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Patent Assertion Entities: A Look at the Numbers

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Patent Assertion Entities

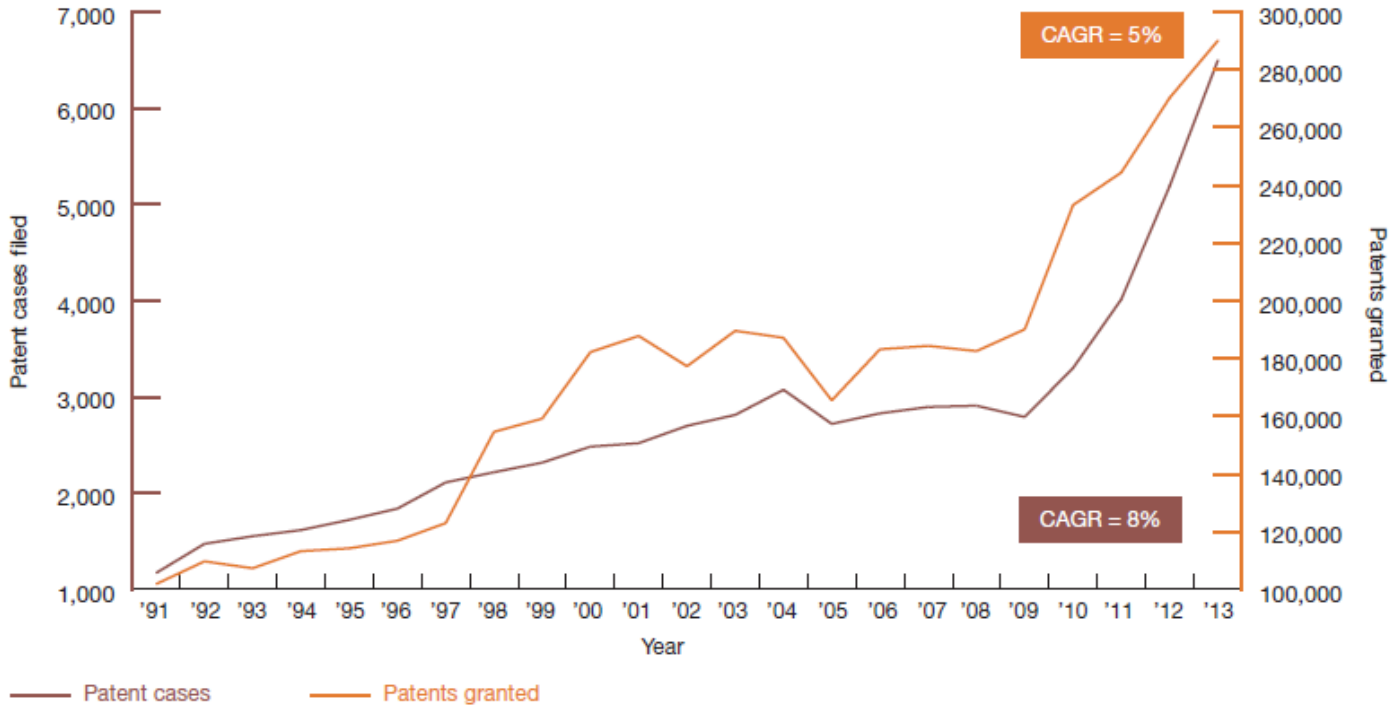
- What are PAEs?
  - Universities?
  - Non-Practicing Entities (NPEs)?
  - Individual Inventors?
  - Any company that licenses out technology it doesn't use itself?
  - FTC definition: "Firms whose business model primarily focuses on purchasing and asserting patents."
    - FTC, The Evolving IP Marketplace: Aligning Patent Notice and Remedies with Competition, 8 n.5 (March 2011) *available at* http://www.ftc.gov/os/2011/03/110307patentreport.pdf.

“Patent Trolls”

“My brother became a patent troll and he now lives under one of those billion-dollar fancy suspension bridges.”

