UNITED STATES
PATENT AND TRADEMARK OFFICE

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Patent Trial and Appeal Board Multiple Petitions Study

Fiscal Years 2021-2022 Update

July 2023

(Data from Oct. 1, 2014, through Sept. 30, 2022)

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Entropic Communications, LLC, Exhibit 2003
Page 2003 - 2
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC

Multiple petitions

- How often does PTAB institute trials on multiple challenges (petitions) filed by a petitioner?
- "Challenge": one petitioner vs. one patent
- Serial petitions
  - petition filed more than 90 days after the first petition filed by the same petitioner challenging the same patent (first filed petition is not a serial petition)
- Parallel petitions
  - petitions that were filed 90 days or fewer apart by the same petitioner against the same patent

Entropic Communications, LLC, Exhibit 2003
Page 2003 - 3
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC

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Serial Petitions

Serial petitions: Timeline

- **Fiscal Year 2016:**
  - *NVIDIA Corp. v. Samsung Elecs. Co.*, Case IPR2016-00134, Paper 9 (PTAB May 4, 2016) (setting forth factors in deciding whether to exercise discretion to deny review)
- **Fiscal Year 2017:**
  - *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, Case IPR2016-01357 et al., Paper 19 (PTAB Sept. 6, 2017) (designed precedential as to section II.B.4.i on Oct. 18, 2017)
- *General Plastic* set forth non-exclusive factors that the Board will consider in exercising discretion on instituting *inter partes* review, especially as to "follow-on" petitions challenging the same patent as challenged previously in an IPR, PGR, or CBM proceeding

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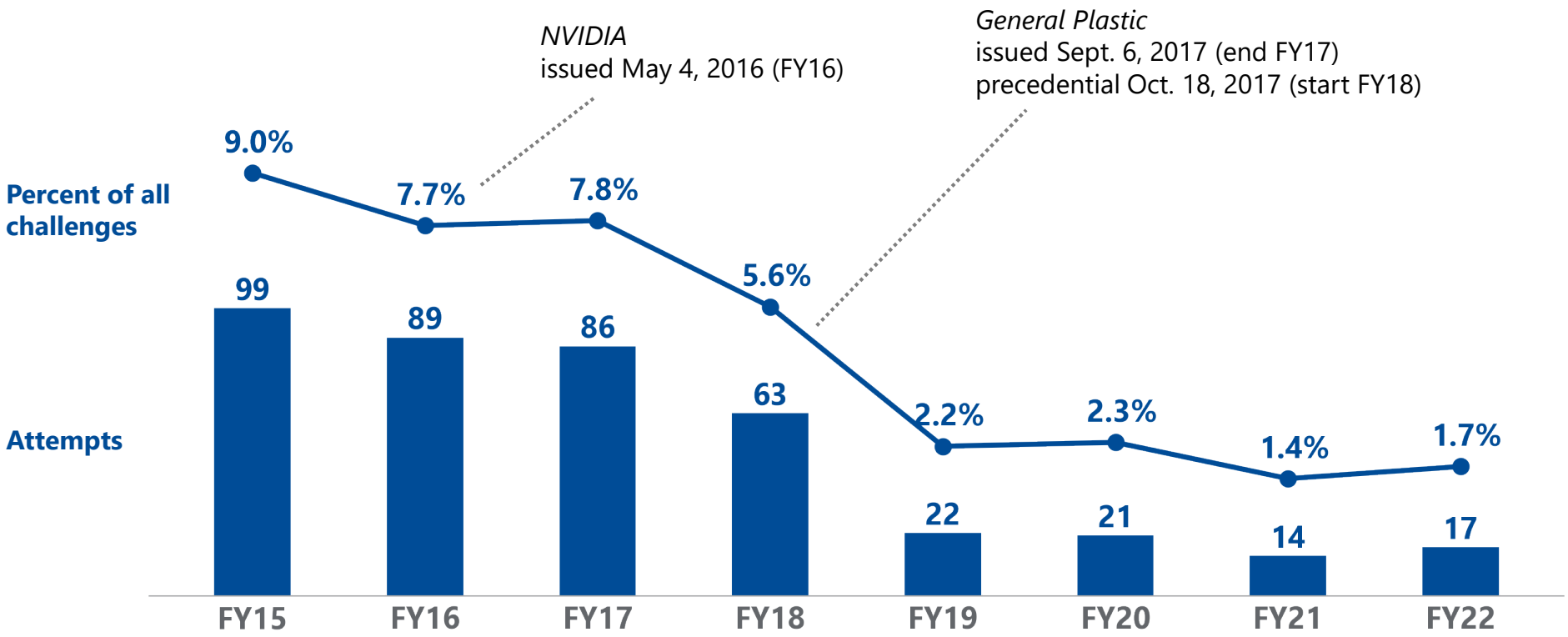
Entropic Communications, LLC, Exhibit 2003
Page 2003 - 5
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC



