

2007 Patent Damages Study

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*connectedthinking



Methodology

- PwC identified legal records in three WestLaw databases Federal Intellectual Property - Cases (FIP-CS) and Combined Jury Verdicts and Settlements (JV-ALL), both from 1980 through June 2007, and CAFC – Cases (FIP-CTA) from 1995 through 2006
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- 16,000 total records reviewed, some of which did not contain all desired data and were not included
- This study focused on damage awards in both U.S. Federal District Courts (FDC) and the Court of Appeals for the Federal Circuit (CAFC)

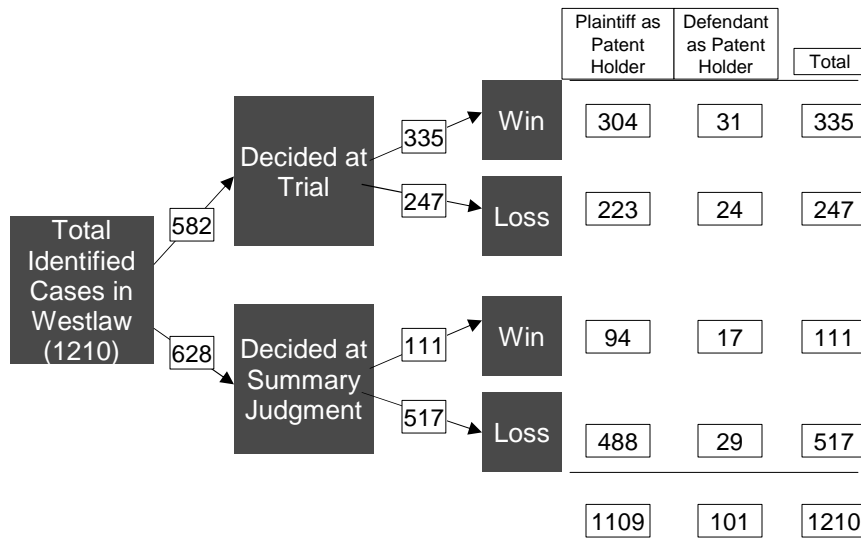
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Methodology

- Awards of damages identified for 2,423 unique FDC cases (1,531 patent cases, 863 trademark cases, and 29 both patent and trademark)
- 758 unique CAFC cases (596 patent cases, 150 trademark cases, and 12 both patent and trademark)
- Jury verdict data varied by jurisdiction and was particularly limited during the early and mid-1980s

Current Patent Actions Analysis (January 1995-June 2007)



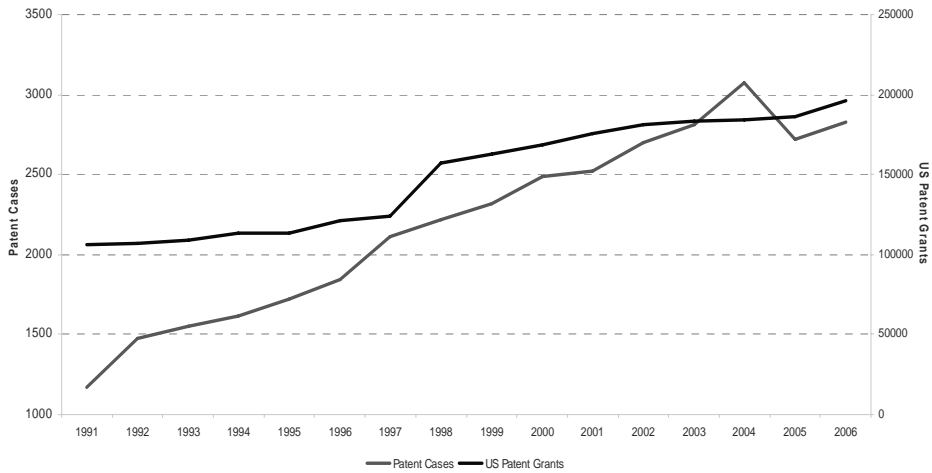
Executive Summary

- Filed patent cases increased more rapidly than growth in patent grants during the past 15 years; however, filed patent cases declined in 2005 and remained lower in 2006 than 2004
- The annual median for patent damage awards leveled off between 2002 and 2006; however, it increased sharply in the first half of 2007
- Use of juries steadily increased, with juries awarding higher damages than bench trials
- For the past 12 years, plaintiffs' overall win rate is about 37%, with patentees' win rate at about 36%
- For the past 12 years, plaintiffs' trial win rate is about 56%, with patentees' win rate at about 57%

