

Inter Partes Review Proceedings

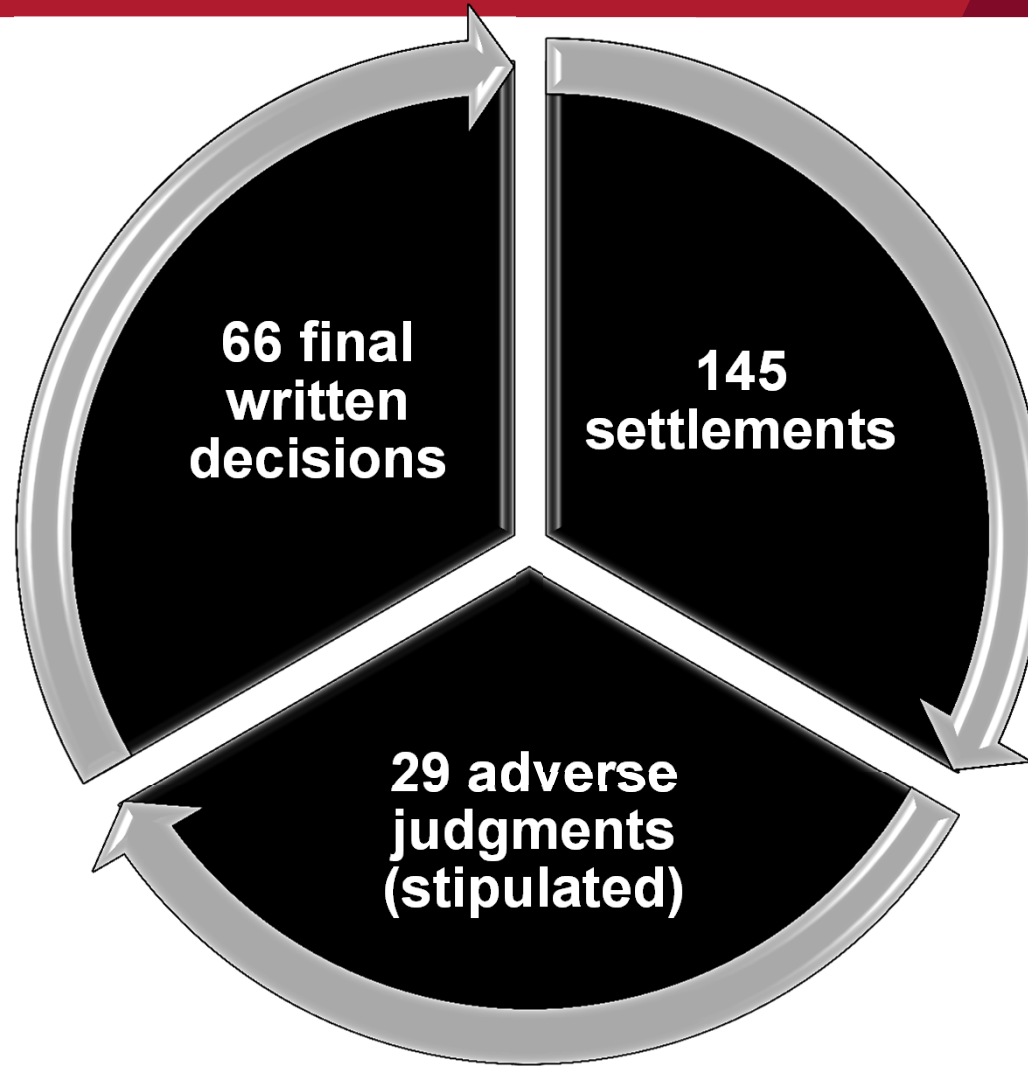
*Sampling of Key Metrics from Cooley's
Proprietary IPR Database*