A serial-petition "attempt" is one petition or a group of two or more petitions filed more than 90 days after the first petition by the same petitioner challenging same patent, with one count per group per fiscal year. Because serial petitions may be filed at a later date, the numbers shown are subject to revision. Joined petitions are excluded.

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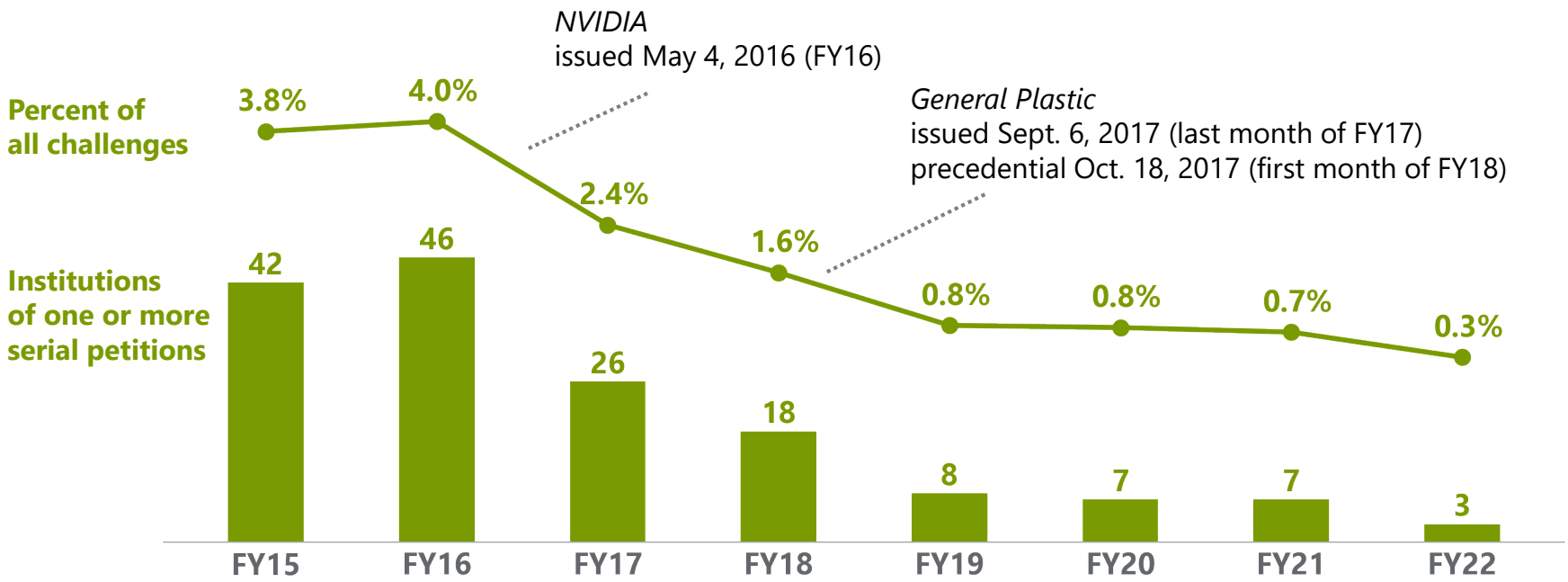
Entropic Communications, LLC, Exhibit 2003
Page 2003 - 6
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC



We assign one count in each fiscal year in which PTAB instituted trial on at least one serial petition in a group of challenges. Because serial petitions may be filed at a later date, the numbers shown are subject to revision. Joined petitions are excluded.

