DOMINION HARBOR

IP FOR THE NEXT GENERATION

NEW/SHIFTING BUSINESS MODELS FOR THE INNOVATION INDUSTRIES

UNCERTAINTY IN ELIGIBILITY AND ITS EFFECT ON PATENT VALUE AND INNOVATION

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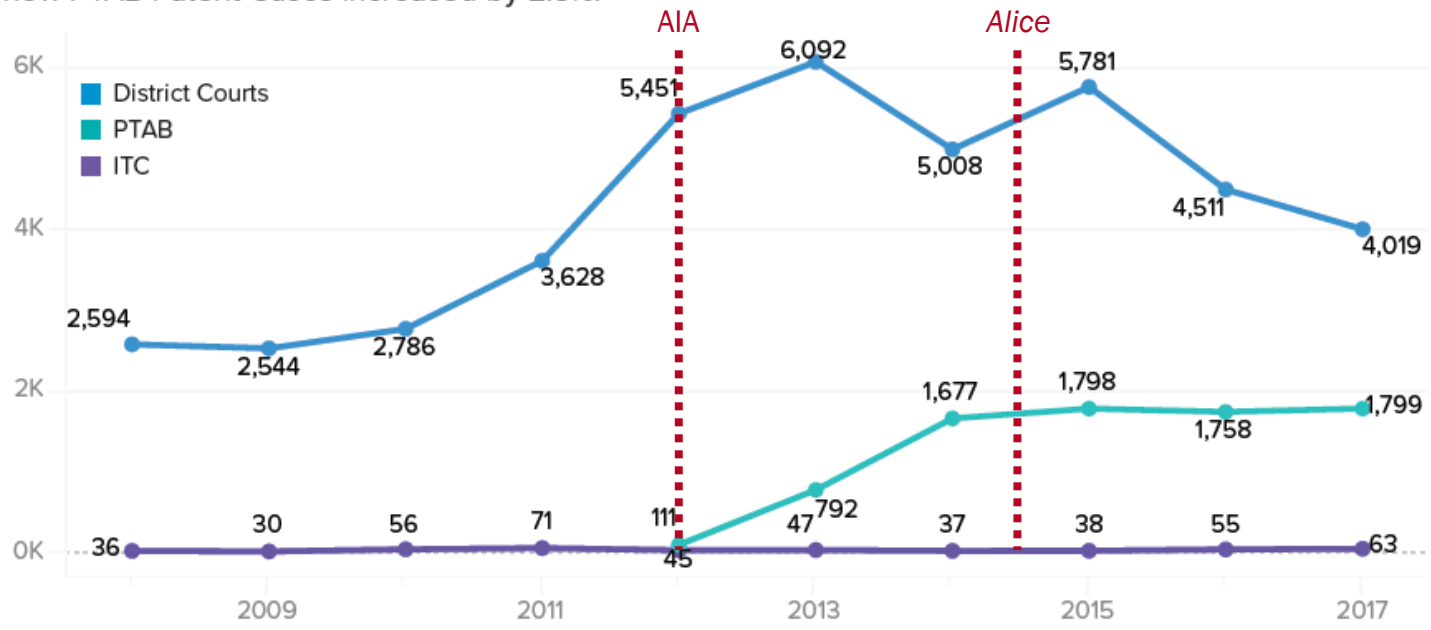
OCTOBER 12, 2018

New Patent Litigation Proceedings

2008-2017

In 2017 the number of new district court Patent Cases decreased by about 10.9%, as compared to 2016, while the number of new PTAB Patent Cases increased by 2.3%.



7% All Proceedings

10.9% District Courts

2.3% PTAB

23.6% ITC

DocketNavigator, 2017 Retrospective, Patent Litigation Special Report, Page 5

EXAMPLE CLAIMS

1. A method comprising:
   a) receiving by an inspector a Downloadable;
   b) generating by the inspector a first Downloadable security profile that identifies suspicious code in the received Downloadable; and
   c) linking by the inspector the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients.

1. A method for identifying characteristics of data files, comprising:
   a) receiving, on a processing system, file content identifiers for data files from a plurality of file content identifier generator agents, each agent provided on a source system and creating file content IDs using a mathematical algorithm, via a network;
   b) determining, on the processing system, whether each received content identifier matches a characteristic of other identifiers; and
   c) outputting, to at least one of the source systems responsive to a request from said source system, an indication of the characteristic of the data file based on said step of determining.

