

Washington State Patent Law Association

November 20th, 2014

Update on Patents and Trials



John Cabeca

Director of the Silicon Valley USPTO

United States Patent and Trademark Office

John.Cabeca@uspto.gov



UPSTO Update on Patents and Trials

Agenda



- Satellite Offices
- End of FY 2014
- Prosecution Initiatives
- Administrative Trials





Establishing a Regional Presence

SATELLITE OFFICES



The USPTO Satellite Offices

Establishing A Regional Presence

OVERVIEW:

- Background
- Update on Establishing Permanent Offices
- Services Offered Regionally
- Regional Outreach and Education Programs



USPTO Offices





The Silicon Valley USPTO

City Hall, San Jose, California

Opening in Spring 2015





Satellite Offices will provide:

- **Walk-in services** to obtain information about the USPTO
- **Workstations for searching** patents and trademarks
- **A regional focus** for workshops, just-in-time training, conferences and roundtables (at all levels)
- **A hearing room** to host Patent Trial and Appeal Board (PTAB) proceedings and remote access to hearings taking place in Alexandria or at another satellite office
- **Interview rooms** to connect applicants to patent examiners working in Alexandria and across the country
- **Remote Training Capability** from local experts to patent examiners around the country
- **Office hours** for strategic partners like Small Business Development Centers and the Export Assistance Center



Regional Focus for Workshops

- For All Levels – From K-12 to IP professionals
 - From basic facts to updates on law and procedure
- Stakeholder roundtables
 - Quality Roundtables
 - First Inventor to File Roadshows
- Inventor conferences and Startup Programs
- Tech Specific Partnership Meetings
 - CyberTech – November 2014 in Silicon Valley
- International programs
 - IP Attaché Program – on both coasts in December
- 1 on 1 assistance
- Co-host programs with strategic community partners



Fiscal Year 2014 in Review

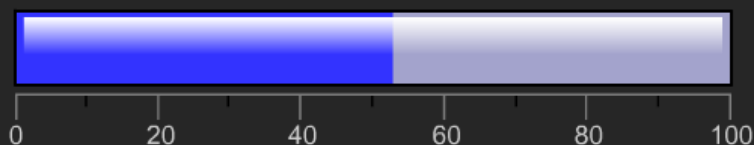
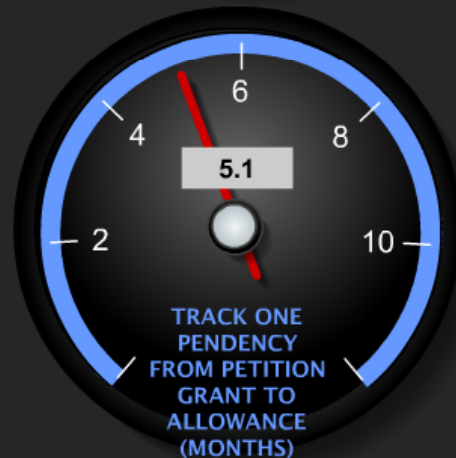
PATENT PERFORMANCE



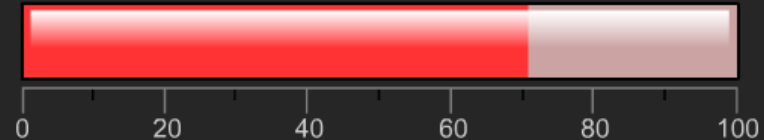
Data Visualization Center

September 30th, 2014

Your window to the USPTO
Patents Dashboard



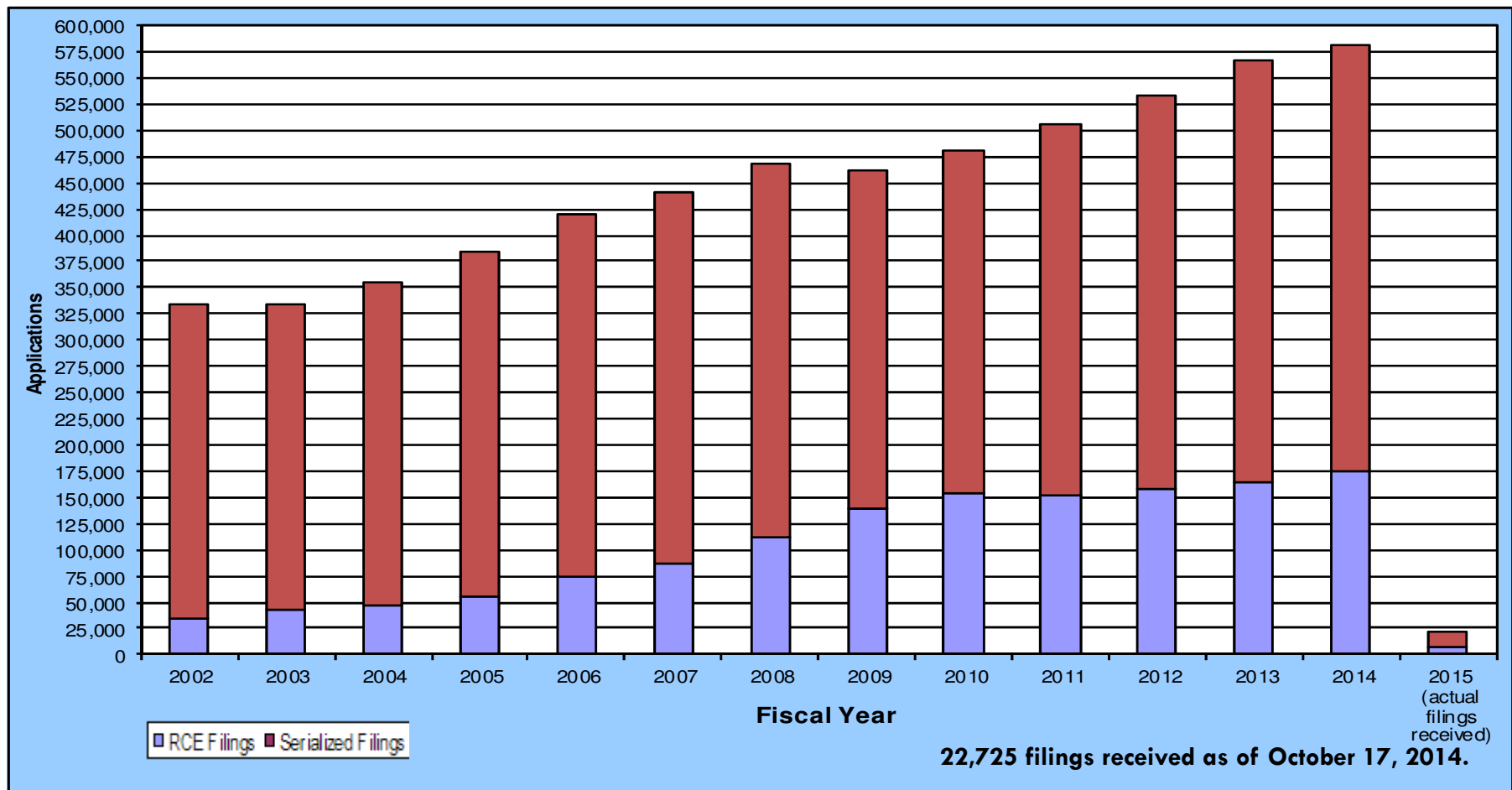
UPR allowance rate, including RCEs = 52.8%