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Entropic Communications, LLC, Exhibit 2003
Page 2003 - 7
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC

Serial petitions: Reasons PTAB instituted on serial petitions in FY21 and FY22

- Patent owner did not contest as serial petition
- Patent owner asserted new claims in District Court
- Serial IPR filed after new guidance
- Large number of claims
- Dismissal of International Trade Commission proceeding used to deny institution of original petition under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential)

Entropic Communications, LLC, Exhibit 2003
Page 2003 - 8
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC

Serial petitions: Summary

- After *General Plastic* issued on Sept. 6, 2017 (last month of FY17) and was made precedential on Oct. 18, 2017 (first month of FY18)
  - Trials instituted based on serial petitions decreased
  - Attempts as a percentage of all challenges in a fiscal year decreased
  - From FY19-22, about 1.8% of AIA patent challenges (74 out of 4,223) involved serial petition attempts; a fraction of those (25 or about 0.6% of AIA patent challenges) resulted in institution of IPR or PGR proceedings

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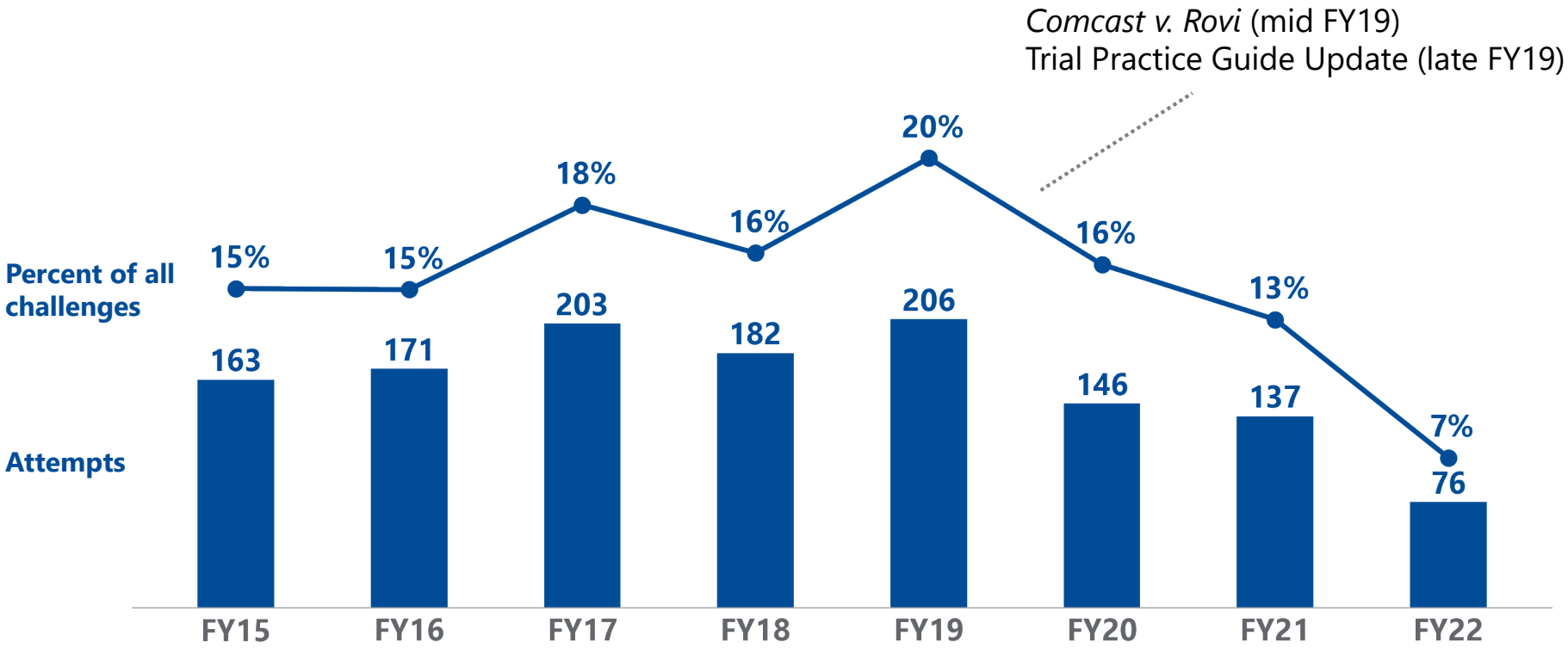
Parallel Petitions

Parallel petitions: Timeline

- **Mid FY19**: *Comcast Cable Commc'ns, LLC v. Rovi Guides, Inc.*, IPR2019-00224, Paper 10 (PTAB Apr. 3, 2019)
  - Requesting additional briefing from the parties on why two or more petitions challenging the same patent are needed
- **Late FY19:** *Trial Practice Guide Update* (July 2019)
  - "After the publication of this guide, it will be expected that petitioners will justify multiple petitions in the first instance in their petitions or in a separate paper with the petitions, and patent owners will respond in their preliminary responses or in a separate paper with their preliminary responses."
  - "[T]wo petitions by a petitioner may be needed, although this should be rare."