Cooley



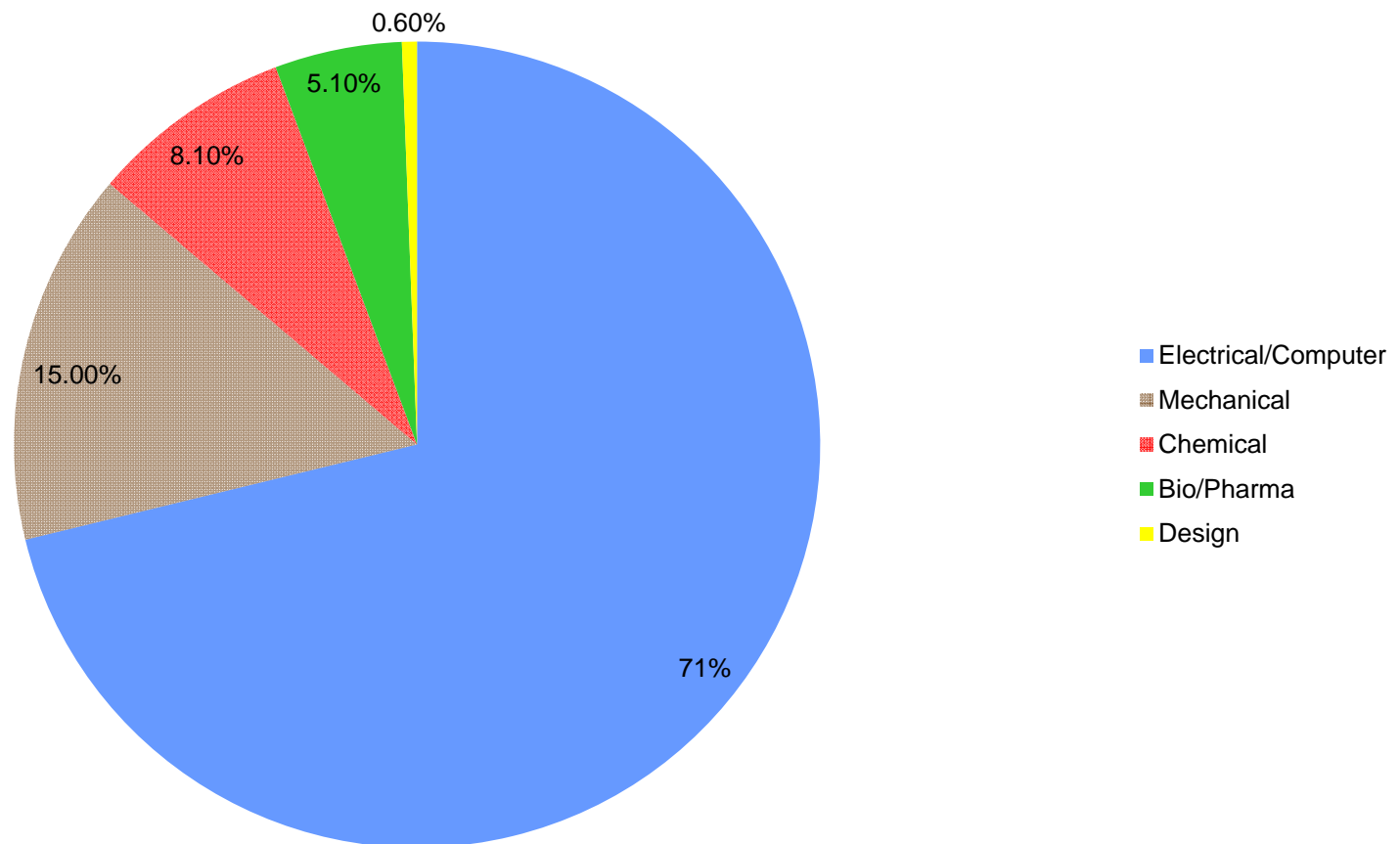
IPR Usage Data

IPR snapshot... as of June 8, 2014



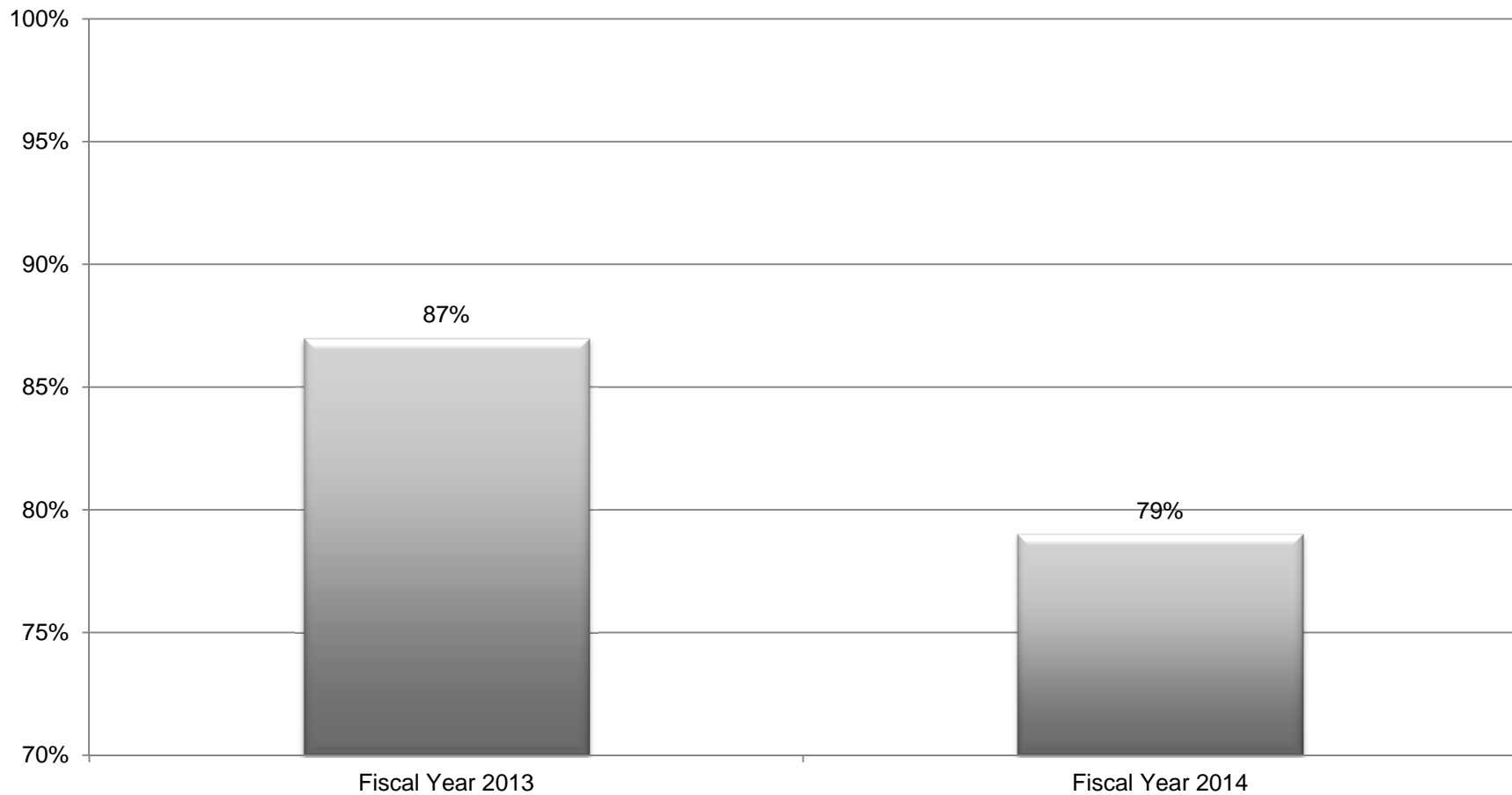
The majority of petitions (71%) focus on electrical and computer technologies

