



Funding and Protecting Your Innovation (Making sense of changes in federal landscape)

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Changes Universal to Federal Govt.

- Offer of “Fork in the Road”
- VERA/VISP
- 5 Bullet point emails
- Contract spend (DOGE instituted)
- Return to Office
- OPM Rules
 - Performance on a Curve
 - PIP Time Frame
 - Performance Agreement Changes
 - New Reduction in Force procedures

Changes to Funding Programs – FedGov Wide

- Budgetary and Congressional appropriations process
- FedGov announcements and talking points re
 - March in rights
 - Return on investment
 - Ownership stakes in companies
- EDA Funding
 - All amounts over \$100K personally approved by the Secretary of Commerce.
- University and Grant Funding

Changes to Funding, cont.

- SBIR/STTR Funding
 - Paused 10/1/25 – no new solicitations, no new awards
 - Program reformed by S3971 (passed by the House 3/17/26, awaiting signature).
 - Funded until 2031
 - Proposal caps
 - Agencies will set limits on how many proposals a single applicants can submit per solicitation cycle
 - National Security Vetting increased
 - Foreign ownership, cybersecurity posture, patent portfolios, personnel affiliations all scrutinized against watch lists
 - Strategic Breakthrough awards
 - New Phase II mechanism up to \$30M per company but MUST have matching private funds.

Govt Stakes in Companies

- \$10B in taxpayer capital (9 companies) since October 2025
- Factors to consider:
 - Amount of stake
 - Liquidation preference
 - Pro-rata rights, non-dilution
 - Vetoes over IP licensing or hiring or board seats or mergers/acquisitions
 - Reporting requirements
 - Valuation
 - Time limits
 - Buyback provisions
 - Data issues – privacy and limitations on government access

Changes Specific to USPTO/Patents

- Significant changes over the last year to patent examining corp
 - New Recusal policy based on stock ownership
 - Removal of AFCP
 - Forced use of similarity search (pilot program)
 - SPEs are examining
 - Loss of experienced examiners and SPEs
 - New examiner performance agreement
 - Production changed – 5% more work per year to be fully successful (about 6 extra weeks of work).
 - Docket size reduction
 - CONS and DIVS pooled and only assigned to examiner docket when no “new” applications have an earlier filing date.

Changes, Patents, cont.

- Data-driven analysis to address highest levels of deviation in examination
- 25% less time for PPH applications
- All FAOMs and allowances must be reviewed by SPE
 - Recently modified
- No technical training and no other time for required training
- Fewer Legal Instrument Examiners (LIEs)
 - Less people to review for formalities and make the case easy for the examiner to examine
- 1 hour of time to interview per case
 - If interview occurred prior to 10/1/25, examiner has already received that hour
 - Any further interviews are performed voluntarily.