Entropic Communications, LLC, Exhibit 2003
Page 2003 - 11
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC



A parallel-petition attempt is a ***group*** of petitions that were filed 90 days or less apart by the same petitioner against the same patent, with one count per group per FY. Joined petitions are excluded. A petition can qualify as both a serial petition (with respect to a first filed petition) and a parallel petition (with respect to other petitions filed contemporaneously)

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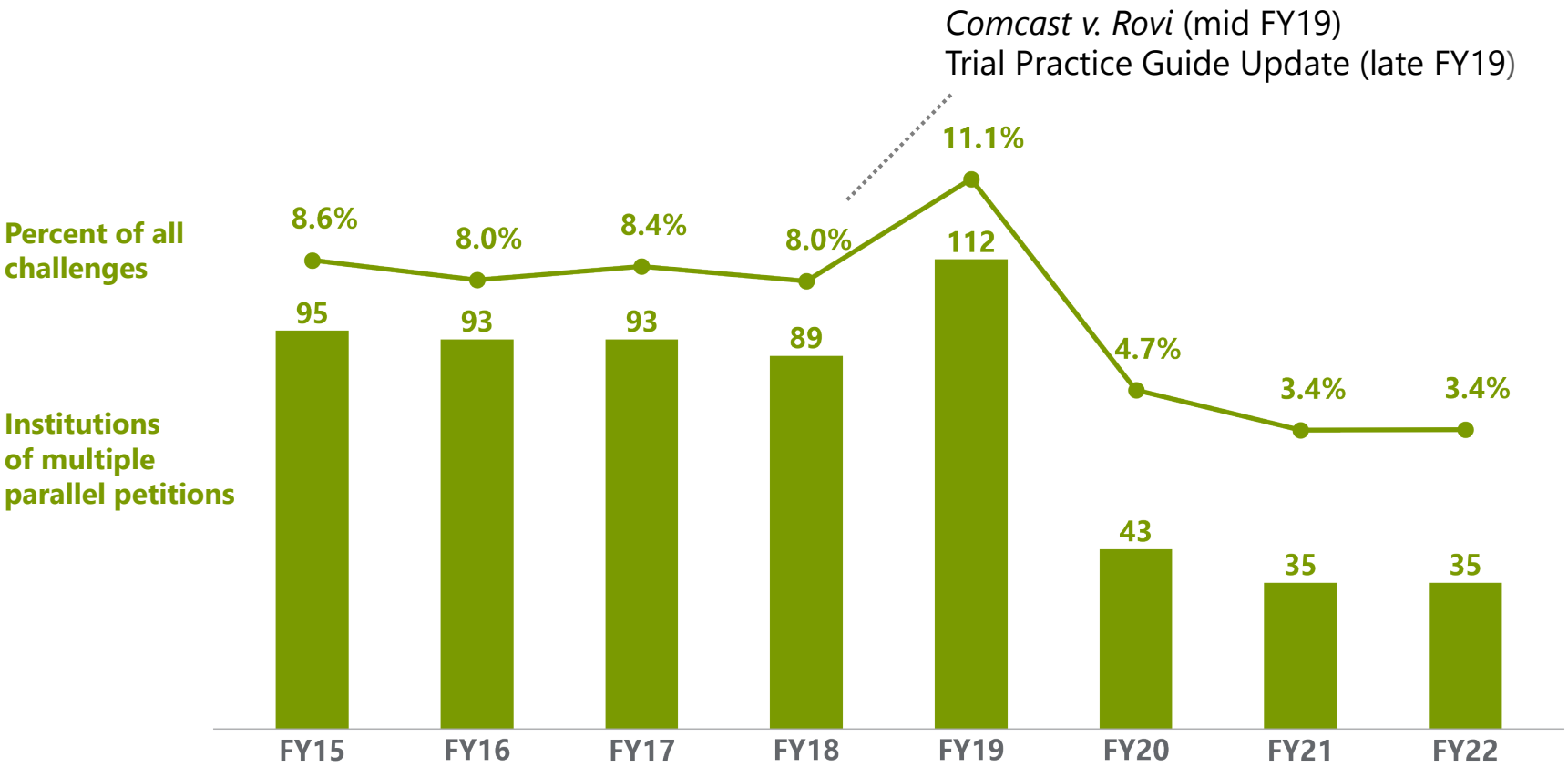
Entropic Communications, LLC, Exhibit 2003
Page 2003 - 12
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC



We assign one count in each FY in which PTAB instituted trial on multiple parallel petitions in a group of challenges. Joined petitions are excluded.

