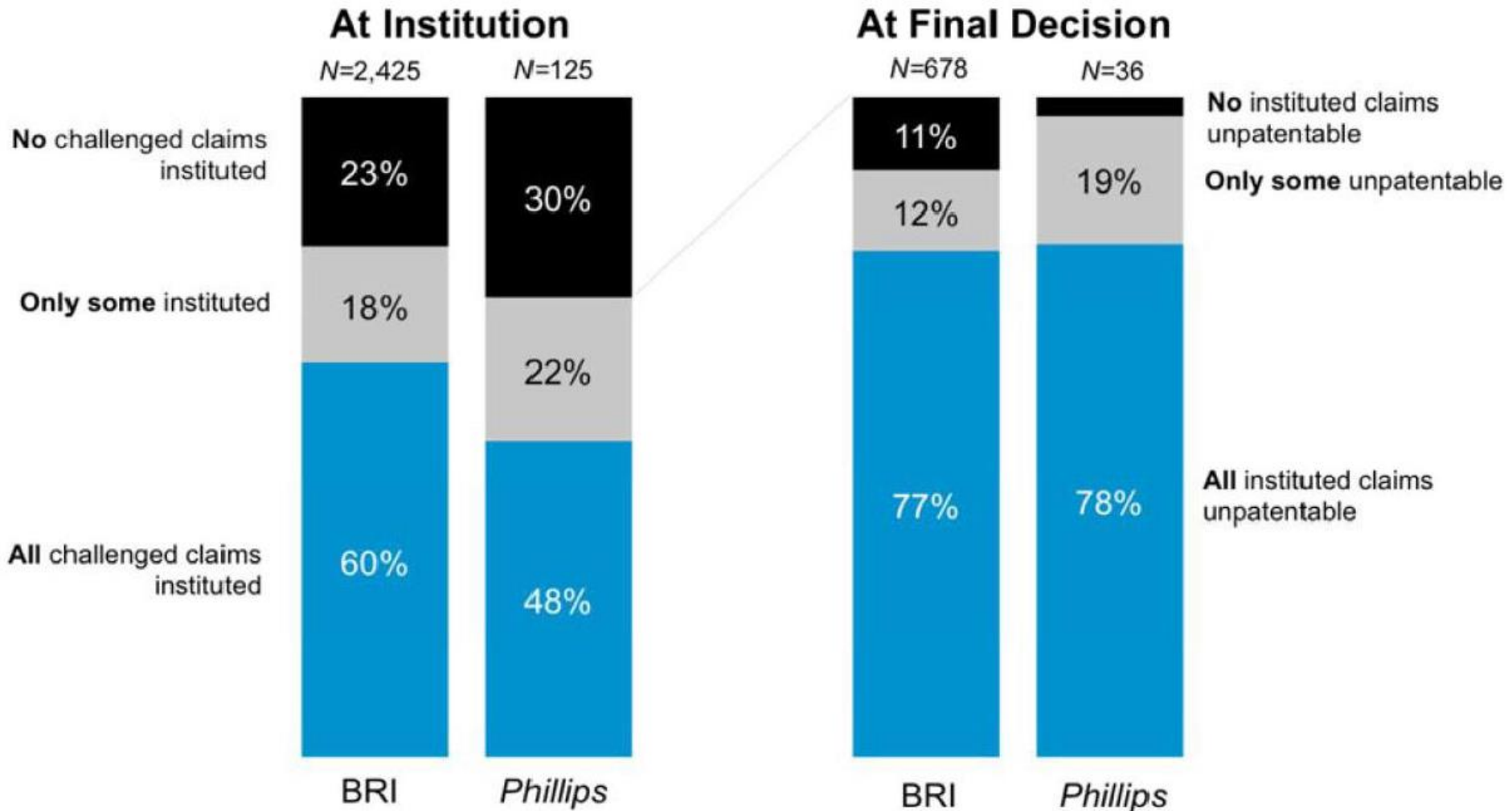


- Unpatentable
- Patentable

Source: Unified Patents



Claim Construction



Source: RPX

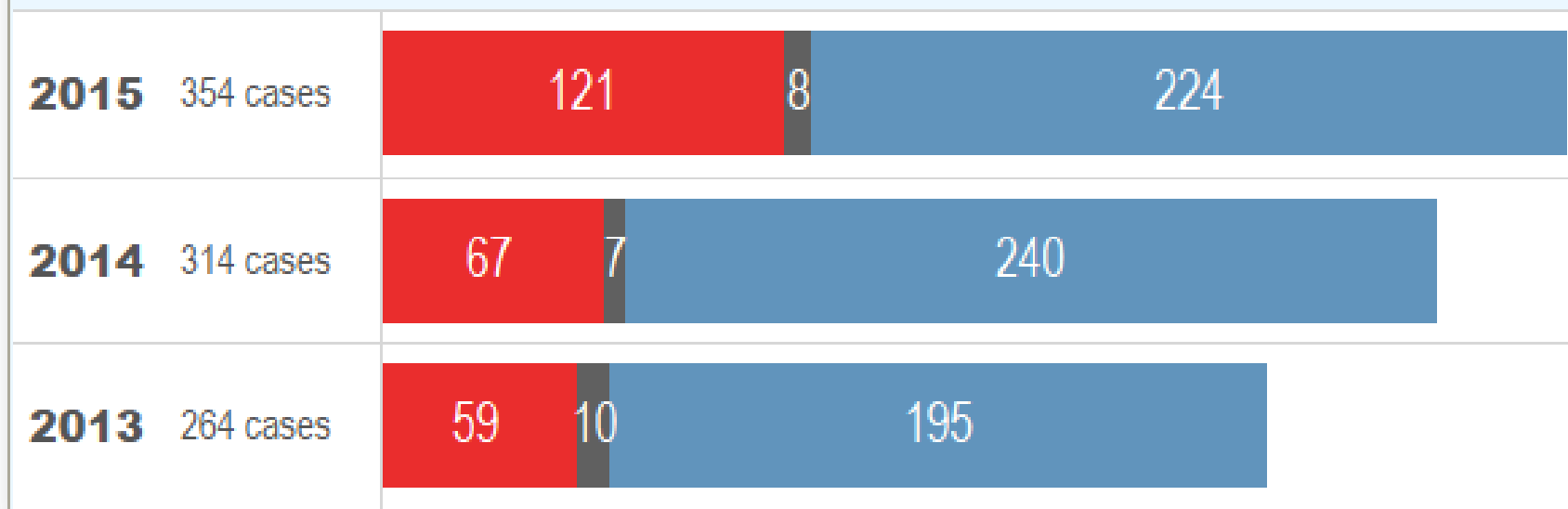
Appeals

Federal Circuit Grapples With PTAB Crush

The Federal Circuit issued 13 percent more opinions on patent disputes in 2015, an increase driven by a striking 80 percent rise in rulings on appeals from the relatively new Patent Trial and Appeal Board.

