

2013 NPE Litigation Report

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RPX's 2013 NPE Litigation Report provides a comprehensive overview of the litigation activities of non-practicing entities (NPEs). This report continues RPX's efforts to bring transparency to the industry and builds on last year's inaugural edition. RPX believes that decisions should be based on data and hopes that the information in this report can help cut through some of the hyperbole often associated with patent monetization.

RPX's second annual NPE Litigation Report includes charts, tables, and commentary regarding NPE activity in 2013. RPX is excited to include key additions that provide further insight into the industry in the 2013 report including data on NPE campaigns and certain USPTO validity challenges.

An NPE campaign is a metric created by RPX and encompasses all cases filed by the same plaintiff that assert the same or related patents. Campaign metrics provide valuable insight into the number of distinct matters or disputes because it groups related matters. In contrast, the number of cases may overstate the number of distinct disputes because plaintiffs often file multiple cases involving the same or related patents against a single defendant. RPX believes that both cases and campaigns provide valuable information and that consideration of both metrics provides the most comprehensive view of NPE activity.

Newly added data on validity challenges before the USPTO include petitions for inter partes review (IPRs) and covered business method review (CBMs). The America Invents Act (AIA) introduced IPRs and CBMs as more efficient means to challenge patent validity. Both procedures are adversarial, often pitting patent owner against accused infringer and, as such, have many similarities to more traditional litigation. These validity challenges are increasingly popular and are an important part of the NPE activity landscape.

A Few Key Observations from 2013:

1. NPEs sued over 2,600 different companies in 2013 and filed 3,608 patent infringement cases. These cases resulted in 4,843 total defendants, which was 13% more than 2012. See Charts 4–6.
2. NPEs filed more than half (63%) of new patent litigation (measured by total defendants). This is the fourth straight year that NPEs were responsible for the majority of all new patent litigation. See Chart 8.
3. NPEs filed 345 new campaigns in 2013, down slightly from 2011 and 2012, but still up substantially from 2009. New campaigns initiated in 2013 averaged 12 defendants. Total campaign defendants and unique campaign defendants were both lower than their case counterparts, reflecting that defendants are often sued multiple times on the same or related patents. See Charts 13–15.
4. At the end of 2013, there were fewer active NPE defendants than at the end of 2012. The 2013 decrease interrupts a long-term trend of annual increases and is wholly based on increased terminations (as opposed to a decrease in defendants added). Nonetheless, active NPE defendants was still up 56% from year-end 2009 to year-end 2013. See Chart 19.
5. Litigation activity in 2013 does not appear to have been affected by the one-time temporal effects of the AIA. The AIA appears to have caused a one-time increase in activity immediately before enactment in September 2011 followed by artificially depressed levels of activity in early 2012. See Charts 20–22.
6. Most NPE litigation in 2013 occurred in the Eastern District of Texas and District of Delaware courts. Those districts accounted for over 60% of cases filed, new defendants added, cases active at year-end, and defendants active at year-end. See Charts 23–26.
7. The International Trade Commission (ITC) was a less popular venue for NPE activity in 2013. The ITC initiated only nine investigations in NPE cases in 2013 compared to 16 in 2011 and 14 in 2012. While the sample size is very small, a presidential veto of an exclusion order obtained by Samsung against Apple, combined with the perception that the ITC may be more susceptible to political pressure and the public backlash against NPEs, may have deterred NPEs from selecting the ITC as a venue. See Charts 33–35.
8. Most companies sued by NPEs were small or private companies. Over half (61%) of unique defendants added in NPE cases in 2013 earn less than \$100M in revenue, and 68% of unique defendants added in NPE cases in 2013 were private companies. However, public companies and companies with greater revenue experienced, on average, a greater number of suits. See Charts 38–41.
9. AT&T was sued more frequently than any other company in 2013 (54 new cases), and Google had the largest number of active cases at year-end (72 active cases). In general, the most frequently targeted companies had significant activities in the Mobile Communications and Consumer Electronics sectors. See Charts 42–43.
10. Acacia led all NPEs in cases filed and total defendants in 2013, filing, on average, over four cases per week. The top four most active NPEs in 2013 were also the top four most active NPEs in 2012 (albeit in a different order). See Tables 44–45.
11. Cases ending in 2013 had a relatively short average duration at 52% completed within six months and 75% completed within a year of filing. Terminated defendants in 2013 had similarly short periods of active litigation with 41% terminating within six months and 60% terminating within a year. See Charts 55–56.

13. Patent assertion entities filed more than 90% of NPE cases and accounted for nearly 90% of new defendants. Inventors, universities, and non-competing entities accounted for a relatively small portion of NPE activity in 2013. See Charts 59–60.
14. Petitions for inter partes review increased significantly during 2013. Seventy-eight percent (78%) more petitions were filed in the second half of 2013 as compared to the first half. From inception through year-end 2013, 797 IPR petitions were filed, of which 317 were filed against patents owned by NPEs. The top two filers of IPRs against NPEs were Apple (26) and Oracle (19). See Charts 61–62, Table 68.
15. The frequency of petitions for covered business method review also increased in 2013. Two hundred and eighty-eight percent (288%) more petitions were filed in the second half of 2013 as compared to the first half. From inception to year-end 2013, 104 CBM petitions were filed, of which 54 were filed against patents asserted by NPEs. The top three filers of CBMs against NPEs were Google (8), Apple (5), and Groupon (5). See Charts 69–70, Table 74.

RPX has made a conscious effort to present the subject data in the most straightforward and objective manner and has withheld its own potentially subjective views and analyses. However, to the extent the reader is interested in an additional level of analysis, we encourage the reader to browse RPX's website (www.rpxcorp.com) or reach out directly to RPX.

Methodology

RPX strives to continuously improve the accuracy and scope of its data and may make minor changes to methodology and underlying data presented in future analyses and reports. In addition, certain aspects of our methodology, such as the treatment of severances and consolidations, may result in slight changes as time passes.

NPE Definition

For the purposes of this report, the following are considered NPEs:

1. Patent assertion entities (PAEs): entities believed to earn revenue predominantly through asserting patents
2. Universities and research institutions
3. Individual inventors
4. Non-competing entities (NCEs): operating companies asserting patents outside their areas of products or services

Cases Filed, Total Defendants Added, and Unique Defendants Added

“Cases filed” refers to filed actions. A single case filed may include multiple defendants. The date for a case filed is the date that it was originally filed.

“Total defendants added” refers to the total number of case/defendant pairings added for a given criterion. New filings, as well as amended complaints that add a defendant, are taken into account in total defendants added.

“Unique defendants added” refers to the total number of entities that have been added as a defendant in a case (via original or amended complaint) for a given criterion. For example, if Company A has been added in seven cases in 2013, it still counts as one unique defendant added in 2013.

The date for determining total defendants added and unique defendants added is the date that a defendant was added to a case. This date may differ from the date the case was originally filed. For example, defendants added in amended complaints may be bucketed in a different time period than the period that applies for the case filed.

“NPE cases filed,” “total NPE defendants added,” and “unique NPE defendants added” have the same meaning as these terms but are limited to cases filed by NPEs.

Campaign, New Campaigns Filed, Total Campaign Defendants, and Unique Campaign Defendants

“Campaign” refers to all cases filed by the same plaintiff (inclusive of all members in the corporate family) where each case has at least one patent or family member of a patent in common with another case in the campaign.

“Campaigns filed” refers to unique campaigns. The date for a campaign filed is the filing date of the first case filed in the campaign. For example, if a campaign includes ten cases, there will be only one new campaign filed; the filing date for the campaign is established by the filing date of the first case filed in the campaign.

“Total campaign defendants added” refers to the total number of campaign/defendant pairings for a given criterion.

“Unique campaign defendants added” refers to the total number of entities that have been added in a campaign for a given criterion.

The date for determining total campaign defendants added and unique campaign defendants added is the date a defendant was first added to a campaign.

“NPE campaigns filed,” “total NPE campaign defendants added,” and “unique NPE campaign defendants added” have the same meaning as these terms but are limited to campaigns filed by NPEs.

NPE Identification

RPX identifies NPEs through a manual review process performed by experienced employees with sophisticated knowledge of the patent industry.

The process includes, among other things, searching for evidence of operating or patent monetization activities on the Internet including company websites; reviewing complaints, with a focus on accused products and allegations regarding products and/or services sold by the patent owner; considering the outside counsel employed by the entity (e.g. whether outside counsel has a history of representing NPEs); reviewing public filings; reviewing corporate disclosure statements filed in litigation; and soliciting market intelligence from patent professionals.

While there are elements of subjectivity in this approach, we believe that the process is robust based on feedback from other patent professionals.

Litigation Identification

RPX has manually reviewed for inclusion in this report all litigations with a nature-of-suit code 830 (Patent) on PACER (Public Access to Court Electronic Records). Out of those cases, RPX has included only those with complaints that allege patent infringement. For example, RPX excludes false marking cases, misfiles, and ownership disputes.

Inter Partes Review and Covered Business Method Review Identification

RPX has reviewed for inclusion in this report all IPRs and CBMs made available through the Patent Trials and Appeals Board’s Patent Review Processing System with case numbers starting with “IPR” or “CBM”.

Inter partes review (IPR) is a proceeding that was introduced in September 2012 as part of the America Invents Act. A petitioner can request the USPTO to review the patentability of one or more claims in a patent on the basis of prior art consisting of patents of printed publications.

Covered business method review (CBM) is another proceeding that was introduced in September 2012 as part of the America Invents Act. A petitioner that has been sued or threatened with suit on patents that claim certain types of financial business methods can request the USPTO to review the patentability of one or more claims in a patent on various grounds.

Declaratory Judgment Actions

Declaratory judgment actions are excluded unless otherwise expressly noted.

Corporate Families

RPX has developed a proprietary database of corporate families. All entities in a corporate family are generally treated as a single unique entity. Portfolio companies owned by private equity firms are a notable exception; they are treated as independent entities. To the extent multiple members of a corporate family are defendants in a lawsuit, RPX counts those entities as a single defendant. Corporate families may change over time. For example, M&A activity may result in consolidation of entities.

NPE Roll-up

RPX's proprietary litigation database rolls up certain related NPEs to a single NPE entity. RPX has manually identified these relationships by, among other things, reviewing corporate disclosures, patent assignment records, and RPX market intelligence. For example, Acacia has numerous subsidiaries that RPX has identified. These entities are all represented as Acacia in this report's analyses concerning the most prolific NPEs.

Transfers, Severances, and Consolidations

RPX takes into account transfers, severances, and consolidations as follows: When a case is transferred, RPX counts the original action and the new action as a single case filed. RPX considers the filing date of the original action to be the case filing date.

When several cases are consolidated, RPX counts the consolidation as one case filed but multiple total defendants added. RPX considers the filing date of the earliest-filed consolidated case to be the case filing date.

When a case is severed into multiple cases, RPX counts multiple cases filed. RPX considers the filing date of the original case to be the filing date of each of the severed cases.

Consolidations and severances may happen after the year of filing and, in such circumstances, RPX's count of the number of cases filed for the year of filing will change as described above.

Market Sector Classifications

RPX has created a proprietary list of market sectors. RPX manually categorizes each case filed into a market sector based on a review of the accused products, defendants, and asserted patents.

In certain portions of this report, defendants are also classified into an RPX market sector. Classification of defendants is based on the type of NPE litigation that the defendant appears in most often.

Data Set

This report uses data from the RPX database as of January 14, 2014. The additional time following year-end 2013 accommodates the lag time between when cases are filed and when PACER makes case information available to the public. As a result of using a January 14, 2014 dataset, transfers, severances, and consolidations that occurred between January 1, 2014 and January 14, 2014 may have had a small effect on reported data.

Charts and Highlights

The following pages feature charts and highlights of key report facts.

Record Volume of Patent Infringement Cases

Chart 1: Cases Filed

Plaintiffs filed a record 5,411 patent infringement cases in 2013, up 15% from 2012. Cases filed has increased at an annualized rate of 19% since 2009, more than doubling during that period.

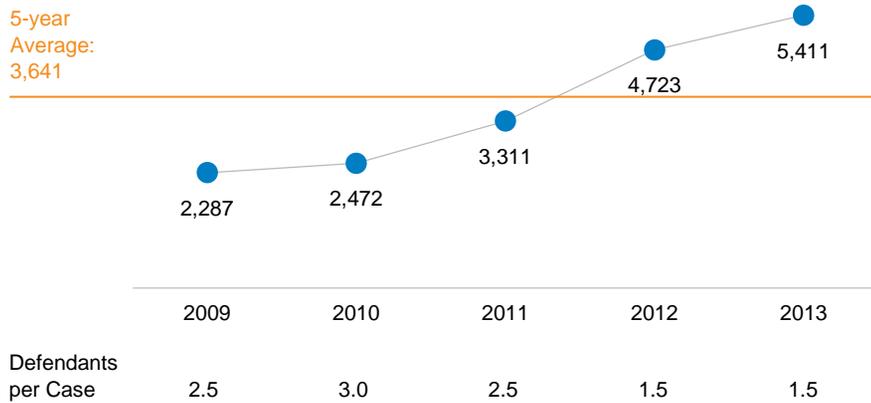


Chart 2: Total Defendants Added

Total defendants added in 2013 increased by 9% and has increased at an annualized rate of 6% since 2009.

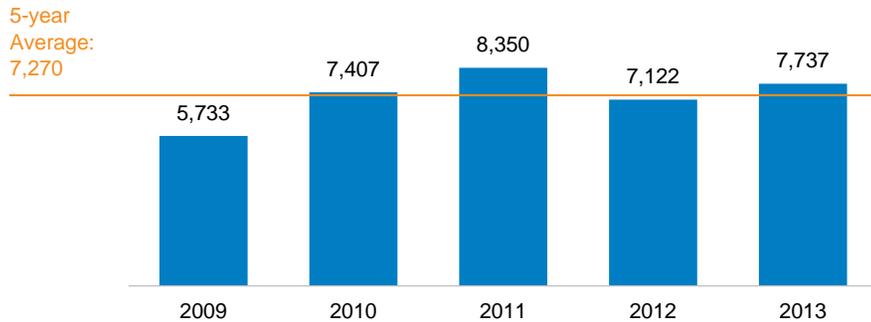
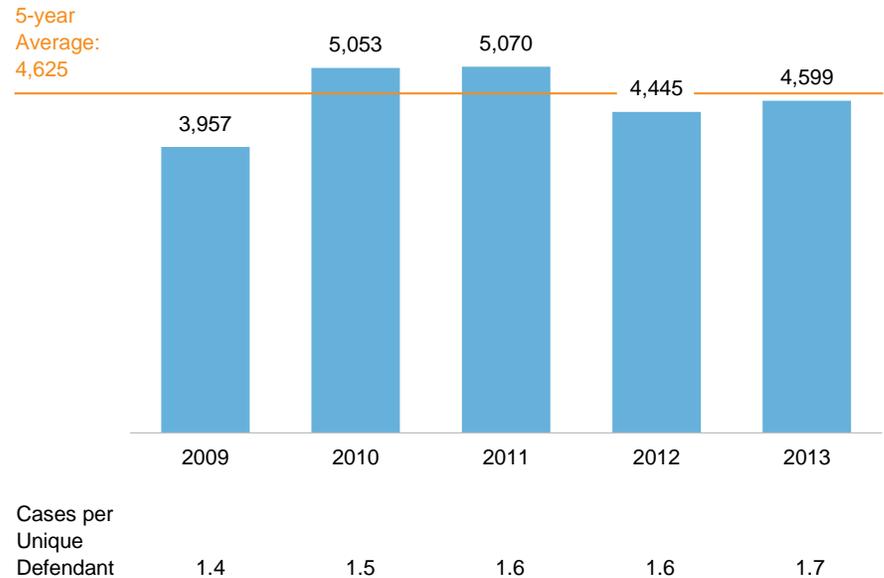


Chart 3: Unique Defendants Added

Unique defendants added in 2013 increased by 3%. Unique defendants added has grown slower than other NPE activity metrics over the past five years (3% annualized). A substantial increase in the number of cases per unique defendant is mostly responsible for the overall increase in total defendants added.



NPE Litigation Activity Up in 2013

Chart 4: NPE Cases Filed

NPE cases filed increased 19% from 2012 to 2013 and has increased by 464% since 2009 (41% annualized growth). The increase in NPE cases filed is overwhelmingly responsible for the overall growth of cases filed and is partly attributable to the new joinder rules introduced by the AIA. Operating companies filed only 156 more cases in 2013 than 2009.

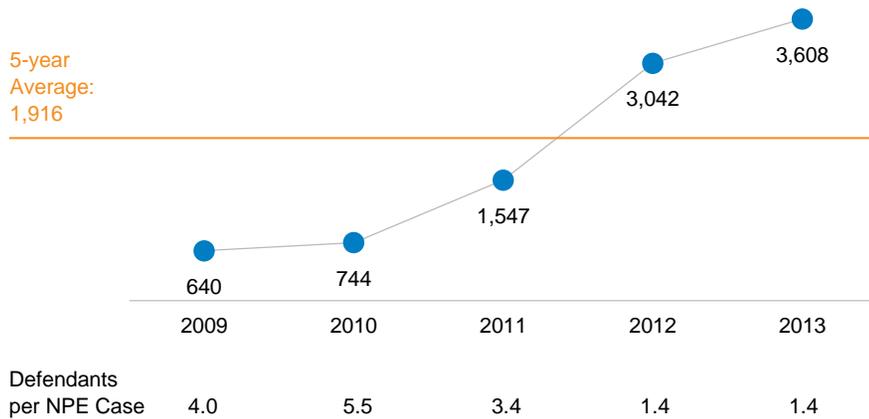


Chart 5: Total Defendants Added in NPE Cases

Total defendants added in 2013 increased by 13% and has increased at an annualized rate of 13% since 2009.