UPR allowance rate, without RCEs = 70.7%



Total Serialized and RCE Filings FY 2002 – FY 2015 (through October 17)

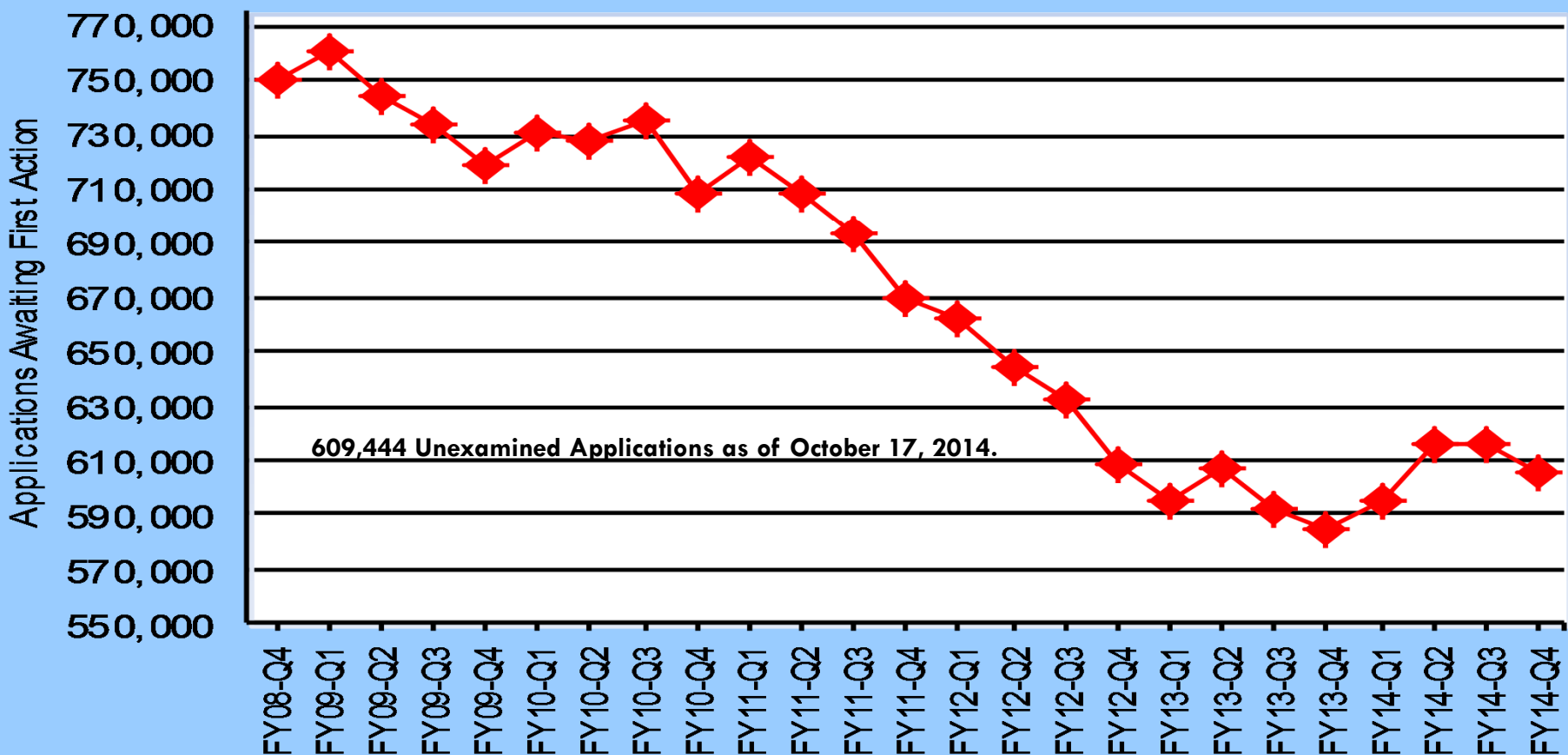


FY 2015 total UPR filing growth rate is projected to be 3% over FY 2014.

The preliminary FY 2014 total UPR filing growth rate is currently 2.8% (582,114 applications).



Unexamined Patent Application Backlog FY 2009 – FY 2015 (through October 17)

