




U.S. DISTRICT COURT PERSPECTIVE
ON PATENT ADJUDICATION

BARBARA M.G. LYNN

United States District Judge

Northern District of Texas

January 29, 2016



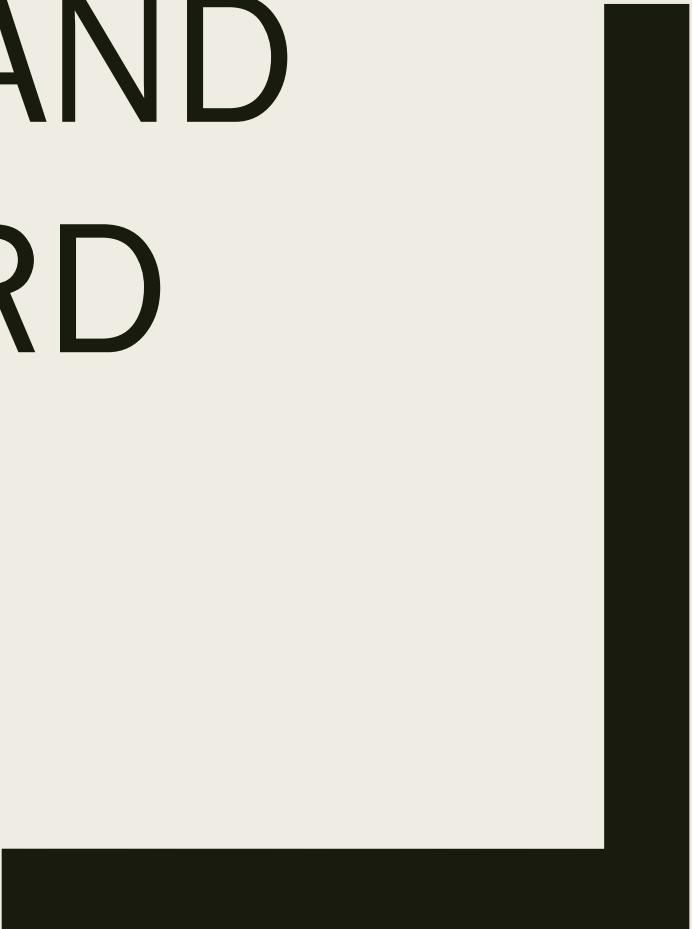
Interplay between the PTAB and U.S. District Courts