Patent Case Filings and Patent

Chart 1. Patent case filings and grants

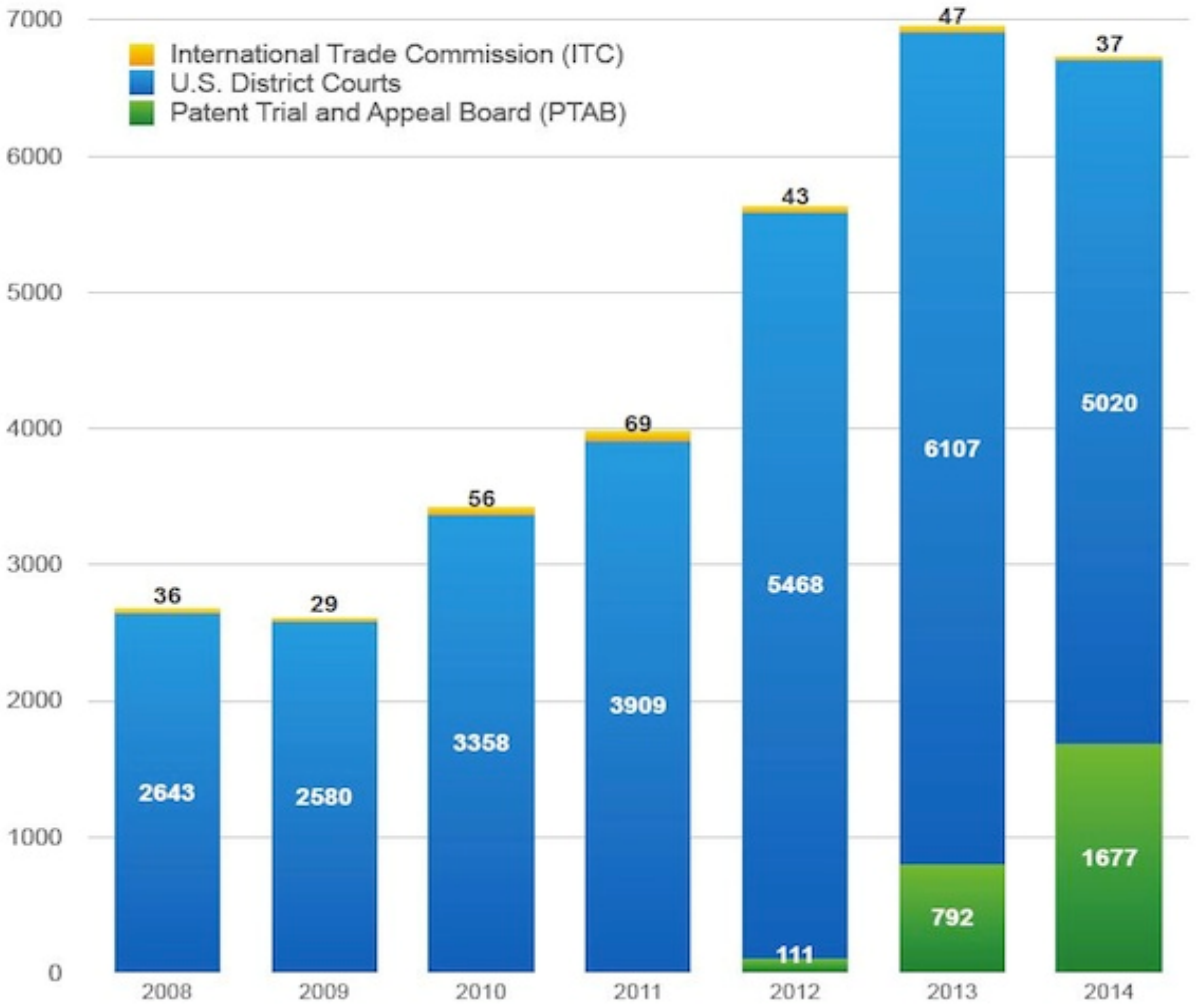


Years are based on September year-end.
Sources: *Performance & Accountability Report* (US Patent and Trademark Office) and *Judicial Facts and Figures* (US Courts)