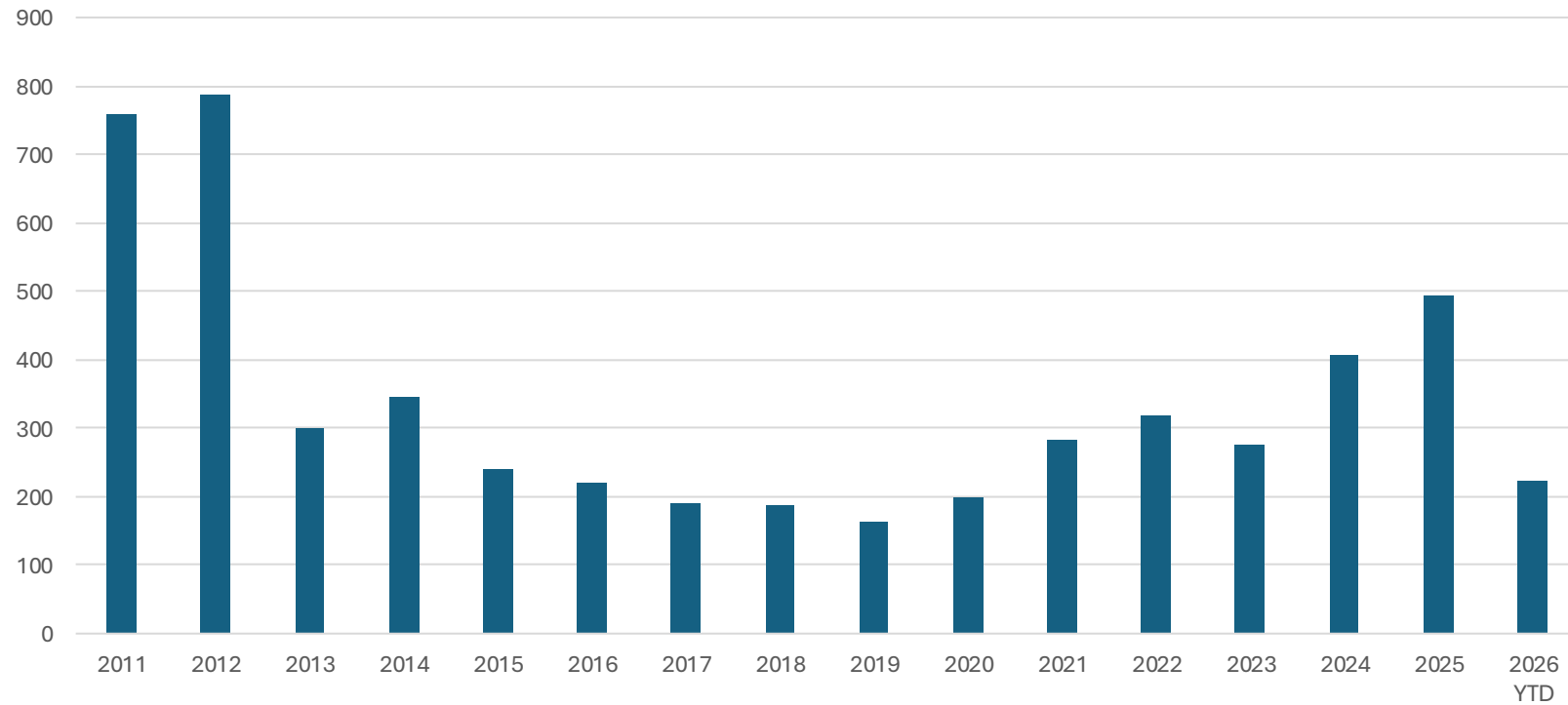
Changes to Central Re-exam Unit

- Loss of examiners
- Production Pilot
- Increase in Filings

Ex Parte Reexams in the (post?)-AIA era



Number of Ex parte Re-exams



Patent Trial and Appeal Board – Dual P



Trial Side:

Resolves disputes over validity of issued patents between third parties

- IPR
- PGR
- CBM – discontinued by statute



Ex parte Appeal Side:

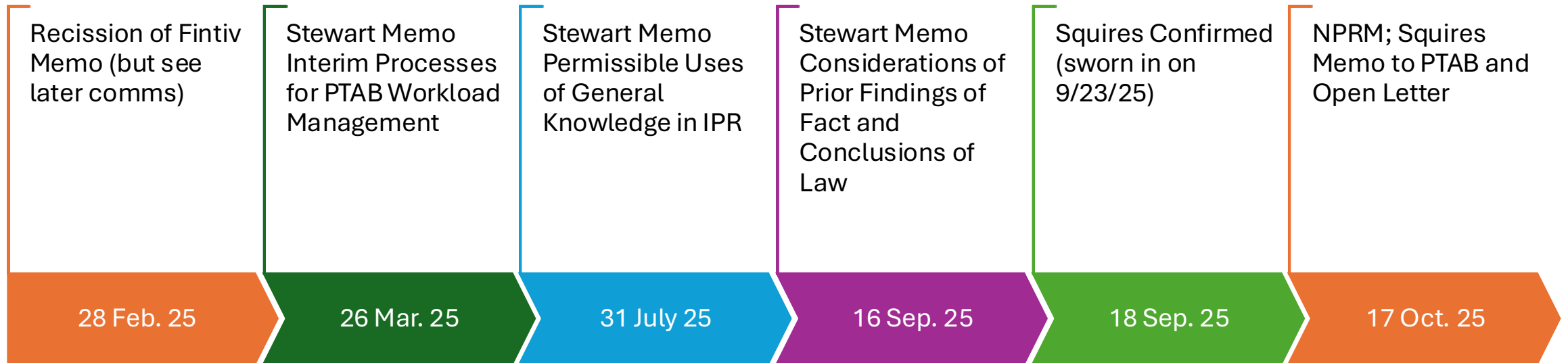
Resolves disputes between applicants and examiners over scope of applications