Executive Summary

- Alleged infringers do not improve their win rate as plaintiffs in matters
- Plaintiffs' win rates vary widely among venues, with Middle Florida most favorable and Eastern Michigan least favorable to plaintiffs
- Reasonable royalties have become the most frequent measure of damages in patent cases, overtaking lost profits
- Treasury bill rates have become the most popular basis for awarding prejudgment interest, overtaking prime rates

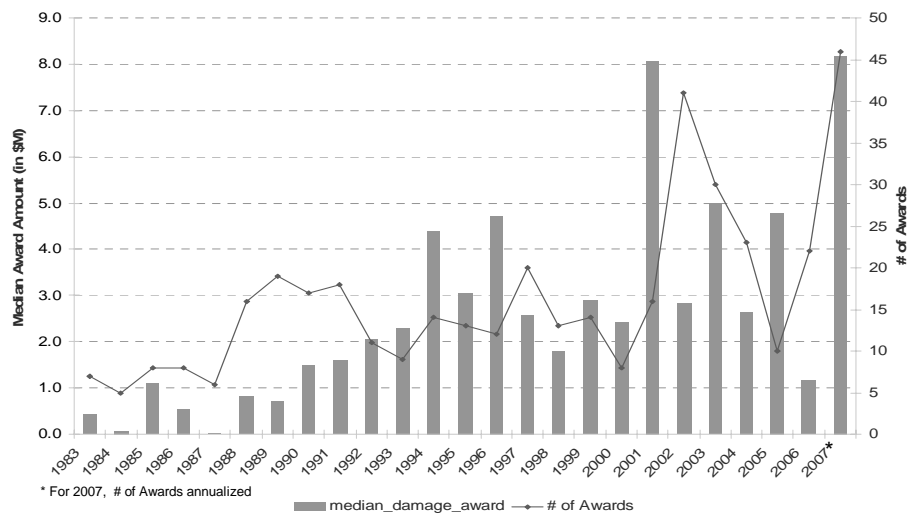
Patent case filings increased more rapidly than the growth of grants until recently



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The median damage awards increased significantly in the first half of 2007