Source: PricewaterhouseCoopers LLP

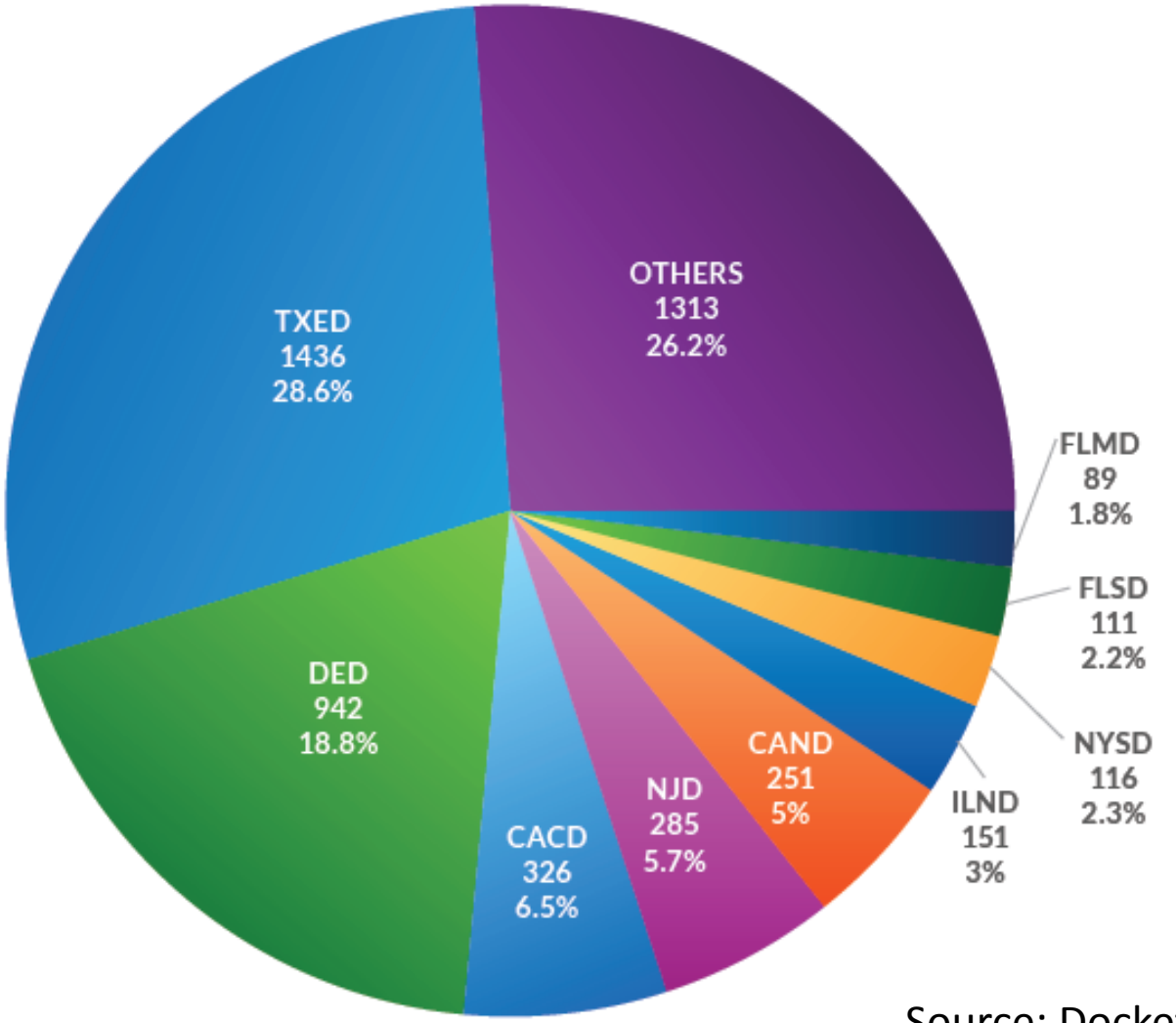
New Patent Litigation

In 2014, the number of new U.S. district court cases declined 18%, while the number of new IPR and CBM proceedings in the PTAB increased 212%.



Docket Navigator 2014

Top Patent Litigation Forums in 2014



Source: Docket Navigator

Top Patent Assertion Entity Forums

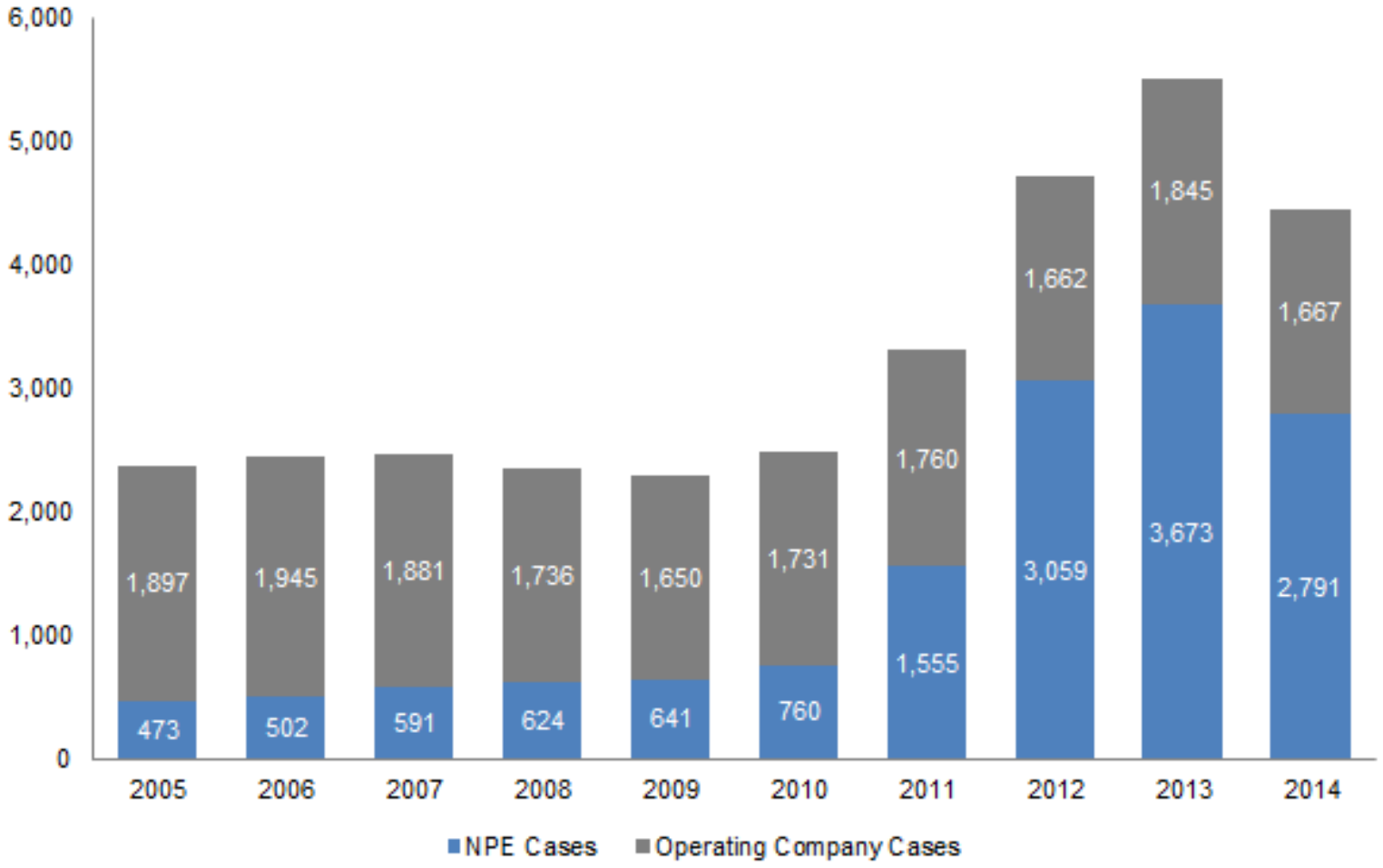
Chart 9b. District courts with most identifed decisions with NPE as patent holder: 1995–2013