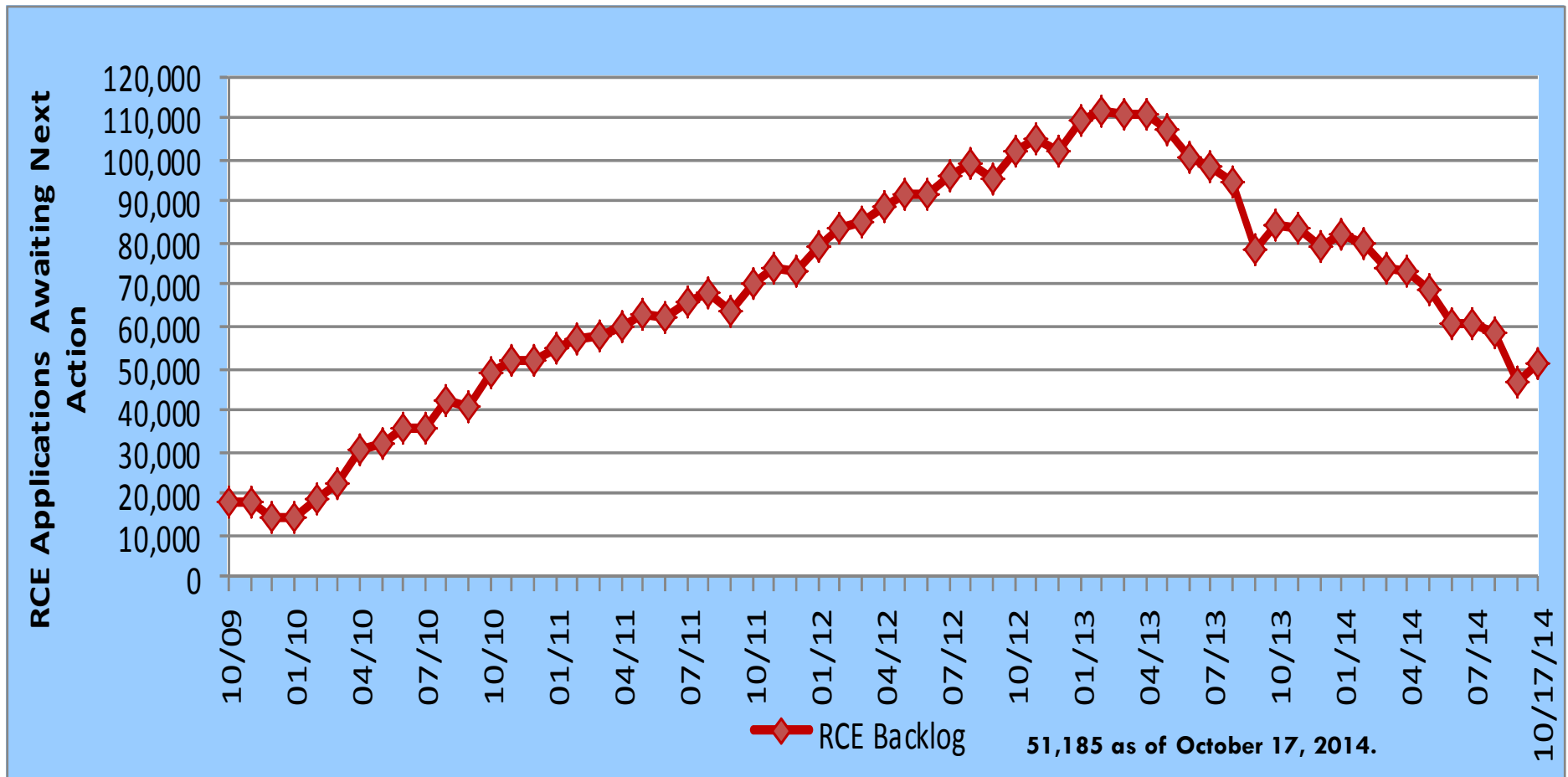


FY 2014 Result: 605,646.



RCE Backlog

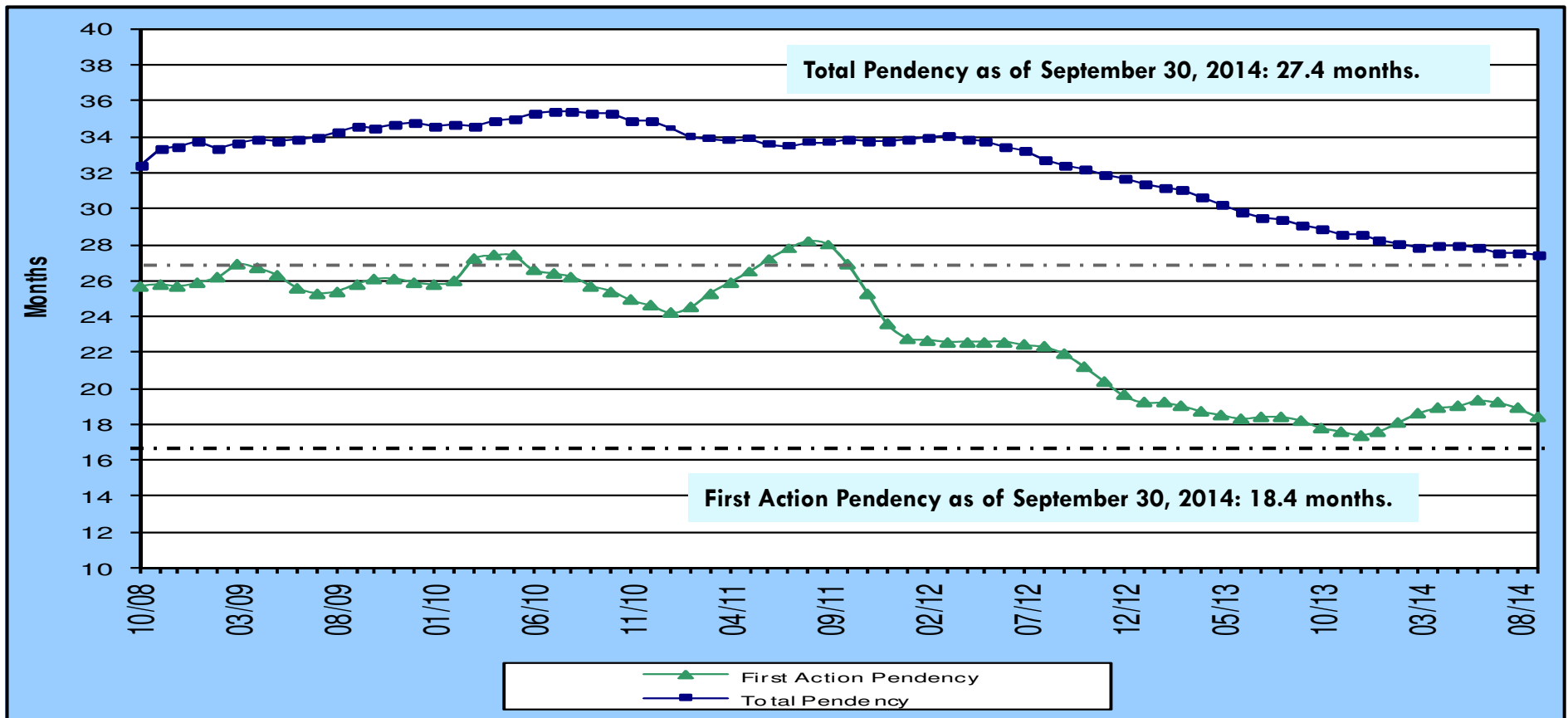
FY 2010 – FY 2015 (through 10/17/14)



FY 2014 result: 46,441.



