Interplay between the PTAB and U.S. District Courts

- Stays of litigation
- Plain and ordinary meaning vs Broadest Reasonable Interpretation
  - Supreme Court to review BRI standard at the PTAB
- Background and experience of district judges and PTAB judges
  - Law Clerks, Special Masters, and Experts
  - No scientifically-reliable analysis, but likely less than 5% of district judges are technically trained, therefore not technically biased
  - PTAB judges have technical backgrounds and many have advanced degrees, including doctorates, in engineering, chemistry, biology, etc.
PATENT TRIAL AND APPEAL BOARD STATISTICS

12/31/2015
Disposed of IPR Petitions Completed to Date*

Narrative:
This graph shows a stepping stone visual depicting the outcomes for all IPR petitions filed to-date that have reached a final disposition.

*Data current as of: 12/31/2015
13 Patent Pilot Courts

- Eastern District of New York
- Southern District of New York
- Western District of Pennsylvania
- District of New Jersey
- District of Maryland
- Northern District of Illinois
- District of Nevada
- Eastern District of Texas
- Northern District of Texas
- Western District of Tennessee
- Central District of California
- Northern District of California
- Southern District of California
- *Southern District of Florida withdrew

- Interested Judges
- Jury Trial Availability
Multi-district Litigation – 17 patent MDLs

- Consolidation – workload, efficiency, consistency
Significant Adjudicative Roles of District Judges

- Markman Claim Construction
  - Facts:
    - Parties disputed the meaning of “molecular weight”
    - District Court found the patent claim invalid for indefiniteness
    - Federal Circuit reversed under de novo review
  - Law:
    - Conclusions regarding factual determinations that depend on credibility are reviewed for clear error
    - Determinations regarding evidence “intrinsic to the patent” and legal issues are reviewed de novo
  - Potential for reversal at Federal Circuit
Significant Adjudicative Roles of District Judges (cont.)

- Development of § 101 Patentable Subject Matter
  - Laws of nature, natural phenomena (Association for Molecular Pathology v. Myriad Genetics, 133 S.Ct. 2107 (2013))

- Extraordinary Case Determinations

- Patent Invalidity and Unenforceability
  - Obviousness and anticipation, laches, etc.

- Mediation Referrals
U.S. System Compared to Unified Patent Court

- **Structural Differences**
  - Full time judges in both PTAB and district courts
  - No juries as adjudicators
  - Not the formal mediation/arbitration system of the UPC
  - Generalist judges in the district courts and competing priorities