District	Decisions involving NPEs	Total identified decisions	NPE % of total decisions	NPE success rate
Texas Eastern	50	136	37%	46%
Illinois Northern	33	136	24%	15%
New York Southern	31	132	23%	13%
California Northern	28	149	19%	14%
Delaware	23	196	12%	35%
California Central	15	84	18%	33%
Massachusetts	14	77	18%	36%
Florida Southern	13	40	33%	15%
Pennsylvania Eastern	11	35	31%	18%
Minnesota	10	48	21%	40%
Texas Southern	10	47	21%	10%
DC	10	23	43%	0%
Texas Northern	9	35	26%	56%
US Court of Federal Claims	8	20	40%	13%
Virginia Eastern	8	47	17%	25%
Florida Middle	8	35	23%	63%
Colorado	7	24	29%	43%
Pennsylvania Western	6	17	35%	67%
Maryland	6	17	35%	0%
Michigan Eastern	6	39	15%	0%
New Jersey	6	87	7%	17%
All identified decisions	**403**	**1,985**	**20%**	**25%**

Includes districts with more than 5 identified decisions involving an NPE as the patent holder.

Source: PriceWaterhouseCoopers LLP

RPX: Total NPE and Operating Company Cases Filed



www.rpxcorp.com/2015/01/09/2014-npe-litigation-new-and-smaller-targets-2/

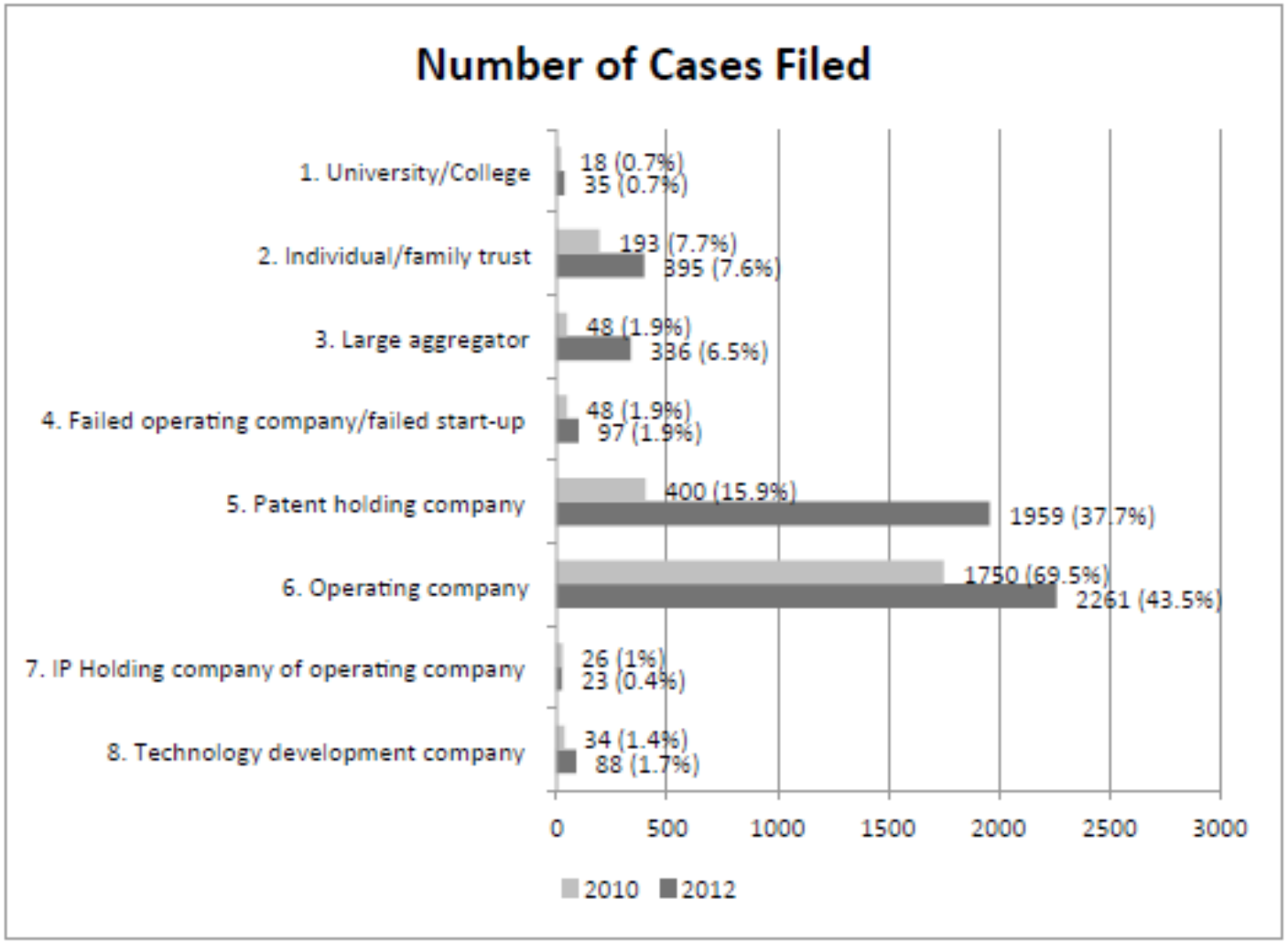
Unpacking Patent Assertion Entities

- Christopher A. Cotropia, Jay P. Kesan & David L. Schwartz, *Unpacking Patent Assertion Entities (PAEs)*, 99 MINN. L. REV. 649 (2014).
- http://www.npedata.com
- "[N]o explosion in NPE litigation between 2010 and 2012."
- 2010: 2,520 patent infringement lawsuits
- 2012: 5,185 patent infringement lawsuits

