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**Patent Owners Faring Better Than Ever in PTAB Proceedings  
Reveals Fitzpatrick, Cella, Harper & Scinto Study**

**New York, NY—December 11, 2017**—A new study of proceedings before the Patent Trial and Appeal Board (PTAB) shows that, despite the initial reputation of *Inter Partes* Review (IPR) proceedings being that of patent killers, patent owners are winning more cases than ever. The study, conducted by law firm Fitzpatrick, Cella, Harper & Scinto, shows that the rate at which patent claims were found unpatentable by the PTAB fell significantly in 2016, while the volume of claims in dispute rose dramatically.

The study found that in every quarter of 2016, the reviewed final written decisions resulted in more than half of the claims originally challenged in IPR proceedings surviving. By contrast, in the previous two years, the survival rate of such claims exceeded 50 percent only once. In the first quarter of 2014, in fact, less than 20 percent of such claims survived challenge.

The effect of last year's decisions on the overall numbers was amplified by a sharp increase in the PTAB's workload. The number of claims at issue in cases decided by the PTAB last year—12,732—is almost equivalent to the number of claims they had adjudicated in all previous years combined. The total rate at which patent claims have survived IPR challenges since the PTAB was first established rose to 45 percent due to patent owners' success in IPR proceedings last year. That number was only 40 percent through 2015.

“While PTAB judges were busier than ever last year on a claim-by-claim basis, that increase in activity hasn't created any negative trends for patent owners,” noted [Justin Oliver](#), partner at Fitzpatrick and head of the firm's PTO Contested Proceedings practice. “In fact, this year's report shows just the opposite. It's evident that 2016 was the best year ever for patent holders in IPRs.”

Other findings in the report include:

- The percentage of IPRs that involve concurrent litigation is 85.6 percent.
- For the first time, the study examined the number of grounds asserted per IPR petition. The data revealed that from 2013 to 2016, the average number of grounds asserted per petition dropped from 9.8 to 4.58, while the number of grounds instituted has continued to hover around three.
- The technologies most frequently at issue in PTAB proceedings are electrical/computer (30 percent of proceedings) and data processing (22 percent).

The report also includes a number of significant findings regarding disputes involving pharmaceutical patents. Among them are:

- Patent owners in pharmaceutical matters fared significantly better than patent owners as a whole; nearly 75 percent of pharmaceutical claims challenged in IPR proceedings survived challenge.
- Pharmaceutical matters accounted for five percent of the PTAB decisions in 2016—a 25 percent increase over the previous year, when they accounted for four percent of decisions.
- Among different types of pharmaceutical claims, compound claims enjoyed the lowest rate of unpatentability per pre-institution challenge (only 19.7 percent), but suffered the highest rate of unpatentability post-institution (66 percent).

Fitzpatrick's report is based on a review of all final written decisions issued through 2016 and all decisions denying institution issued through 2015. For pharmaceutical claims, the report looked at all final written decisions issued through June 2017 and all decisions denying institution issued through June 2016. The full report, which provides valuable insights regarding both the usefulness of these proceedings to challengers and effective lines of defense for patent owners, is available [here](#). A specialized report of pharmaceutical patent disputes is available [here](#).

For additional insight, please visit Fitzpatrick's contested proceedings information hub, the [Post Grant HQ](#).

**About Fitzpatrick, Cella, Harper & Scinto:**

At Fitzpatrick, Cella, Harper & Scinto ([www.fitzpatrickcella.com](http://www.fitzpatrickcella.com)), IP is not just a practice area – it is the firm's sole focus. Founded in 1971, Fitzpatrick is a leading national intellectual property law firm with offices in New York, Costa Mesa, California, and Washington, D.C. It has one of the premier patent litigation and prosecution practices, which covers the spectrum of intellectual property services, including applying for patent and trademark protection, litigation, appeals, interferences, post-grant patent challenges (e.g., IPRs), alternative dispute resolution, licensing, opinions, corporate transactions, and due diligence. Fitzpatrick represents an international client base from Fortune 500 companies to start-up companies.

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