Changes to Board Operations

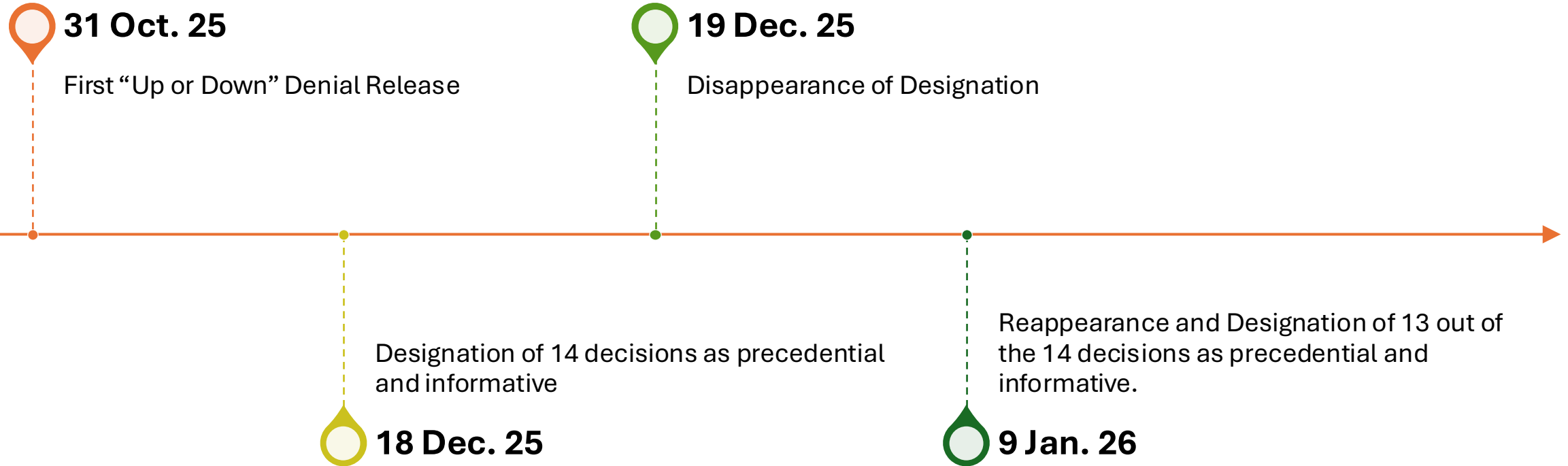
Massive internal changes affecting Administrative Patent Judges

- Staffing Changes
 - USPTO & PTAB have been affected by government-wide changes (Fork, RTO, Early Retirement, RIFs)
 - Approximately 14% APJ attrition
- Workload Changes
 - Initiative to reduce *ex parte* appeal pendency
 - APJs given smaller time-budget for AIA matters
- Location Changes
 - Return-to-office mandate (within 50 miles)
 - Announced closure of Rocky Mountain Regional Office
- PTAB Leadership Changes
 - Near complete overhaul of PTAB leadership