IPR Petitions by Technology Area

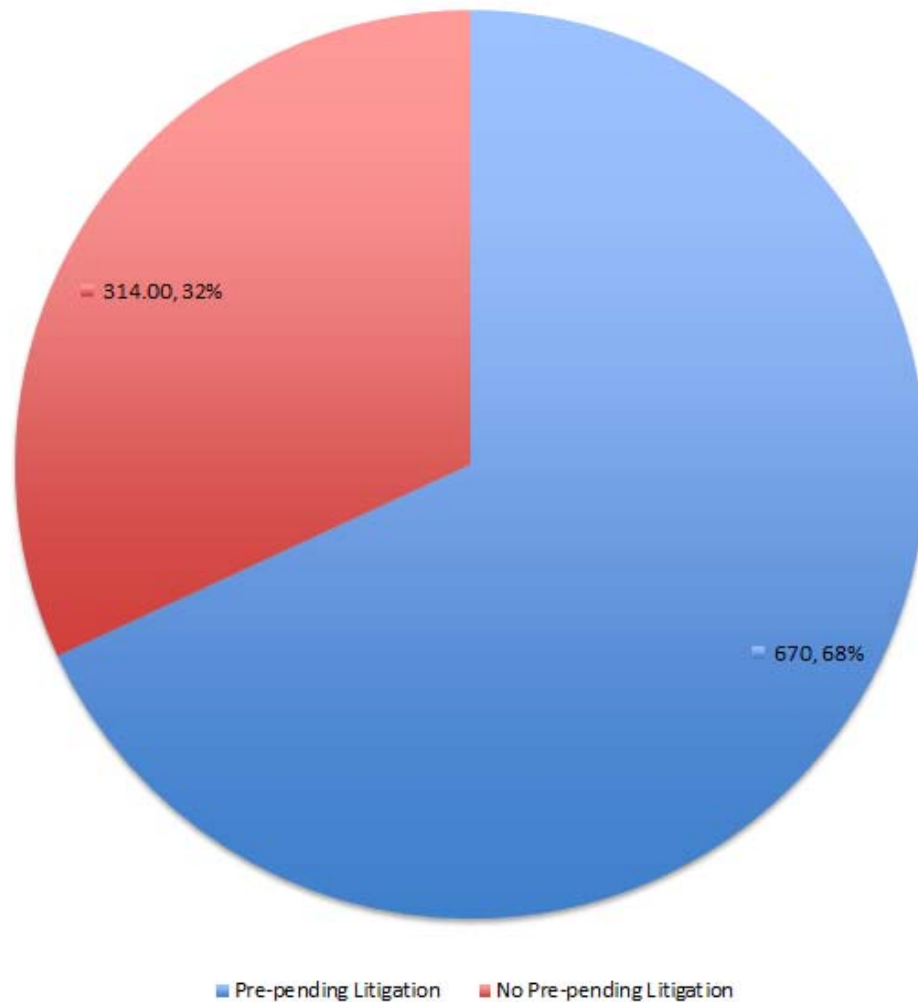


IPR institution rates declined from 87% last year to 79% this year

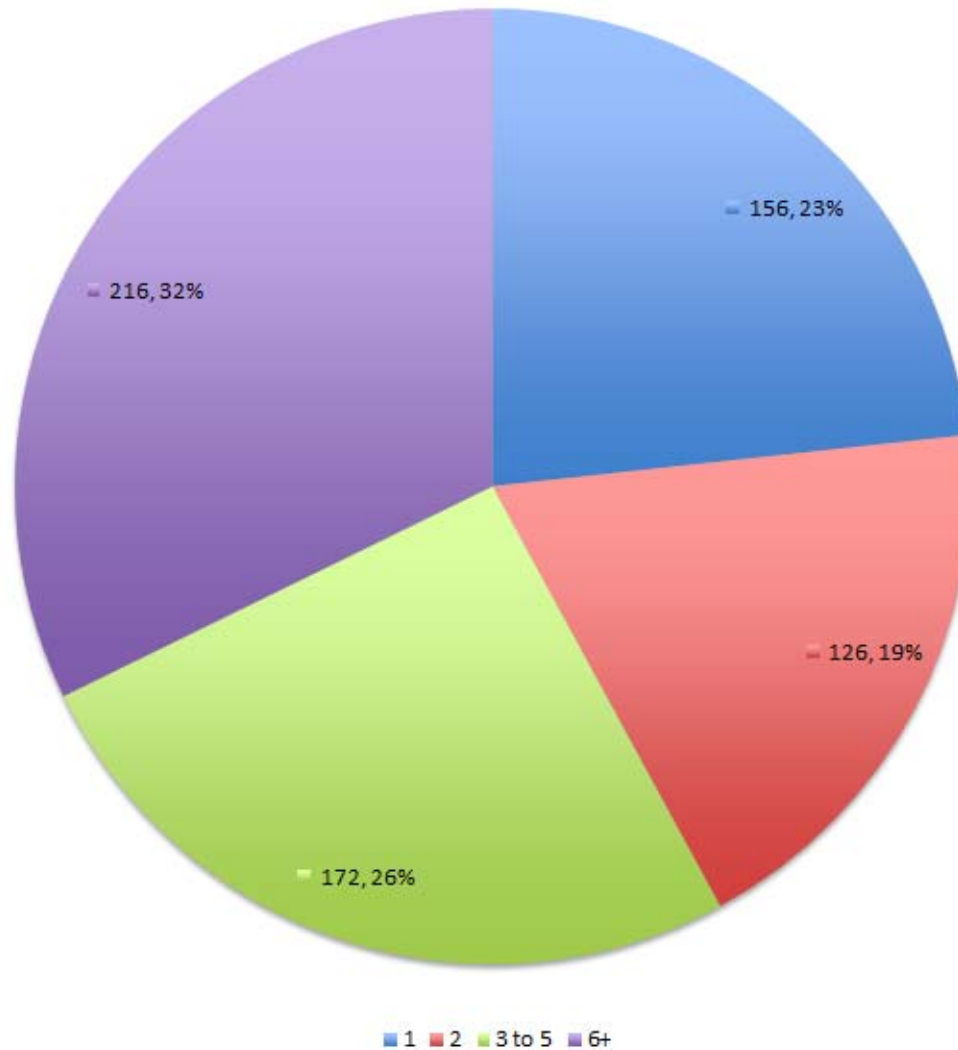
IPR Institution Rate by Year



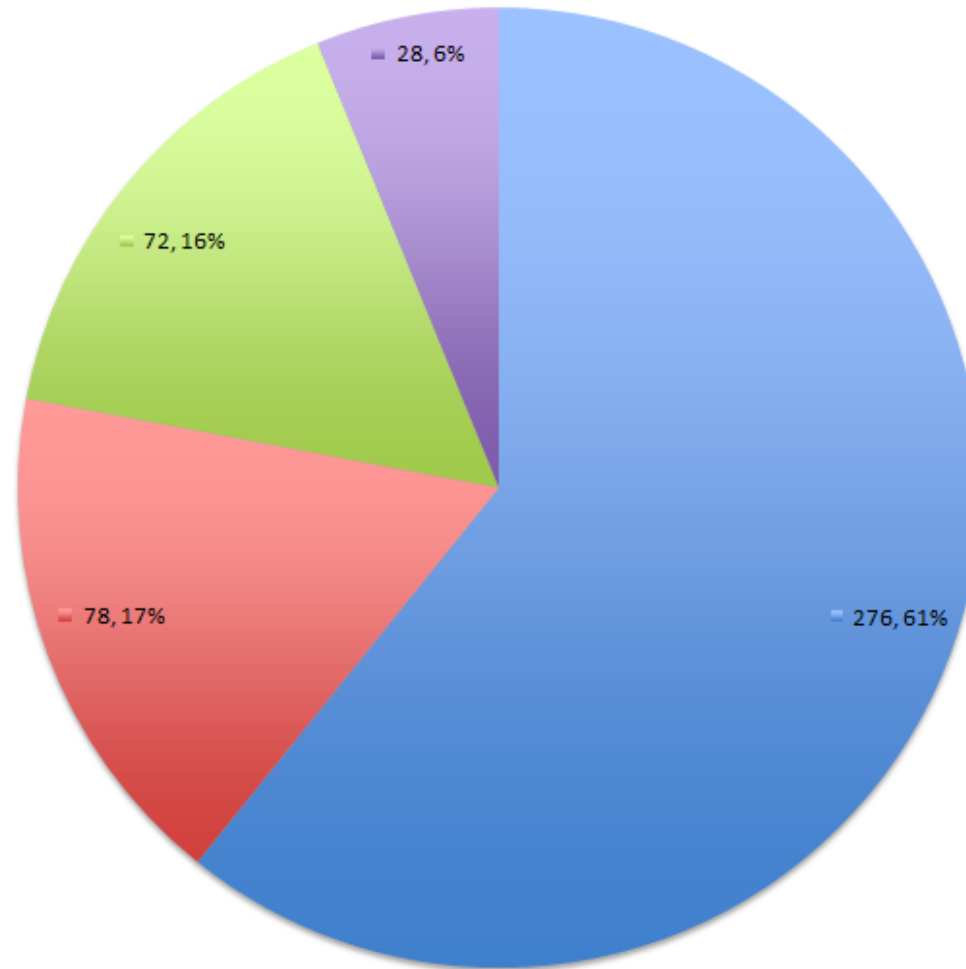
Two-thirds of IPRs arise out of pre-pending district court litigation