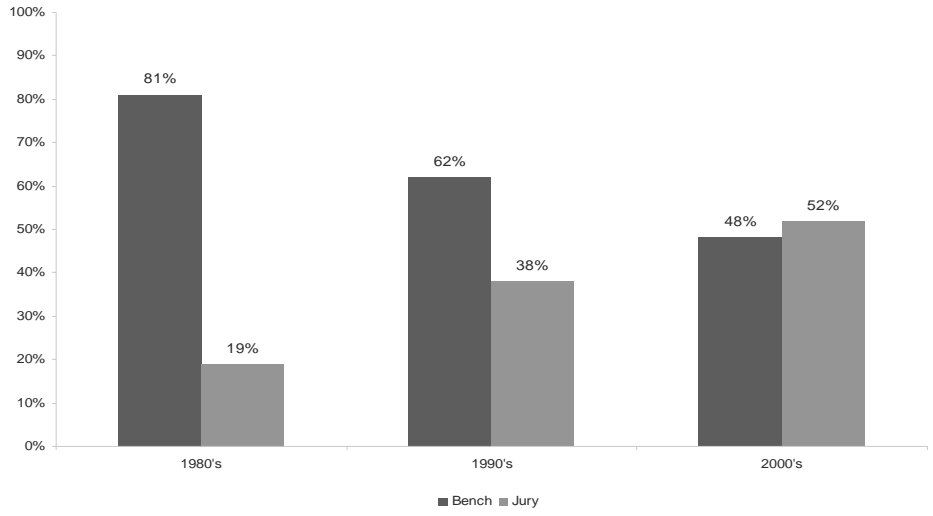


* For 2007, # of Awards annualized

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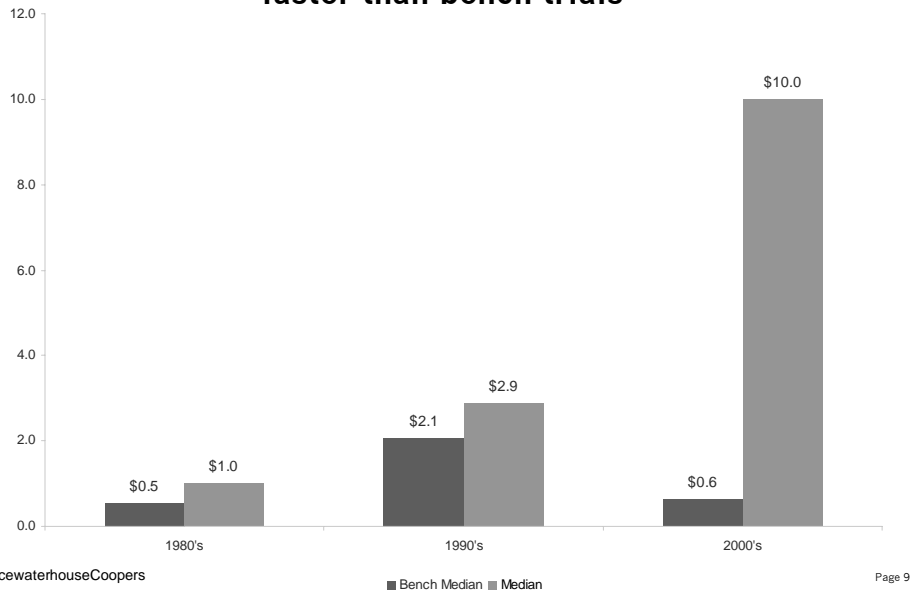
Use of juries has increased significantly



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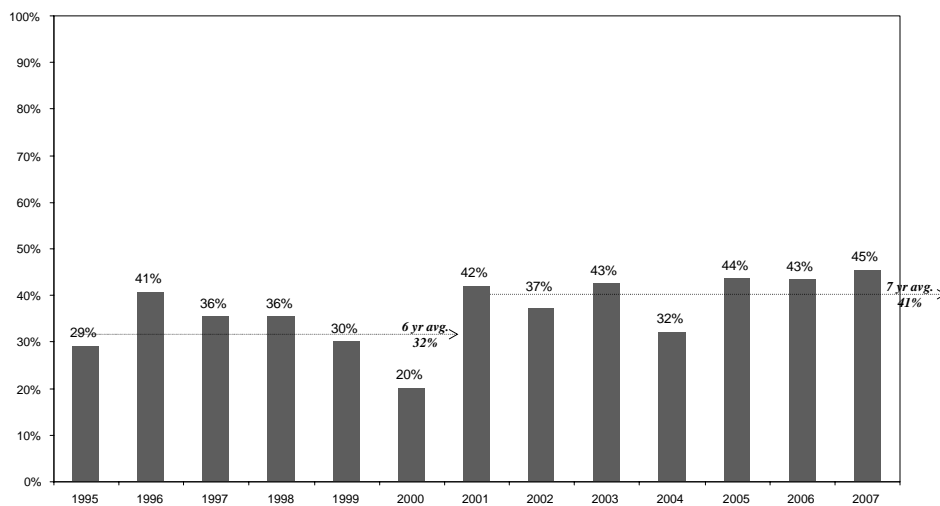
Median damages awarded by juries have increased much faster than bench trials