Changes to Trial Side of PTAB - Timeline

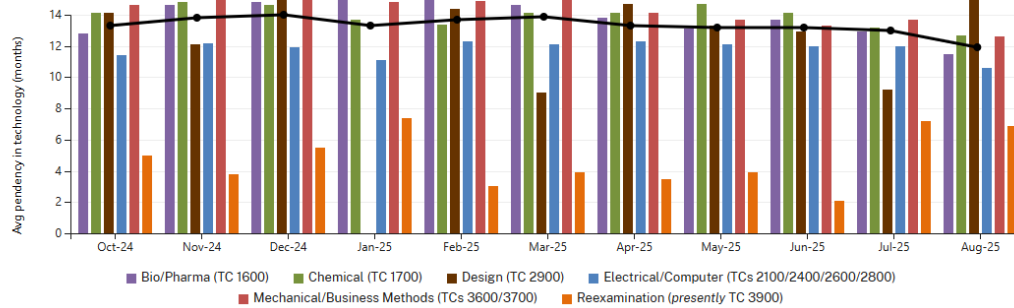


Changes – Timeline Cont'd



The Other Side of the PTAB: Ex Parte

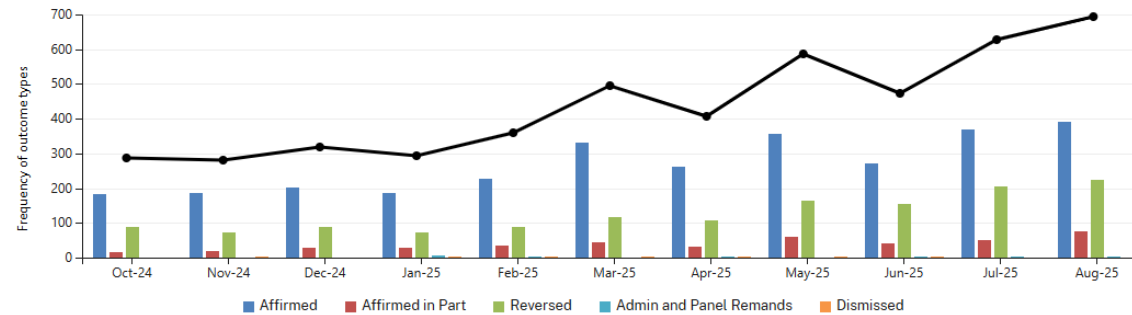
Average appeal pendency (months) by technology and fiscal year



- **Prior Goal:** Average pendency of 12 months for *ex parte* appeals
- **2025 Goal:** ALL appeals should have pendency under 12 months

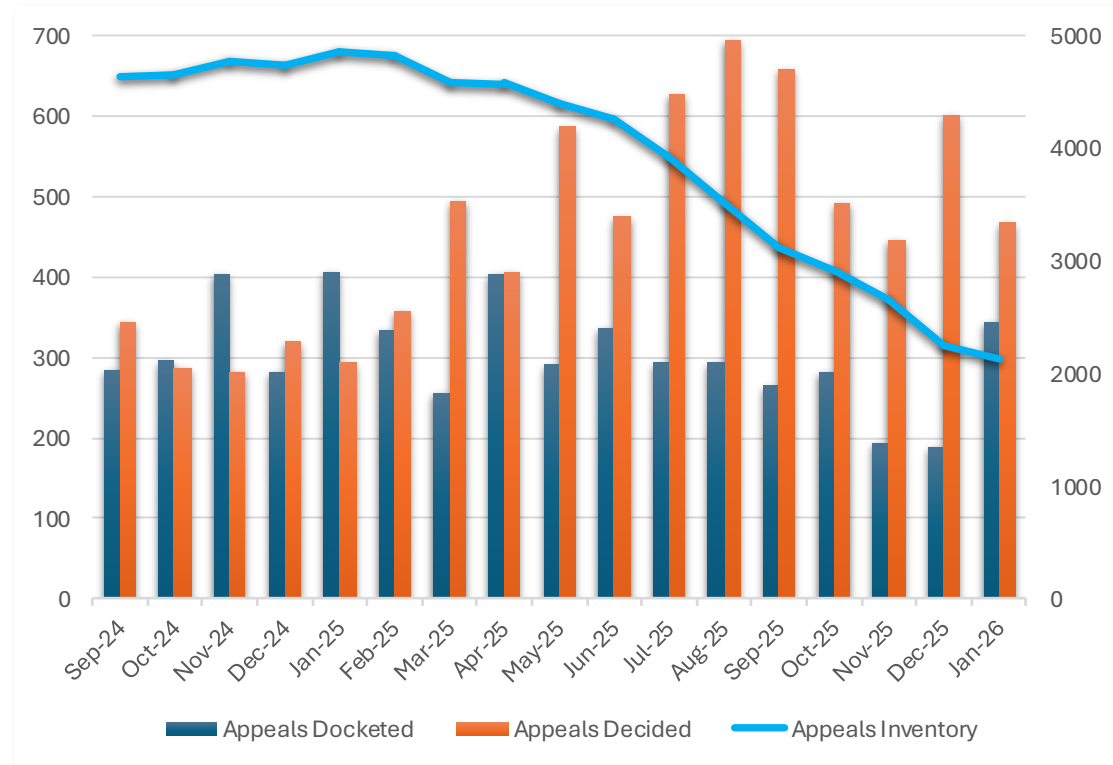
- **2025 Goal:** PTAB output of at least 500 *ex parte* decisions per month