Venue of origination

- District Court
- ITC
- PTAB

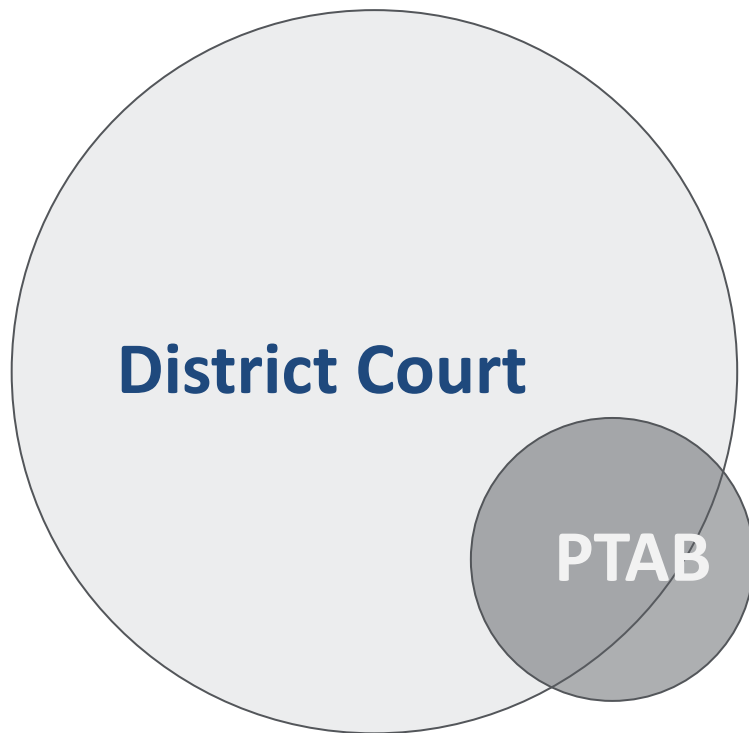


Federal Circuit has affirmed PTAB 88% of the time

Source: Law 360

Litigation

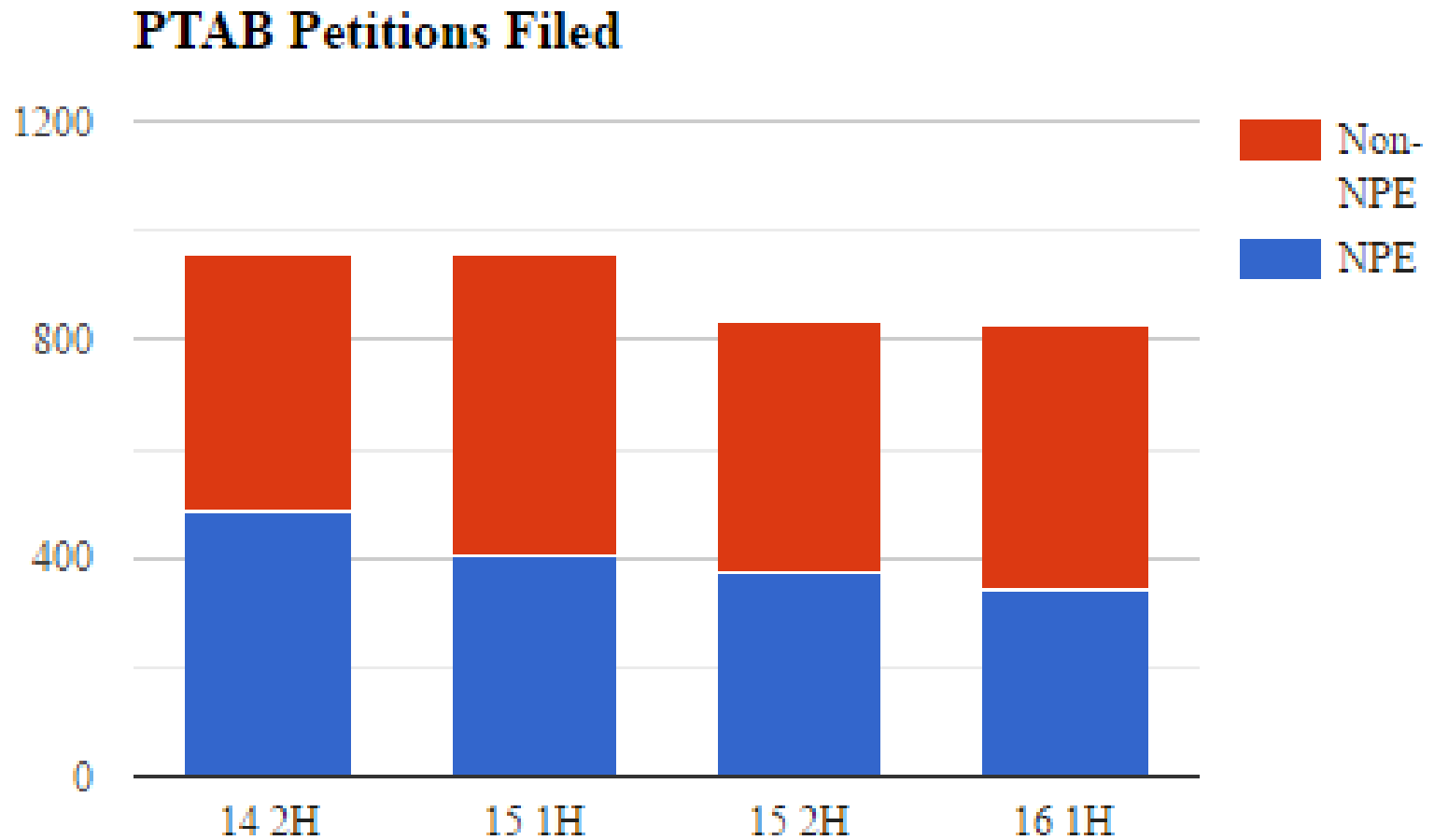
Overlap (Unique) Patents



- District Court
 - ~13,000 unique patents asserted (2012-14)
 - 12% were challenged at the PTAB
- PTAB
 - ~2,000 unique patents challenged
 - 79% were asserted in district court