IPRs are not just for single patent NPE lawsuits – IPRs are filed in many cases where multiple patents are asserted

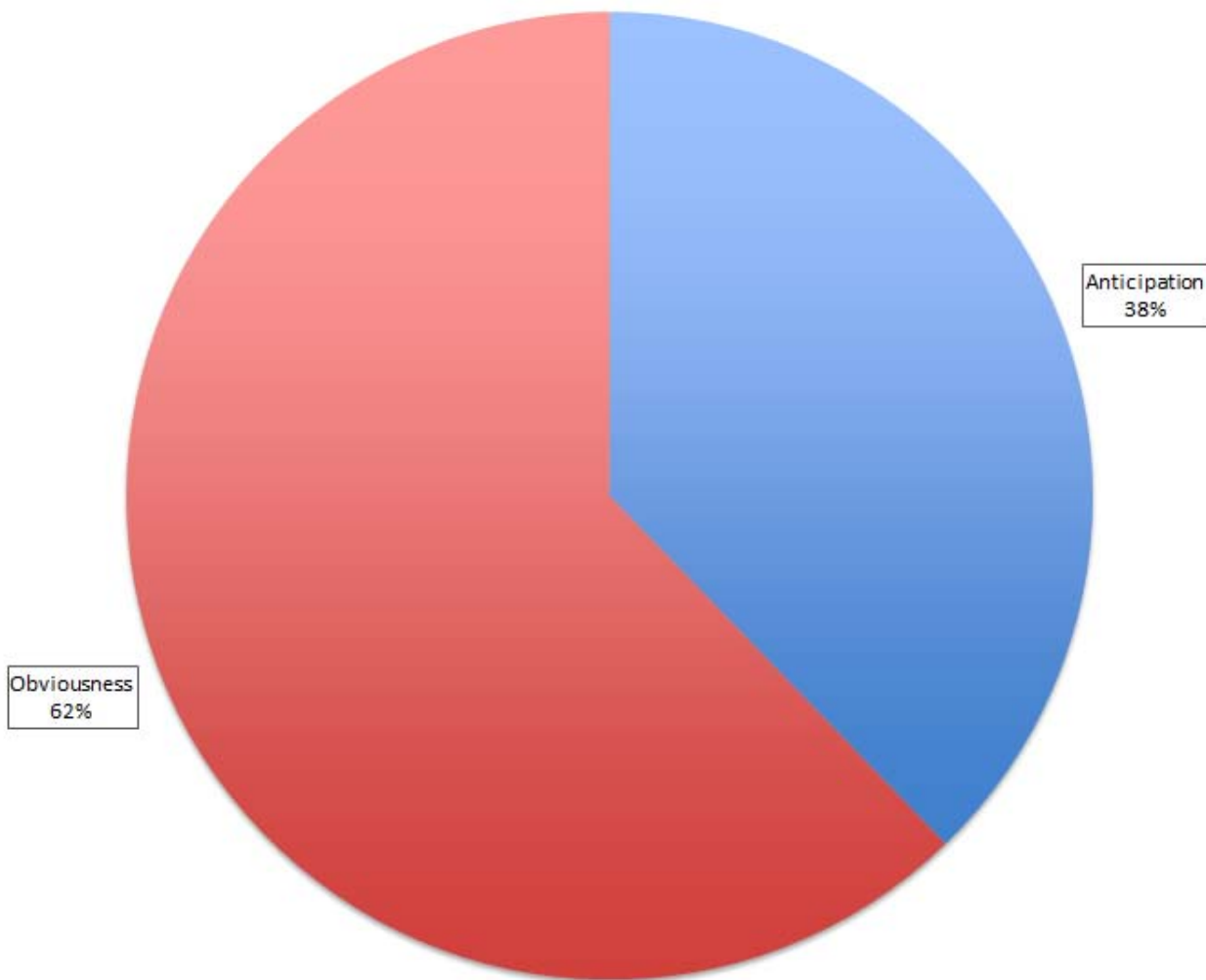


It is not uncommon for petitioners to file multiple IPRs in response to a lawsuit