Appeal outcome by type and fiscal year



APJs reducing ex parte pendency

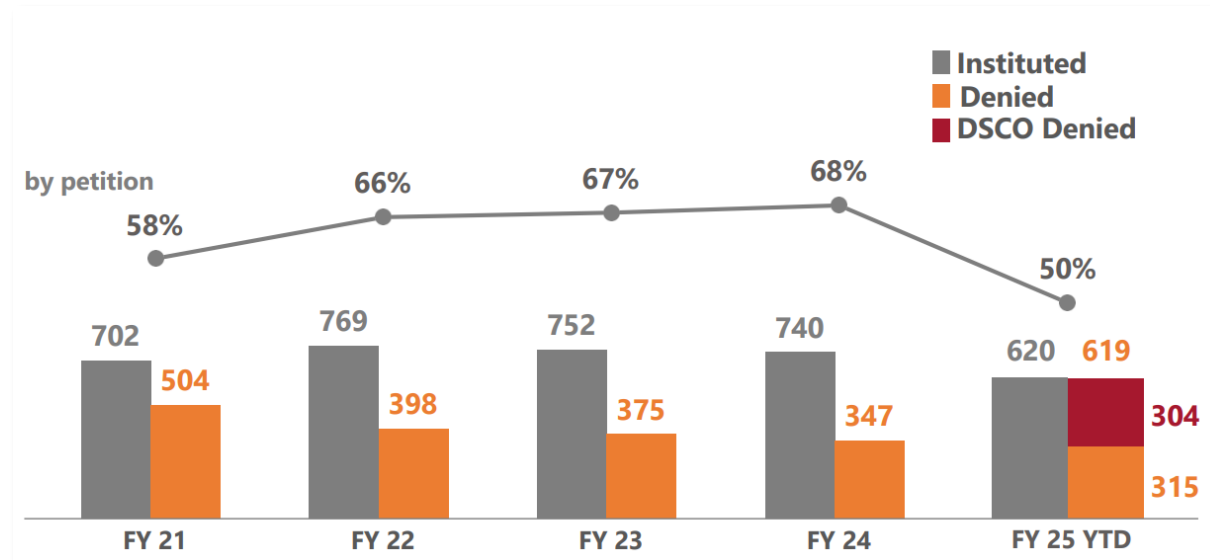
- 2025 Goal: all appeals should have pendency under 12 months
- Over the last 3 months, PTAB output has outpaced incoming cases by ~375/month
- At current rates, PTAB appeal inventory will reach zero in approximately **8 months** (June/July 2026)