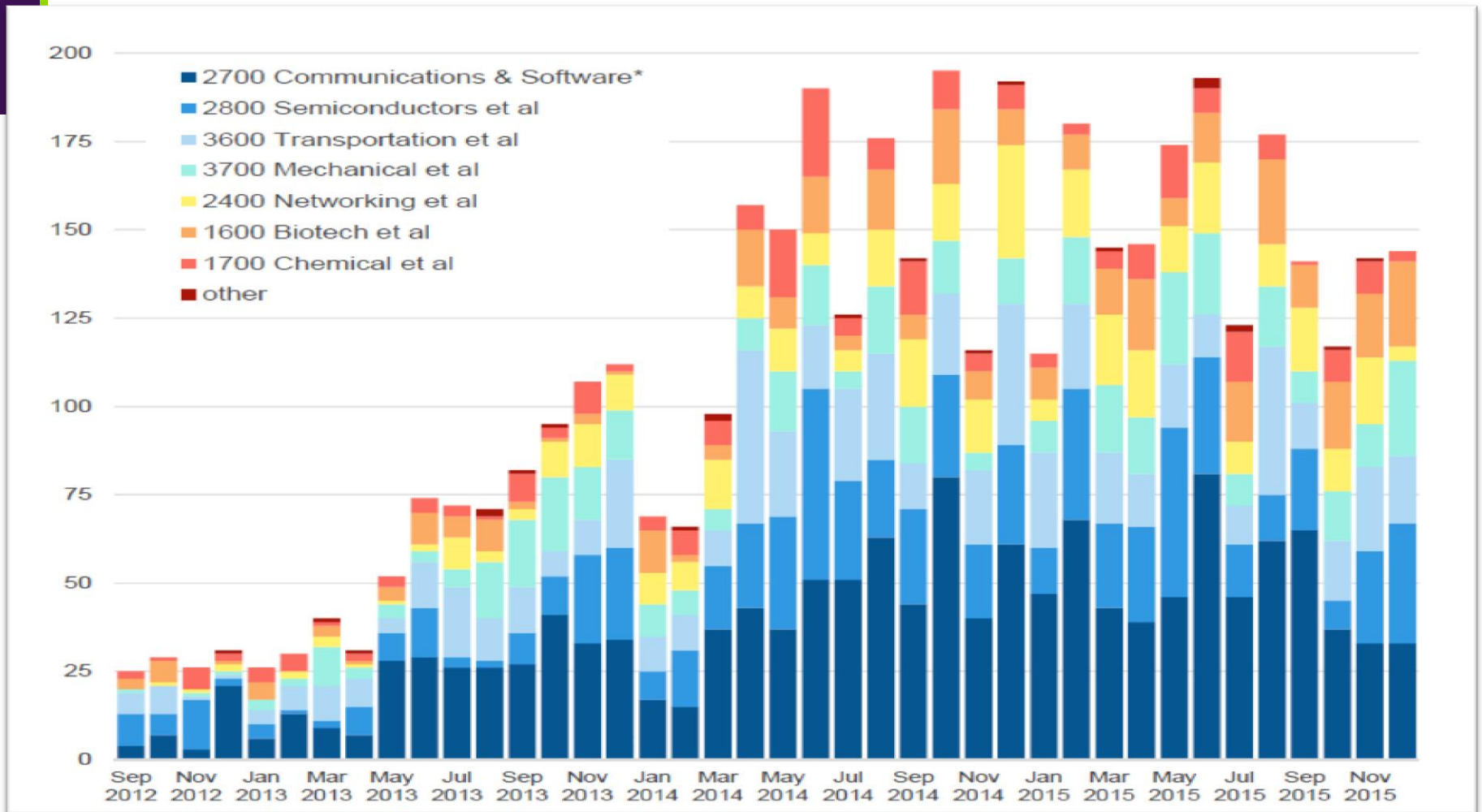
Source: Unified Patents

Petitions by NPE Status



Source: Unified Patents

Petitions by Tech Class



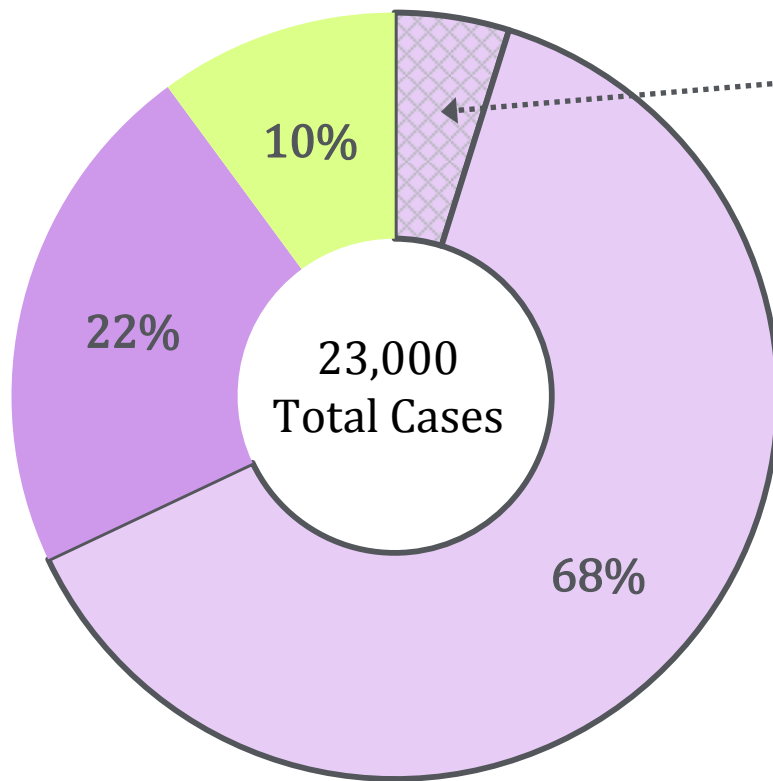
Source: Docket Navigator

Litigation: Stays Pending IPR (1/2014 - 6/2016)

	Num.	Grant	Deny	Partial	Other
E.D. Tex.	88	46 (52.3%)	36 (40.9%)	4 (4.5%)	2 (2.3%)
D. Del.	95	59 (62.1)	28 (29.5)	5 (5.3)	3 (3.1)
C.D. Cal.	53	29 (54.7)	15 (28.3)	4 (7.5)	5 (9.4)
N.D. Cal.	112	68 (60.7)	23 (20.5)	15 (13.4)	6 (5.3)
All Except E.D. Tex.	724	437 (60.3)	185 (25.5)	56 (7.7)	46 (6.3)
Total	812	483 (59.5)	221 (27.2)	60 (7.4)	48 (5.9)