- 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.*

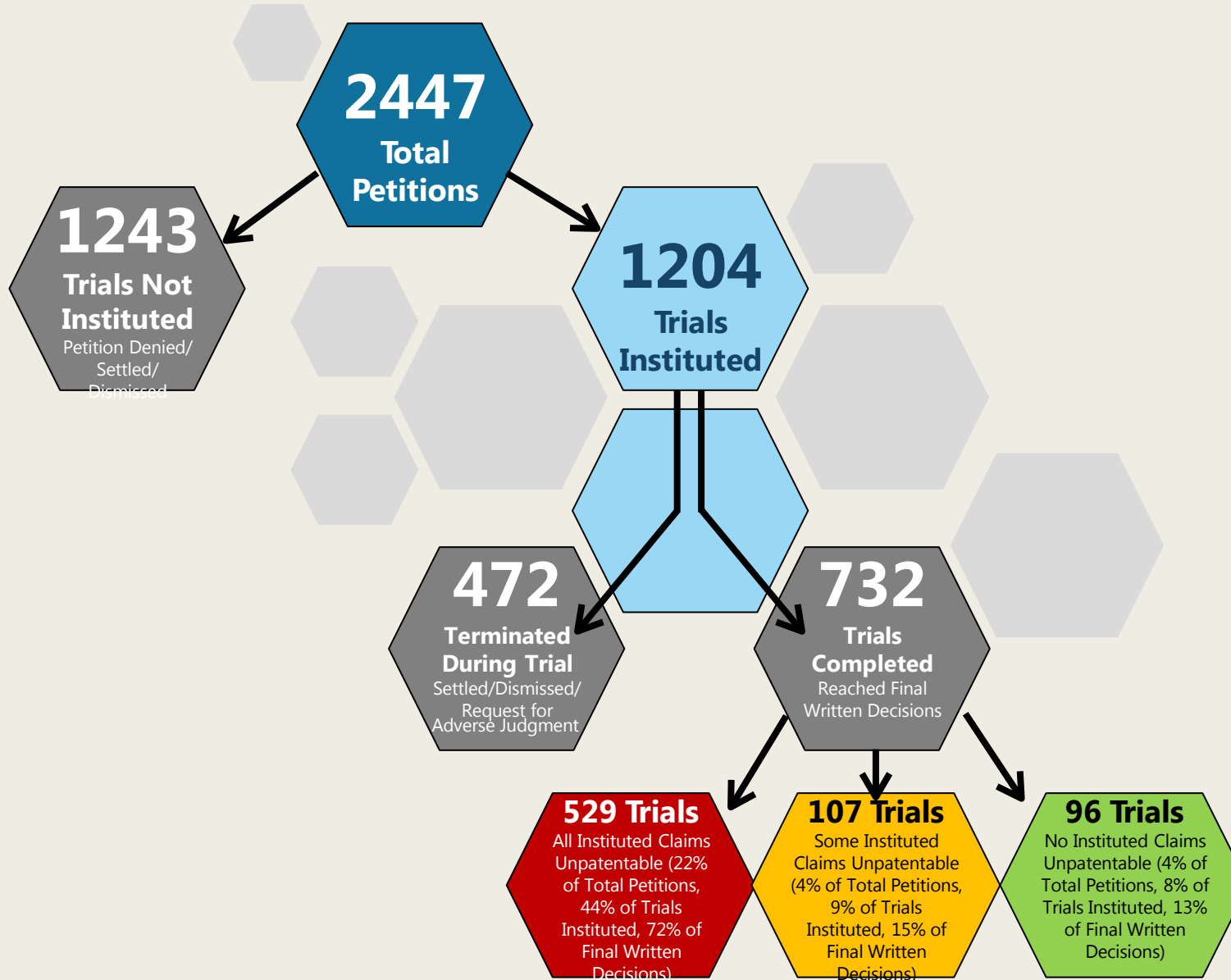


PATENT TRIAL AND APPEAL BOARD STATISTICS

12/31/2015



Disposition of IPR Petitions Completed to Date*



Narrative:

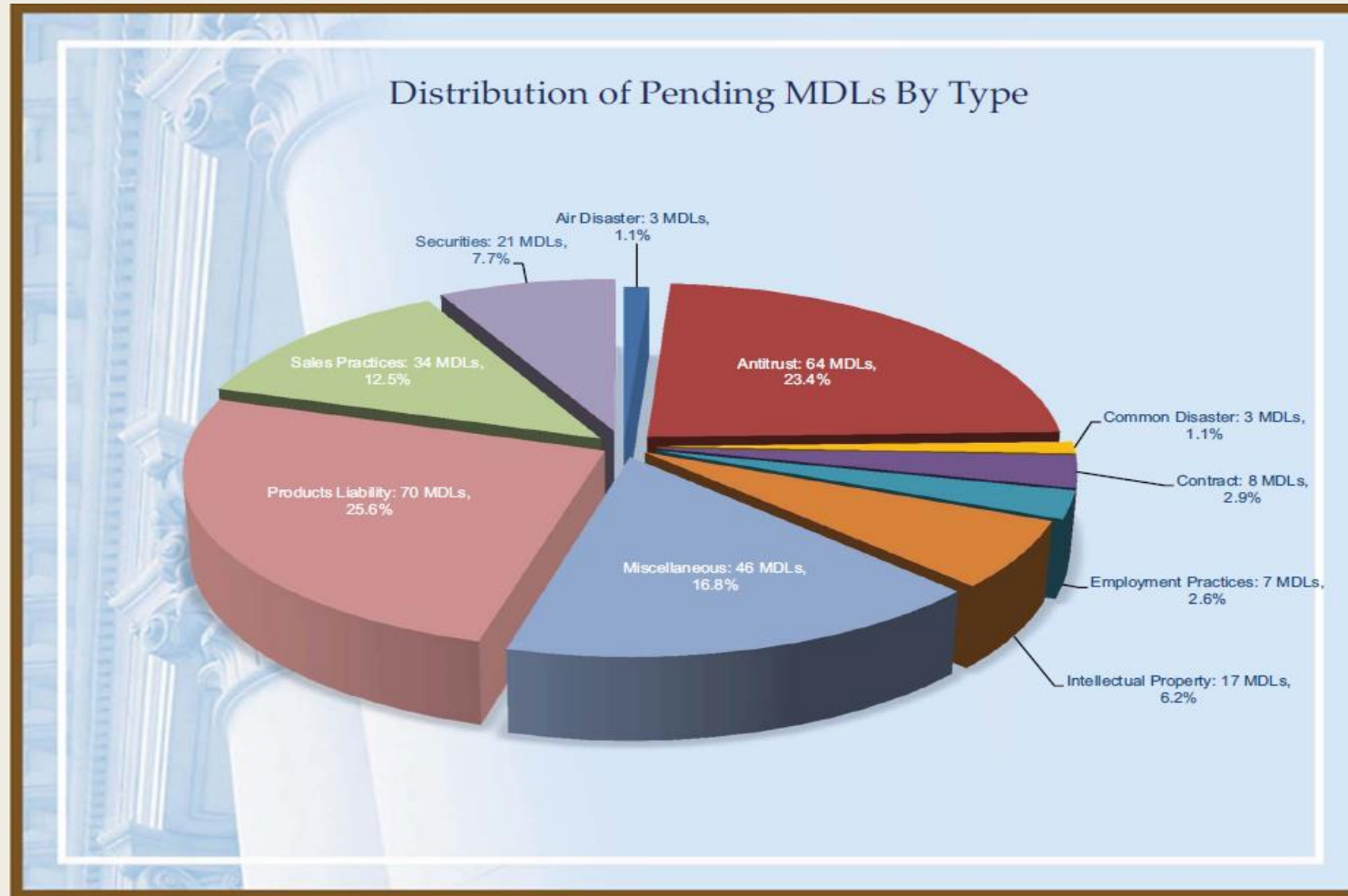
This graph shows a stepping stone visual depicting the outcomes for all IPR petitions filed to-date that have reached a final disposition.