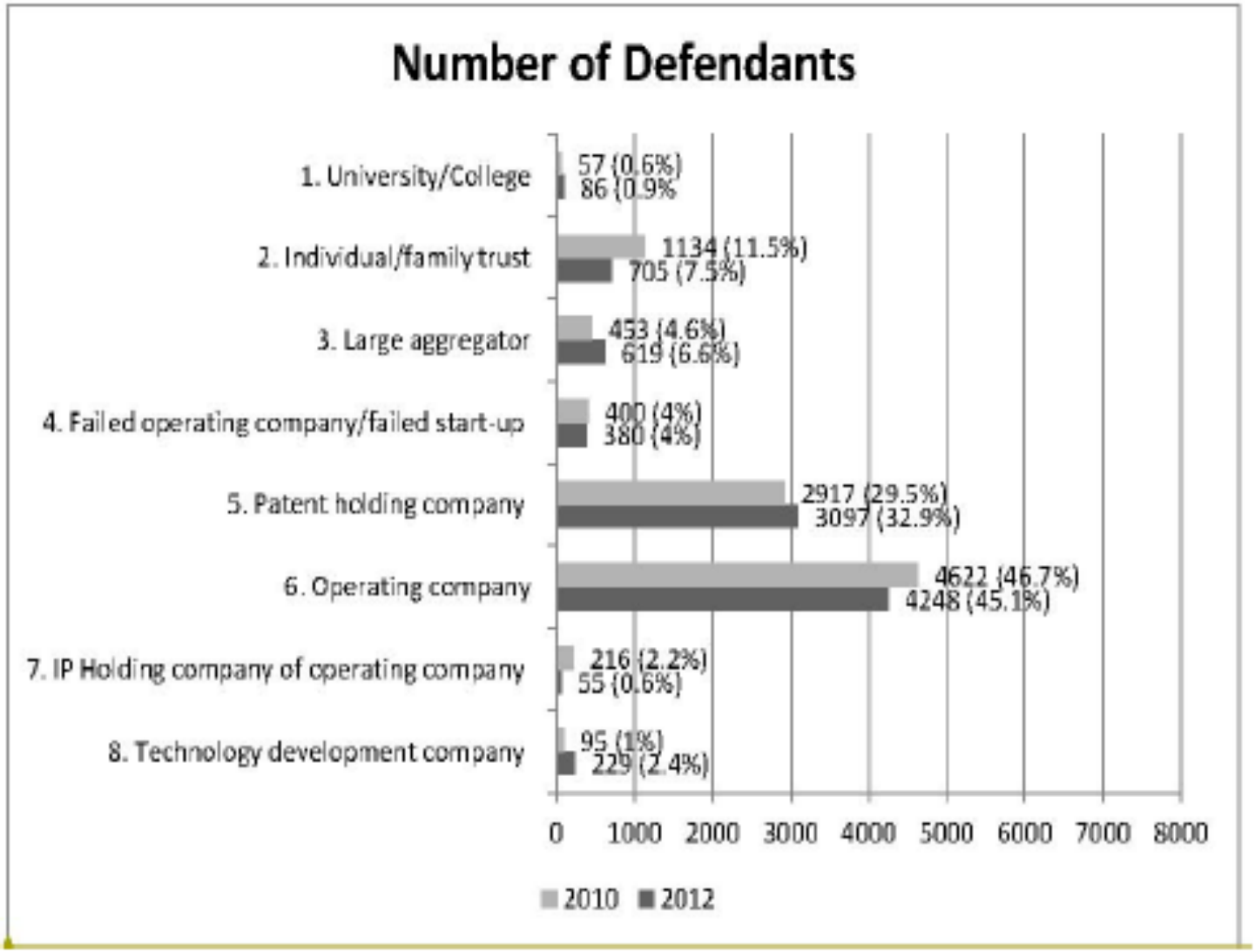
Patent Holder Classifications

- University
- Individual Inventor
- Large Patent Aggregator
- Failed Operating or Start-Up Company
- Patent Holding Company
- Operating Company
- IP Holding Company
- Technology Development Company

Classification of Patent Holders



Number of Defendants by Type of Patentee



What's Your Definition of PAE?

- All but Operating Companies
  - 2.7% increase in unique patentees
  - 1.6% increase in defendants
- All but Individual Inventors (and Operating Companies)
  - 2% increase in unique patentees
  - 5.6% increase in defendants

What's Your Definition of PAE?