EXAMPLE CLAIMS

U.S. Patent No. 6,154,844

1. A method comprising:
   a) receiving by an inspector a Downloadable;
   b) generating by the inspector a first Downloadable security profile that identifies suspicious code in the received Downloadable; and
   c) linking by the inspector the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients.

ELIGIBLE

Finjan, Inc. v. Blue Coat Systems, Inc.,
Case No. 13-cv-03999 (N.D. Cal. 2015)

U.S. Patent No. 6,460,050

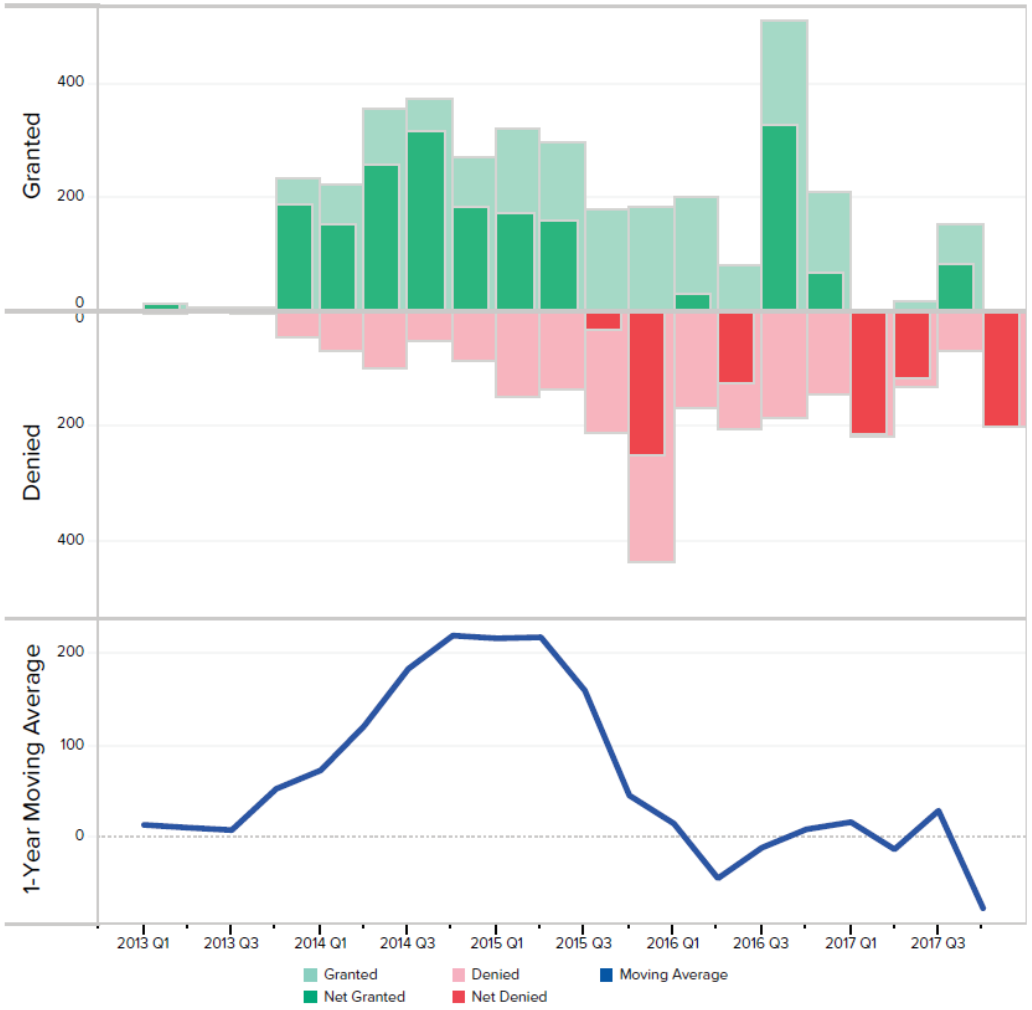
9. A method for identifying characteristics of data files, comprising:
   a) receiving, on a processing system, file content identifiers for data files from a plurality of file content identifier generator agents, each agent provided on a source system and creating file content IDs using a mathematical algorithm, via a network;
   b) determining, on the processing system, whether each received content identifier matches a characteristic of other identifiers; and
   c) outputting, to at least one of the source systems responsive to a request from said source system, an indication of the characteristic of the data file based on said step of determining.