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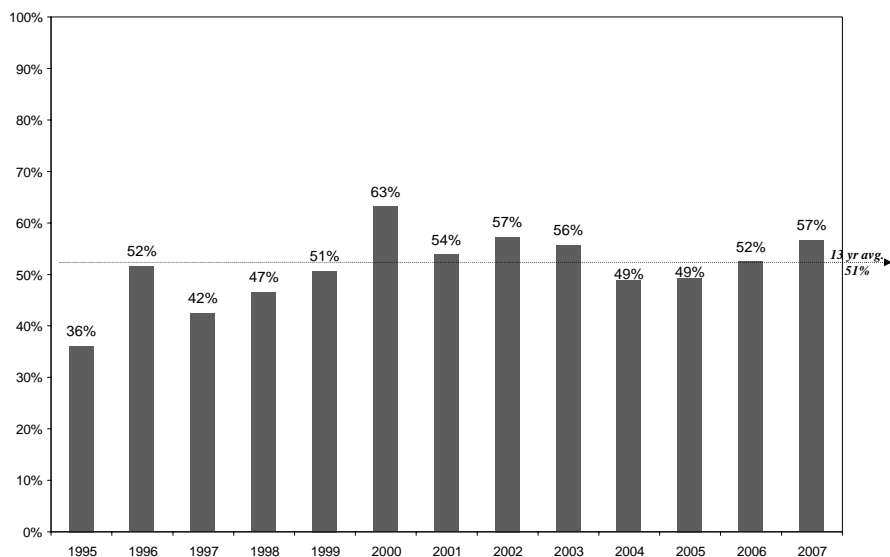
Plaintiffs' overall win rate is about 37%



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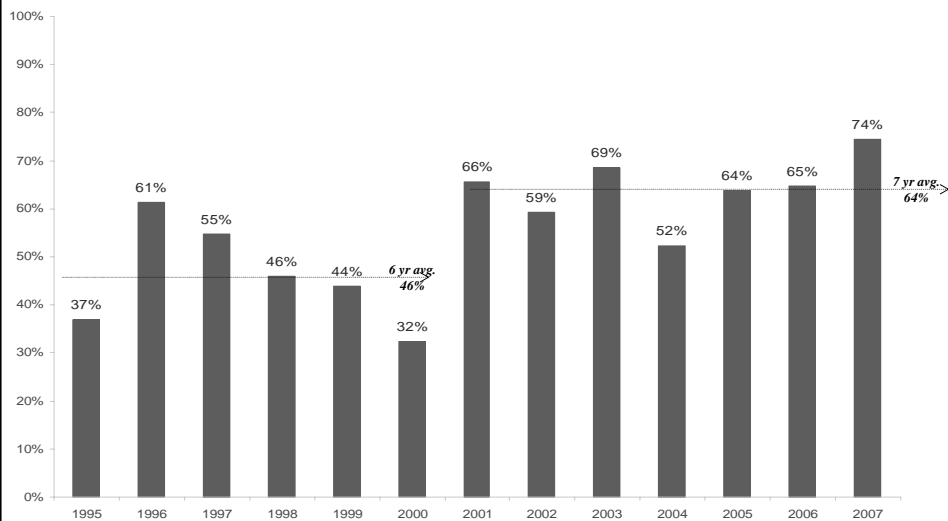
Patent cases are adjudicated at summary judgment about 51% of the time



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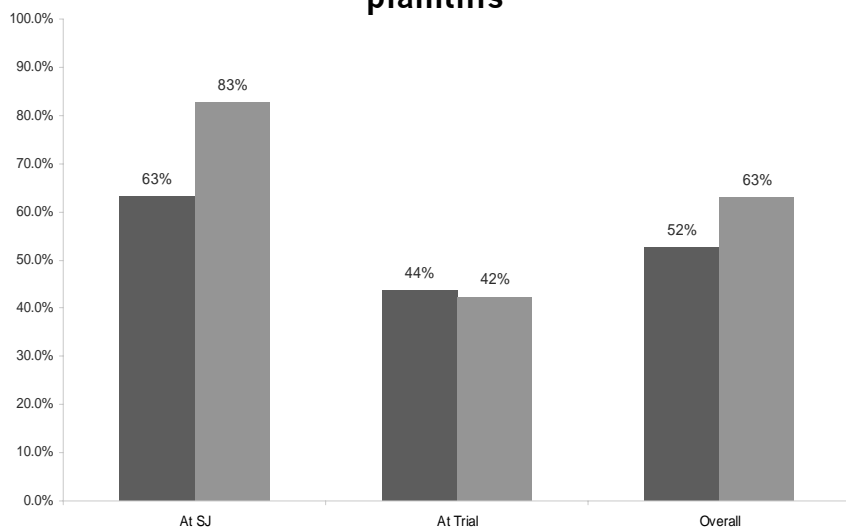
Plaintiffs win about 56% of the time at trial