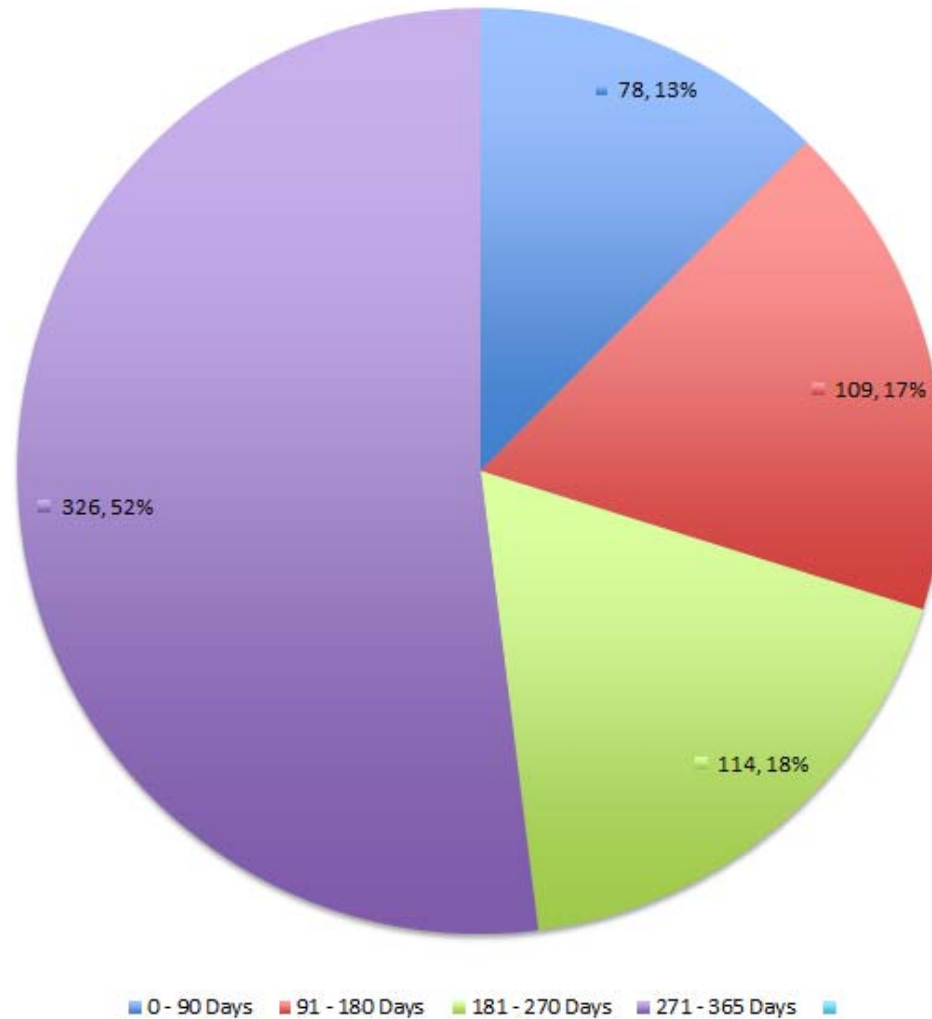


■ 1 IPR ■ 2 IPR ■ 3 to 5 IPR ■ 6+ IPR

Petitioners have the most success invalidating claims with obviousness theories

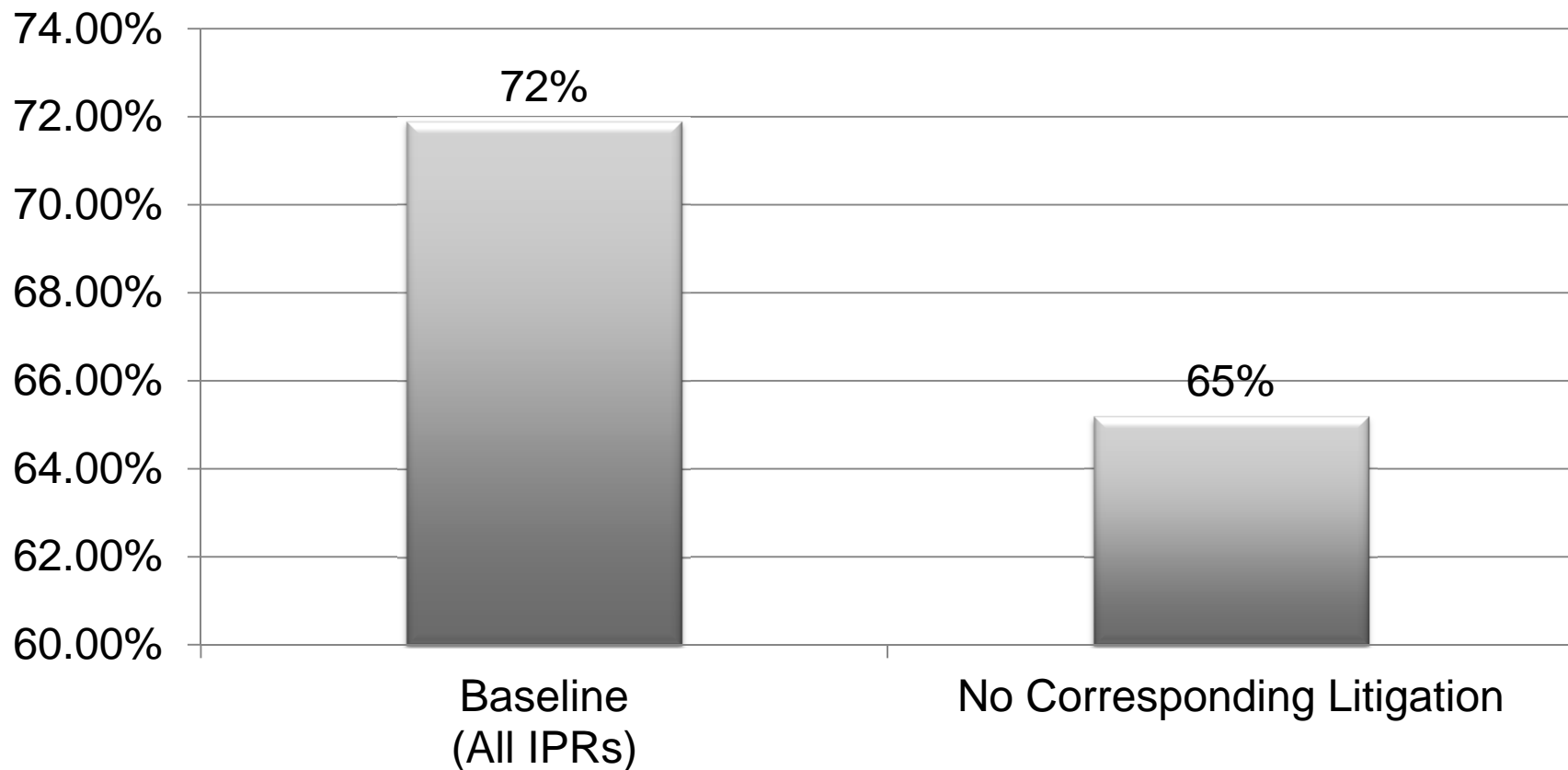


Most petitions are filed 9-12 months after a petitioner is sued for infringement



Petitions that arise out of litigation have a 5%-10% greater win rate than petitions that do not