First Action Pendency and Total Pendency FY 2009 – FY 2014



--- Average Total Pendency FY 2014 Target (2015 President's Budget): 26.7 months

--- Average First Action Pendency FY 2014 Target (2015 President's Budget): 17.4 months

CPC training/transition time and the change to the RCE count scheme will effect the decrease in First Action pendency in FY 2014

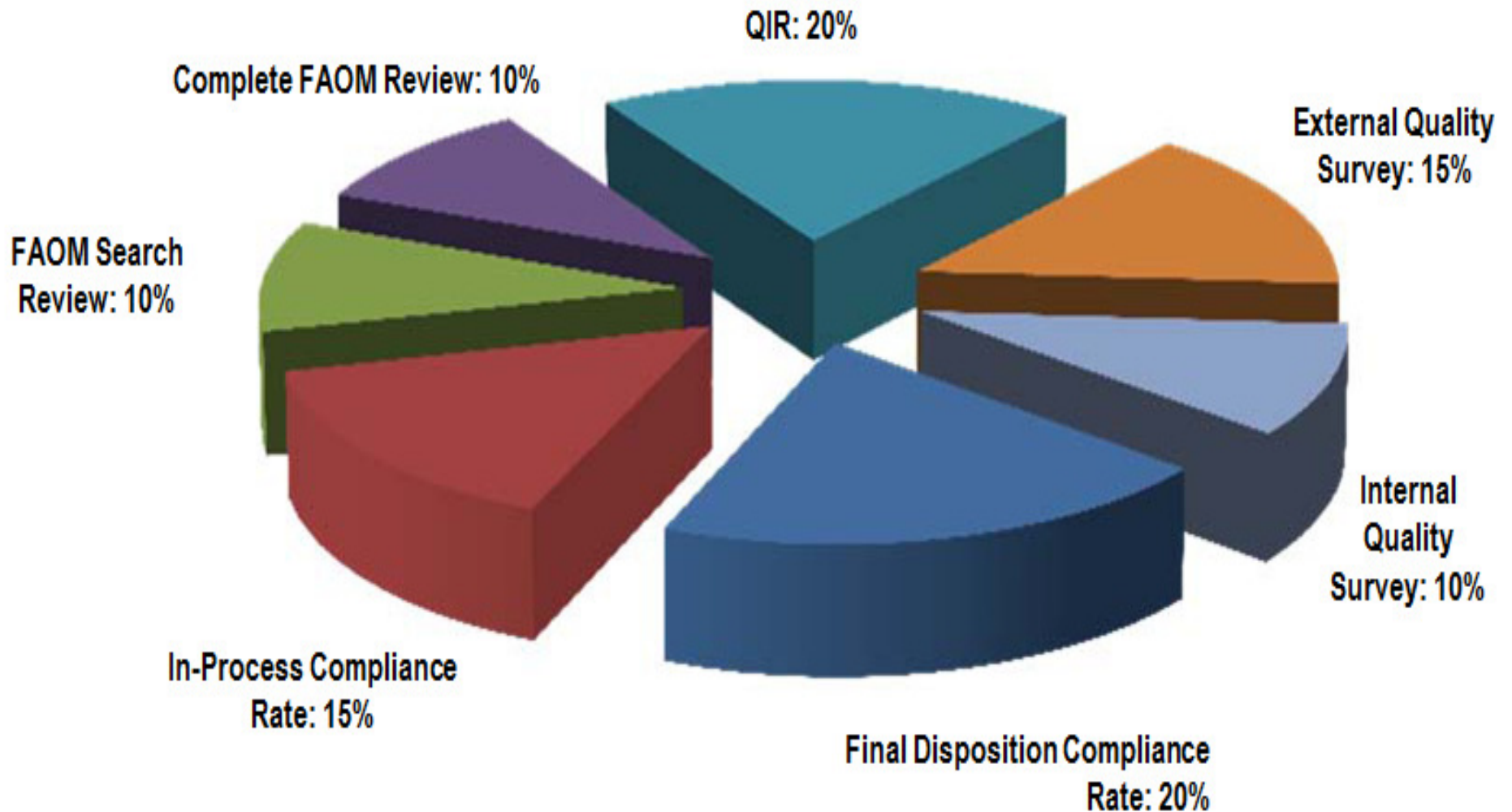


United States Patent and Trademark Office

QUALITY AND TRAINING



Quality Components



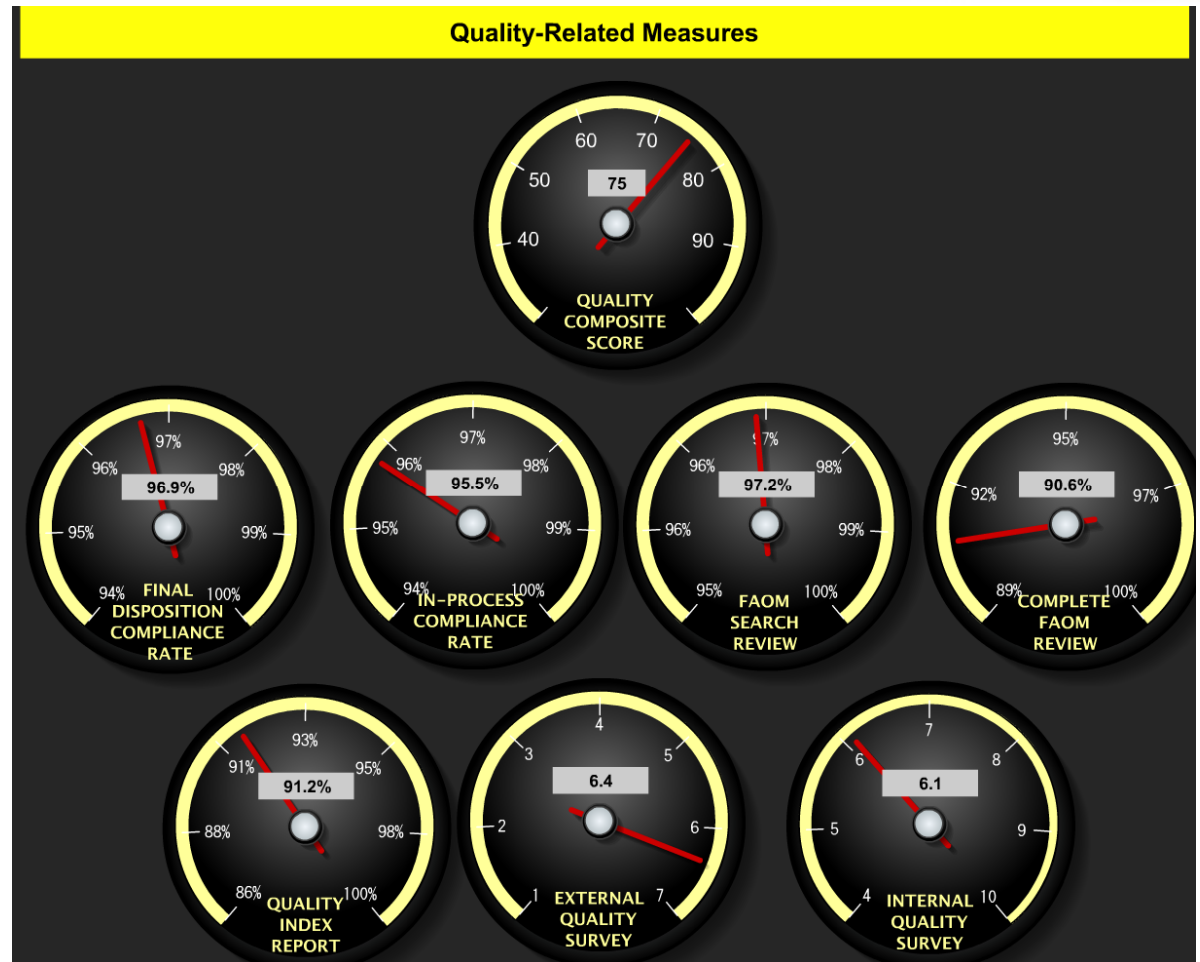


Reporting Quality Measures

The **USPTO Dashboard** shows updated Quality Composite Score and component information

<http://www.uspto.gov/dashboards/patents/main.dashxml>

FY 14 Goal: 83-91%





Training

Examination Guidance and Training Materials

America Invents Act

First Inventor To File (FITF)

- [First-Inventor-to-File Training Plan for USPTO Examiners](#) [PDF]
- [First-Inventor-to-File Statutory Framework Chart](#) [PDF]
- Overview CBT (March 2013) (46 min) [Video](#) | [Slides](#) [PDF]
- Overview Follow-On Video (March 2013) (27 min) [Video](#) | [Slides](#) [PDF]
- FITF Definitions (June 2013) (14 min) [Video](#) | [Slides](#) [PDF] / [Handout](#) [PDF]
- Comprehensive Examiner Training Slides (Summer 2013) [Video](#) | [Slides](#) [PDF]
- AIA FITF Indicator Training (Fall 2013) [Video](#)

non-FITF AIA Regulations

- [non-FITF Regulations Training](#) (Summer 2013) [PDF]

35 U.S.C. 112

35 USC 112(f) – “Means-plus-function” limitations

- 35 USC 112(f): Broadest Reasonable Interpretation and Definiteness of § 112(f) Limitations