Source: Love & Yoon, 2016

Litigation: Impact on Settlement

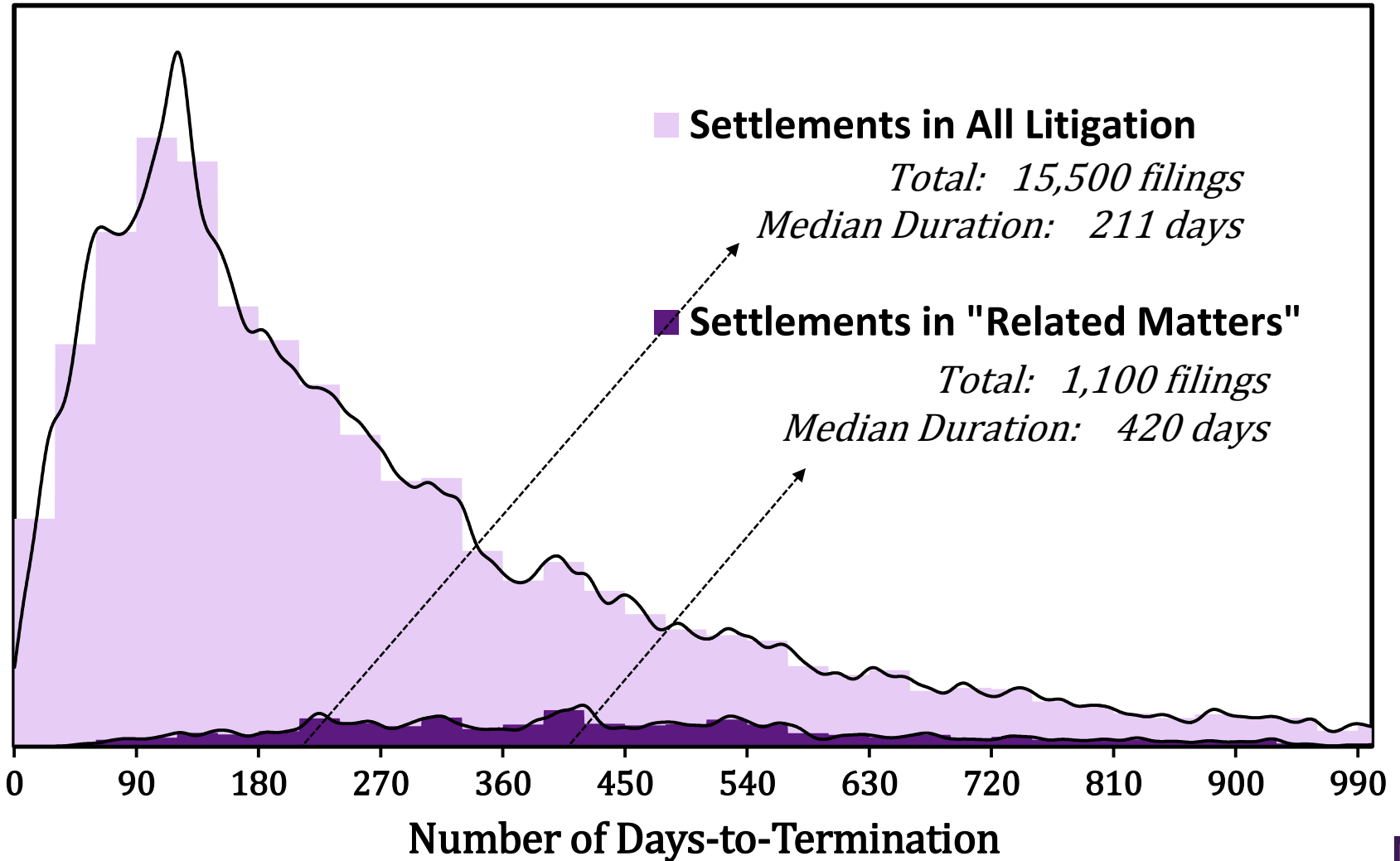


Of settled district court cases, about **7%** or **1100** of them were identified as pending “**related matters**” in at least one PTAB challenge.