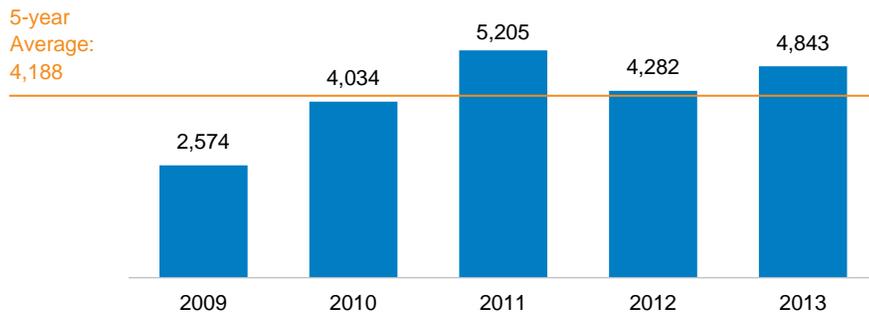
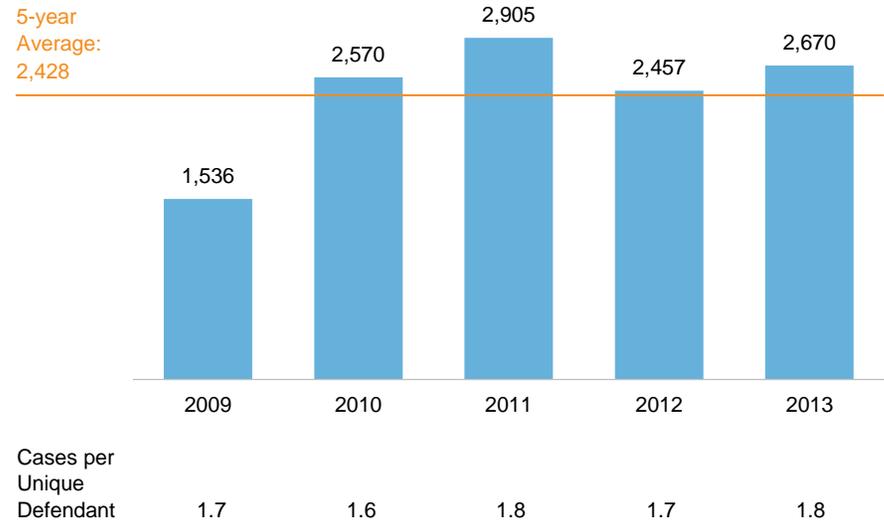


Chart 6: Unique Defendants Added in NPE Cases

Unique defendants added in 2013 increased by 9% and has increased at an annualized rate of 12% since 2009.



NPE Litigation Accounted for the Majority of Patent Litigation

Chart 7: NPE Cases Filed as Percentage of All Patent Infringement Cases Filed

NPE cases filed accounted for the majority of all patent infringement cases filed for the second straight year in 2013. The NPE share of cases filed has more than doubled since 2009.

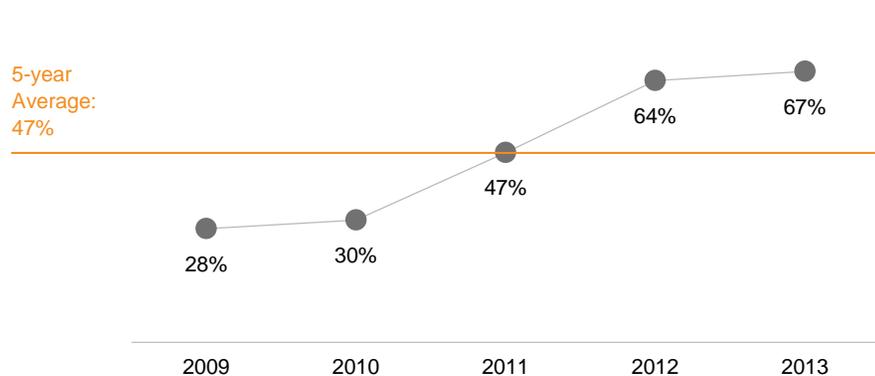


Chart 8: Total NPE Defendants Added as Percentage of Total Patent Infringement Defendants Added

NPE share of total defendants added remained around 60% for the third straight year. NPEs accounted for the majority of all defendants added for the fourth straight year.

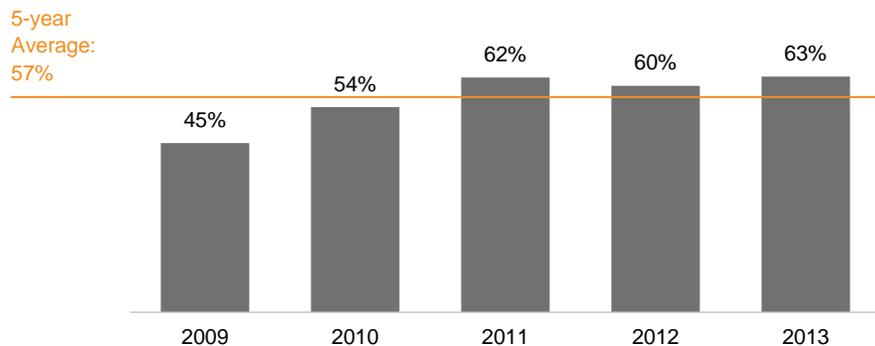
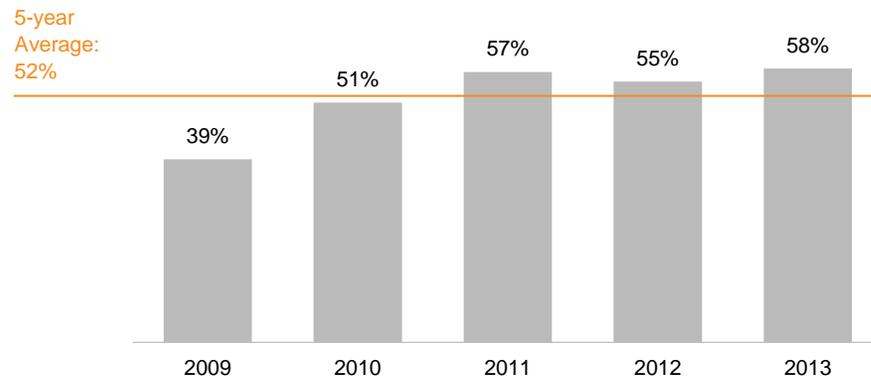


Chart 9: Percentage of Unique Defendants Added in at Least One NPE Case

NPE share of unique defendants added exhibited similar trends to total defendants added. For the fourth straight year, more than half of the companies that were added as a defendant in a patent infringement case in 2013 were added in an NPE case.



Steady Rate of New Patent Infringement Campaigns

Chart 10: New Campaigns Filed

The number of new campaigns filed in 2013 was up slightly from 2012 but has remained relatively steady over the past five years. In contrast, the number of defendants per campaign is up 41% since 2009.

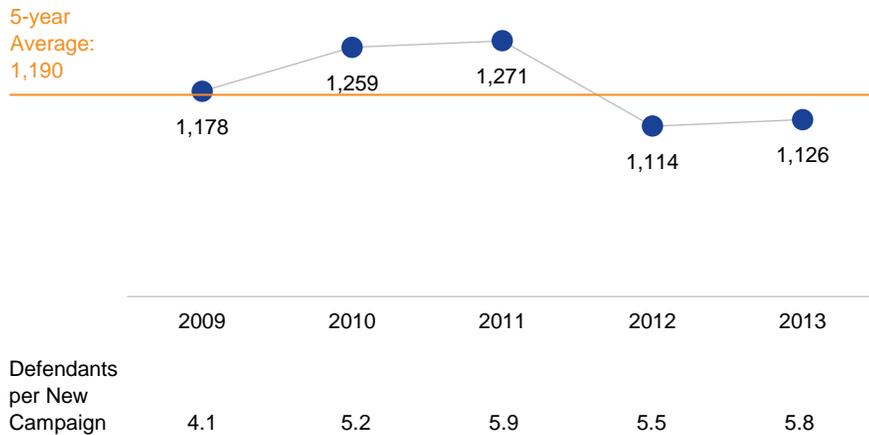


Chart 11: Total Defendants Added

Total campaign defendants added in 2013 increased by 7% by from 2012. Total campaign defendants added has increased at an annualized rate of 6% since 2009.

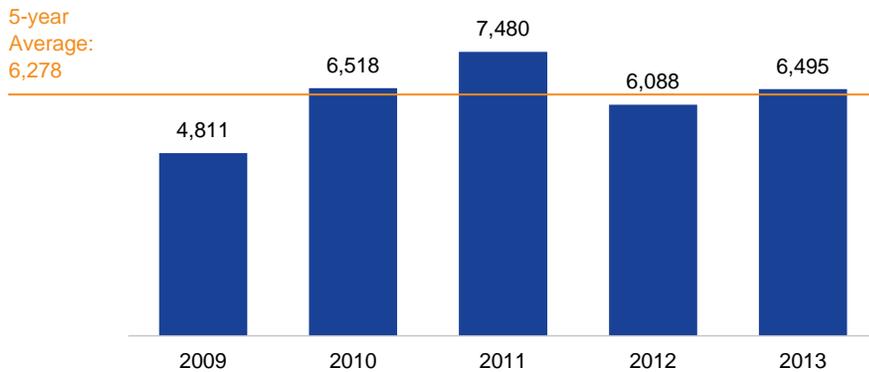
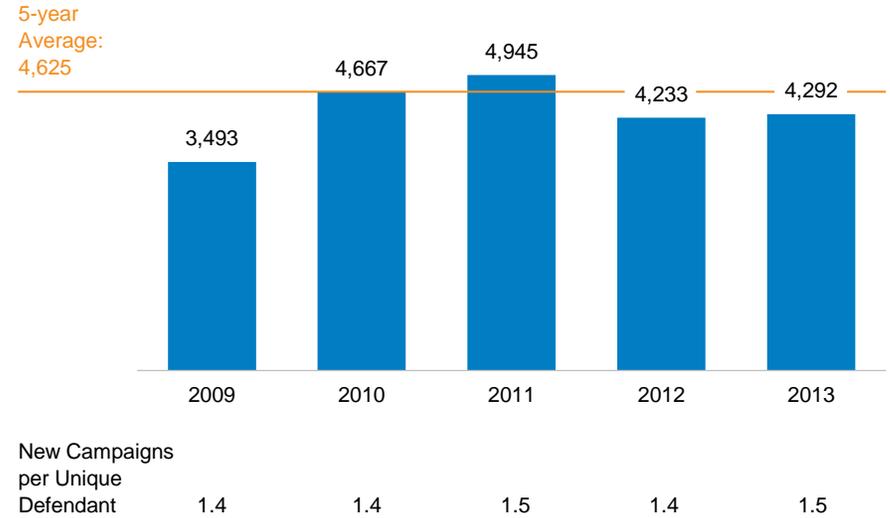


Chart 12: Unique Defendants Added

Unique campaign defendants added in 2013 increased slightly (1%) from 2012. Unique campaign defendants added has grown slower than total campaign defendants added over the past five years (4% annualized increase).



Volume of New NPE Campaigns Remains Steady as Defendants Added Increases

Chart 13: New NPE Campaigns Filed

New NPE campaigns filed dropped slightly (7%) from 2012 to 2013 despite an increase in NPE cases filed and total campaign defendants added. New NPE campaigns filed has increased at an annualized rate of 8% since 2009.

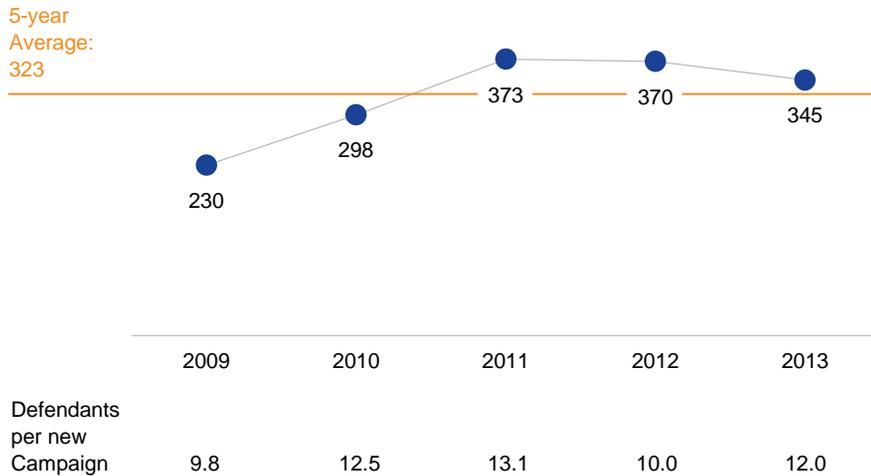


Chart 14: Total Defendants Added in New NPE Campaigns

Total NPE campaign defendants added in 2013 increased by 11% from 2012. Total campaign defendants added has increased at an annualized rate of 13% since 2009.

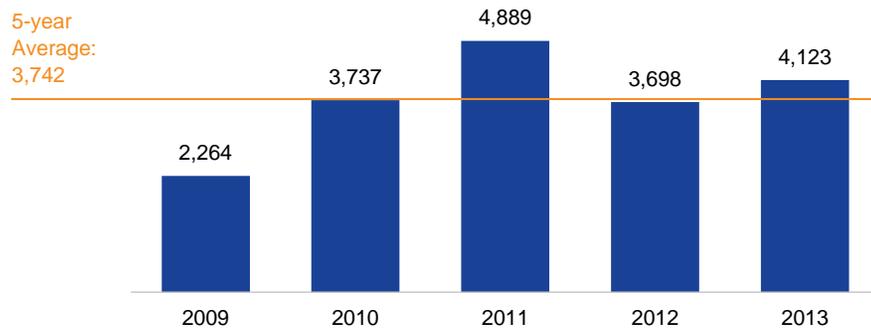
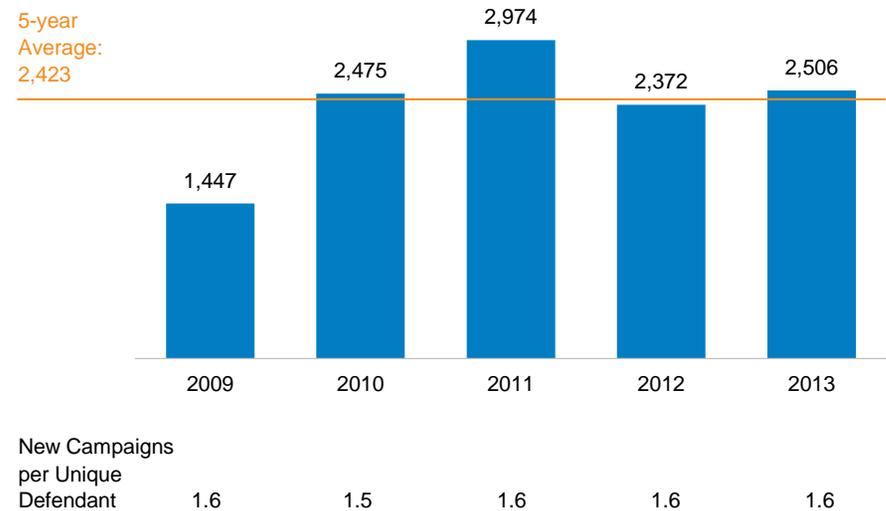


Chart 15: Unique Defendants Added in New NPE Campaigns

Unique NPE campaign defendants added in 2013 increased by 6% from 2012 and has increased at an annualized rate of 17% since 2009.



Operating Companies Filed Most New Campaigns but New NPE Campaigns Accounted for a Majority of Defendants Added

Chart 16: New NPE Campaigns Filed as Percentage of Patent Infringement Campaigns Filed

New NPE campaigns filed accounted for less than a third (31%) of all new campaigns filed in 2013. The NPE share of new campaigns filed has increased by 55% since 2009.

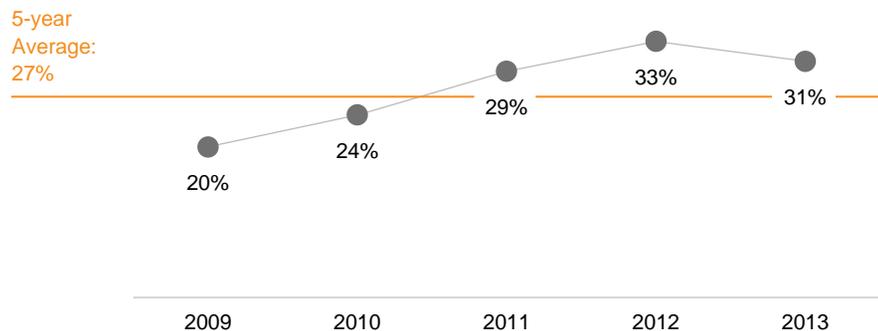


Chart 17: Total NPE Campaign Defendants Added as Percentage of Total Patent Infringement Defendants Added

NPE share of total campaign defendants added remained around 60% for the third straight year, up 34% since 2009.

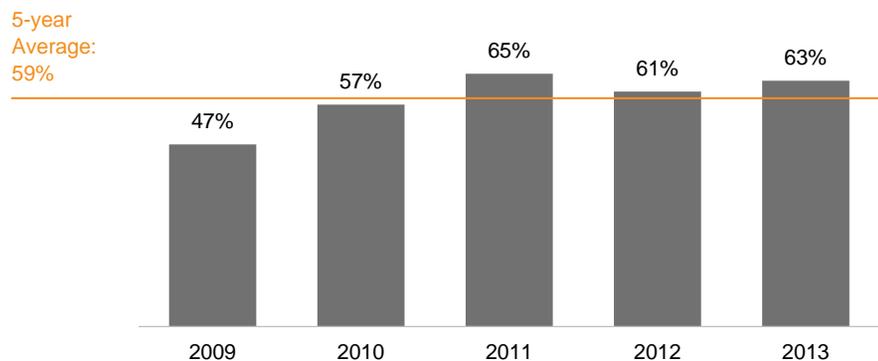
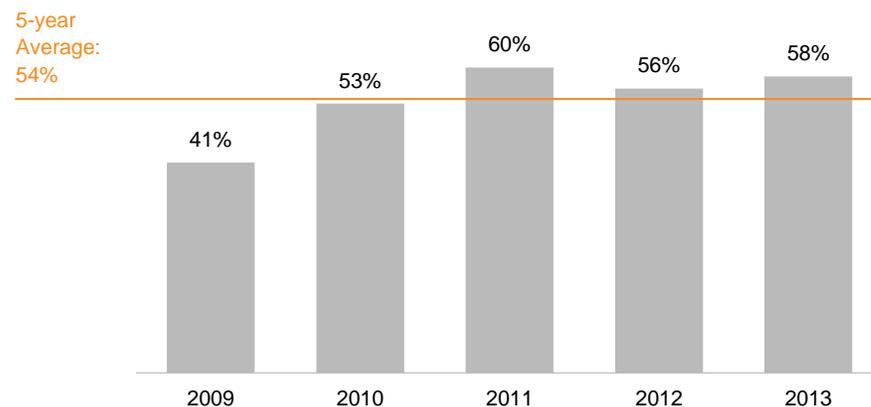


Chart 18: Percentage of Unique Campaign Defendants Added in at Least One New NPE Campaign

NPE share of unique campaign defendants added exhibited similar trends to total campaign defendants added. More than half of the companies that were added as a defendant in a new patent infringement campaign in 2013 were added in a new NPE campaign.