Entropic Communications, LLC, Exhibit 2003
Page 2003 - 13
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC

- Patent owner contested, but petitioner prevailed for one or more of the following reasons (30% FY21; 46% FY22)
  - Large number of claims/complex claim set
  - Prior art eligibility/priority date issues
  - Different claims
- Patent owner did not contest (70% FY21; 54% FY22)

All percentages based on all parallel petition attempts in each respective fiscal year.

Entropic Communications, LLC, Exhibit 2003
Page 2003 - 14
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC

Parallel petitions: Summary

- After FY19, during which the Board published guidance that informed petitioners that they will be expected to justify multiple petitions,
  - Institution of multiple trials based on parallel petitions decreased
  - Attempts as a percentage of all challenges in a fiscal year decreased

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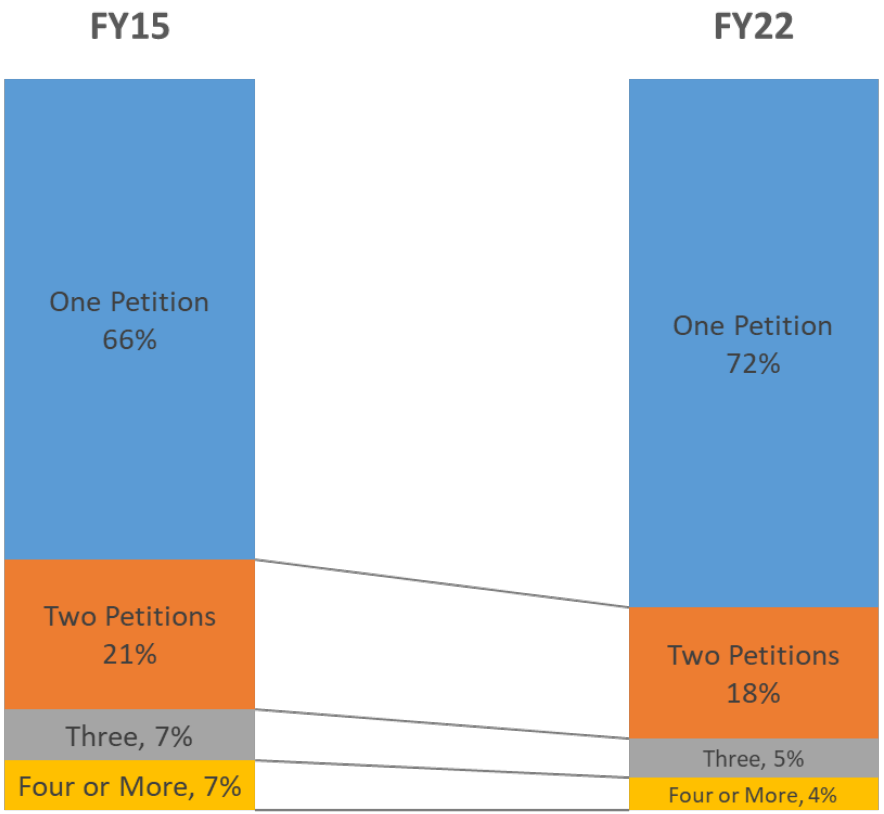
Overall Trends



FY15

- 1,090 out of 1,265 patents challenged (86%) subject to only one or two petitions
- 175 out of 1,265 patents challenged (14%) subject to three or more petitions

FY22

- 1,003 out of 1,113 patents challenged (90%) subject to only one or two petitions
- 110 out of 1,113 patents challenged (10%) subject to three or more petitions

Patents that are challenged in IPR or PGR proceedings are typically subject to only one petition in a fiscal year. This graph shows how many petitions, regardless of the challenger, were filed against each challenged patent in representative fiscal years 2015 and 2022. Due to rounding, percentages may not add up to 100%.

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Entropic Communications, LLC, Exhibit 2003
Page 2003 - 17
IPR2024-00432, Comcast Corporation v. Entropic Communications, LLC