 - [Computer Based Training](#) [CBT] [posted May 5, 2014]
 - [PowerPoint of the CBT](#) [PPT] [posted May 5, 2014]
- 35 USC 112(f): Evaluating § 112(f) Limitations in Software-Related Claims for Definiteness under 35 USC 112(b)
 - [Computer Based Training](#) [CBT] [posted June 20, 2014]
 - [PowerPoint of the CBT](#) [PPT] [posted June 5, 2014]
- 35 USC 112(f): Identifying Limitations That Invoke 112(f)
 - [Computer Based Training](#) [CBT] [posted August 2, 2013]
 - [PowerPoint of the CBT](#) [PPT] [posted August 2, 2013]
 - [Handout](#) [PDF] [posted August 2, 2013]
- 35 USC 112(f): Making the Record Clear
 - [Computer Based Training](#) [CBT] [posted August 2, 2013]
 - [PowerPoint of the CBT](#) [PPT] [posted August 2, 2013]
 - [Handout](#) [PDF] [posted August 2, 2013]

The public is invited to submit comments on the training to: TrainingComments112f@uspto.gov

Supplemental, ¶1, ¶2, ¶4, ¶6

- [Supplementary Examination Guidelines for Determining Compliance With 35 U.S.C. 112 and for Treatment of Related Issues in Patent Applications](#) (signed January 21, 2011)
- [35 U.S.C. § 112 Supplementary Examination Guidelines](#) [PPT] (slide set prepared from guidelines)



Patent Examiner Training

How Stakeholders Can Help:

Patent Examiner Technical Training Program (PETTP):

- Share your expertise with Patent Examiners
 - Lecture on state of the art, emerging trends & new developments in focused technology areas
- Satellite offices will support guest lecturers

Site Experience Education (SEE) Program:

- Patent Examiners visiting with industries
- Gain first-hand experience and SEE how technology operates in the field