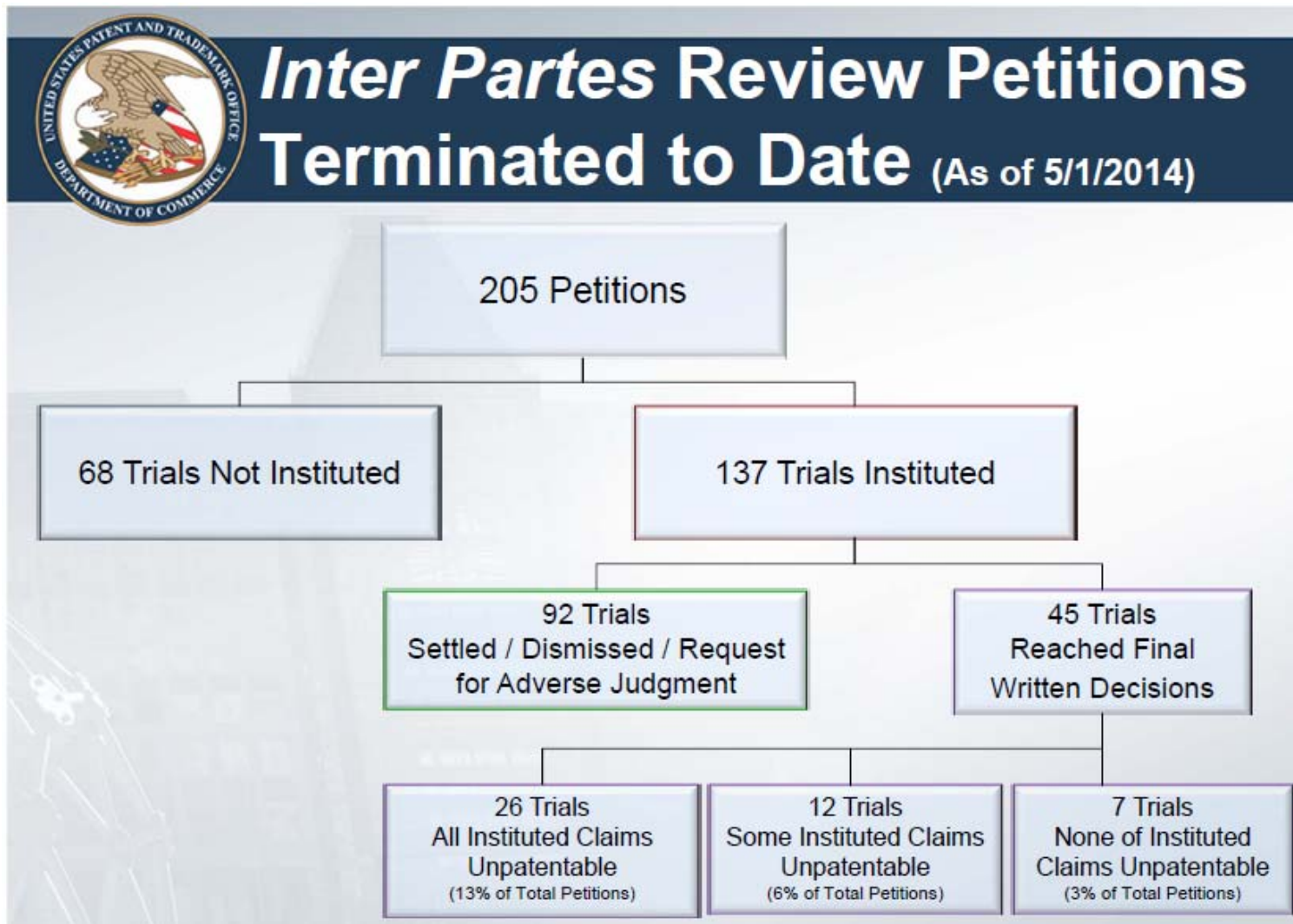
Average Claim Invalidation Rate (with or without underlying litigation)





Preliminary IPR Win Rates

At 100,000 feet, it's difficult to tell whether the IPR process works as intended