- Settled
- Otherwise Terminated
- Pending

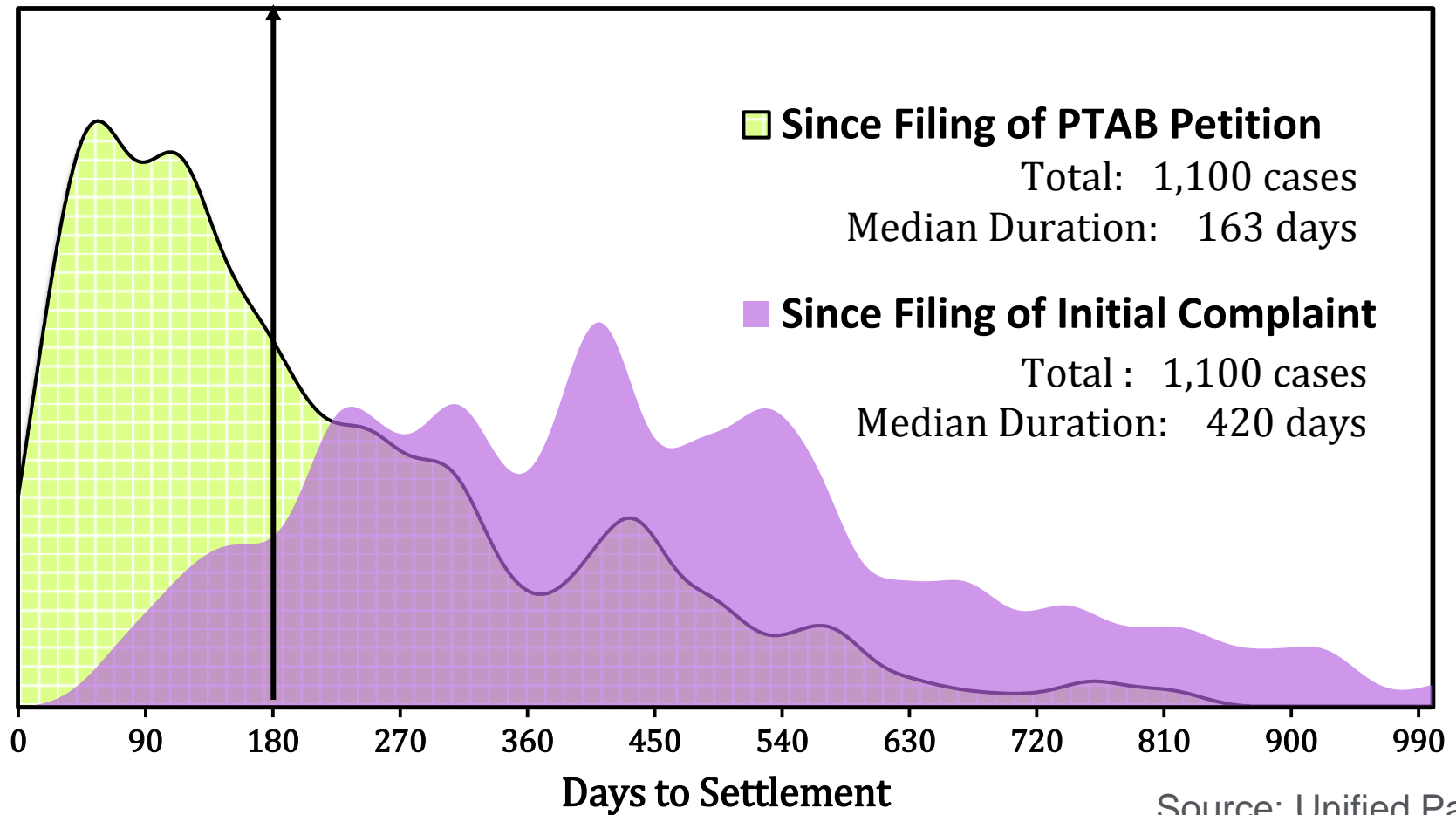
Source: Unified Patents

Litigation: Impact on Settlement



Litigation: Impact on Settlement

Institution Dec
by 6 Months



Source: Unified Patents