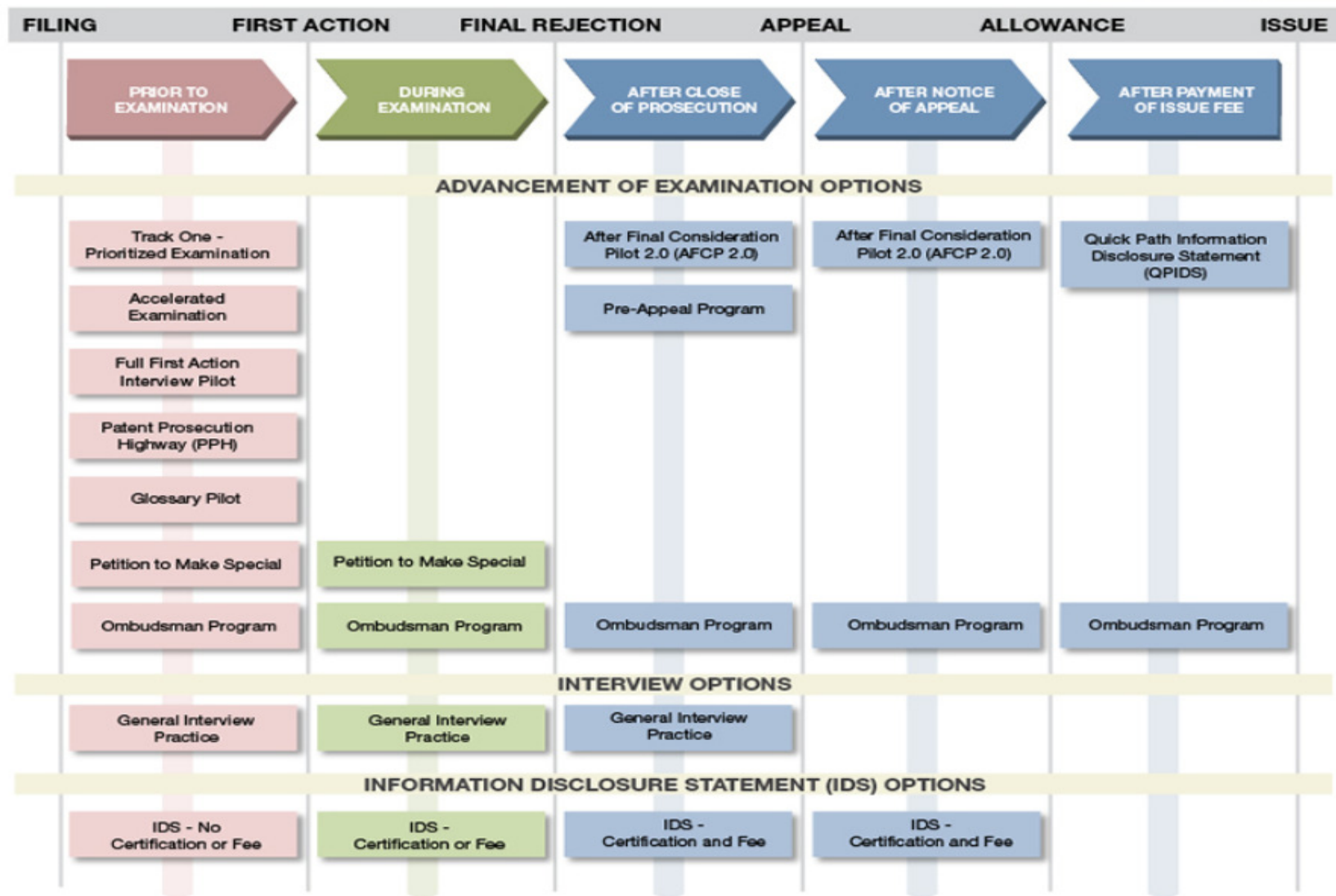
Options for Applicants

PATENT PROSECUTION INITIATIVES



Patent Application Initiatives Timeline

http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp





Patent Application Initiatives

http://www.uspto.gov/patents/init_events/patapp-initiatives-timeline.jsp

	<u>Track One (Prioritized Examination)</u>	<u>Accelerated Examination</u>	<u>Full First Action Interview Pilot</u>	<u>Glossary Pilot</u>	<u>Ombudsman Program</u>
Description	The goal is to provide a final disposition within twelve months, on average, of prioritized status being granted. Learn about Track One statistics .	Accelerated examination provides applicant the opportunity to have final disposition of an application in 12 months. Learn about Accelerated Examination statistics	Under this Program, an applicant is entitled to a first action interview, upon request, prior to the first Office action on the merits.	Focus on enhancing claim clarity in the specification of software-related applications through the use of glossaries.	The Patents Ombudsman Program enhances the USPTO's ability assist applicants or their representatives with issues that arise during patent application prosecution.
Program Start Date	09/2011 (AIA)	08/2006	10/2009	06/02/2014	04/2010
Currently Active (accepting applications)	Yes	Yes	Yes, extended beyond 11/16/12	Yes (as of 06/02/14)	Yes
Petition / Request	Request	Petition	Request	Petition	Request
Surcharge / Fee	Yes - \$4800 / \$2400 small entity; \$4000/ \$2000 as of 3/10/12	Yes - \$130 ***	No	No	No



Track One Filings

(through October 17)

Petitions Received	October	November	December	January	February	March	April	May	June	July	August	September	Total
FY 11												855	855
FY 12	390	302	285	292	371	442	457	516	436	470	517	559	5,037
FY 13	505	513	575	504	468	1,029	400	508	530	584	642	636	6,894
FY 14	715	570	732	650	629	1,028	822	803	795	796	673	911	9,124
FY 15	347												347



Percent of Small and Micro Entity Applications	*Number of Micro Entity Applications	Track One Requests Filed After an RCE
51.3%	850	1,628

*Micro entity status was implemented March 19, 2013

trackone
PRIORITIZED EXAMINATION



Need to FAST track your patent? Use Track One!



Patent Prosecution Highway

Global PPH Pilot



Principles of Global PPH:

- Retains PPH benefits and fast-track of applications (MOTTAINAI & PPH 2.0)
- Streamlines process:
 - A single set of requirements – simplified filing
 - A single USPTO program (no more PPH or PCT-PPH)
 - A single approach to determining earliest effective date
- 19 Offices participating in Global PPH, including USPTO
 - IP5 PPH: EPO and China only with other IP5 Offices
- Pilot Start date: January 6, 2014





Glossary Initiative
definition • technology disclosure • claim clarity
language • understanding functional terms

Glossary Pilot Program

A NEW STRATEGY FOR IMPROVING CLAIM CLARITY USING GLOSSARIES

Still Accepting Applications!



Patent Glossary Pilot

- Eligible Applications must fall in technologies under Technology Center 2100, 2400, 2600 or 3600 (Business Methods area only)
- Accepted applications will receive special status up to the FAOM
- Pilot started on June 2, 2014
 - Ends after 6 months or 200 applications

Glossary Initiative



http://www.uspto.gov/patents/init_events/glossary_initiative.jsp



AFCP 2.0

After Final Consideration Pilot 2.0 (AFCP 2.0)

What if...



Issued

Pilot
extended through
Sept. 30, 2015



After Final Consideration Pilot (AFCP 2.0)

- Gives Examiners additional time to search and consider amendments after final rejection and interview with applicant to discuss results
 - Over 61,000 requests since May 2013
 - Interview is 3 times more likely in an application with an AFCP 2.0 request when compared to applications without an AFCP 2.0 request
 - Non-pilot cases are 3 times more likely to result in the filing of an appeal brief
- Pilot extended until September 30, 2015
 - Further evaluation and surveys underway