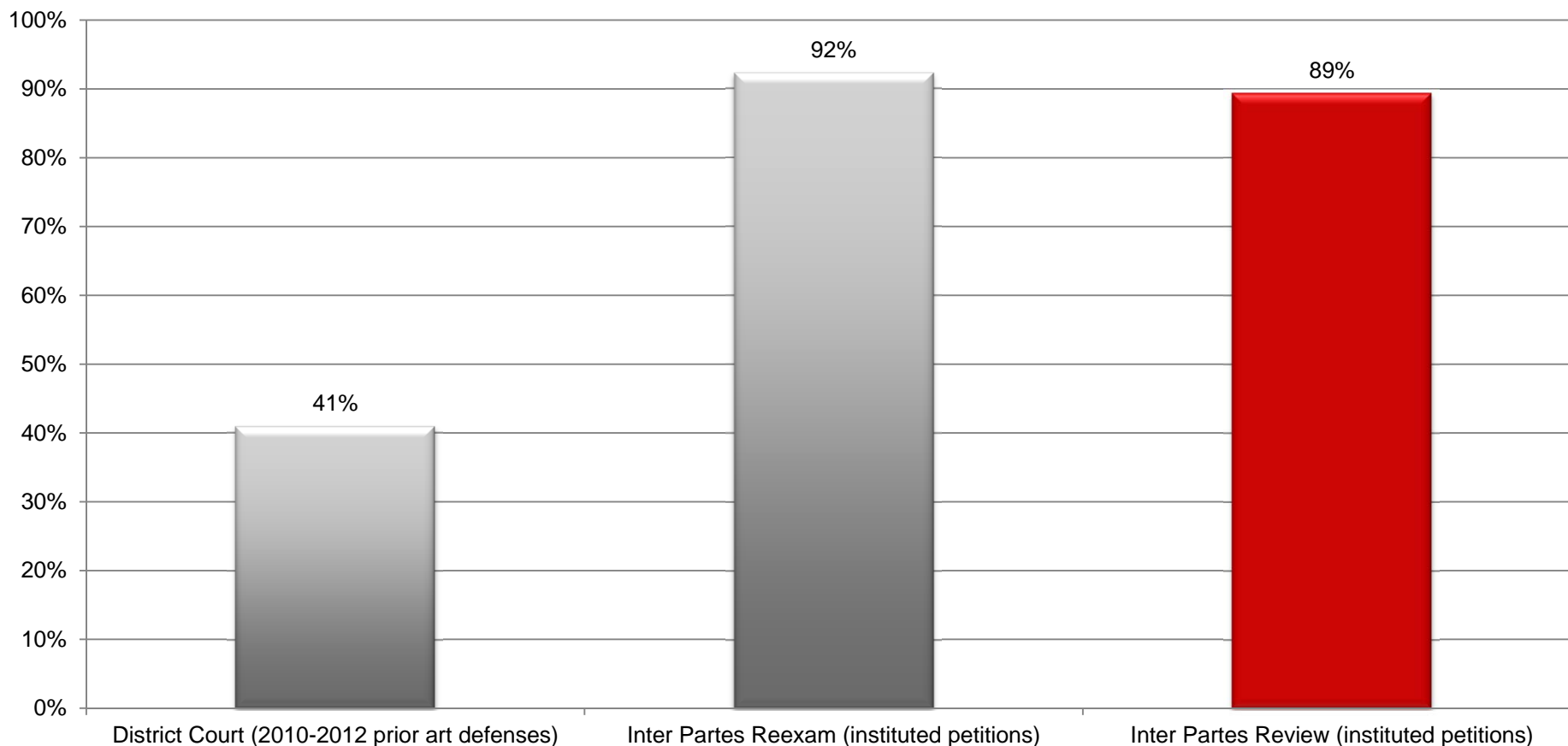


The Patent Office's statistics tend to obscure IPR win rates



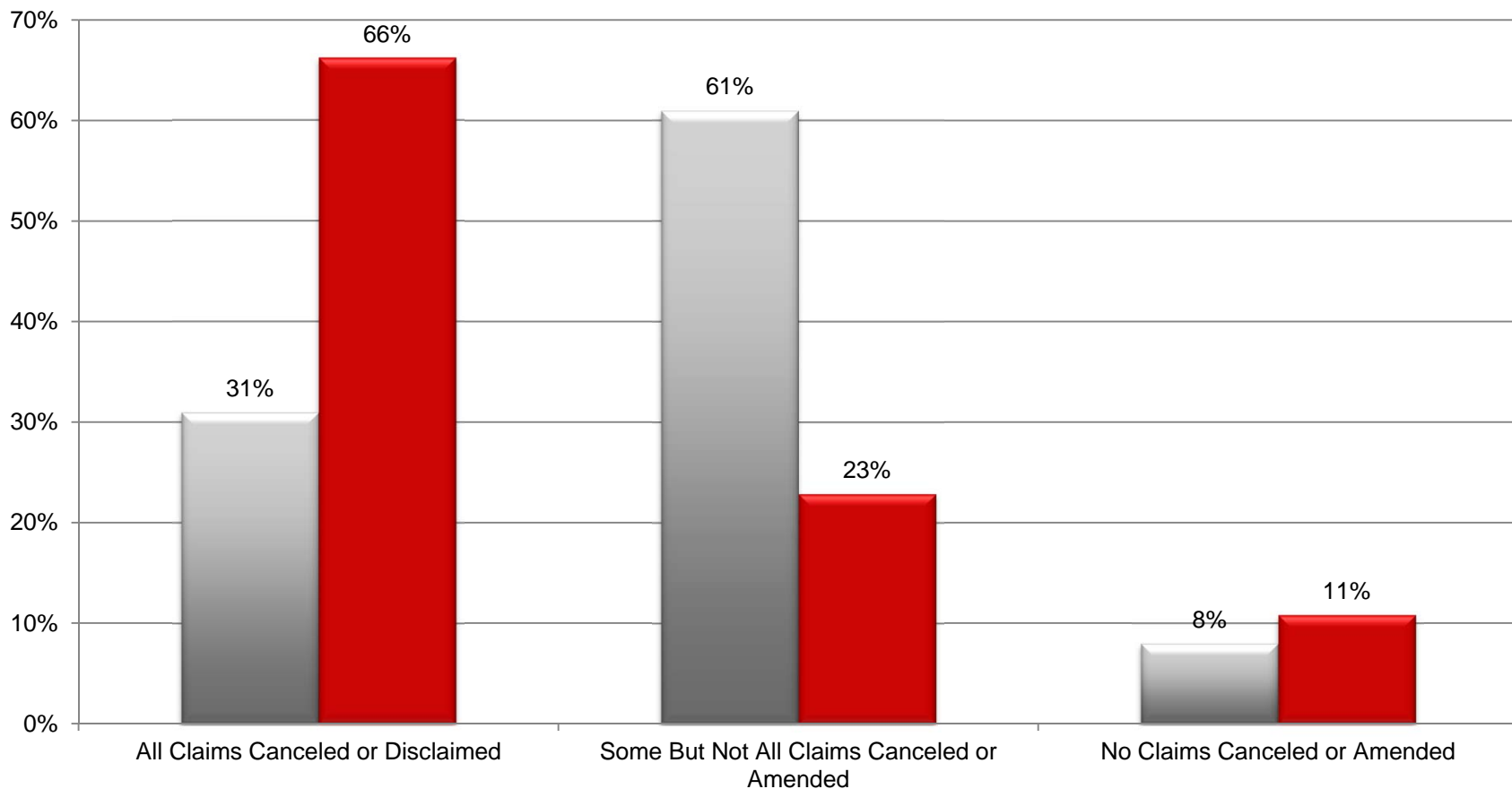
At the highest level of abstraction, IPR appears to be a bit less effective than *inter partes* reexam

Composite (Partial + Complete) Invalidation Win Rate



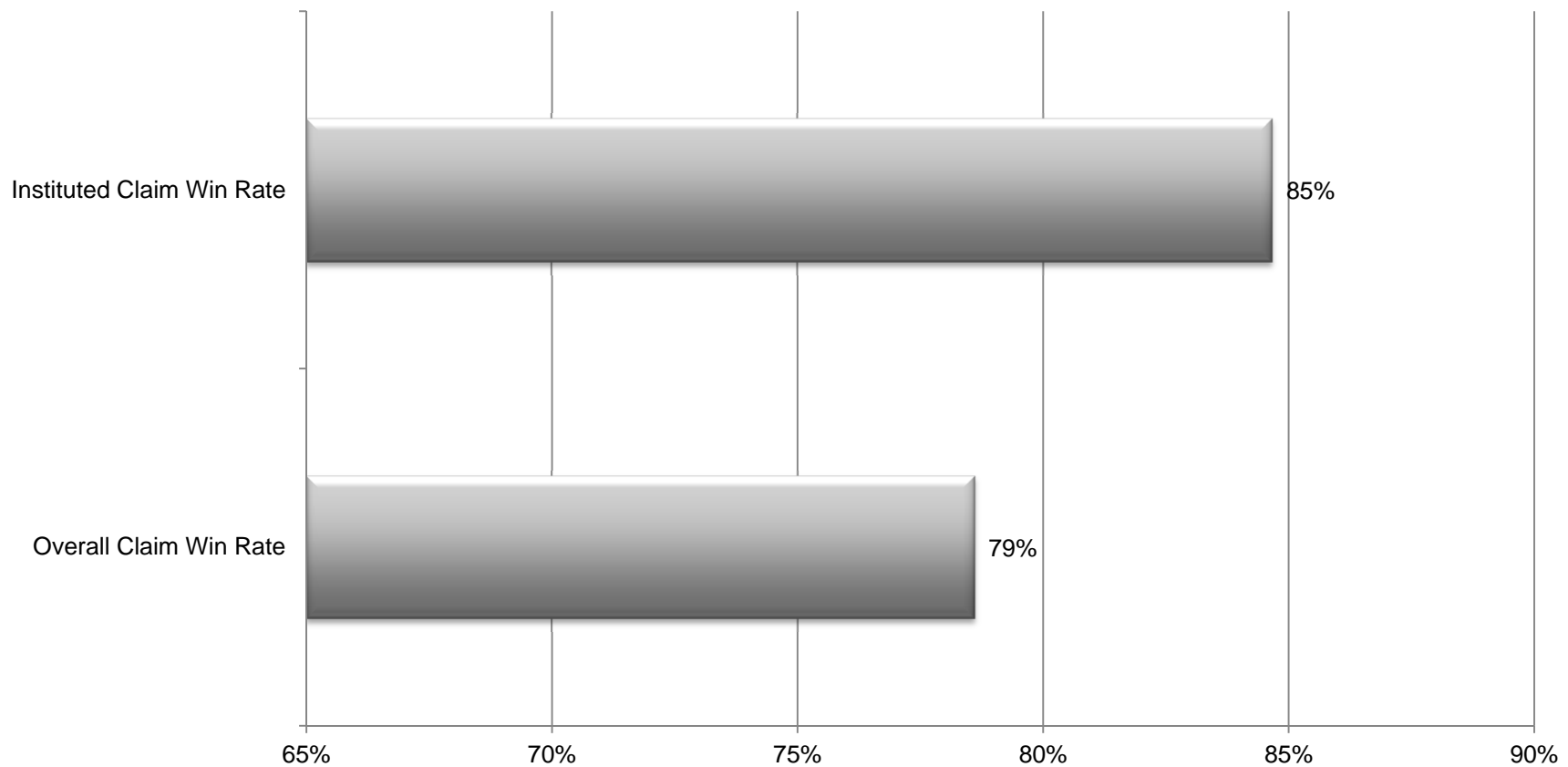
But a closer look reveals that IPRs have a much higher complete invalidation rate than *inter partes* reexamination