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Alleged infringers don't increase their overall win rate as plaintiffs



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■ Alleged Infringer as Plaintiff ■ Alleged Infringer as Defendant

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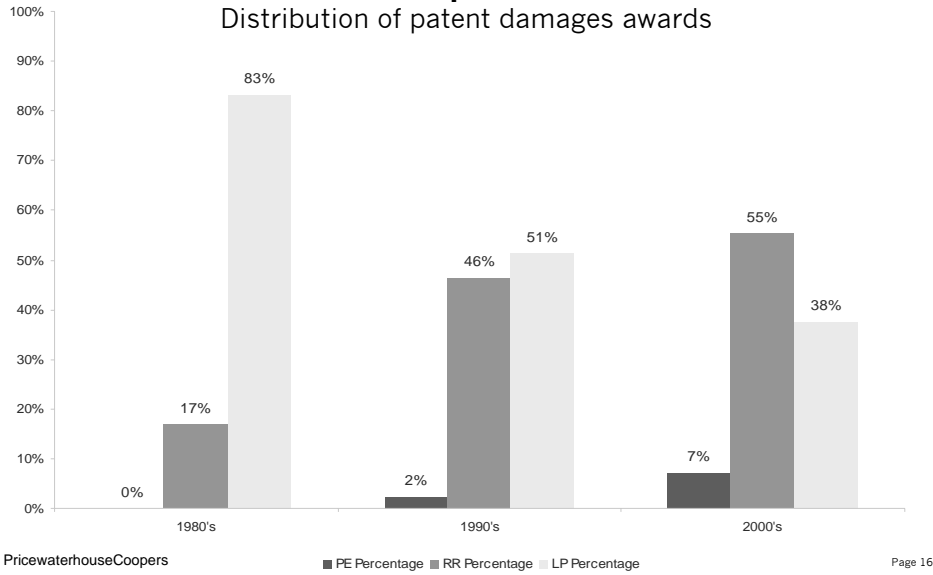
January 1995 – June 2007 Average Plaintiff Win Rate

Top 5 Districts	Overall	SJ	Trial
1. Florida Middle	65%	0%	79%
2. Wisconsin Western	58%	40%	78%
3. New York Eastern	58%	25%	75%
4. Virginia Eastern	49%	20%	70%
5. Texas Eastern	49%	8%	70%
Median - (All Districts)	37%	18%	59%

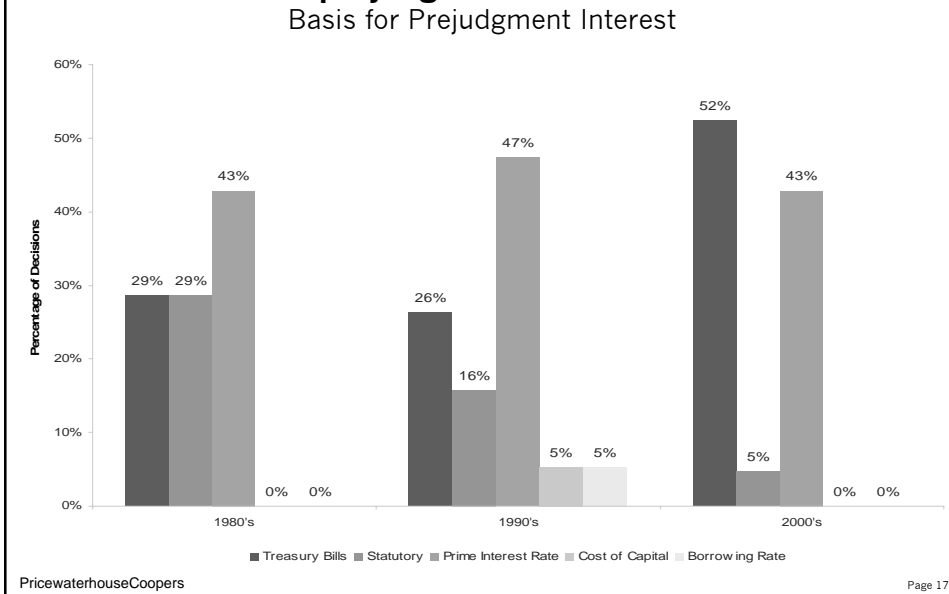
January 1995 – June 2007 Average Plaintiff Win Rate