NPE Total Active Defendants Backlog Decreases

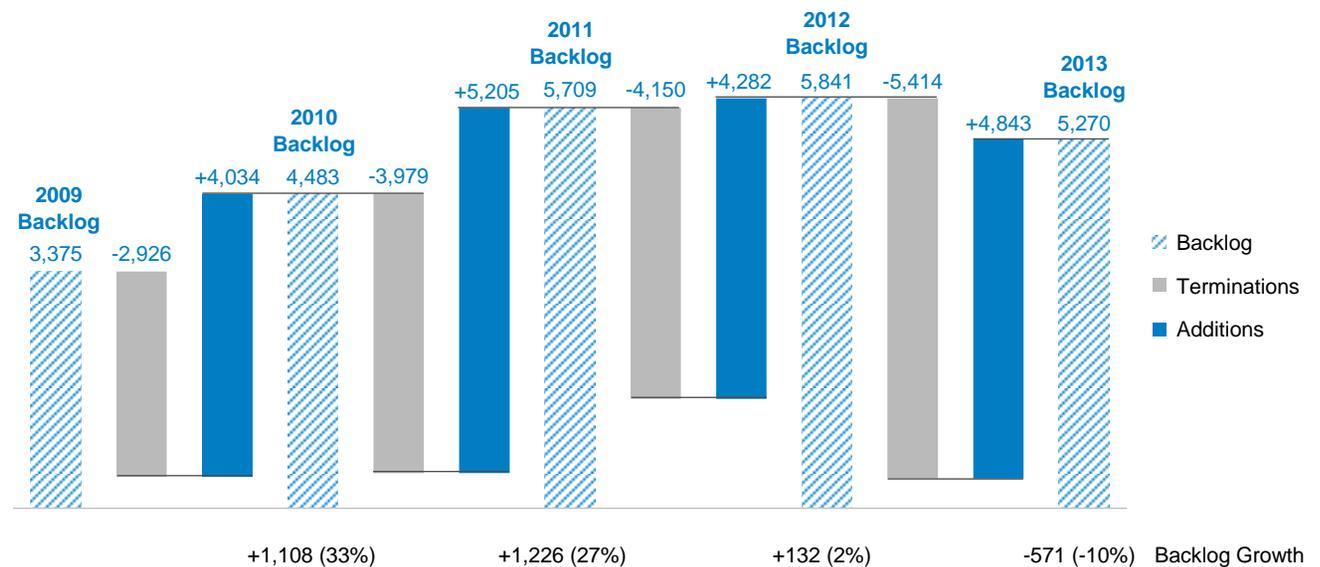
The 2013 year-end backlog, a proxy for the overall scope and cost of NPE litigation, decreased 10% from 2012 as resolutions outpaced new defendants. This reversed the long-term trend of increasing total active NPE defendants.

While total defendants added still increased by 13%, terminations increased 30% from 2012. Terminations of active defendants has increased at an annualized rate of 17% from 2010 to 2012.

Eighty-three percent (83%) of the decrease is attributable to a reduction in active E-commerce and software defendants. In contrast, there was an increase in financial services, automotive, mobile communications, and media content and distribution defendants.

Sixty-one percent (61%) of the decrease is attributable to defendants with less than \$1B of revenue and virtually all of the decrease attributable to defendants with less than \$10B in revenue.

Chart 19: Active NPE Defendants Backlog



Methodology Notes:

“Total active NPE defendants” is the total number of NPE case/active defendant pairings. “Backlog” is the number of total active NPE defendants at the end of a given year. For example, at the end of 2009, there were 3,375 total active NPE defendants.

NPE Litigation Volume Has Stabilized Post-AIA

Chart 20: Quarterly Impact of AIA on NPE Cases Filed

NPE cases filed rose dramatically following the September 16, 2011 enactment of the America Invents Act and the accompanying stricter standards for joinder of defendants, but remained relatively stable, on a quarterly basis, in 2013.

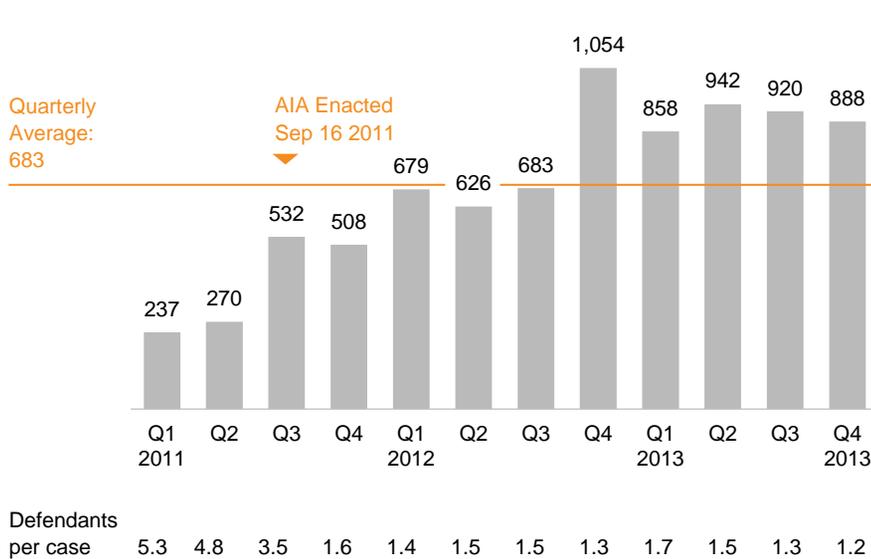


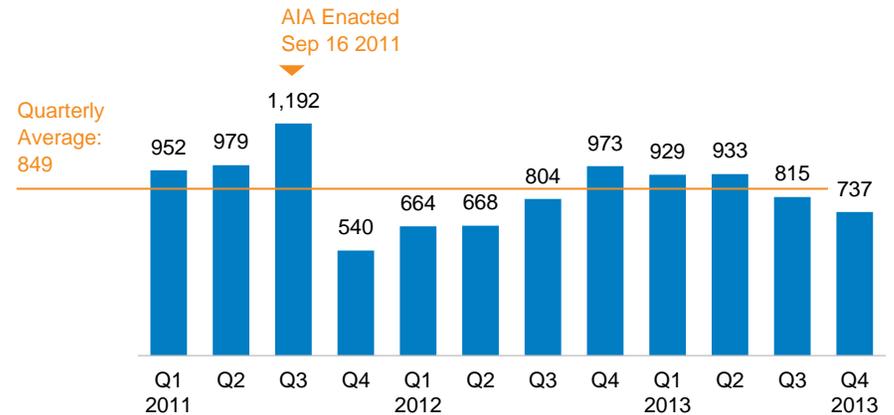
Chart 21: Quarterly Impact of AIA on Total Defendants Added in NPE Cases

Total defendants added in NPE cases spiked in Q3 2011 as NPEs rushed to file multi-defendant cases before AIA enactment and fell immediately after. Total defendants added recovered by the end of 2012 and appears to have stabilized in 2013.



Chart 22: Quarterly Impact of AIA on Unique Defendants Added in NPE Cases

Unique defendants added followed similar trends to total defendants added.



The Majority of NPE Litigation Was in the Eastern Texas and District of Delaware

The Eastern District of Texas and District of Delaware were again the most popular venues for NPE cases filed, together representing 67% of new cases filed and 64% of total defendants added in 2013. The popularity of these districts is consistent with the industry perception that these districts are favorable venues for plaintiffs and/or NPEs. The next five highest volume districts combined had 15% of cases filed and 18% of total defendants added—fewer than either of the top two districts.

Methodology Notes:

“District court” is based on the district of the original filing and does not take into account venue transfers.

Chart 23: NPE Cases Filed in 2013 by District Court

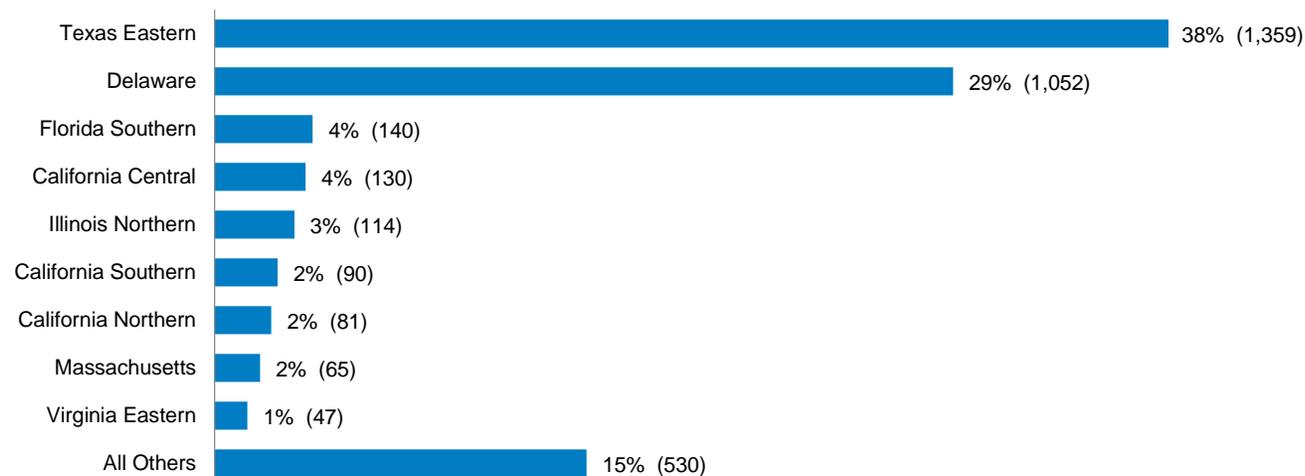
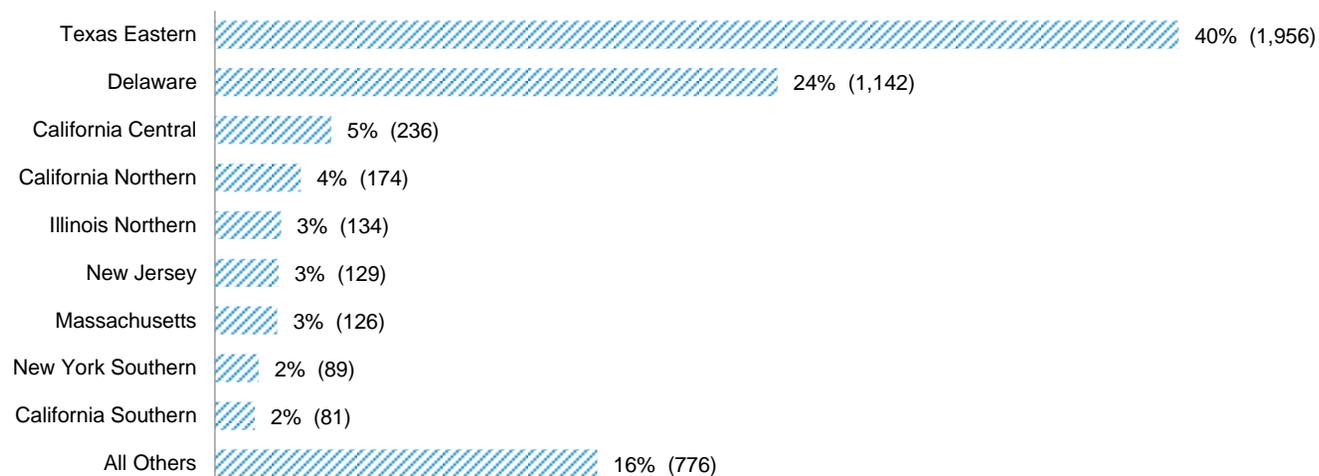


Chart 24: Total NPE Defendants Added in 2013 by District Court



Districts with Highest NPE Litigation Volumes also Have the Largest Backlogs

The Eastern District of Texas and District of Delaware also accounted for over half of the total pending cases (63%) and total active NPE defendants (61%) at the end of 2013. The next five districts accounted for 17% of pending cases and 19% of total active NPE defendants.

Methodology Notes:

“District court” is based on the district where a case was pending at year-end, which may differ from the district court of the original filing. “Total active NPE defendants” is the total number of NPE case/active defendant pairings.

Chart 25: NPE Cases Pending at Year-end 2013 by District Court

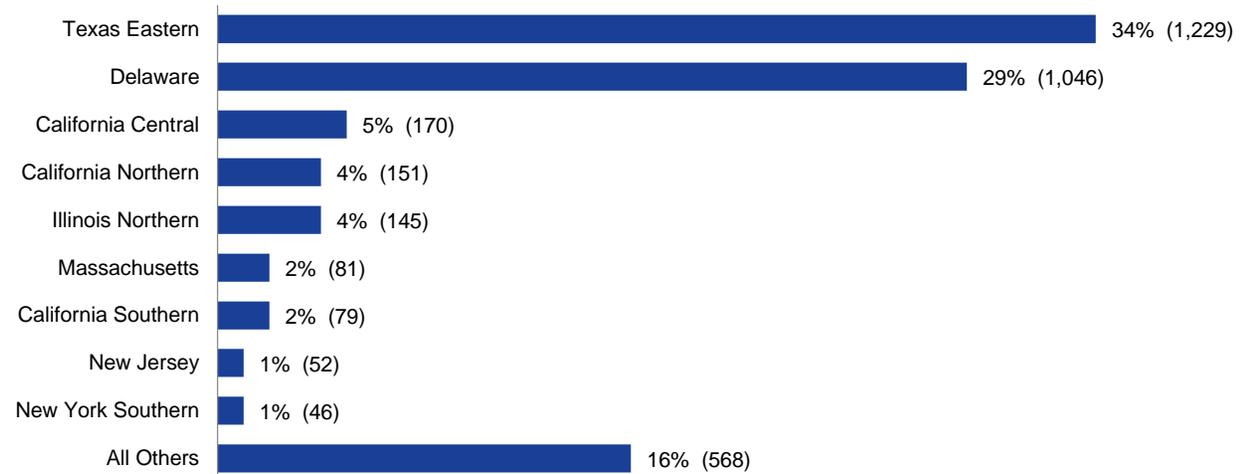
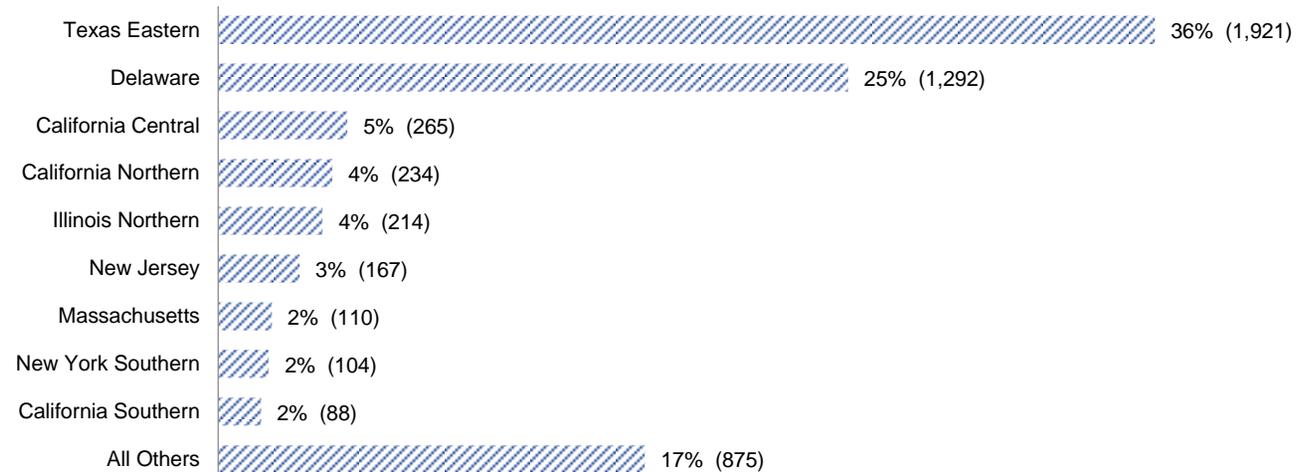


Chart 26: Total Active NPE Defendants at Year-end 2013 by District Court



Declaratory Judgment Actions Were Spread Out in 2013

In contrast to NPE filings, declaratory judgment actions were spread among multiple districts in 2013. Five districts accounted for at least 5% of declaratory judgment actions, led by the Northern District of California, a venue often perceived as unfavorable for NPEs.

Methodology Notes:

"Districts" expressly denoted in Chart 28 are limited to those with at least five NPE cases filed in 2013.