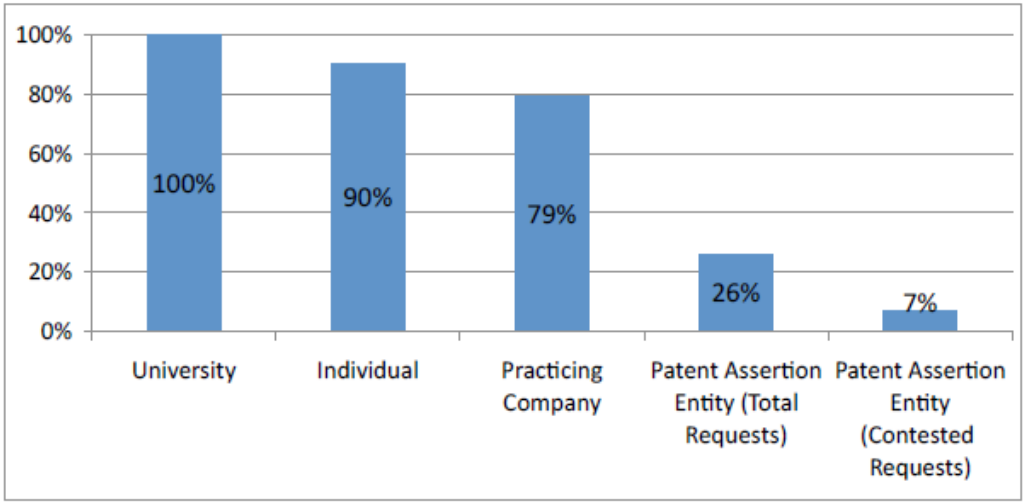
- Only Patent Holding Companies and Patent Aggregators
  - 1.8% increase in unique patentees
  - 5.4% increase in defendants

RPX vs. Cotropia et al.

- RPX:
  - NPE suits made up **55%** of defendants sued in 2010 and **61%** in 2012
- Cotropia et al.
  - Large Aggregators and Patent Holding Companies made up **34.06%** of defendants sued in 2010 and **39.45%** in 2012
  - Add Individual/Family Trust cases= **45.52%** in 2010 and **46.94%** in 2012

PAE: Injunction Success

FIGURE 1: DISTRICT COURT INJUNCTION-GRANT RATES BY ENTITY TYPE
(JULY 2006 TO AUGUST 2011)



Category	Grant Rate	Granted	Denied	Total
University/Research Organization	100%	3	0	3
Individual	90%	9	1	10
Practicing Company[1]	79%	126	33	159
PAEs[2] (total requests)	26%	5	14	19
PAEs[3] (contested requests)	7%	1	14	15

Source: Chien and Lemley

Success Rates: Jury v. Bench

Chart 6b. Patent holder overall success rates

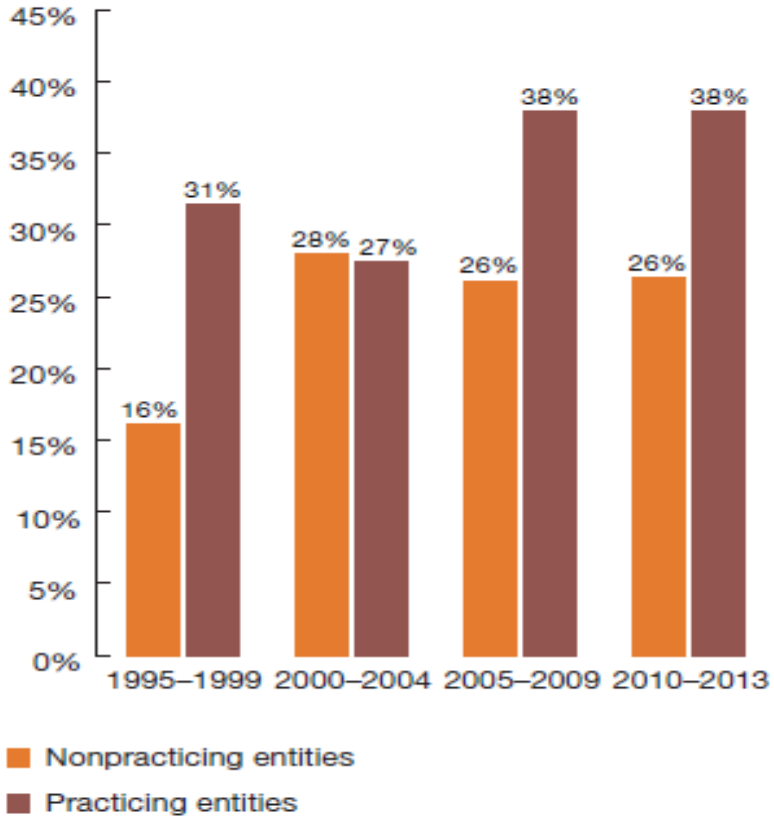
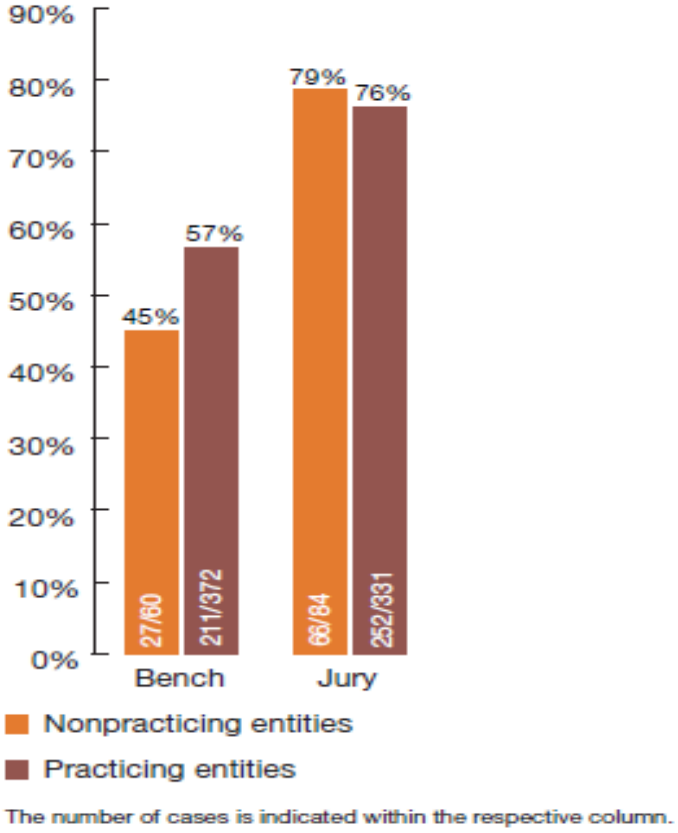