Institution Statistics Pre- and Post-Bifurcation

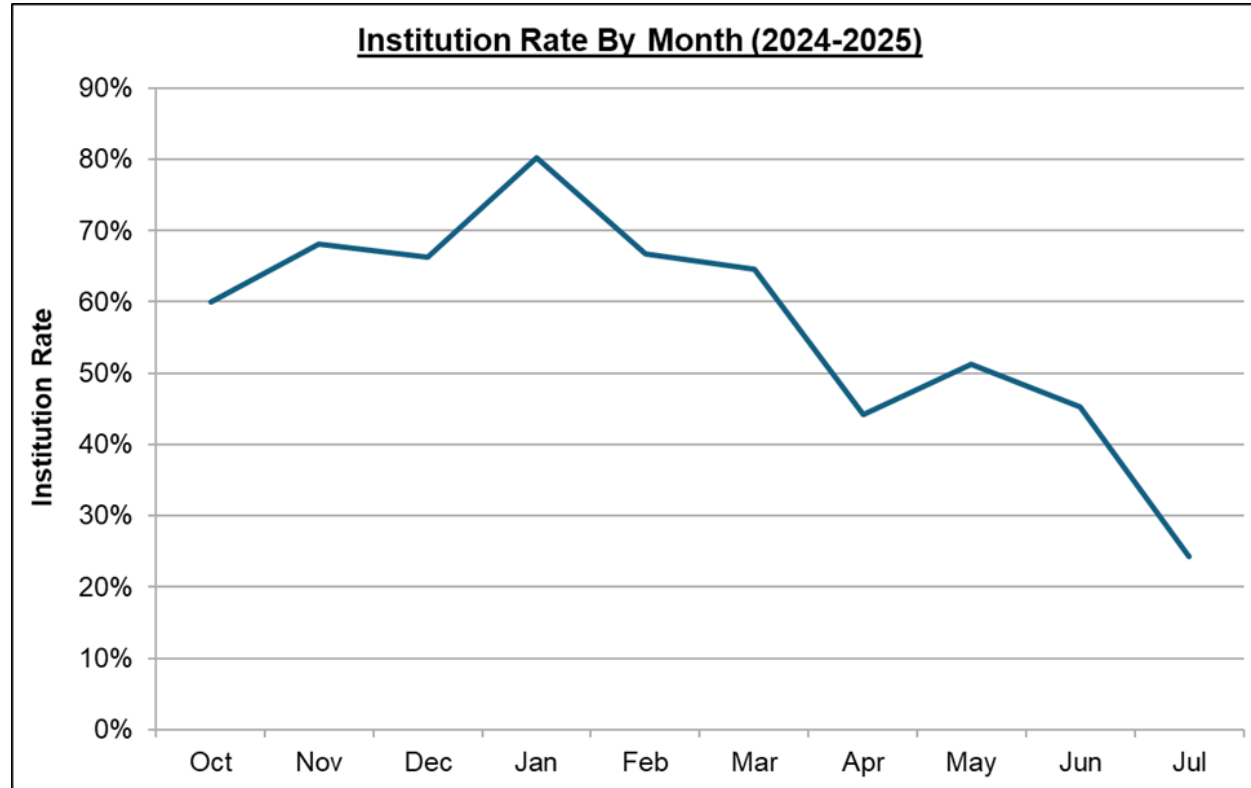
Institution rates by petition

(FY21 to FY25 through July: Oct. 1, 2020 to Sept. 30, 2025)



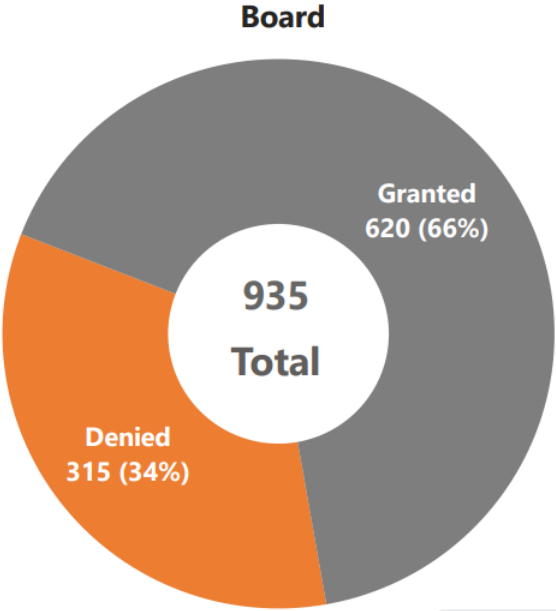
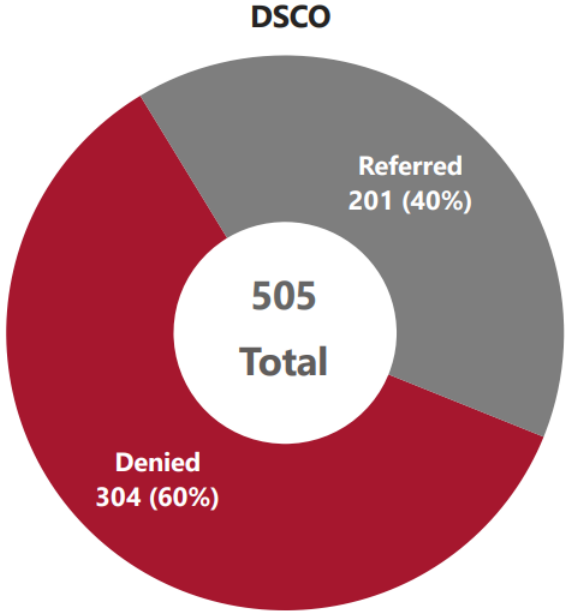
https://www.uspto.gov/sites/default/files/documents/TriaL_StatsFY25_Q4.pdf