Chart 27: District Courts with Largest Volume of Declaratory Judgment NPE Cases Filed in 2013

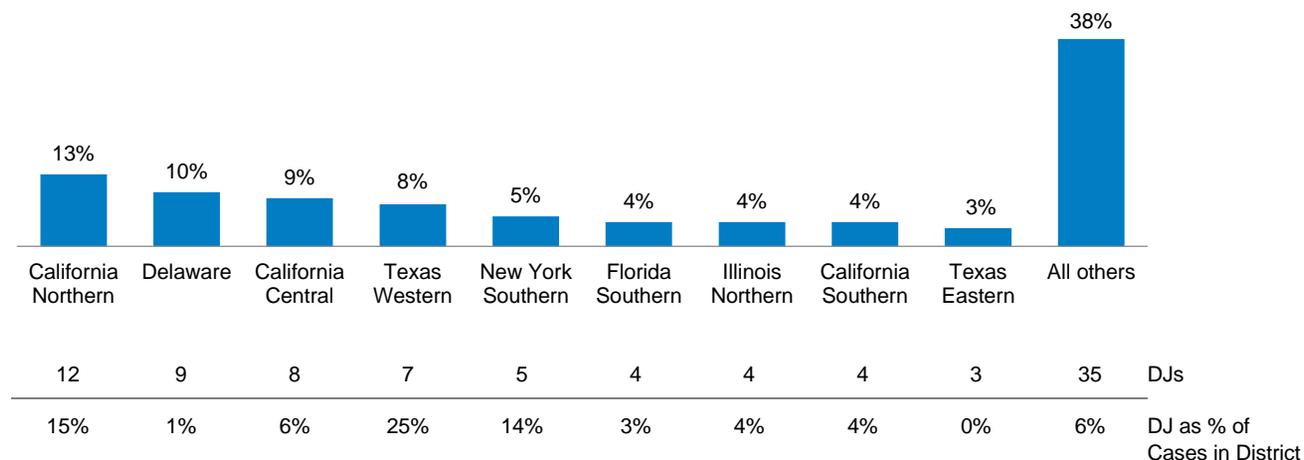


Chart 28: District Courts with Largest Proportion of Declaratory Judgment NPE Cases in 2013

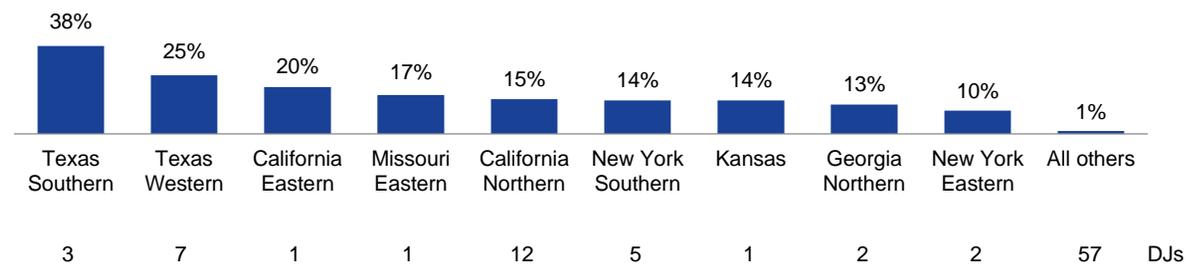


Chart 29: Cases Transferred In

- Cases Transferred In (by District Court)
- Non-transferred Recipient (by District Court)

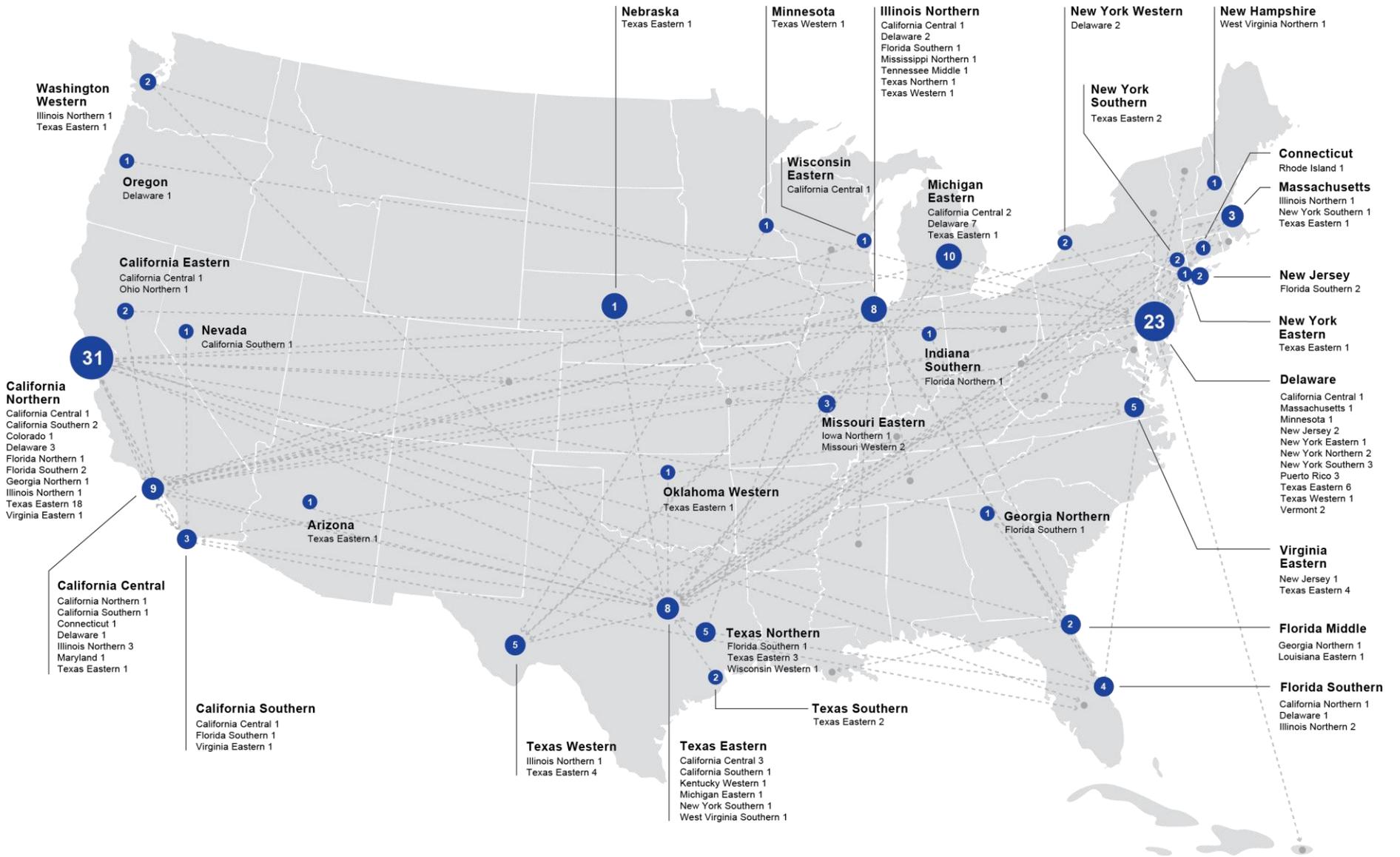


Chart 30: Cases Transferred Out

- Cases Transferred In (by District Court)
- Non-transferred Recipient (by District Court)

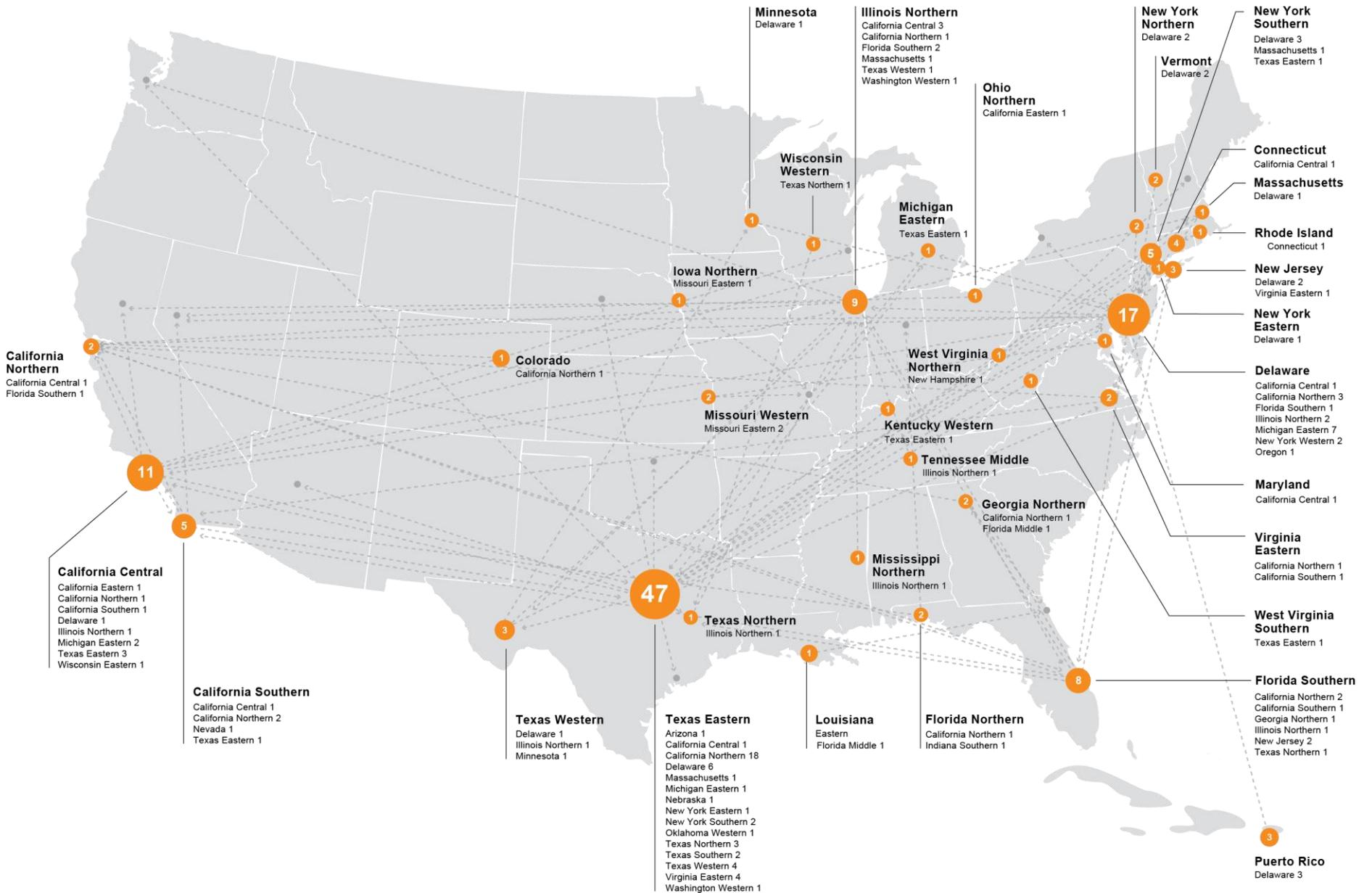


Chart 31: District of Delaware Cases Transferred 2013

● Cases Transferred In (by District Court)
 ● Cases Transferred Out (by District Court)

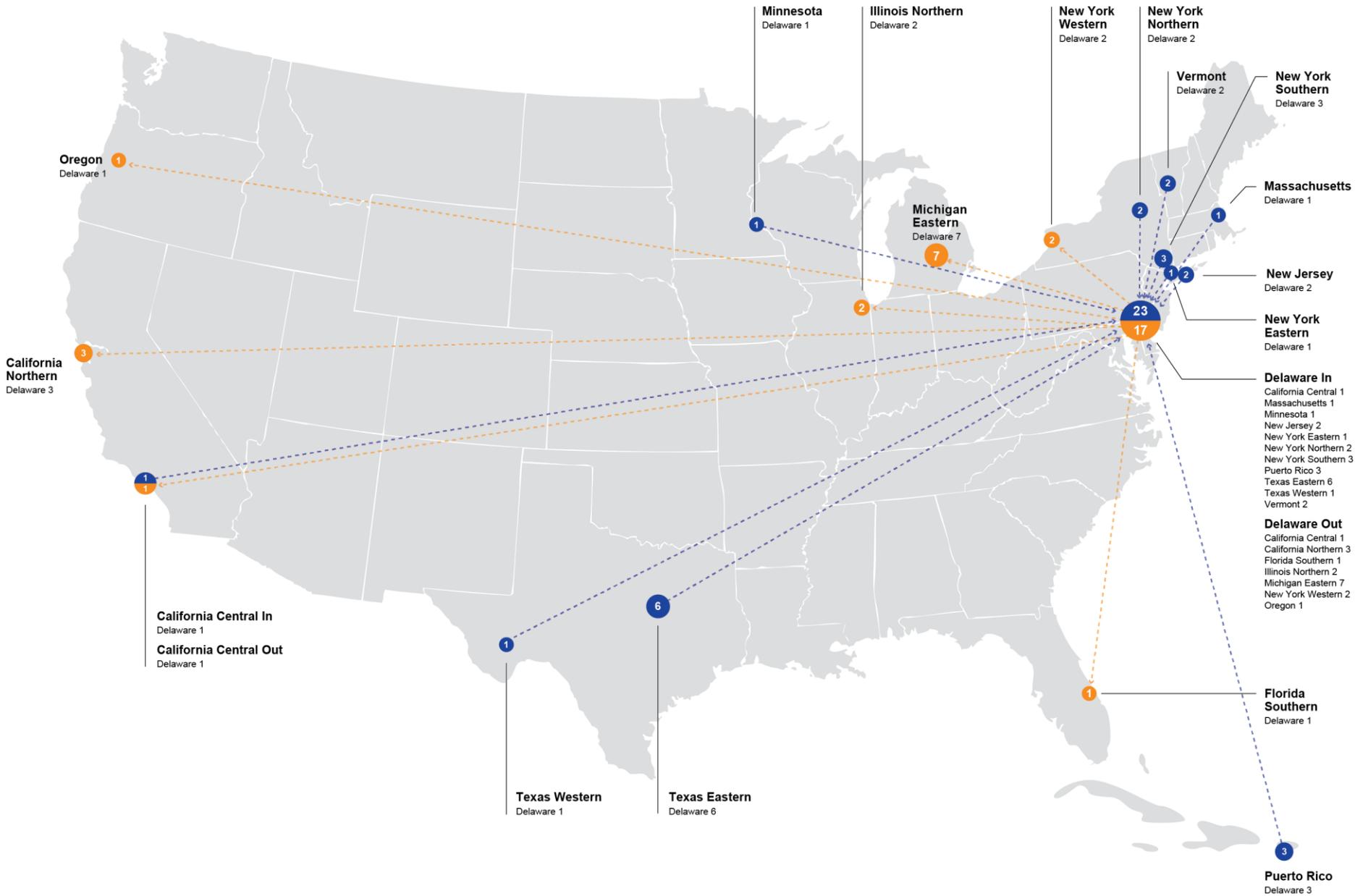
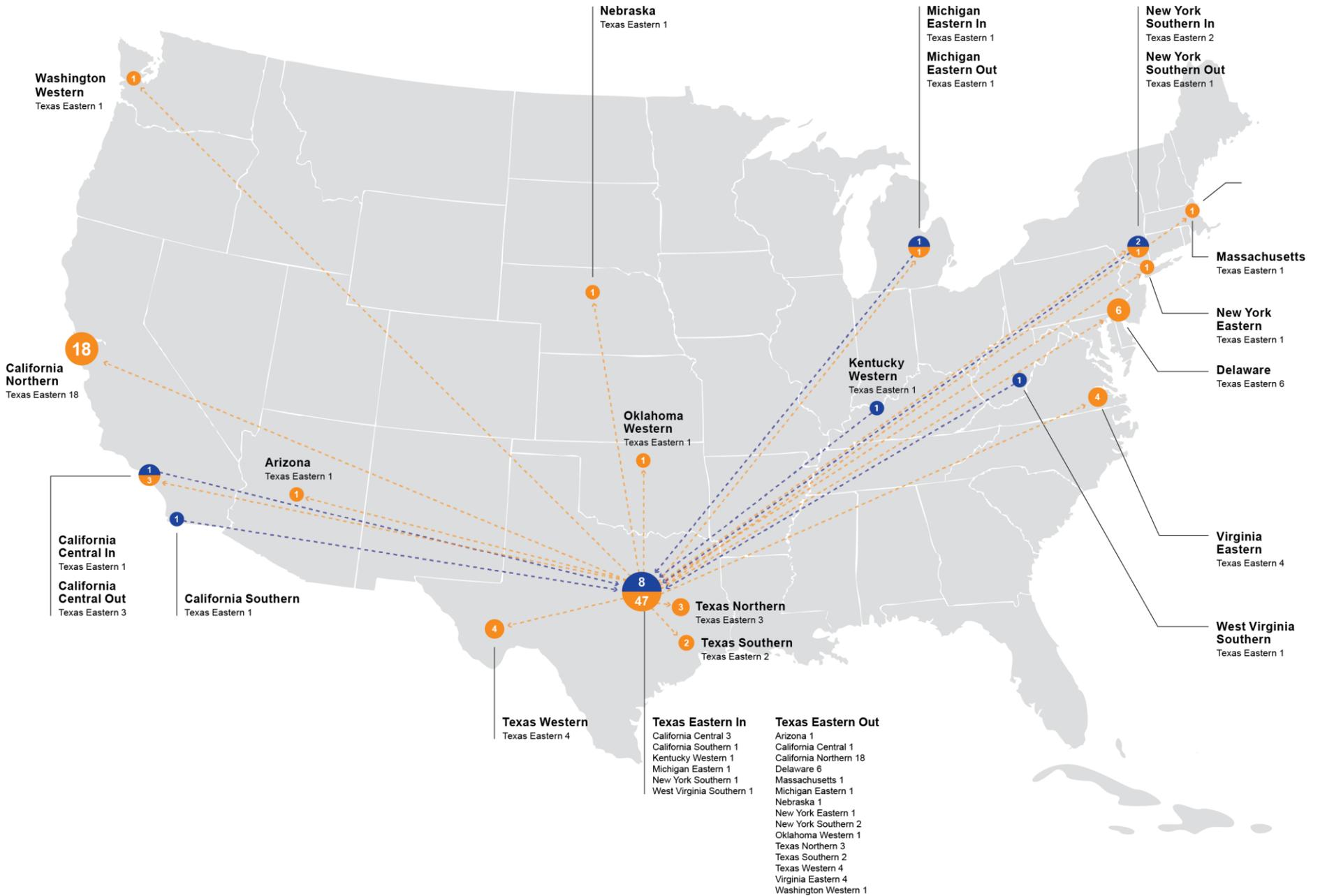


Chart 32: Texas Eastern Cases Transferred 2013

- Cases Transferred In (by District Court)
- Cases Transferred Out (by District Court)



The ITC Was a Less Popular Venue for NPE Litigation in 2013

Chart 33: Total Initiated ITC Patent Investigations

Total initiated ITC patent investigations have fluctuated over the past five years with a spike in 2010 and 2011 and a return to lower levels in 2012 and 2013.