Inter Partes Reexam vs. Inter Partes Review (Excludes denials of petitions)



The average claim-based win rate for IPRs is 79% overall and 85% for instituted claims

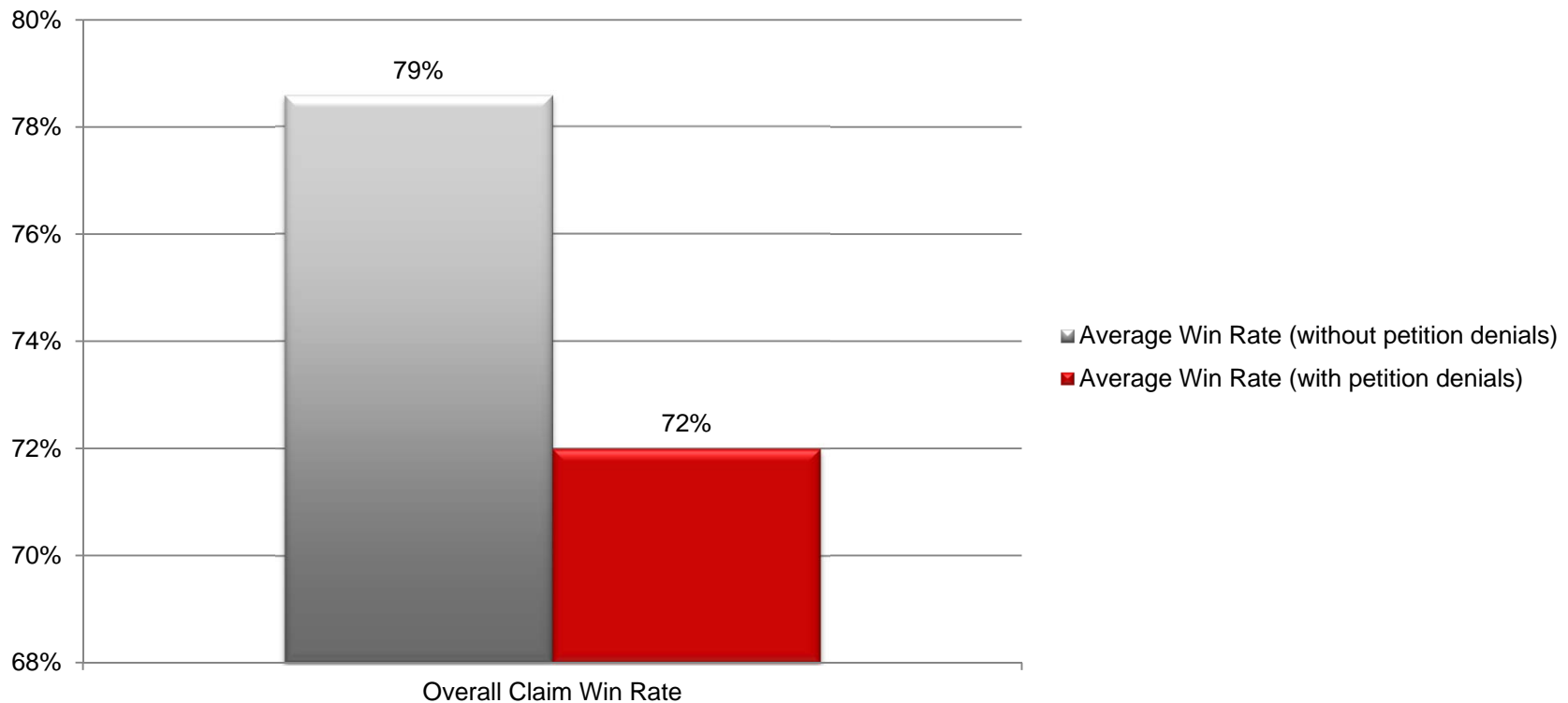
Average IPR Petitioner Win Rates (Excludes denials of petitions)



When petition denials are included, overall win rates are 5-10% lower

- ▶ A petition denial does not necessarily equate to a finding of validity

Overall Petitioner Win Rates (with and without petition denials)



The background features a complex geometric design. It consists of several overlapping rectangular and trapezoidal shapes. A light blue area occupies the top-left and bottom-left portions. A dark blue area is on the right side, partially overlapping the light blue. A red trapezoidal shape is positioned in the top-right corner. A large, semi-transparent white area with a fine grid pattern covers the central and right portions of the image.

Want to Learn More?

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Want to learn more? Feel free to contact us:



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- ▶ Lead and co-lead in scores of patent cases
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 - ▶ *Intellectual Asset Management (IAM) Patent 1000* – leading patent litigator and patent prosecutor
 - ▶ *Super Lawyers* Rising Star
 - ▶ *"One of the brightest people I've ever worked with" who is "fabulous in his ability to think outside of the box and be creative with IP litigation."* Kate Rundle, EVP and GC, Oclaro Inc.
- ▶ Adjunct professor of patent law at both the University of Colorado and the University of Denver
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- ▶ Trial-tested patent litigator
- ▶ Practice focuses on software and consumer electronics
- ▶ Played lead roles in five recent trials, including a 2011 arbitration in which the patent holder formally stipulated to non-infringement during his presentation of the non-infringement case
- ▶ Extensive record defending clients in all major patent litigation venues throughout the U.S., including E.D. Texas, D. Col., D. Del., and N.D. California
- ▶ Experienced with enforcement proceedings in the ITC and the patent reexamination process
- ▶ Recognized repeatedly by Colorado *SuperLawyers* as a Rising Star (2011 & 2012)
- ▶ Frequent lecturer on patent reform and licensing
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