Bottom 5 Districts	Overall	SJ	Trial
1. Michigan Eastern	15%	0%	40%
2. Connecticut	17%	7%	50%
3. Ohio Southern	18%	13%	33%
4. Kansas	21%	17%	25%
5. Florida Southern	24%	9%	40%
Median - (All Districts)	37%	18%	59%

Reasonable royalties have become the most frequent measure of damages awarded in patent cases, overtaking lost profits



Treasury bill rates have become the most frequent basis for prejudgment interest



Litigation Tactics

- Outcome of summary judgment is material
- Venue and forum shopping pays
- Juries award much higher damages
- Infringers' win rates don't increase as plaintiffs
- Reasonable royalties are awarded most frequently

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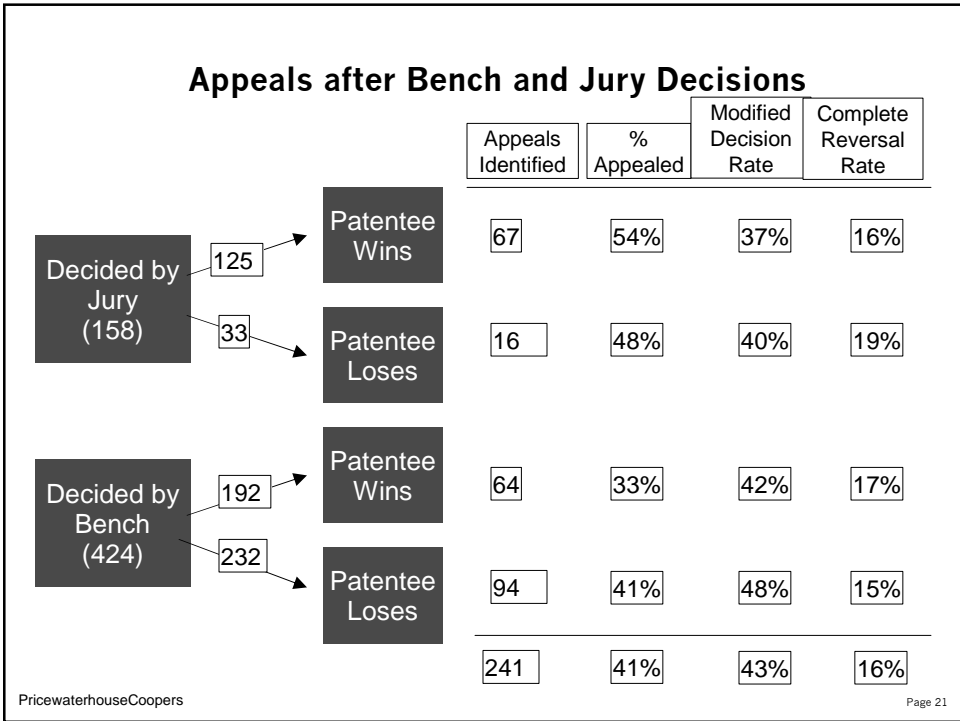
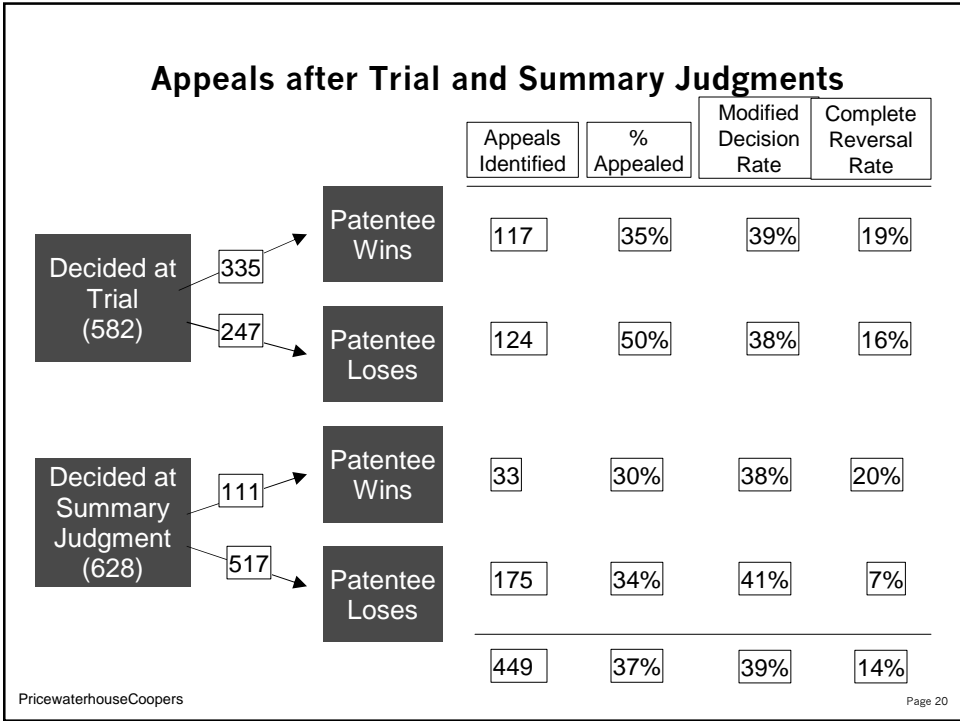
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Executive Summary (CAFC)

