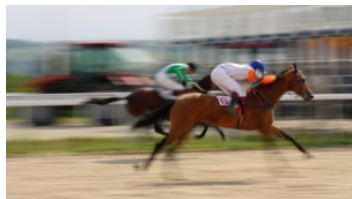


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The Cost-Effectiveness of PTAB Proceedings (<http://www.ptab-blog.com/2015/11/13/the-cost-effectiveness-of-ptab-proceedings/>)

Posted on November 13th, 2015 (<http://www.ptab-blog.com/2015/11/13/the-cost-effectiveness-of-ptab-proceedings/>) by Philip Swain (<http://www.ptab-blog.com/author/pswain/>)



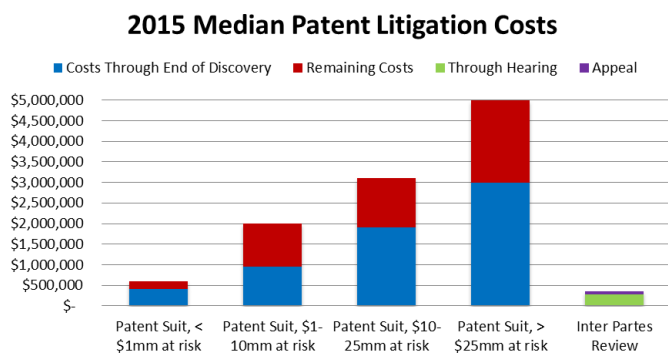
(<http://www.ptab-blog.com/wp-content/uploads/sites/13/2015/11/image001.jpg>) *PTAB litigation is less expensive and faster than the old ways.*

An old joke about patent litigation among trial counsel that produces cringes when told to clients is that patent litigation is known as the “sport of kings.” That is because of the great expense of investigating, pleading, discovery, motion practice, expert discovery, pretrial preparation, and trial in a traditional patent case. Like that other sport of kings, horse racing, often only the most well-heeled can afford to play and finish the game.

So one of the main objectives of the America Invents Act of 2011 was to establish an alternative to those expensive proceedings. Thus the Patent Trial and Appeal Board was born, with the objective, among other things, of offering a cost-effective alternative to expensive district patent litigation.

How cost-effective is the PTAB? A comparison of the best source of statistics on the cost patent litigation, the American Intellectual Property Law Association’s Annual Report of the Economic Survey, prepared under the Direction of the AIPLA’s Law Practice Management Committee (based on voluntary self-reporting by survey participants), indicates that PTAB proceedings are indeed considerably less expensive than district court patent litigation. While the survey says that the median cost of traditional patent litigation for medium sized (\$10 – \$25 million at risk) patent litigation will cost \$3.1 million to trial (up slightly from the median cost in 2011, before the AIA, when a medium sized patent litigation (\$1 million to \$25 million at risk) was \$2.5 million, the survey reports that the median cost for completing a PTAB proceeding (through appeal) is \$350,000.

The difference in costs is dramatically illustrated below:



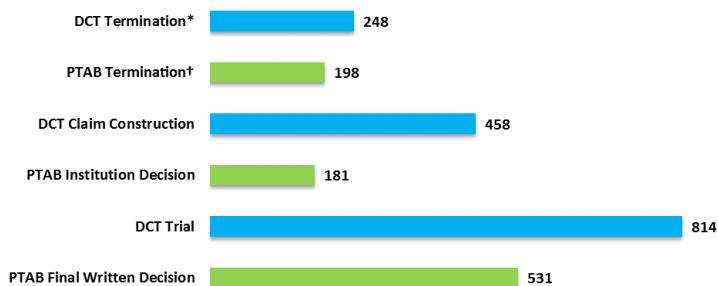
(<http://www.ptab-blog.com/wp-content/uploads/sites/13/2015/11/image003.png>)

(Source: American Intellectual Property Association 2015 Report of the Economic Survey.)

Moreover, PTAB proceedings are faster. According to statistics compiled from Lex Machina, the median time from filing to trial for a patent infringement case nationally is approximately two years, three months (814 days). Whereas the average time for final decision in the PTAB, from filing of the petition until final decision by the PTAB, is one year, six months (531 days).

While the time difference is not quite as stark as the cost difference, the PTAB time bars (below) are still considerably shorter than the district court time bars.

Median Days to Complete Patent Litigation



(<http://www.ptab-blog.com/wp-content/uploads/sites/13/2015/11/image005.png>)

* Median time to termination (all cases, including settlement, dismissal, summary judgment, etc.)

† Median time to termination (all PTAB trials, including settlement, denial of institution, etc.)

(Source: Lex Machina)

CONCLUSION

While the PTAB is still a relatively new tribunal, and the economic cost statistics are still being developed by law firms and attorneys, it seems clear that the PTAB proceedings are indeed a cost-effective alternative to patent litigation. At the very least, they are an important arrow in the quiver of every party facing the defense of a potential patent infringement claim.

For more on the relative advantages of the PTAB, see the article “[Good, Fast, Cheap Certainty: The Case for Patent Office Litigation](http://www.ptab-blog.com/2015/11/04/good-fast-cheap-certainty/) (<http://www.ptab-blog.com/2015/11/04/good-fast-cheap-certainty/>)” by my partners Walter Egbert and Scott Kamholz.

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