Institution Statistics Pre- and Post-Bifurcation



Disposition Rates by Decision Type

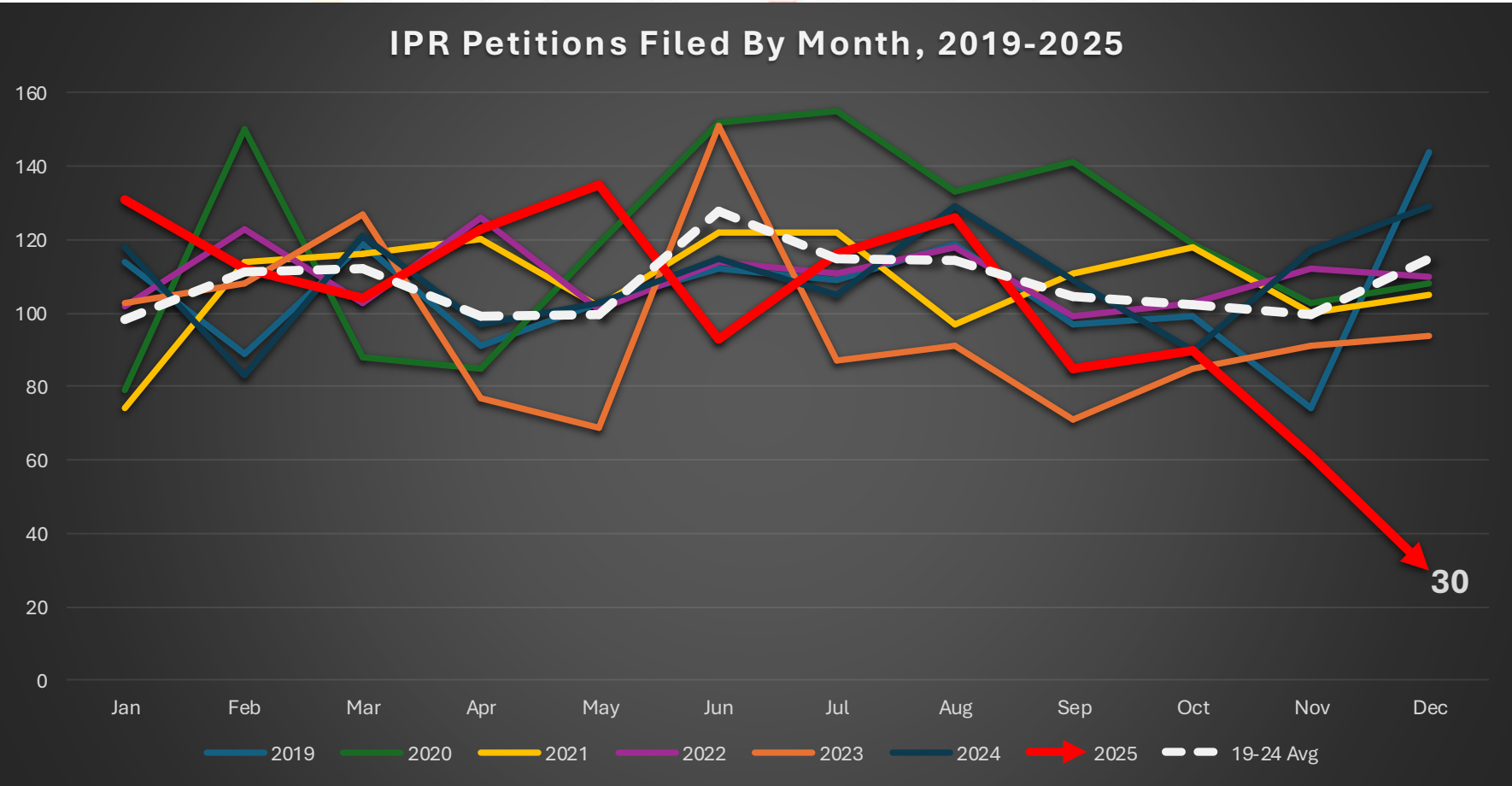
FY 25: Oct. 1, 2024 to Sept. 30, 2025



"DSCO" is "Director Discretionary Considerations"

