NOV 18 2016

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CAFC APPEALS
PTAB STATS

FEDERAL CIRCUIT PTAB APPEAL STATISTICS - NOVEMBER 2016

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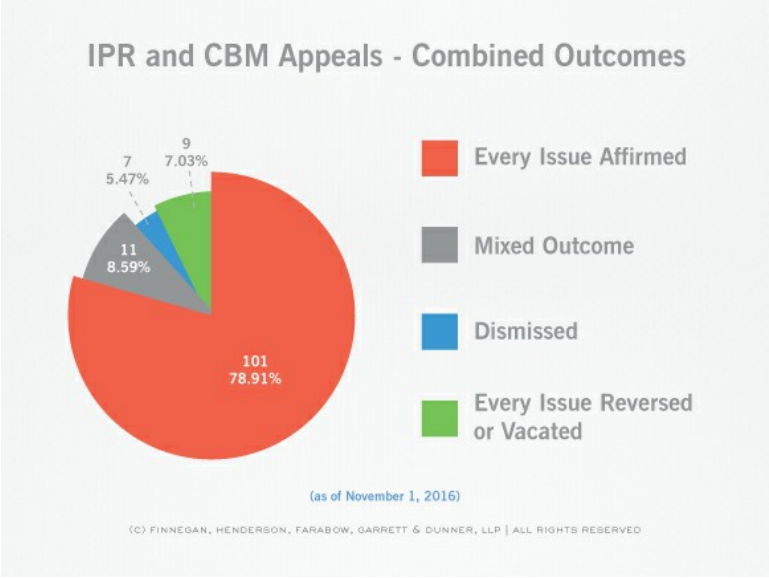
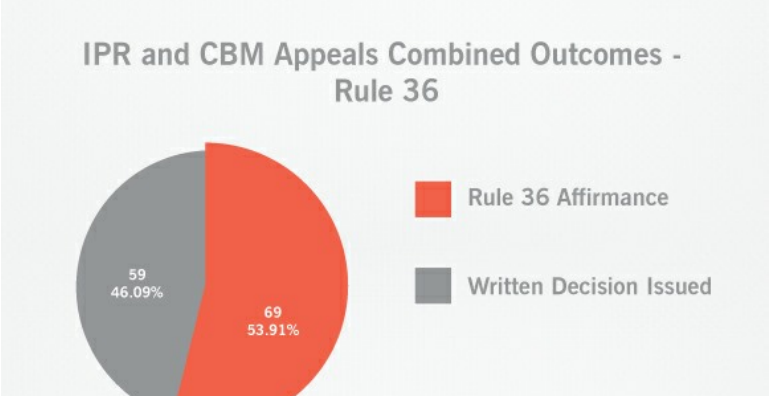
Editor: ***Jason E. Stach***

Through November 1, 2016, the Federal Circuit decided 128 PTAB appeals from IPRs and CBMs. The Federal Circuit affirmed the PTAB on every issue in 101 (78.91%) of the cases, and reversed or vacated the PTAB on every issue in 9 (7.03%) of the cases. A mixed outcome on appeal, where at least one issue was affirmed and at least one issue was vacated or reversed, occurred in 11 (8.59%) of the cases.



The court dismissed 7 (5.47%) of the cases without rendering a decision on the merits. Dismissals may occur, for example, where the Federal Circuit determines that it does not have jurisdiction to hear a case, such as in an appeal from a PTAB institution decision. As the Supreme Court established in *Cuozzo Speed Techs., LLC v. Lee*, the Federal Circuit is barred from considering appeals from institution decisions under 35 U.S.C. § 314(d). Dismissals may also result from settlements among the parties to the appeal, or where the court determines that a prior decision renders a case moot.