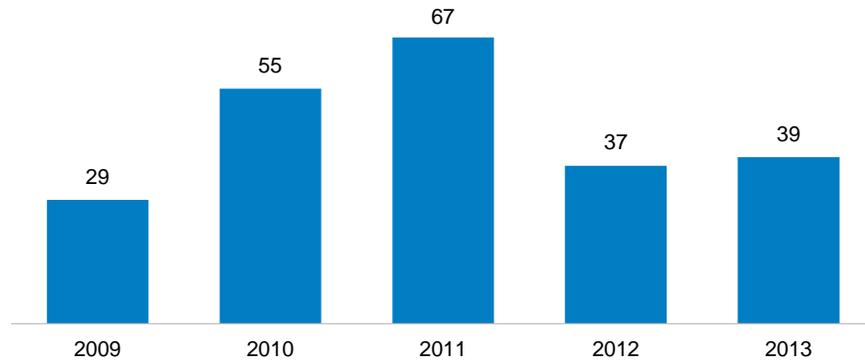


Chart 34: Total Initiated ITC NPE Patent Investigations

NPE litigation in the ITC increased significantly in 2011 and 2012, but decreased in 2013. The decrease in ITC filings may be attributable to a number of factors including the perception that the ITC is a political body, the political unpopularity of NPE assertions, and public support of measures combating NPEs. The fact that enforceable exclusionary orders may be more difficult to obtain could also have deterred ITC filings. In August 2013, President Barack Obama vetoed an exclusion order obtained by Samsung against Apple.

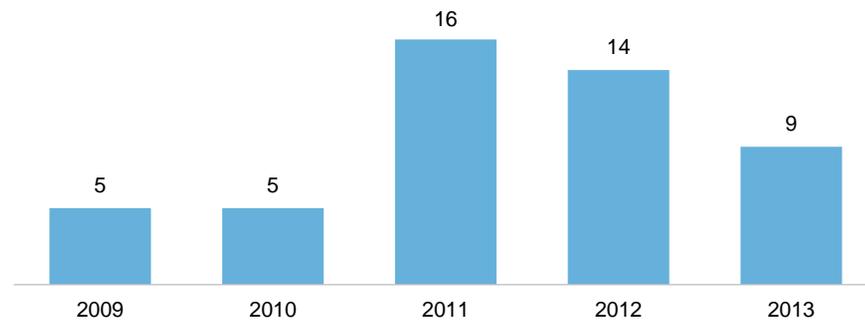
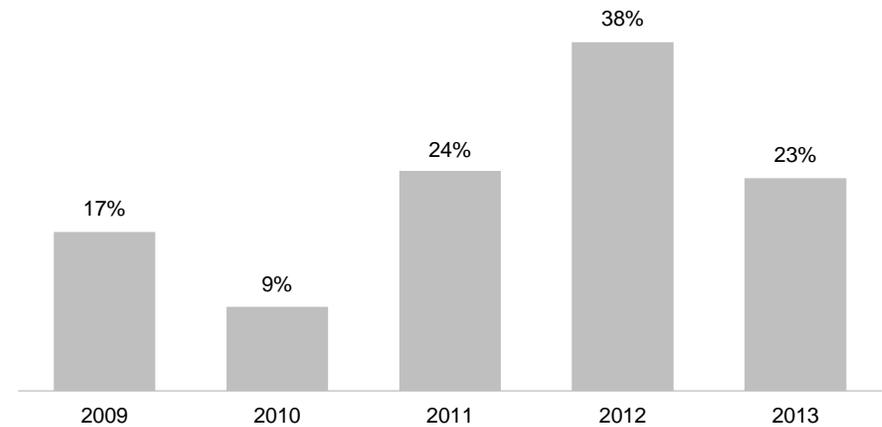


Chart 35: Initiated NPE Investigations as Percent of Initiated ITC Patent Investigations

The NPE share of initiated ITC patent investigations in 2013 decreased by 15% from 2012 and was at its lowest level since 2010.



Methodology Notes:

RPX reviewed all initiated Section 337 ITC investigations and identified those involving allegations of patent infringement to compile the RPX data set. Investigations were counted based on the year an investigation was initiated, and complaints that had not led to an investigation by the end of 2013 were not included in the dataset.

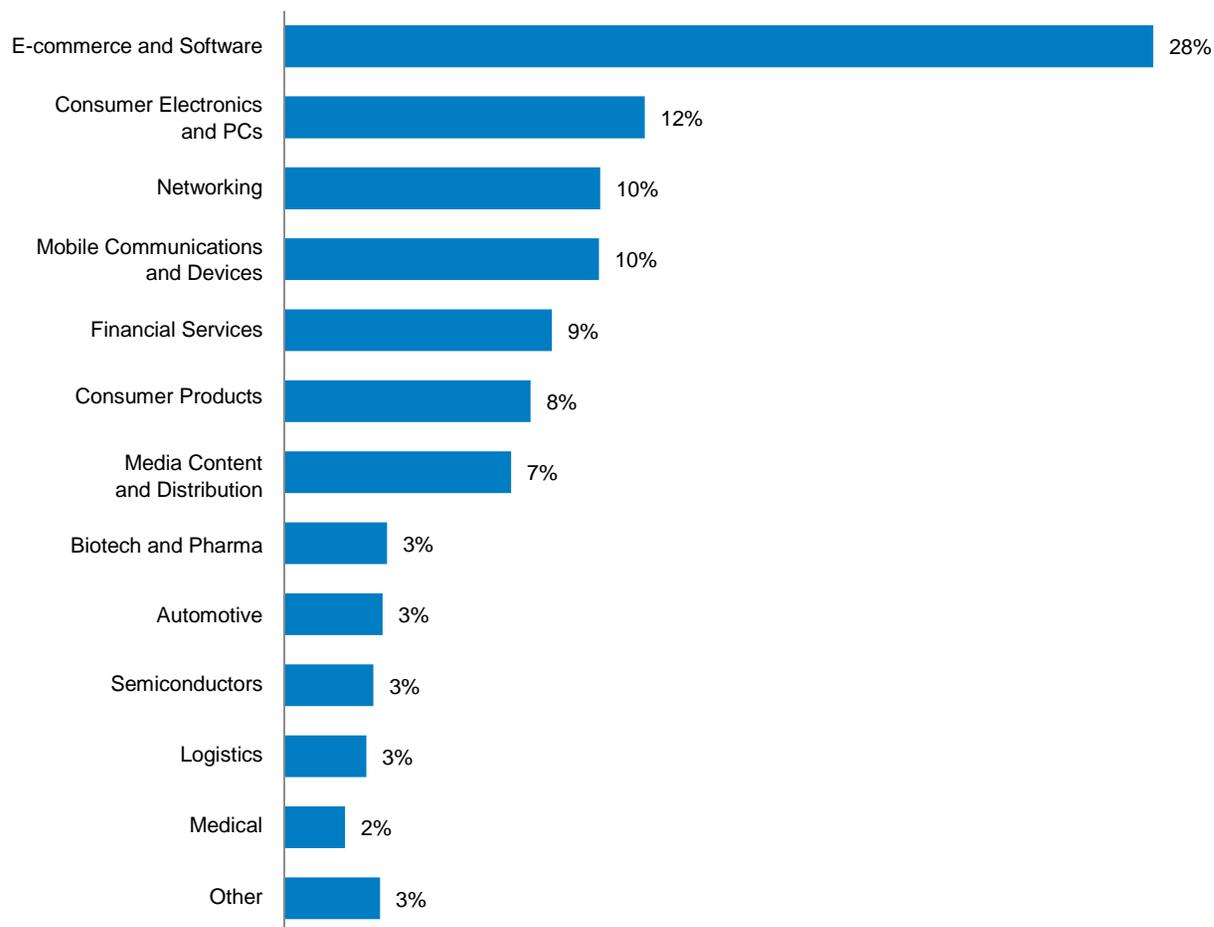
NPEs Targeted a Broad Range of Sectors but Again Focused on Information Technology

Total NPE defendants added in E-commerce, consumer electronics and PCs, networking, and mobile communications and devices litigation accounted for 60% of total NPE defendants added in 2013. Financial services litigation experienced the largest increase, growing from a 5% share in 2012 to a 9% share in 2013.

Methodology Notes:

“Total NPE defendant added sector” is based on the classification of the relevant case. Accordingly, a company may be included as an “NPE defendant added in multiple sectors” to the extent it was in cases classified in multiple sectors.

Chart 36: Total NPE Defendants Added by Sector



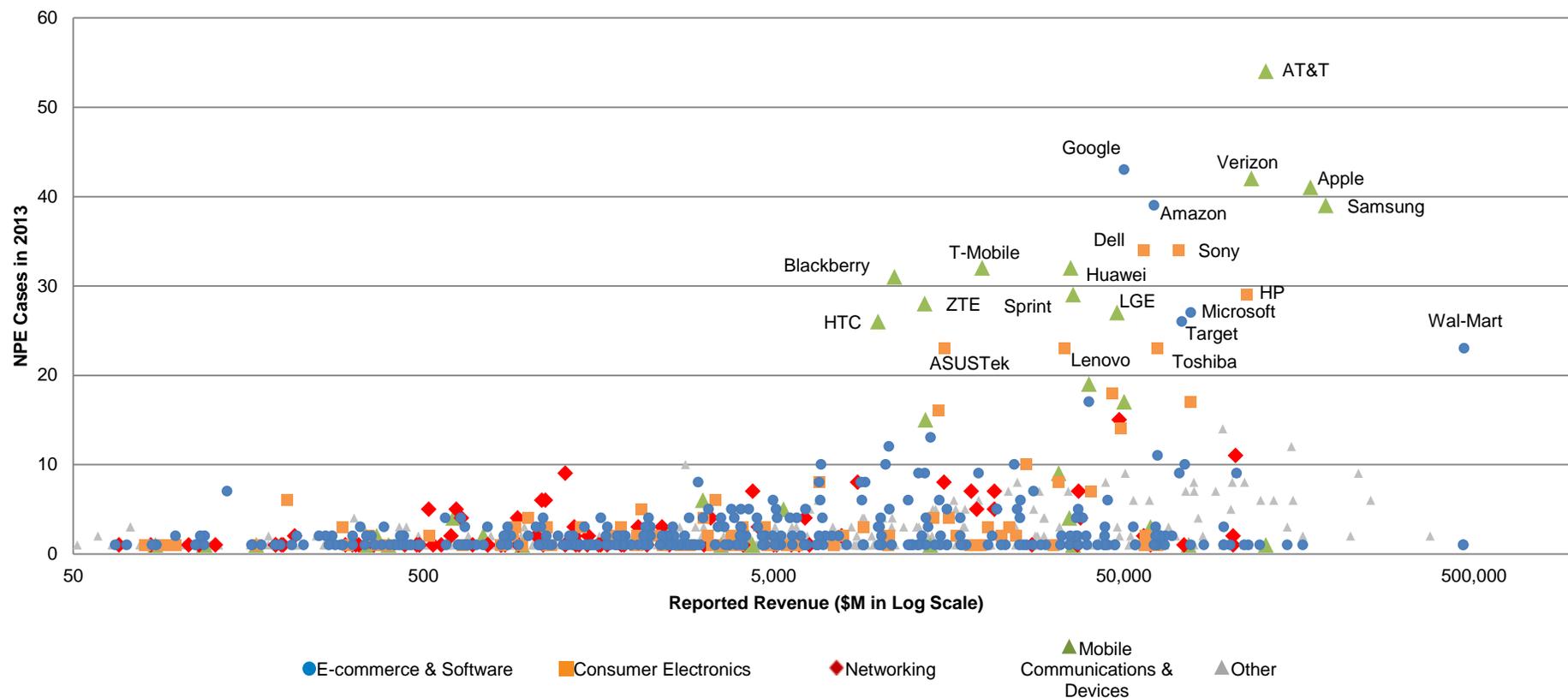
High NPE Case Frequency Correlates with Sector and Revenue

In 2013, companies that were sued most frequently by NPEs generated high revenues and most commonly were defendants in mobile, E-commerce and software, and consumer electronics cases.

Methodology Notes:

Companies were categorized based on the most common RPX sector of cases they were added to in 2013. Revenue is based on data from third-party providers and is for annual results available at year-end 2013 (typically 2012 results).

Chart 37: NPE Case Frequency per Company by Sector and Revenue



Defendants Included Public and Private Companies of All Sizes

Chart 38: NPE Defendants Added by Ownership Type

Over two-thirds of the unique NPE defendants added and nearly one-half of the total NPE defendants added in 2013 were private companies.

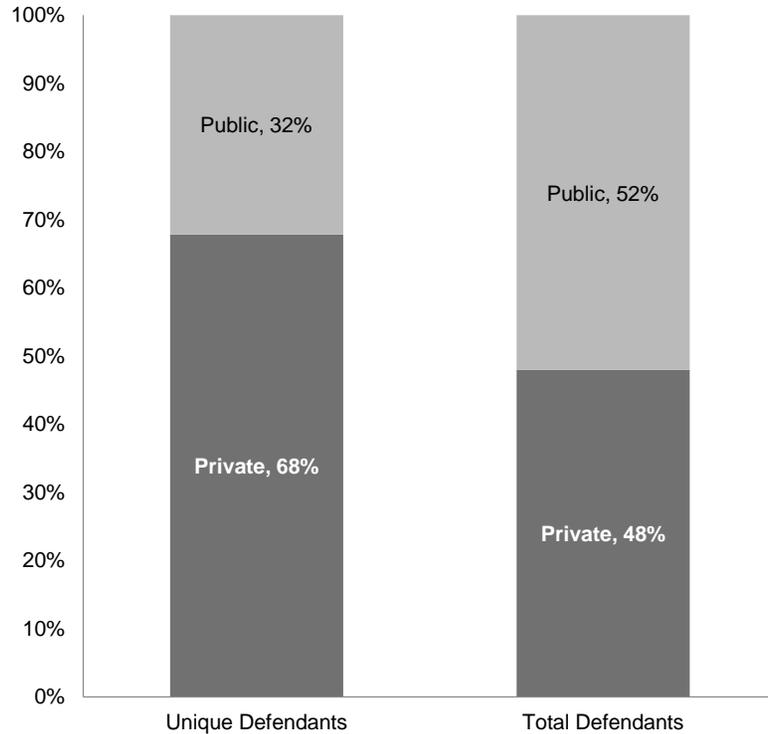
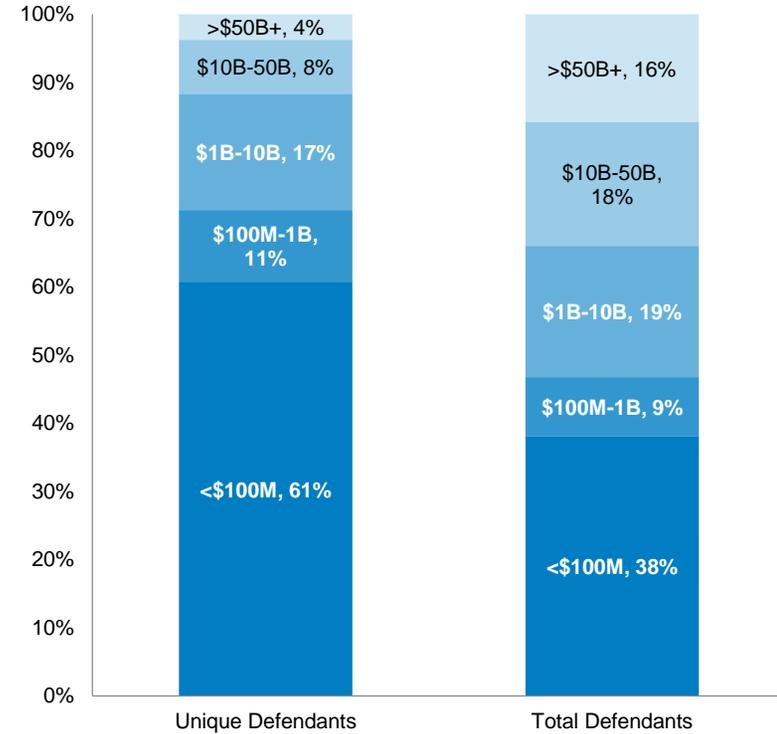


Chart 39: NPE Defendants Added by Company Revenue

Companies with less than \$100M in revenue accounted for over half of the unique NPE defendants added and nearly 40% of total NPE defendants added.



Methodology Notes:

Revenue is based on data from third-party providers and is for annual results available at time of report (typically 2012 results). Determination of ownership type is also based on data from third-party providers. Ownership type may change across time as companies switch from private to public and vice versa.

Higher Frequency of Suits for Larger and Public Companies

Chart 40: Cases per Unique Defendant by Ownership Type

Public companies experienced a higher frequency of new suits in 2013. Public companies with at least one new NPE case in 2013 averaged 2.9 new cases while private companies with at least one new NPE case averaged just 1.3 new cases.

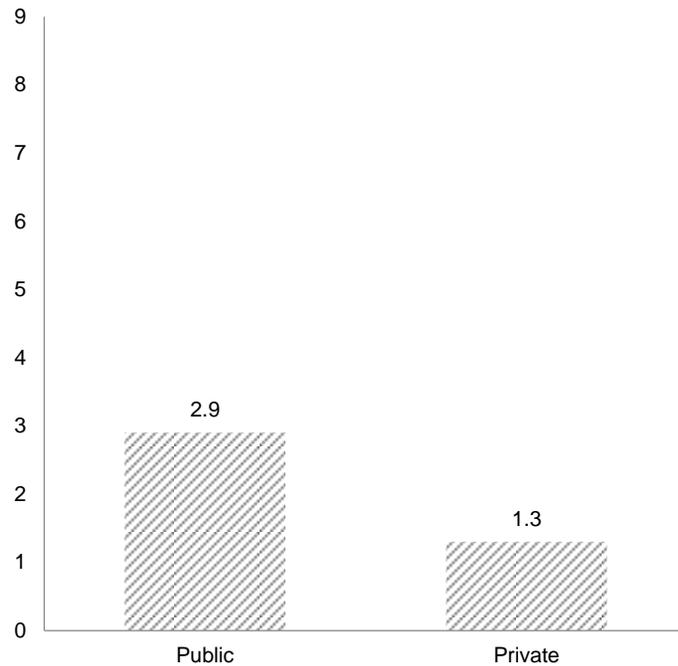
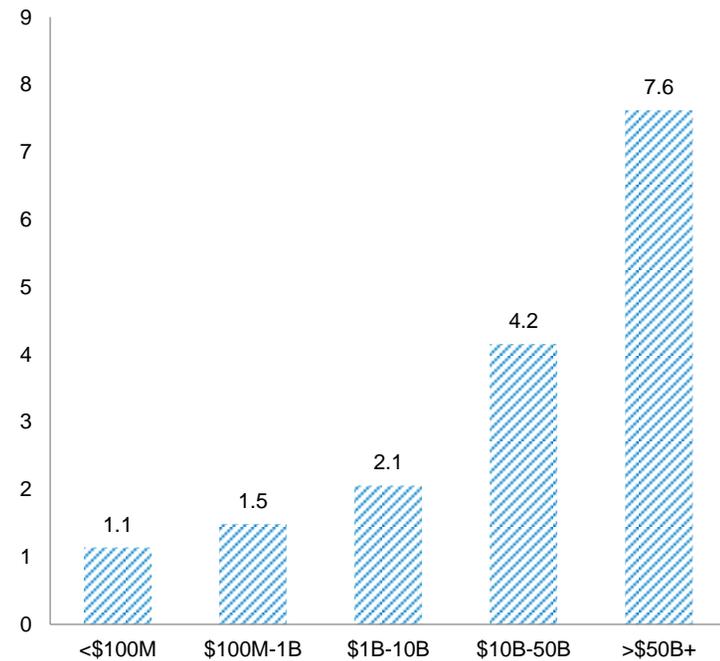


Chart 41: Cases per Unique Defendant by Company Revenue

Companies with higher revenue were more likely to be repeat targets. Companies with at least one new case and at least \$50B in revenue averaged 7.6 new cases. Companies with at least one new case and revenue of \$100M or less averaged 1.1 new cases.