Chart 6c. Patent holder success rates at trial: 1995–2013

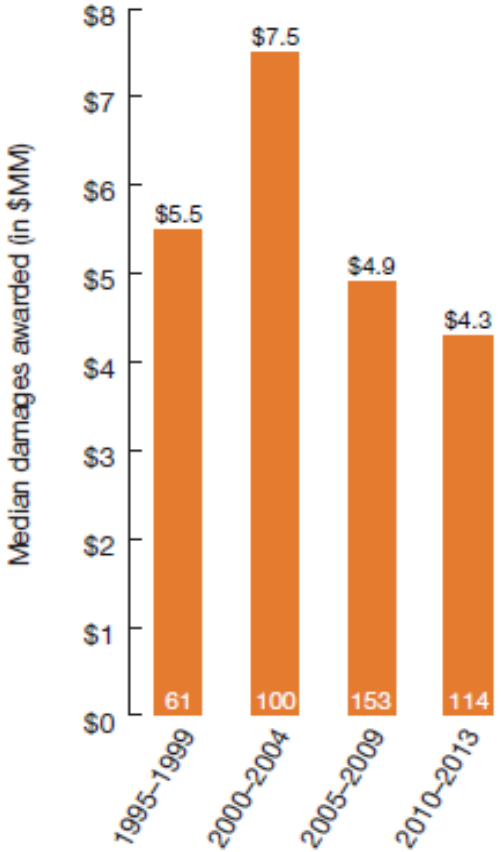


The number of cases is indicated within the respective column.

Source: PricewaterhouseCoopers LLP

Damages

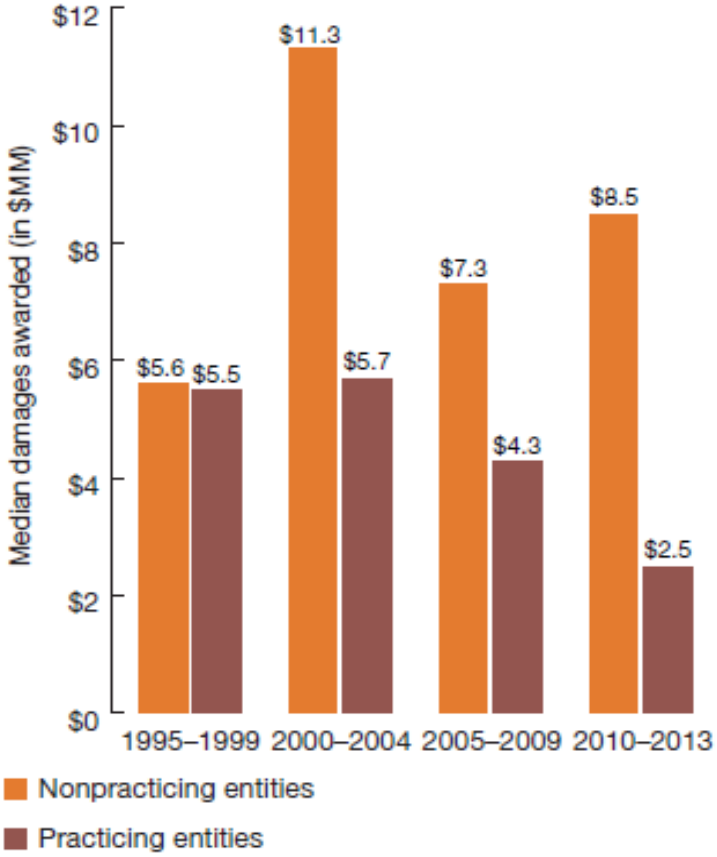
Chart 2a. Median damages awarded



Median damages are adjusted for inflation to 2013 US dollars.

The number of identified decisions is indicated within the respective column.