(as of November 1, 2016)

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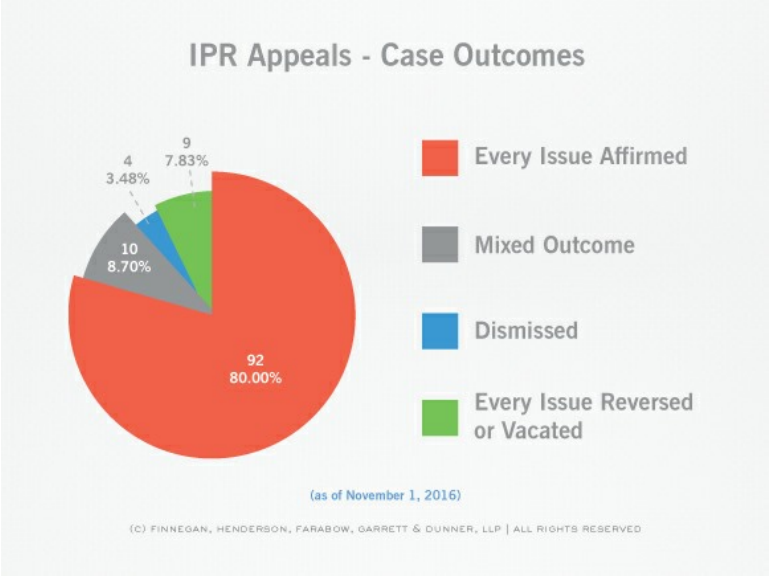
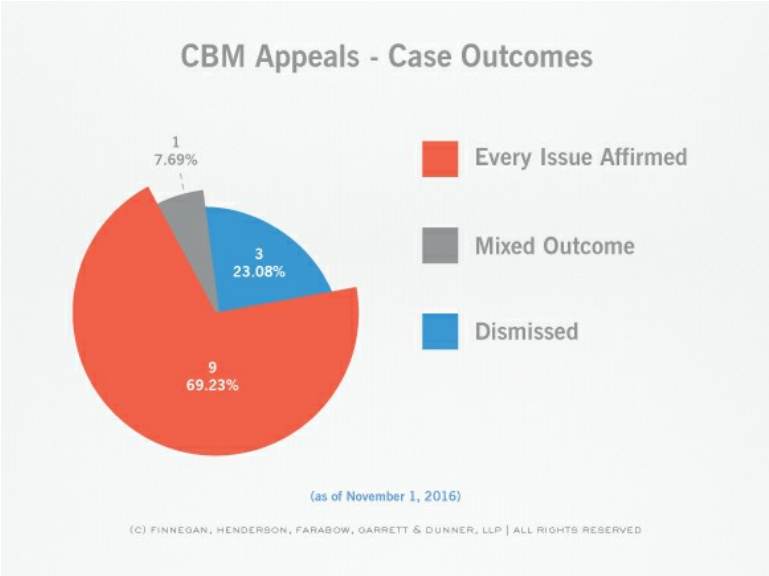
An important tool that helps the Federal Circuit manage its growing docket of PTAB appeals is the Rule 36 affirmance, whereby the court affirms the PTAB without rendering a full, written opinion. Of the 128 PTAB appeals it has considered thus far, the Federal Circuit has issued Rule 36 affirmances in 69 (53.91%) of cases. The court issued written opinions, including affirmances, reversals, and mixed decisions, in 59 (46.09%) of its cases.



Breaking down the numbers further, in its appeals from IPRs, the Federal Circuit affirmed the PTAB on every issue in 92 (80.00%) of the cases, reversed or vacated the PTAB on every issue in 9 (7.83%) of the cases, issued a mixed outcome in 10 (8.70%) of the cases, and dismissed 4 (3.48%) of the cases.



In CBM appeals, the Federal Circuit affirmed the PTAB on every issue in 9 (69.23%) of the cases, issued a mixed outcome in 1 (7.69%) case, and dismissed 3 (23.08%) cases. The Federal Circuit has not reversed or vacated the PTAB on every issue in a CBM appeal.

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