Methodology Notes:

Revenue is based on data from third-party providers and is for annual results available at time of report (typically 2012 results). Determination of ownership type is also based on data from third-party providers. Ownership type may change across time as companies switch from private to public and vice versa.

Top 15 Defendants in 2013 Were Once Again Concentrated in Mobile Communications and/or Consumer Electronics

Table 42: Top 15 NPE Defendants by New Cases

The companies most frequently sued by NPEs in 2013 were concentrated in the mobile and consumer electronics industries and include 11 of the top 15 targeted companies in 2012. New companies on the list include Huawei, ZTE, Sprint, and T-Mobile. LG, HTC, Wal-Mart and Motorola Mobility (due to the Google merger) fell off the list. Most companies (12 of 15) had more new cases in 2013 than 2012.

Rank	Defendant	2013	2012
1	AT&T	54	29
2	Google	43	55
3	Verizon	42	25
4	Apple	41	51
5	Amazon	39	36
5	Samsung	39	42
7	Dell	34	24
7	Sony	34	28
9	Huawei	32	13
10	Blackberry	31	22
10	T-Mobile	31	11
12	Hewlett-Packard	29	22
12	Sprint Nextel	29	19
14	ZTE	28	15
15	Microsoft	27	19

Table 43: Top 15 NPE Defendants by Active Cases at Year-end

In 2013, Google took over the number one spot for active cases at year-end as a result of its acquisition of Motorola Mobility. There was little change to the top 15 companies; 13 of the 15 were also top 15 companies in 2012. Huawei and T-Mobile are newcomers while Motorola Mobility and Toshiba fell off. Among the top 15 defendants by active cases at year-end, a slight majority (eight) had fewer suits pending at year-end 2013 than year-end 2012.

Rank	Defendant	2013	2012
1	Google	72	99
2	AT&T	70	51
3	Apple	68	82
4	Samsung	63	60
5	Sony	58	63
6	Amazon	54	52
7	Verizon	46	36
8	HTC	42	50
8	LG Electronics	42	43
10	Dell Incorporated	41	44
10	Sprint Nextel	41	29
12	Hewlett-Packard	40	42
13	Huawei	39	17
13	Microsoft	39	35
13	T-Mobile	39	19

Acacia Was the Top NPE Filer in 2013

Acacia led NPEs in both the number of NPE cases filed and total NPE defendants added in 2013. While the top four NPEs in 2013 were also the top four in 2012, none of the rest of the top ten NPEs in 2013 appeared on the 2012 list.

Table 44: Top 10 NPEs by Cases Filed in 2013

Rank	NPE	2013	Active at YE 2013
1	Acacia Research Corporation	239	241
2	IPNav	147	145
3	Arrivalstar SA, Melvino Technologies Limited	137	23
4	Empire IP LLC	126	155
5	Wyncomm LLC	100	25
6	Marathon Patent Group Incorporated	62	54
6	Innovative Wireless Solutions LLC	62	22
8	Ubicomm LLC	61	10
9	Novelpoint Holdings LLC	58	28
10	Eclipse IP LLC	56	24

Table 45: Top 10 NPEs by Total Defendants Added in 2013

Rank	NPE	2013	Active at YE 2013
1	Acacia Research Corporation	346	340
2	IPNav	214	245
3	Arrivalstar SA, Melvino Technologies Limited	143	24
4	Empire IP LLC	142	180
5	DataTreasury Corporation	104	97
6	Marathon Patent Group Incorporated	86	55
7	Simon Nicholas Richmond	85	85
8	Wyncomm LLC	77	13
9	e.Digital Corporation	68	44
10	Eclipse IP LLC	65	30

Acacia Was also the Top NPE by Filings over Past Five Years

Acacia was also the top NPE by NPE cases filed and total NPE defendants added over the past five years. The list of top NPEs by cases filed in the past five years is similar to 2012 (eight out of ten the same).

Table 46: Top 10 NPEs by Cases Filed 2009–2013

Rank	NPE	Past 5 Years	2013 Only
1	Acacia Research Corporation	686	239
2	IPNav	519	147
3	Arrivalstar SA, Melvino Technologies Limited	350	137
4	Empire IP LLC	269	126
5	Altitude Capital Partners	123	35
6	Novelpoint Holdings LLC	113	58
7	Geotag Incorporated	111	10
8	Uniloc Corporation Pty Limited	101	41
9	Wyncomm LLC	100	100
10	Pragmatus	98	12

Table 47: Top 10 NPEs by Total Defendants Added 2009–2013

Rank	NPE	Past 5 Years	2013 Only
1	Acacia Research Corporation	1,581	346
2	IPNav	1,330	214
3	Arrivalstar SA, Melvino Technologies Limited	538	143
4	Empire IP LLC	437	142
5	Geotag Incorporated	368	104
6	PJC Logistics LLC	321	0
7	Select Retrieval LLC	223	1
8	Altitude Capital Partners	214	54
9	Patent Properties Incorporated	212	5
10	Uniloc Corporation Pty Limited	204	42

Top 10 NPEs Were Responsible for About One-third of Cases and Defendants

The top 10 NPEs in 2013 accounted for over one-third of NPE cases filed and 27% of total NPE defendants added. Serial NPEs, a group that overlaps with the top 10 NPEs, accounted for 28% of NPE cases filed and total NPE defendants added in 2013.

Chart 48: Share of NPE Filings from Top 10 NPEs in 2013

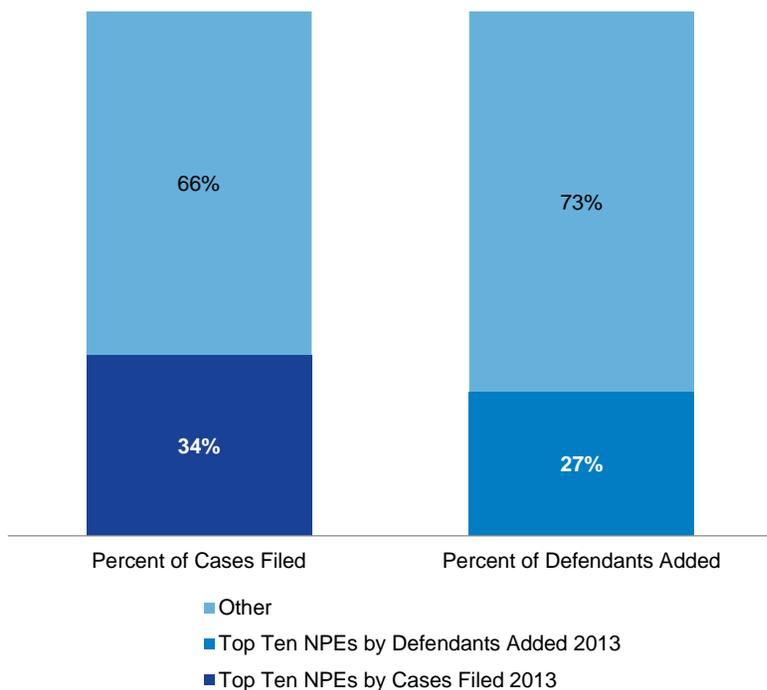
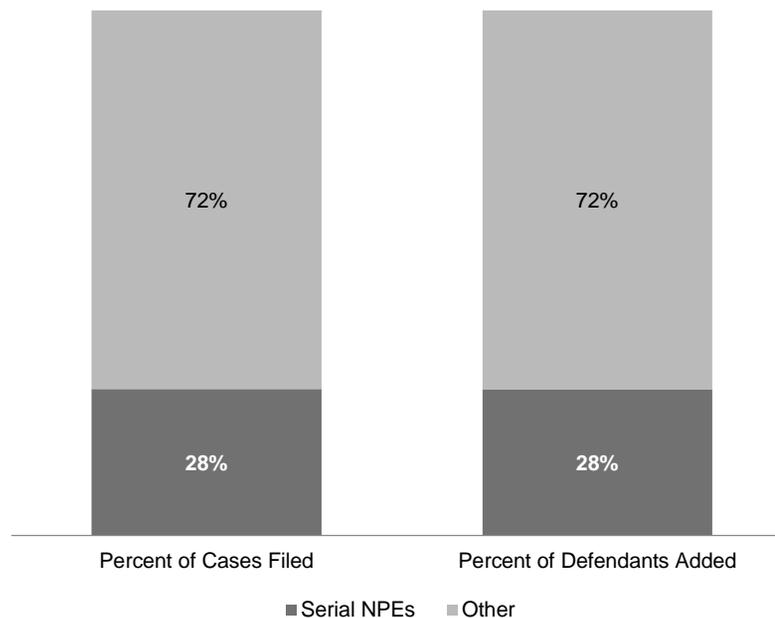


Chart 49: Share of NPE Filings from Serial NPEs in 2013



Methodology Notes:

The top 10 NPEs are those listed in Table 44 (cases) and Table 45 (defendants). Serial NPEs are NPEs that RPX has identified as having initiated three or more assertion campaigns, including campaigns before 2013.

Patents Related to Mobile Devices and Software Were Most Frequently Asserted

Patents asserted by NPEs in 2013 most commonly had USPC codes associated with mobile devices and software. The top five class codes accounted for 30% of unique patents asserted by NPEs in 2013.

Methodology Notes:

“Common RPX Categories” are the most common RPX sector classifications for cases in which patents of the applicable United States Patent Classification (USPC) code were asserted in 2013.

Table 50: Most Frequent USPC Classes of Patents Asserted by NPEs in 2013

USPC Code	Common RPX Categories*	Unique Patents	Total Defendants
705: Data Processing: Financial, Business Practice, Management, or Cost/Price Determination	E-commerce & Software, Financial Services	136	1,136
709: Electrical Computers & Digital Processing Systems: Multicomputer Data Transferring	E-commerce & Software, Networking	125	801
455: Telecommunications	Mobile Communications & Devices, Networking	107	615
370: Multiplex Communications	Networking, Mobile Communications & Devices	85	567
340: Communications: Electrical	E-commerce & Software, Logistics	69	694
606: Surgery	Medical, Biotech & Pharma	57	146
375: Pulse or Digital Communications	Consumer Electronics & PCs, Mobile Communications & Devices	55	387
701: Data Processing: Vehicles, Navigation, & Relative Location	Logistics, Automotive	51	687
713: Electrical Computers & Digital Processing Systems: Support	Financial Services, E-commerce & Software	47	313
715: Data Processing: Presentation Processing of Document, Operator Interface Processing, & Screen Saver Display Processing	E-commerce & Software, Financial Services	41	402
726: Information Security	Networking, E-commerce & Software	40	130
348: Television	Consumer Electronics & PCs, Mobile Communications & Devices	38	157
379: Telephonic Communications	Mobile Communications & Devices, Networking	37	161
235: Registers	Financial Services, E-commerce & Software	35	490
707: Data Processing: Database, Data Mining, & File Management or Data Structures	E-commerce & Software, Mobile Communications & Devices	35	121
345: Computer Graphics Processing & Selective Visual Display Systems	E-commerce & Software, Consumer Electronics & PCs	33	192
362: Illumination	Consumer Products, Consumer Electronics & PCs	30	232
435: Chemistry: Molecular Biology & Microbiology	Biotech & Pharma, Medical	29	42
714: Error Detection/Correction & Fault Detection/Recovery	Media Content & Distribution	25	90
All others		681	3,449

Patents Asserted by NPEs Most Frequently Claim Priority to Technology Boom

Patents asserted by NPEs in 2013 most frequently had a priority date between 1996 and 2000, a period generally considered a technology boom (and that subsequently resulted in the bursting of a technology bubble). Over the past five years, the mean and median priority dates of asserted patents have not changed substantially.

Methodology Notes:

Priority date is based on filing date of earliest-filed family member.

Chart 51: Priority Date of NPE Asserted Patents in 2013

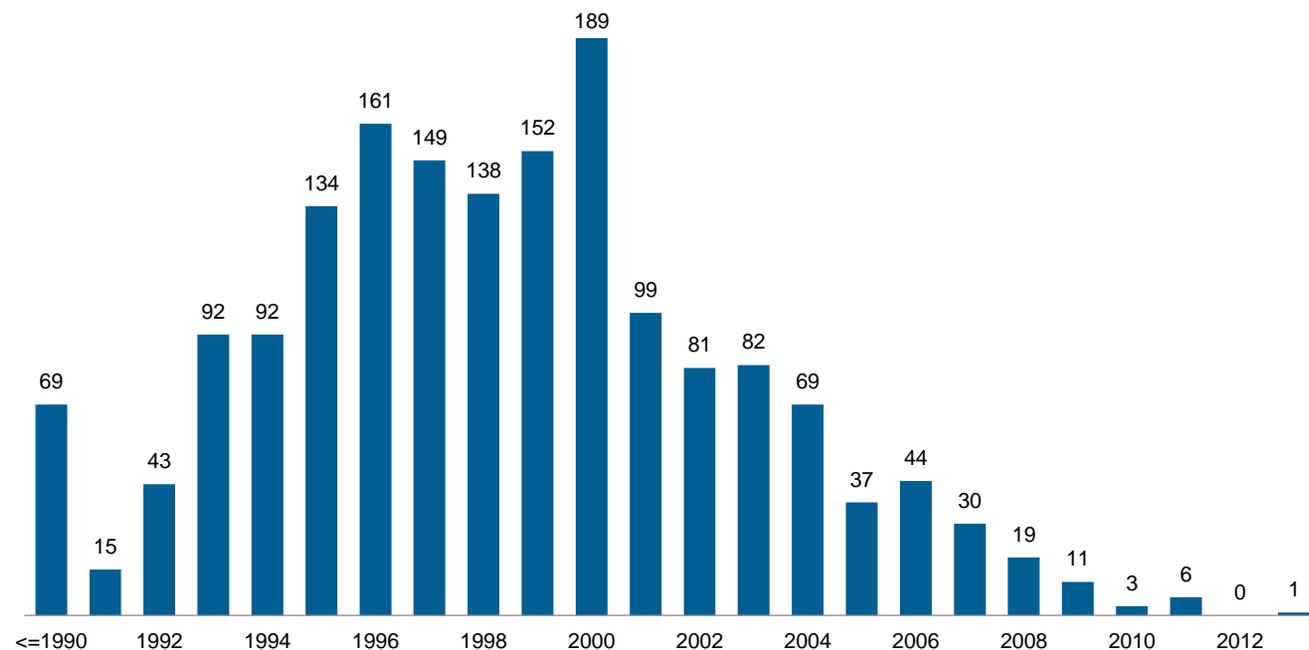


Table 52: Mean/Median Priority Date of NPE Asserted Patents by Year of Assertion

	2009	2010	2011	2012	2013
Mean Year	1996	1997	1997	1998	1998
Median Year	1997	1997	1997	1998	1998

Patents Asserted by Operating Companies also Most Frequently Claim Priority to Technology Boom

Patents asserted by operating companies had slightly later priority dates than those asserted by NPEs but also commonly had priority dates during the technology boom. The mean and median dates of patents asserted by operating companies have changed more than patents asserted by NPEs.

Methodology Notes:

Priority date is based on filing date of earliest-filed family member.

Chart 53: Priority Date of Operating Company Asserted Patents in 2013

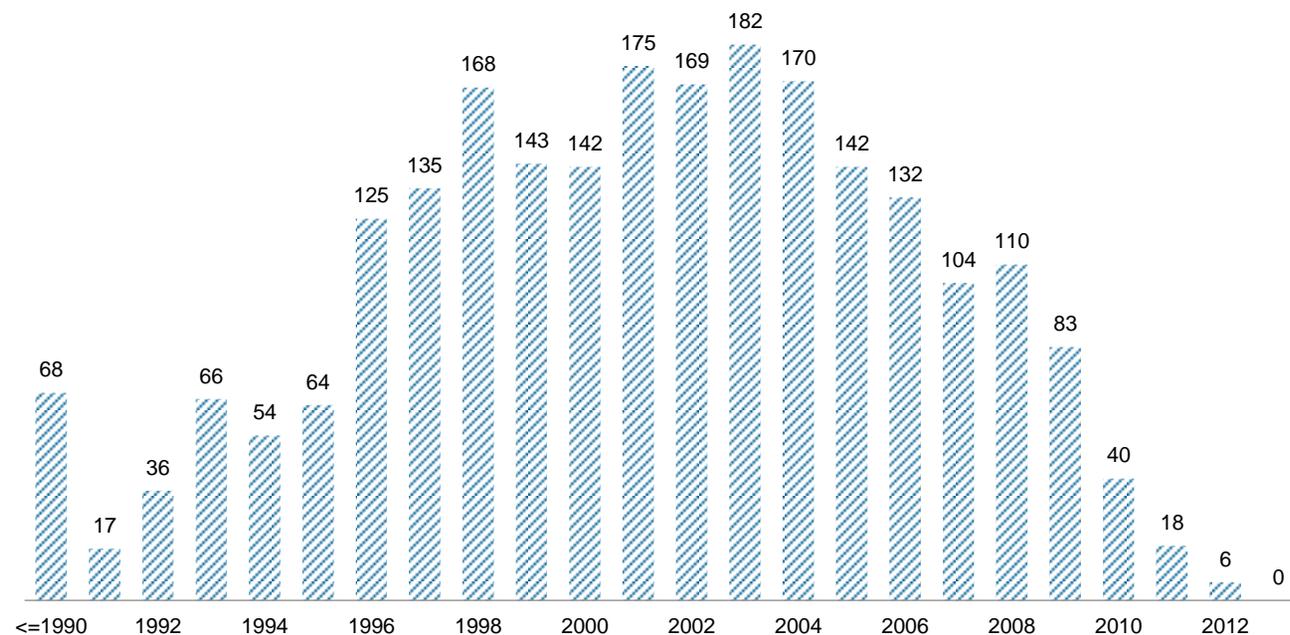


Table 54: Mean/Median Priority Date of Operating Company Asserted Patents by Year of Assertion

	2009	2010	2011	2012	2013
Mean Year	1997	1998	1999	2000	2001
Median Year	1998	1998	2000	2000	2001

Over Half of NPE Cases that Ended in 2013 Lasted Less than Six Months

Chart 55: Duration of NPE Cases Ended in 2013 (N=3,278)

Most NPE cases that ended in 2013 did so within six months of filing. Less than 30% of cases lasted more than a year. On average, cases that ended in 2013 lasted ten months.

