The America Invents Act of 2011
A Decade of Stolen Dreams

PTAB Invalidity Rates

As of June 24, 2021, there have been 8,340 patents involved in cases at the Patent Trial and Appeal Board (PTAB). Of that number, a total of 3,105 patents had one of two Final Written Decisions – declaring the patent either "Not Unpatentable" or "Unpatentable/Cancelled".

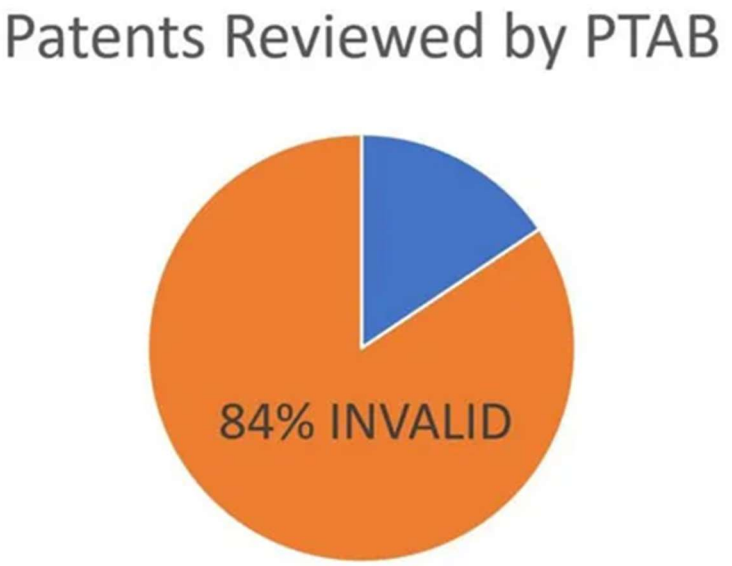
There is much debate over interpreting the remaining 5,235 patents that began, but did not complete, a PTAB review. Some analysts would count settlements and denials as a win for inventors. However, this is a narrow view. Settlements usually mean the challenger gets to keep infringing with little or no compensation paid to the actual inventor – which is in no way an inventor triumph.

With respect to denials, there is no estoppel or even expectation that the patent would be upheld in a subsequent challenge. A patent denied institution is almost the same as a patent that has never been challenged – at substantial risk of future invalidation by the PTAB.

The bottom line is that little is known about the 5,325 patents that did not reach a final decision. In a best-case scenario, they are probably on the same footing as the millions of other patents that have never been challenged.

Accordingly, the focus is squarely placed on the 3,105 patents that have been subject to a PTAB *Final Written Decision*. Of those patents subject to a decision, 2,612 of them have been determined by an unconstitutionally formed administrative tribunal to be "Unpatentable/Cancelled."

The net result is 84% (2,612/3,105) of the patents that have been fully reviewed by the PTAB have been declared invalid. The USPTO data for FY20 indicates that a fraction of these patents would have some of the claims invalidated, while a majority of them would have all challenged claims invalidated.



This is a summary of "Assessing PTAB Invalidity Rates" by Josh Malone, US Inventor Policy Director
The full article may be found at: https://usinventor.org/assessing-ptab-invalidity-rates/