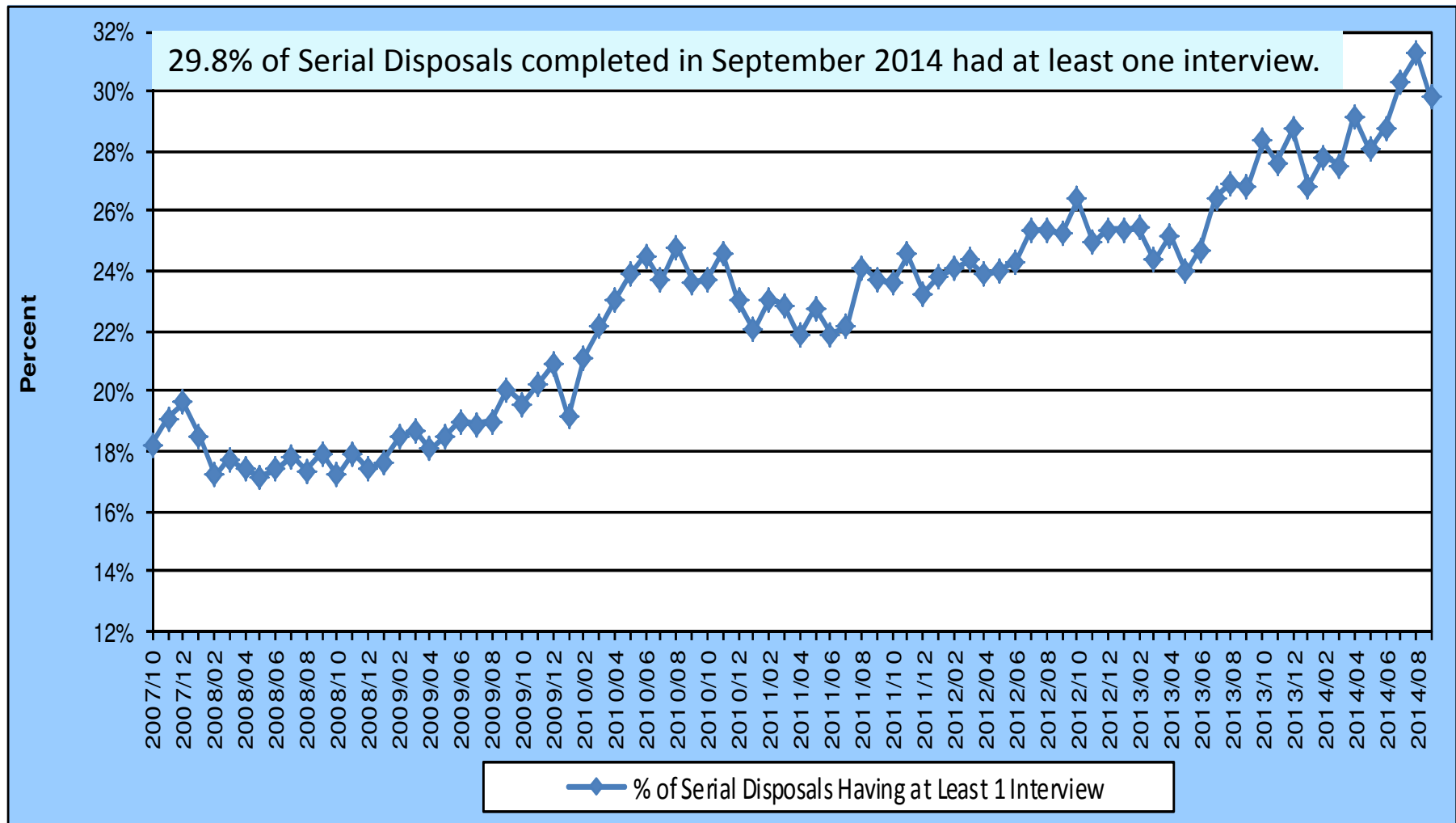
Quick Path Information Disclosure Statement (QPIDS)

- Offers consideration of IDS after payment of Issue Fee
- Eliminates need to file RCE when IDS does not necessitate reopening prosecution
- Pilot extended until September 30, 2015
 - ~ 4,300 filed through September 30, 2014
 - ~ 3,200 RCE's avoided out of the ~3,700 cases completed

QPIDS	FY 12	FY 13	FY 14	Total
Total Number filed	498	1,373	2,449	4,320
Total QPIDS completed process	327	1,171	2,241	3,739
• # Corrected NOAs mailed	280	997	1,934	3,211
• Total # of RCEs processed	47	172	307	526



Percent of Serial Disposals Having at Least One Interview by Month (FY 2008 – FY 2014)





Update on AIA Trials
Ex Parte Appeal Backlog
Judge Hiring

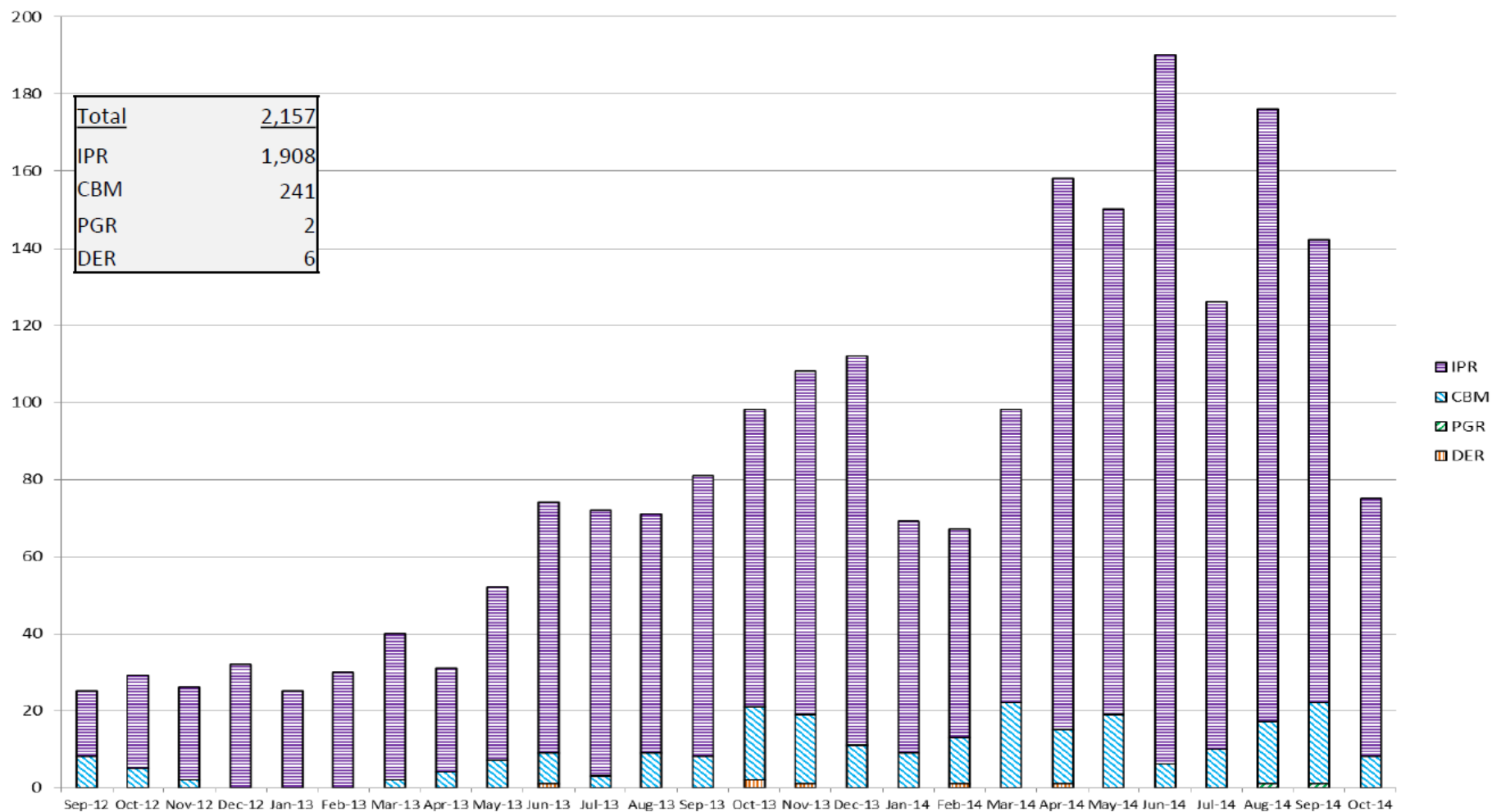
PATENT TRIAL AND APPEAL BOARD



AIA Trial Progress (as of October 16, 2014)