INELIGIBLE

Intellectual Ventures I LLC v. Symantec Corp.,
838 F.3d 1307 (Fed. Cir. 2016)
(affirming district court's finding of ineligibility for this claim)

PTAB – 101 INSTITUTIONS

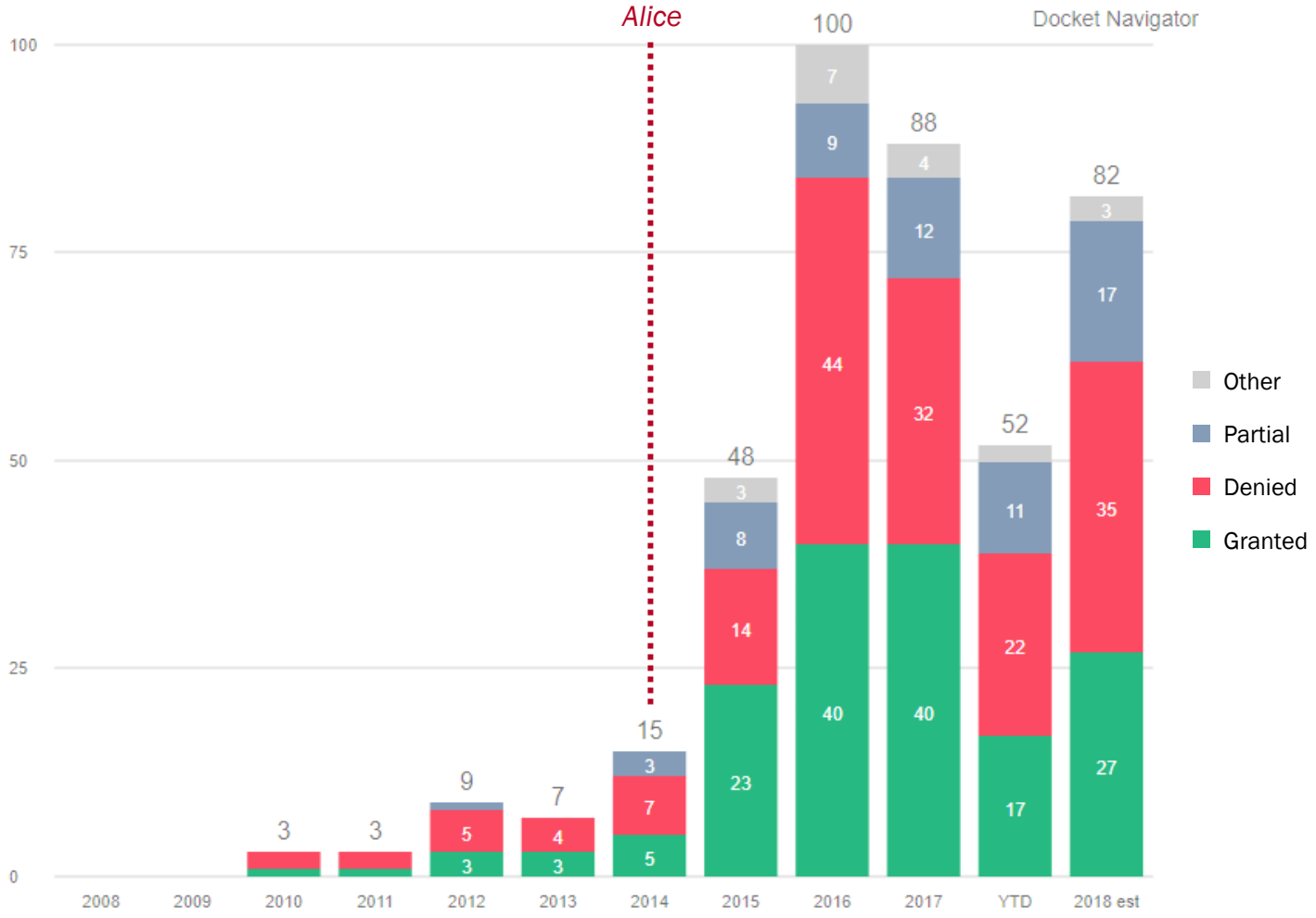
§ 101 Institution Outcomes



DocketNavigator, 2017 Retrospective, Patent Litigation Special Report, Page 50

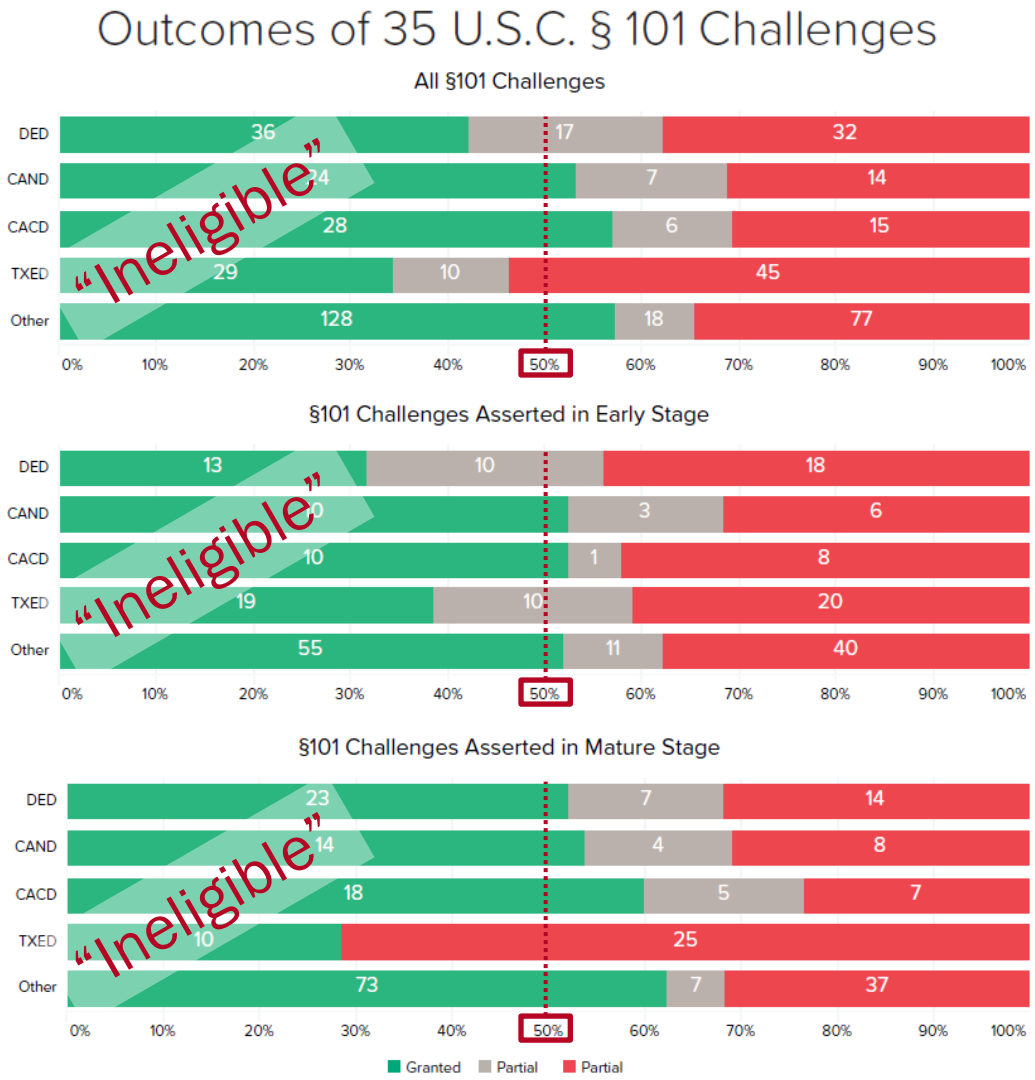
DISTRICT COURTS – 101 MOTIONS

Motions to Dismiss for Failure to State a Claim Under 35 U.S.C. § 101 by Year



DocketNavigator, Custom Report (generated September 2018)

DISTRICT COURTS – 101 CHALLENGES (MTD & MSJ)



DocketNavigator, 2017 Retrospective, Patent Litigation Special Report, Page 40

EFFECT ON INNOVATION – UBER EXAMPLE

- "The impact of the portfolio is the sum of the economic coverage of its patents relative to each business-relevant product. The economic coverage is measured by the probability-weighted royalty."

$$Impact_i = \sum_{j=1}^{N} v_j = \sum_{j=1}^{N} P_j R_j V_i = \sum_{j=1}^{N} P_j b \bar{s}_j V_i$$

P_j = probabilistic coverage of j^{th} feature

b = base royalty rate

R_j = royalty rate of the j^{th} feature

s_j = average significance of j^{th} feature

V_i = magnitude of revenue stream

- "The probabilistic coverage Pj can be defined by the likelihood that at least one patent of the portfolio reads onto the feature and is valid."

$$P_j = P\{X_j \geq 1\} = 1 - P\{X_j = 1\} \approx 1 - q_{j,1} q_{j,2} \cdots q_{j,n}$$

X_j = no. of patents that cover the j^{th} feature

q = likelihood that the k^{th} relevant patent would fail in enforcement

https://www.iam-media.com/patents/uber-article