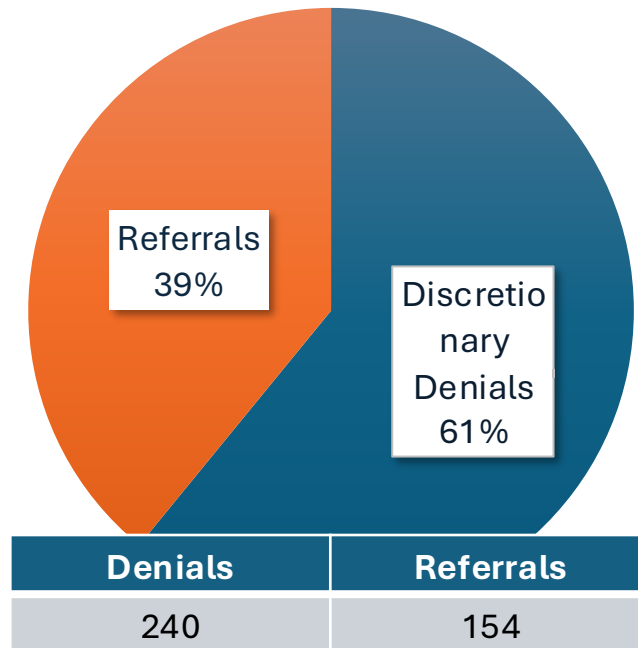


Effect of New Policies on IPR Filings

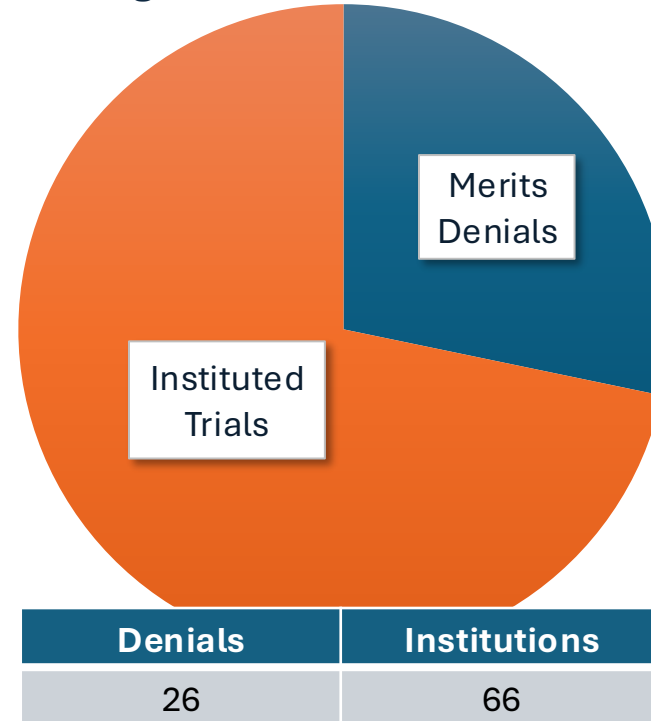


Summary Notices – By The Numbers

Stage 1: Discretionary Considerations



Stage 2: Merits Considerations



Next Big Changes: New Discretionary Factors and IPR Rules Proposed

- **US Manufacturing and Small Business Use of AIA Proceedings**
 - Issued March 11, 2026
 - The extent to which any products accused of infringement in a parallel proceeding are manufactured in the United States of are related to investments in American manufacturing operations;
 - The extent to which any products made, sold or licensed by the patent owner that compete with the accused products are manufactured in the United States; and
 - Whether the petitioner is a small business that has been sued for infringement of the patent at issue.
- **October 17, 2025 Notice of Proposed Rulemaking**
 - Fundamental changes to institution criteria that will significantly restrict IPR availability
 - Public had **45 days** to file comments on the proposals (**December 2, 2025**)
- Proposed § 42.108(d): no institution unless petitioner stipulates to not challenge *any* claim of the patent on *any* §§ 102/103 ground of unpatentability in *any* forum
 - Stipulation would cover grounds that *cannot* be raised in the IPR (system art)

Next Big Changes: “One Challenge” NPRM, cont’d

- Proposed § 41.108(e): no institution if claim was previously found not invalid in District Court/ITC/Federal Circuit/PTAB FWD/*Ex Parte* reexam allowance
 - *Anyone’s* prior challenge precludes IPR; not limited to cases involving the same petitioner
- Proposed § 42.108(f): no institution if “more likely than not” that a challenged claim will reach jury trial, ITC initial or final determination, or PTAB FWD
 - What is sufficient basis to establish? District statistics? Scheduling order?
- Proposed § 41.108(g): if PTAB determines that “extraordinary circumstances” exist that warrant institution despite (d), (e), or (f), may refer case to Director to personally institute
 - “Extraordinary circumstances” may include that prior challenge was in bad faith or there’s been a change in the statute or Supreme Court precedent
 - Does *not* include other new caselaw, new prior art, new arguments, or prior failure to appeal

Given all the changes, What Now?

- Funding of small businesses, university projects, etc. changed significantly.
- Every aspect of the USPTO has changed significantly and is continuing to change.
 - Practitioners need to adapt.
- The stated goals of the administration do not match the reality of the consequences of their actions.
 - Solving crises that they created.
- This is a generational shift in how the Office operates and how practitioners will interact with it.
- Patent Quality will be the responsibility of the applicant.