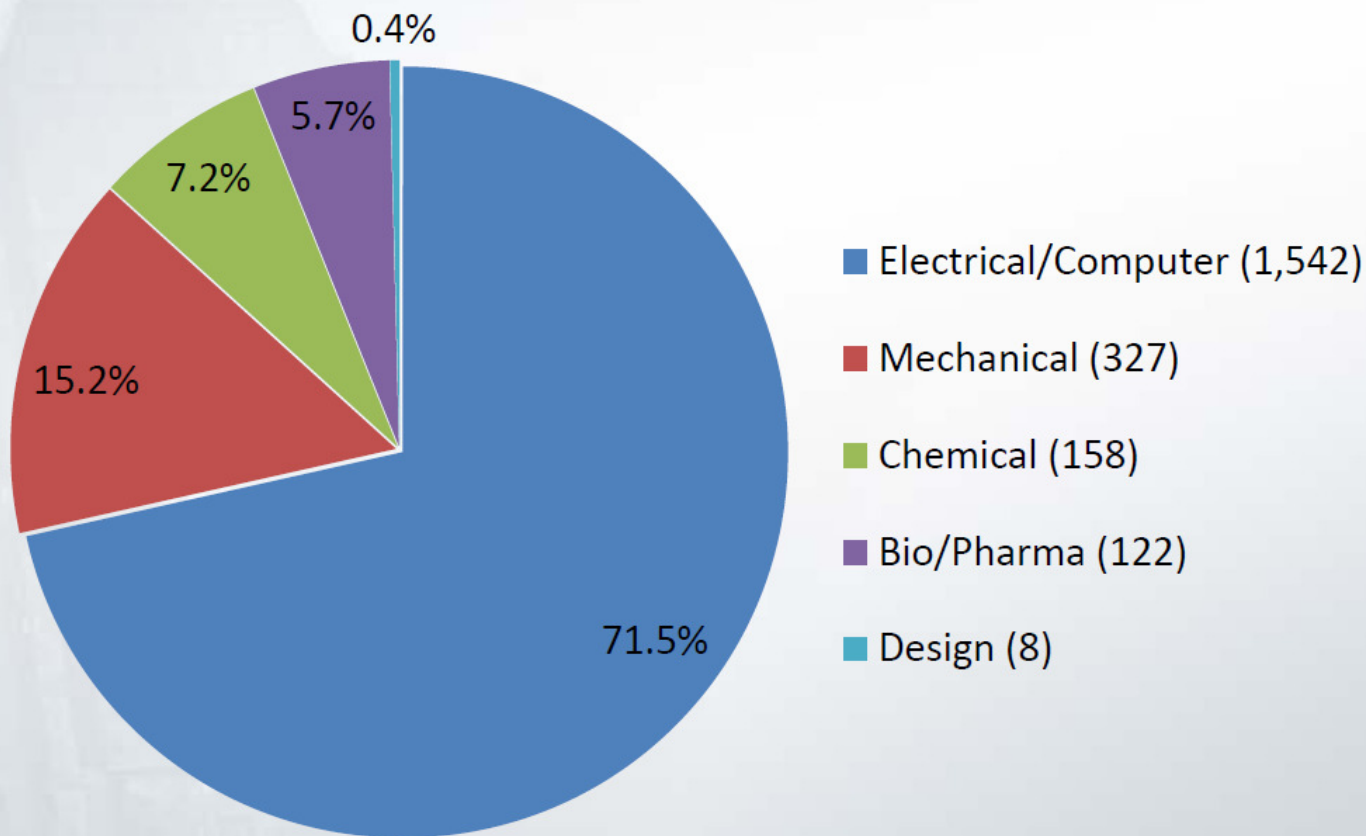
AIA Monthly Filings





AIA Trial Progress (as of October 16, 2014)

AIA Petition Technology Breakdown





AIA Trial Progress (as of October 16, 2014)

AIA Petition Dispositions

		Trials Instituted	Joinders	Percent Instituted	Denials	Total No. of Decisions on Institution
IPR	FY13	167	10 ⁺	87%	26	203
	FY14	557	15 ⁺	75%	193	765
	FY15	46	18 ⁺	86%	10	74
CBM	FY13	14	-	82%	3	17
	FY14	91	1 ⁺	75%	30	122
	FY15	4	-	80%	1	5
DER	FY14	-	-	0%	3	3



AIA Trial Progress (as of October 16, 2014)



AIA Final Dispositions

		Settlements	Adverse Judgments	Final Written Decisions
IPR	FY13	38	2	0
	FY14	210	39	130
	FY15	3	1	11
CBM	FY13	3	0	1
	FY14	27	3	13
	FY15	4	-	2



Inter Partes Review Petitions Terminated to Date

(As of 9/4/2014)

11,046 Claims in 348 Petitions

5,045 Claims Challenged
(348 Petitions)

6,001 Claims Not Challenged

3,344 Claims Instituted
(66% of Claims Challenged)
(237 Petitions)

**1,701 Claims
Challenged
but Not
Instituted**
(34% of Claims
Challenged)

**999 Claims Found
Unpatentable**
(30% of Claims Instituted,
20% of Claims Challenged)
(91 Petitions)

606 Claims Cancelled or Disclaimed (Non-PTAB)
(18% of Claims Instituted, 12% of Claims Challenged)

1,739 Claims Patentable
(52% of Claims Instituted, 34% of Claims Challenged)



PTAB Hiring

- About **220** PTAB judges on board!
- 20 judges already on board in the Silicon Valley Office - more on the way!
- Hiring for new judges continues!
 - In Alexandria and the Satellite Offices



THANK YOU!

John.Cabeca@uspto.gov

SiliconValley@uspto.gov

THE UNITED STATES PATENT AND TRADEMARK OFFICE