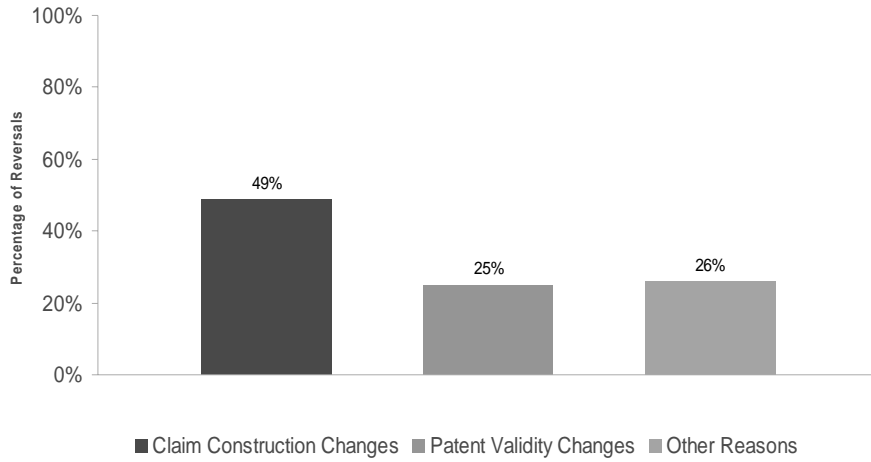
- 37% of all cases are appealed
- Jury verdicts are appealed 53% of the time while bench verdicts are only appealed 35%
- Appellant win rates are near 41%, for all lower court decisions
- Erroneously construed claims is the leading reason for reversal
- Percentage of cases appealed varies among venues, with Florida Southern and Texas Northern Districts having the highest percentages of cases appealed, while Texas Eastern and Maryland Districts have the lowest percentage

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Claim Construction Changes is the leading reason for a modified decision



Most Appealed Districts, 1995 - 2006

District	# Lower Court Cases	% Cases Appealed
1. Florida Southern	21	76%
2. Texas Northern	28	68%
3. Virginia Eastern	35	54%
4. California Central	46	50%
Median - (All Districts)	21	37%

Least Appealed Districts, 1995 - 2006

District	# Lower Court Cases	% Cases Appealed
1. Texas Eastern	35	14%
2. Maryland	12	17%
3. New Jersey	41	17%
4. California Southern	11	18%
Median - (All Districts)	21	37%

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