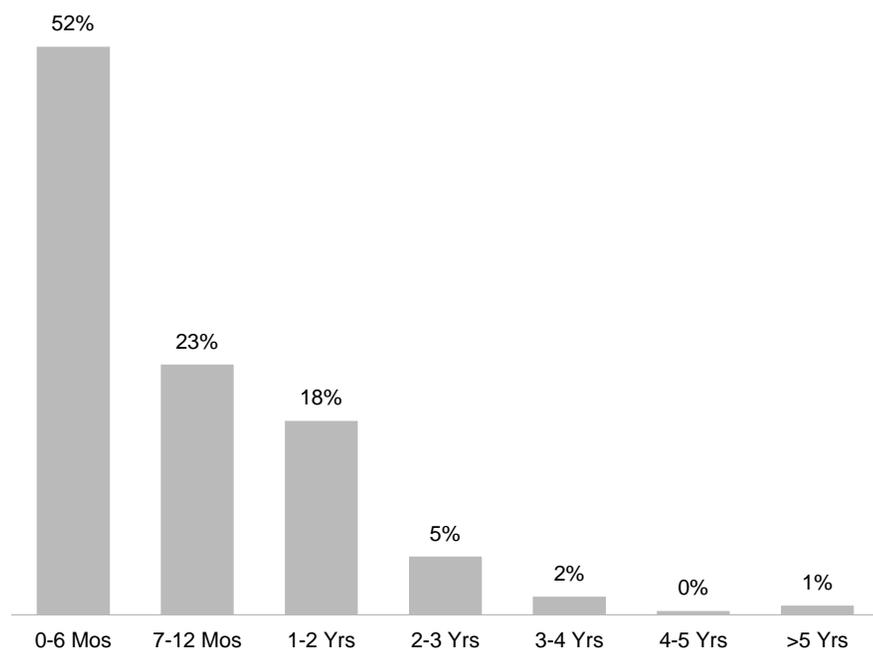
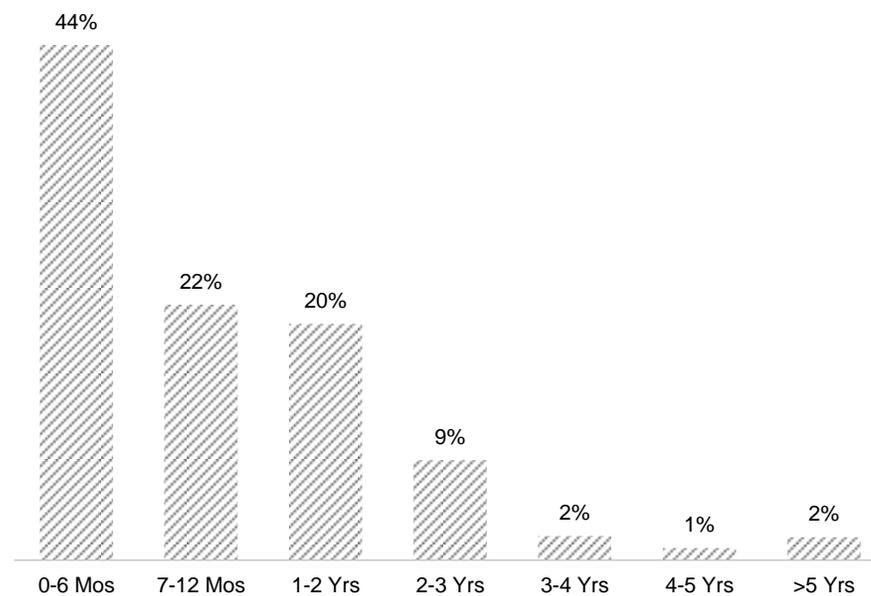


Chart 56: Duration of NPE Cases Active at Year-end 2013 (N=3,567)

Nearly half of active cases at year-end 2013 had been pending for less than six months. On average, cases active at year-end in 2013 had been pending for twelve months.



Methodology Notes:

Statistics regarding duration are likely skewed toward shorter periods due to a significant increase in NPE litigation over the past five years. By way of example, there was a much smaller set of cases that could have lasted five years than those that could have lasted six months or less in 2013 because there were fewer cases filed five years ago. This effect likely applies to all duration statistics.

Most NPE Defenses Terminated in 2013 Lasted Less than One Year

Chart 57: Duration of Litigation for Defendants Terminated in 2013 (N=5,414)

Sixty percent (60%) of defendants terminated in 2013 terminated within one year of filing, and less than 20% lasted more than two years. The average time in litigation for defendants terminated in 2013 was 11 months.

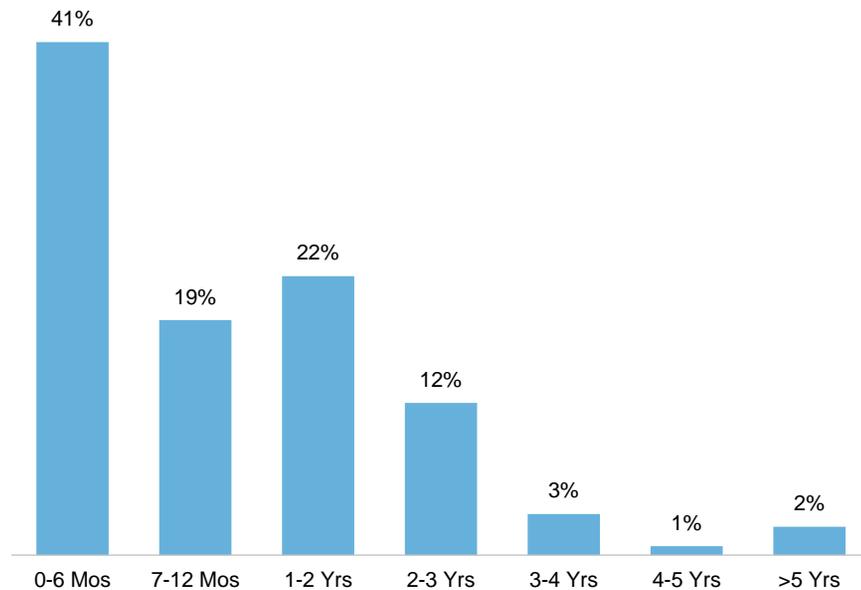
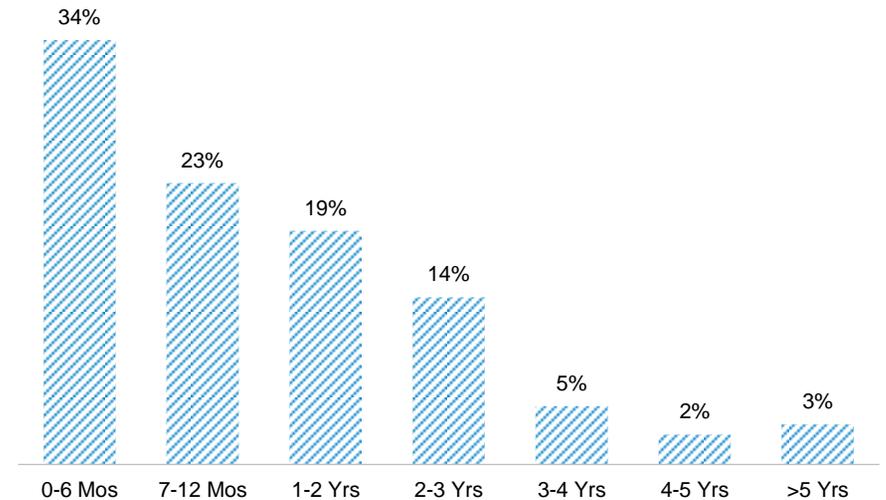


Chart 58: Duration of Litigation for Defendants Active at Year-end 2013 (N=5,270)

The distribution of active defendants at year-end 2013 was similar to active cases. On average, defendants active at year-end 2013 had been in litigation for 12 months.



Methodology Notes:

Duration of litigation for defendants is calculated for each defendant/case combination, starting on the date each defendant was added and ending on the date each defendant was terminated. As described on the prior page, statistics are likely skewed towards shorter periods.

Assertions by PAEs Accounted for the Overwhelming Majority of NPE Cases

Patent assertion entities dominated NPE activity in 2013. Inventors, non-competing entities, and universities together accounted for less than 10% of NPE cases filed and less than 15% of total NPE defendants added. The distribution of type of asserting entity was little changed as compared to 2012.

Chart 59: NPE Cases Filed in 2013 by NPE Type

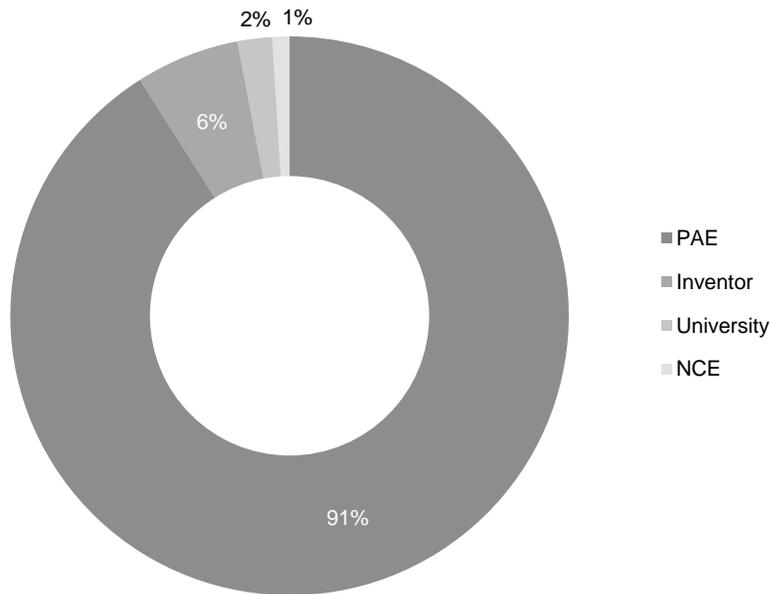
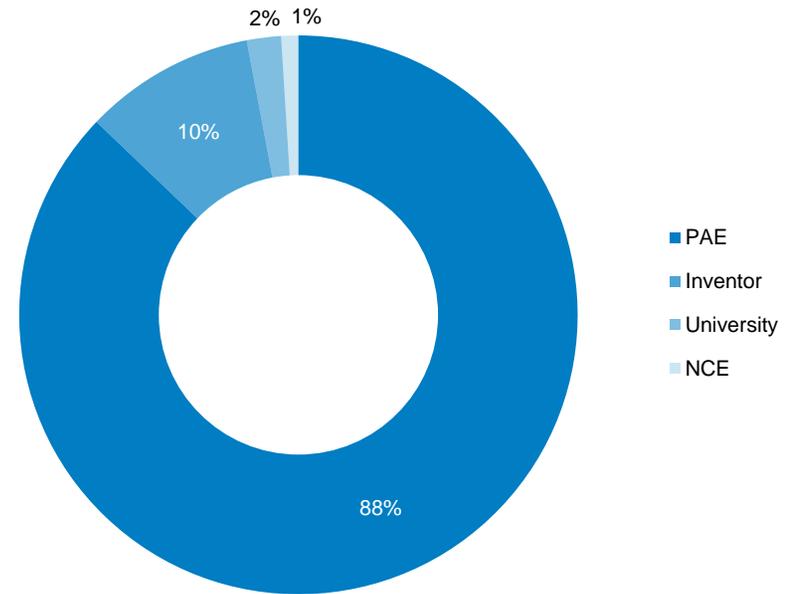


Chart 60: Total NPE Defendants Added in 2013 by NPE Type



IPR Petitions Increased During 2013

The number of petitions for inter partes review increased substantially over the course of 2013 for both patents owned by NPEs and operating companies. At year-end 2013, there had been 797 IPR petitions since the proceeding first became available in September 2012.

Chart 61: Total IPR Petitions by Month

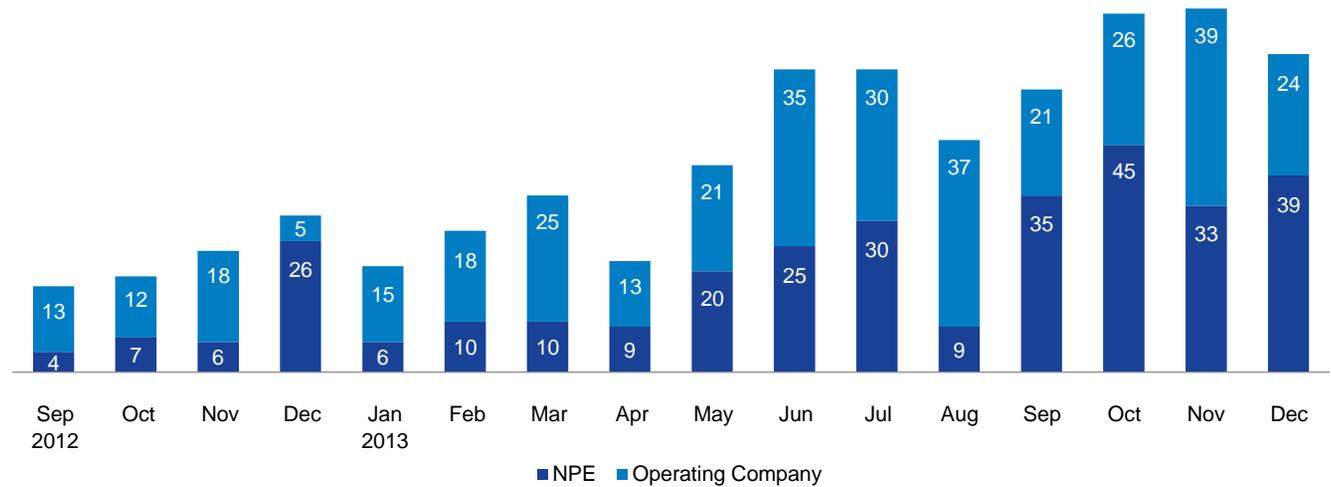
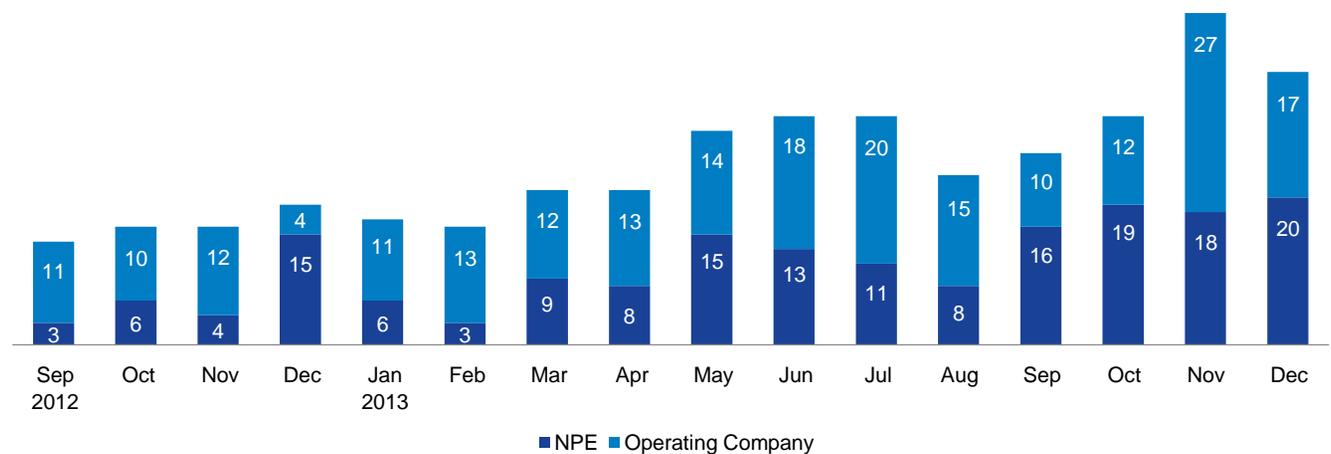


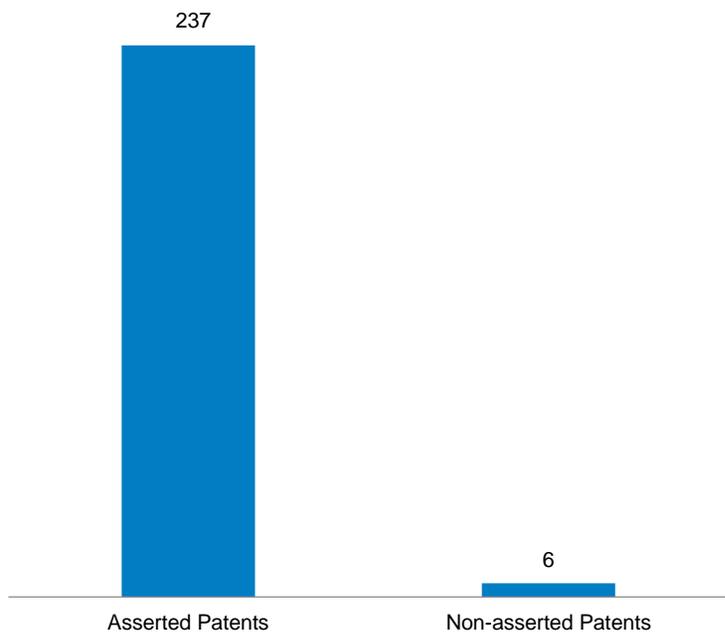
Chart 62: Total IPR'd Patent Families by Month



Nearly All NPE Patents Subject to an IPR Have Been Asserted

Chart 63: Number of IPR'd NPE Patents by Assertion Status

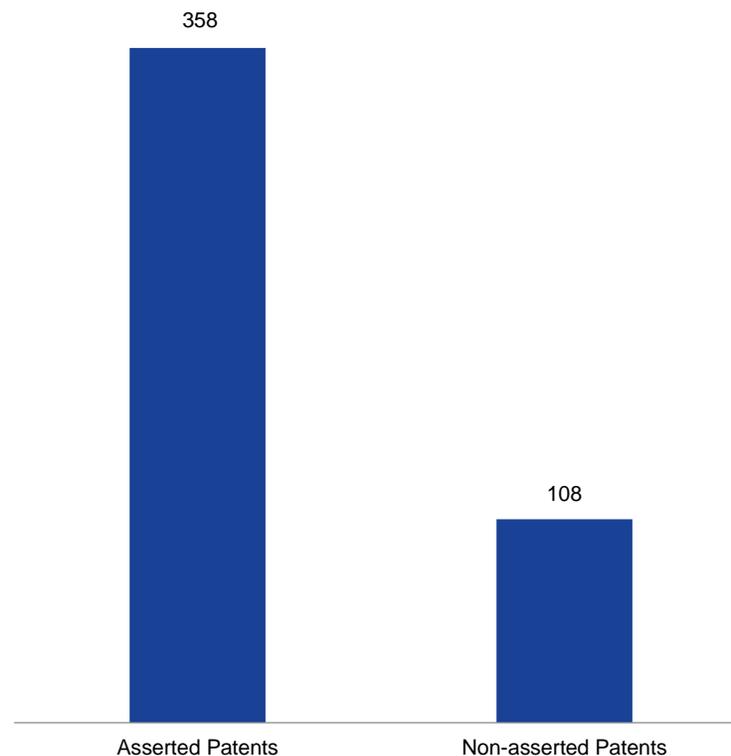
Over 97% of all NPE patents subject to an IPR have been asserted in US district court. Petitioners rarely challenged NPE patents that were not already in litigation.