Chart 2b. Median damages awarded: nonpracticing entities vs. practicing entities

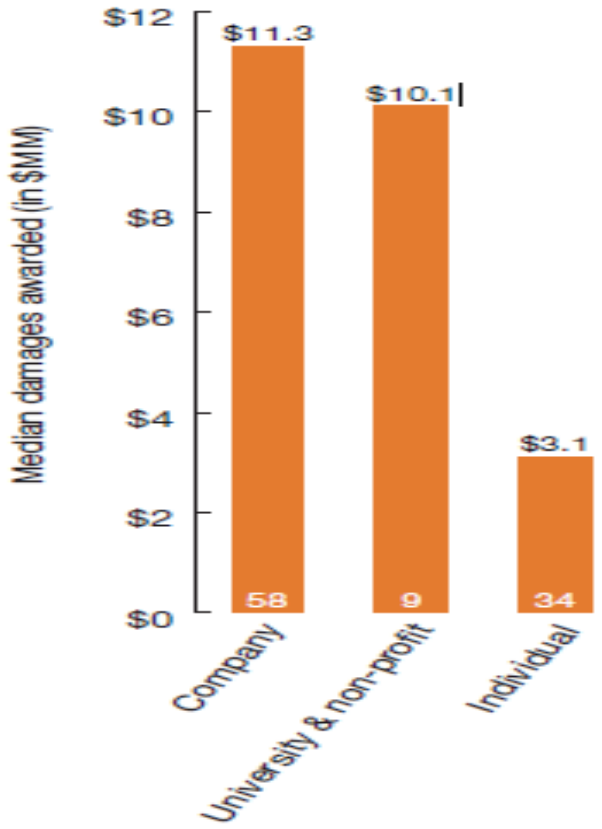


Median damages are adjusted for inflation to 2013 US dollars.

Source: PricewaterhouseCoopers LLP

Damages by NPE Type

Chart 11a. Patent holder median damages awarded by NPE type: 1995–2013

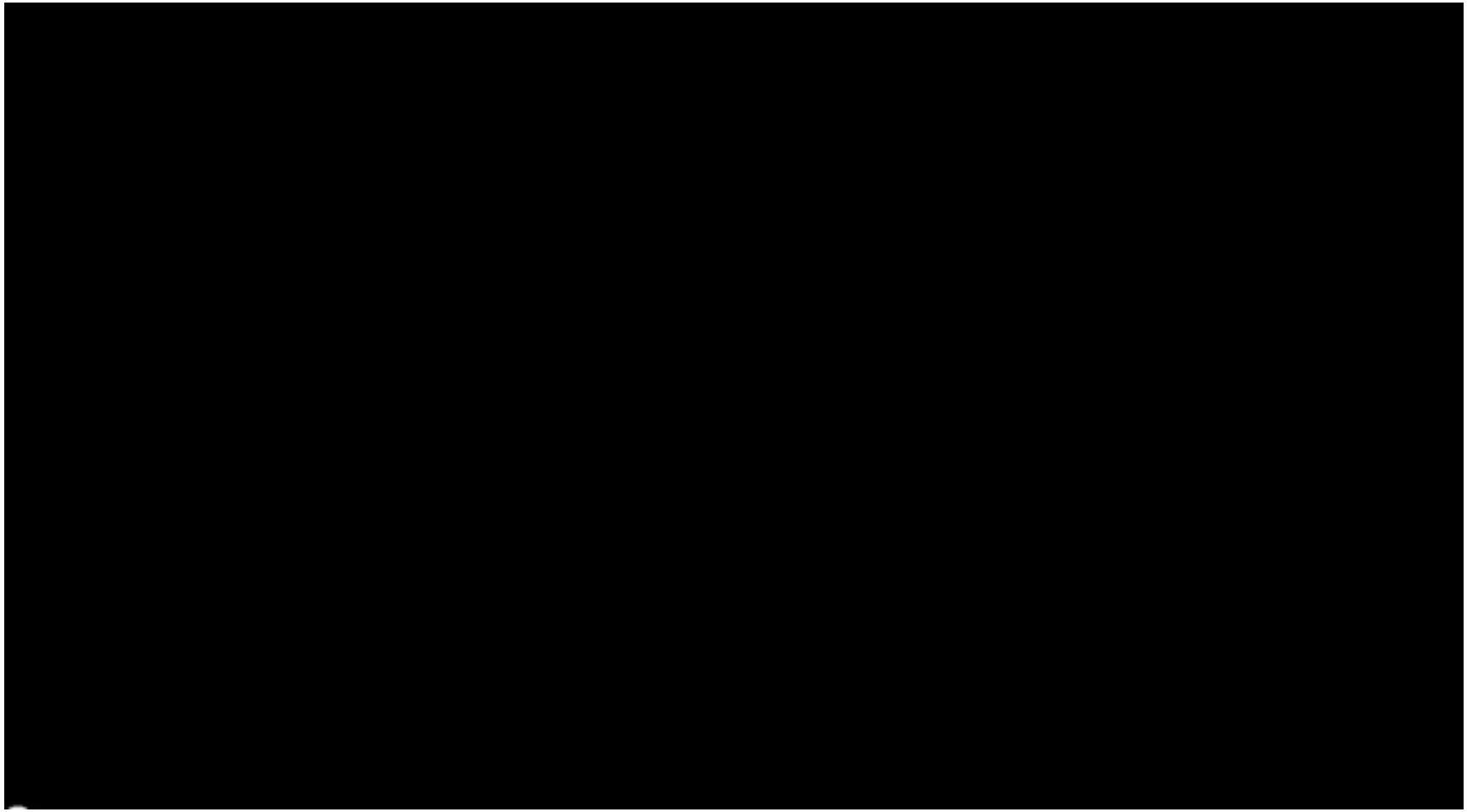


Median damages are adjusted for inflation to 2013 US dollars.

The number of cases is indicated within the respective column.

Source: PricewaterhouseCoopers LLP

Personal Audio v. Lotzi Digital (Podcast)



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Questions?

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