*Data current as of: 12/31/2015

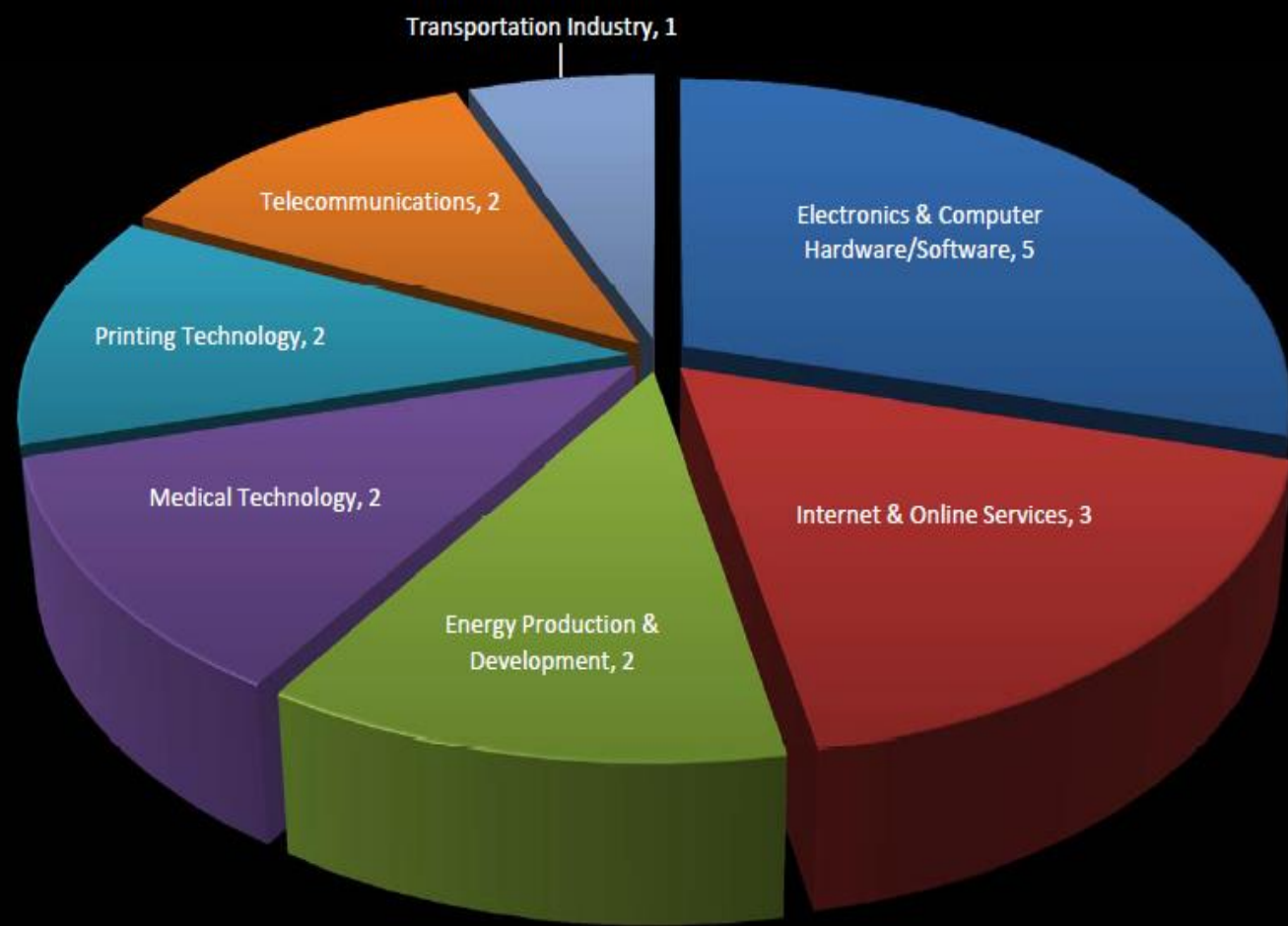
13 Patent Pilot Courts

- 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



Pending Patent MDLs by Subject Matter

Significant Adjudicative Roles of District Judges

- *Markman* Claim Construction

- *Teva Pharmaceuticals USA v. Sandoz*, 135 S. Ct. 831 (2014)

- 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
 - Defining “inventive concept” Post-*Alice Corp. v. CLS Bank International*, 134 S.Ct. 2347 (2014)
 - 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*