The Majority of Operating Company Patents Subject to an IPR Have Been Asserted

Chart 64: Number of IPR'd Operating Company Patents by Assertion Status

A smaller portion (70%) of all operating company patents subject to an IPR have been asserted in US district court. While petitioners more commonly challenged patents in litigation, it was significantly more likely for a petitioner to challenge an operating company that had not been litigated than an NPE patent that had not been litigated.



NPE Patents Subjected to IPRs Have Been Asserted Broadly over the Past Five Years

Chart 65: NPE Cases Filed Asserting IPR'd Patents

Over 1,000 cases have been filed asserting NPE patents that were subject to an IPR as of year-end 2013. Cases are weighted towards more recent years, which may reflect the recent availability of the procedure, as well as the one-year bar on filing a petition.

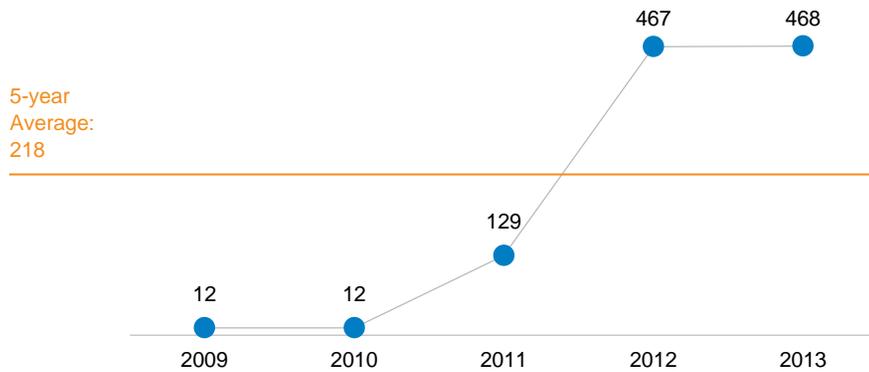


Chart 67: Unique NPE Defendants Added with IPR'd Patents

Over 900 unique defendants have been added to cases asserting NPE patents that were subject to an IPR as of year-end 2013.

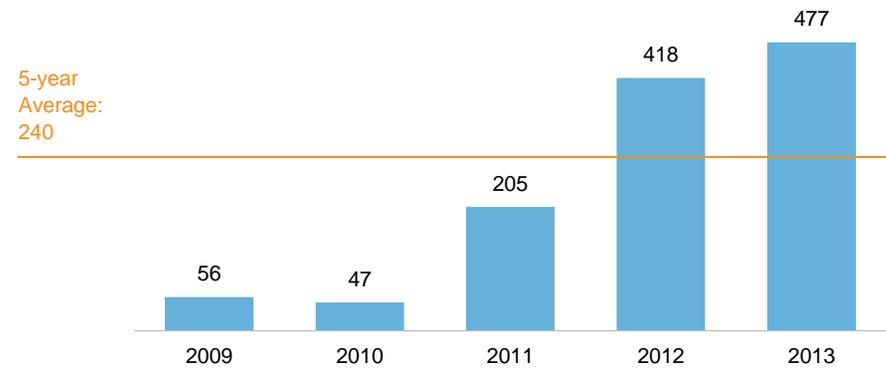
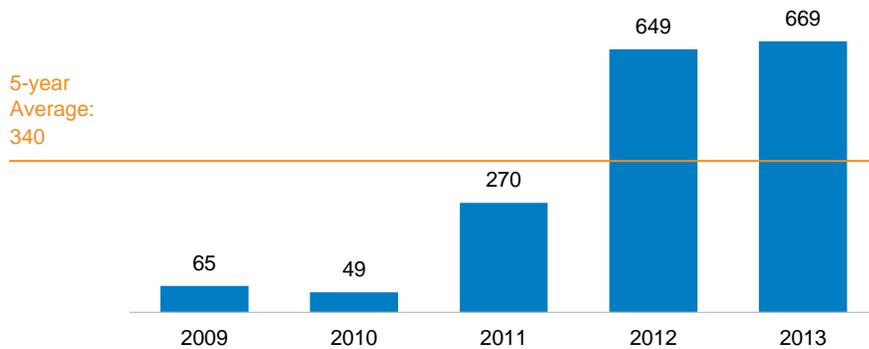


Chart 66: Total NPE Defendants Added with IPR'd Patents

Over 1,700 defendants have been added to cases asserting NPE patents that were subject to an IPR as of year-end 2013.



Many of the Top 10 IPR Filers on NPE Patents Are Operating Companies in the Mobile Devices and Software Sectors

The top ten IPR filers against NPEs accounted for over 40% of all IPRs filed against NPEs. Most of these companies filed very few, if any, petitions against patents owned by operating companies.

Table 68: Top 10 Filers of IPR Petitions

Rank	IPR Filer	Total Filings Against NPEs	Other Filings
1	Apple	26	2
2	Oracle Corporation	19	3
3	Samsung Electronics	17	0
4	Toyota Motor Corporation	14	2
5	Microsoft	12	2
6	Google Inc.	10	3
7	Facebook Incorporated	8	0
7	RPX Corporation	8	0
7	ZTE Corporation	8	0
10	EMC Corporation	6	0

CBM Filings also Increased During 2013

The frequency of petitions for covered business method review and CBM'd patent families increased substantially over time for both NPEs and operating companies. Since covered business method review became available to year-end 2013, there had been 104 CBM petitions.

Chart 69: Total CBM Petitions by Month

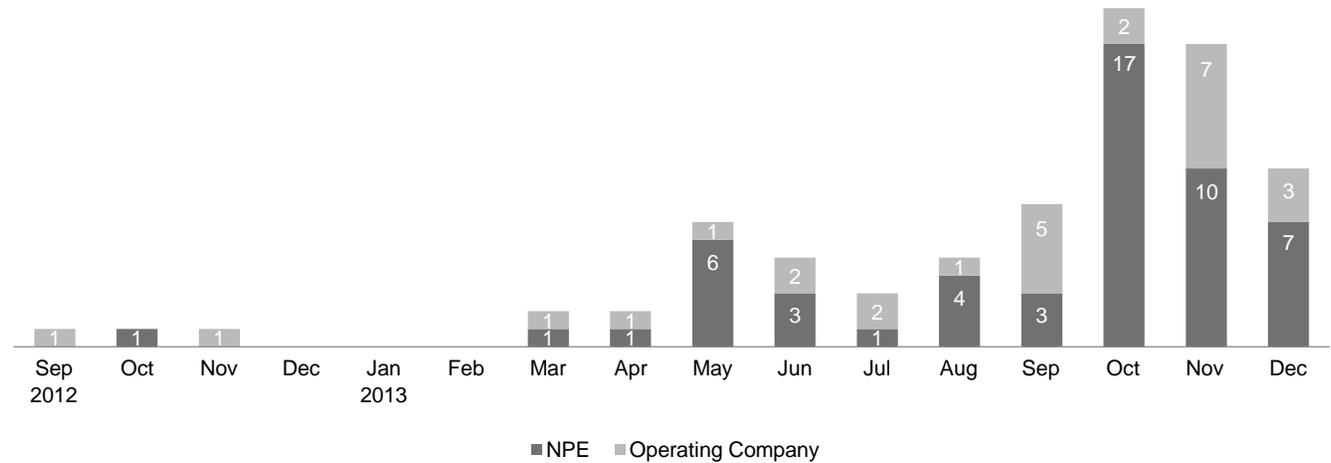
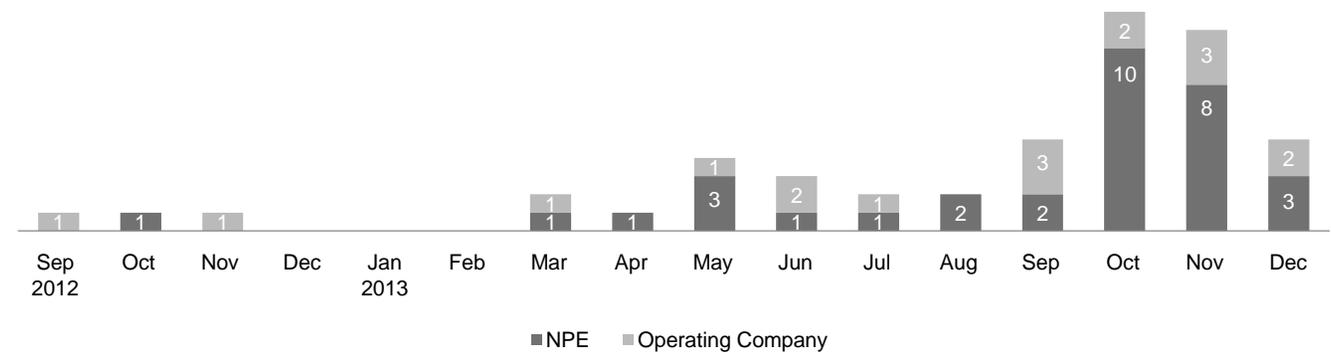


Chart 70: Total CBM'd Patent Families by Month



NPE Patents Subjected to CBMs Have Been Asserted Broadly over the Past Five Years

Chart 71: NPE Cases Filed Asserting CBM'd Patents

Over 480 cases have been filed asserting NPE patents that were subject to a petition for CBM review.

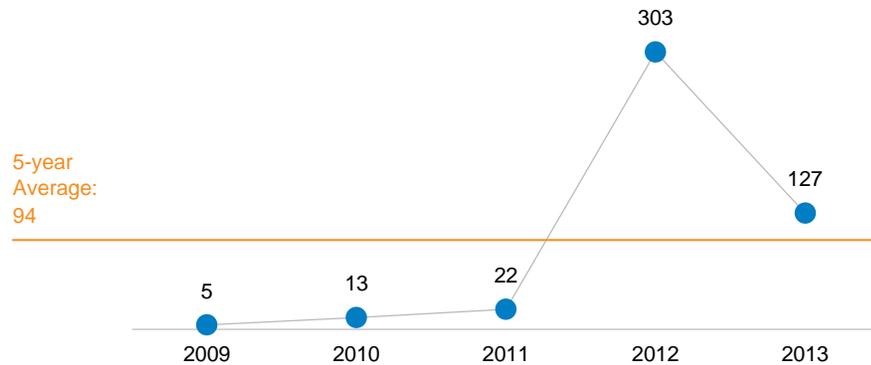


Chart 73: Unique NPE Defendants Added with CBM'd Patents

Over 610 unique defendants have been added to cases asserting NPE patents that were subject to a petition for CBM review.

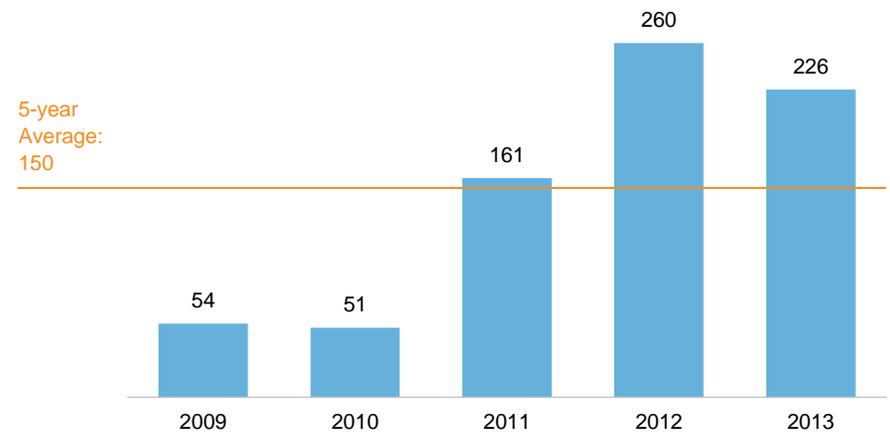
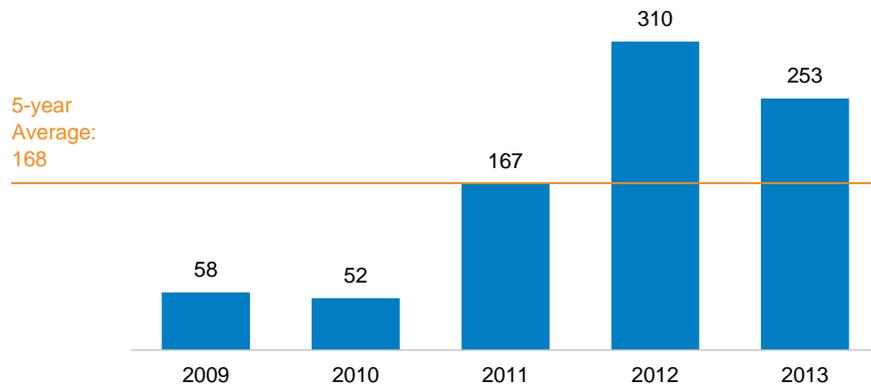


Chart 72: Total NPE Defendants Added with CBM'd Patents

Over 850 defendants have been added to cases asserting NPE patents that were subject to a petition for CBM review.



The Top 10 CBM Filers on NPE Patents Have Significant Software and Financial Services Businesses

Unsurprisingly, given the limited scope of CBM review, the top ten CBM filers against NPEs included well-known software and financial service companies. The top ten CBM filers against NPEs accounted for over 65% of all CBMs filed against NPEs.

Table 74: Top 10 Filers of CBM Petitions

Rank	CBM Filer	Total Filings Against NPEs	Other Filings
1	Google Inc.	8	0
2	Apple	5	0
2	Groupon Incorporated	5	0
4	Agilysys Incorporated	3	0
4	Bank of America	3	0
4	eBay Incorporated	3	0
4	edo Interactive Incorporated	3	0
4	PNC Financial Services Group	3	0
9	American Express	2	1
9	Fidelity National Information Services Incorporated	2	4

About RPX

RPX Corporation (NASDAQ: RPXC) provides patent risk management solutions, helping corporations reduce and manage the costs of patent risk. We provide a more rational and efficient alternative to the traditional litigation approach to patent assertion defense, offering defensive buying, acquisition syndication, patent intelligence, insurance services, and advisory services.

Defensive buying and acquisition syndication leverages the combined strength of companies facing NPE assertion. RPX acquires high-risk patents and rights in the open market and out of litigation—patents and rights that would otherwise be used against our clients. For a set annual fee, each client in our network receives a license to all patents we have aggregated in the growing RPX portfolio. RPX also organizes syndicated acquisitions in which clients cooperate to acquire high-value portfolios and rights at an attractive price.

In addition to risk reduction through patent acquisitions, RPX provides industry-leading market intelligence covering NPEs, litigation, and the patent marketplace. Through our intelligence, clients gain visibility into company-specific patent risk, enabling them to make informed, strategic decisions on patent matters.

By year-end 2013, the RPX network had grown to 168 companies in five years. The RPX membership consists of companies across a broad range of industries including consumer electronics and personal computing, E-commerce and software, financial services, media content and distribution, mobile communications and handsets, networking, and semiconductors. Our buying power, capacity for gathering and disseminating market intelligence, and expertise in valuing and acquiring patent assets continues to grow as our client network expands.

RPX is transforming how operating companies mitigate and manage NPE patent risk. Because we will never assert or litigate patents, our interests are 100% aligned with those of our clients. Our success depends entirely on our ability to provide our clients with high-value service that reduces their cost and risk of patent assertion.

As of year-end 2013, RPX had:

- Reviewed more than 5,800 patent portfolios
- Completed 167 acquisitions, deploying over \$750 million in capital, of which approximately \$530 million was RPX capital
- Achieved more than 430 dismissals from over 60 litigations for members
- Mitigated an estimated \$1.5 billion in patent assertion defense cost for members
- Acquired or sub-licensed rights to over 4,200 patents

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