

Seyfarth PTAB Blog



A legal look at Patent Trial and Appeal Board decisions and trends

PTAB Statistics - Then and Now

By Patrick T. Muffo

The *Inter Partes* Review (IPR) and Covered Business Method (CBM) procedures were enacted on September 16, 2012. Since then, the PTAB has released data on a monthly basis to illustrate the trends in the various petitions and which technology areas were most active. The past year has shown a compelling trend in various data that deserves a closer look.

One trend is the increase in popularity of IPR and CBM petitions. In June 2015, the PTAB had received only 3532 total AIA petitions since the September 16, 2012 effective date of the IPR and CBM procedures. As of June 2016, the PTAB has now received 5202 total petitions, an increase of over 47% in just one year. The monthly data shows a consistent increase in the number of petitions starting in June 2013, with the June 2016 number of petitions being almost four times that of the June 2013 number.

The breakdown in the types of petitions, however, generally remains the same. The percentage of IPR vs. CBM petitions has stayed approximately the same, at a 90% vs. 9% 2016 ratio, and a 90% vs. 10% 2015 ratio. The 2016 data also includes 1% for Post Grant Review (PGR) petitions, which for all intents and purposes were not available in 2015 due to the lack of patents eligible for such a procedure (eligible patents must have been filed under the new first-to-file system).

The technology breakdown also saw changes over the past year. For example, biology and pharmaceuticals increased from 6% in fiscal year 2014, to 9% in fiscal year 2015, to 13% in fiscal year 2016. This could be due to the increased number of pharmaceutical petitions filed by petitioners such as non-practicing entity and Kyle Bass managed Coalition for Affordable Drugs (CFAD). The business of the CFAD and similar copycat entities is to short pharmaceutical stocks and attack their patents in an attempt to lower the value of the stock. The idea being, a pharmaceutical company would be most affected by the loss of one of its patents, so the IPR procedure would work best to lower stocks of pharma companies more so than other companies. It is therefore no surprise, then, that the pharma area has increased in popularity for filing IPR petitions.

Takeaway

IPR and CBM petitions have become even more popular mechanisms for attacking a patent on validity grounds. Although business decisions may shift which patents are attacked and in which technology areas, the issue of patent validity is even more frequently being litigated before the PTAB rather than in district courts.

[Patrick T. Muffo](#) is an author of the Seyfarth PTAB Blog and Associate in the firm's Chicago office. For more information, please contact a member of the [Patent Practice Group](#), your Seyfarth Shaw LLP attorney, or Patrick T. Muffo at pmuffo@seyfarth.com.

www.seyfarth.com



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