July 28, 2015

PTAB Average Time-To-Decision in IPRs May Surprise You

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This post was co-authored by Foley & Lardner Summer Associate Jonathan E. Robe.

Ever wonder how long it takes the PTAB to decide to institute trial? Ever have someone ask how long it will take for the Board to issue its final written decision?

Of course, the maximum amount of time is fixed – 3 months to an institution decision and 12 months to a final decision. But an analysis of 100 recent PTAB decisions reveals that the actual amount of time could be just 1 month and 9 months, respectively.

The data sets consisted of 100 IPR proceedings which reached a final decision on the merits through May 31, 2015.[1]

Time to Institution Decision

The first data set evaluated the amount of time from the patent owner's preliminary response to the PTAB's decision to institute trial. Table 1 provides some summary statistics.

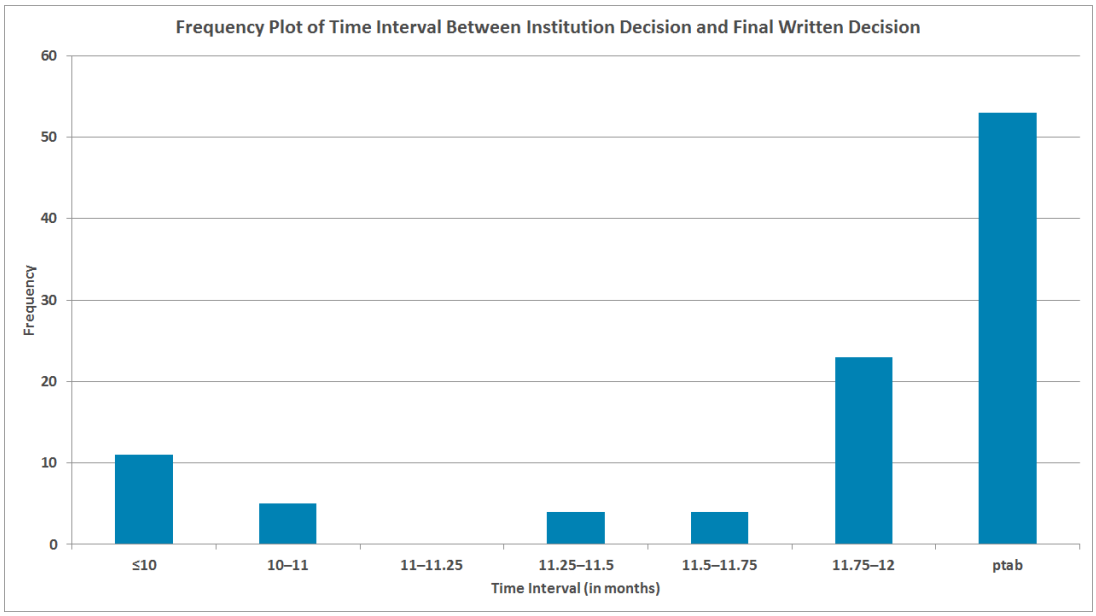
Table 1

Privacy - Terms

Summary Statistics for Time Interval Between Filing of Preliminary Response and Issuance of Institution Decision*	
Mean Time Interval	10.97
Median Time Interval	11.57
Mode Time Interval	12.14
Minimum Time Interval	4.14
Maximum Time Interval	13.00
Count (*n*)	100
*All time intervals expressed in weeks	

Chart 1 is a frequency plot for the time interval between filing of the patent owner's preliminary response and the issuance of an institution decision for this set.

Chart 1



Time to Final Decision

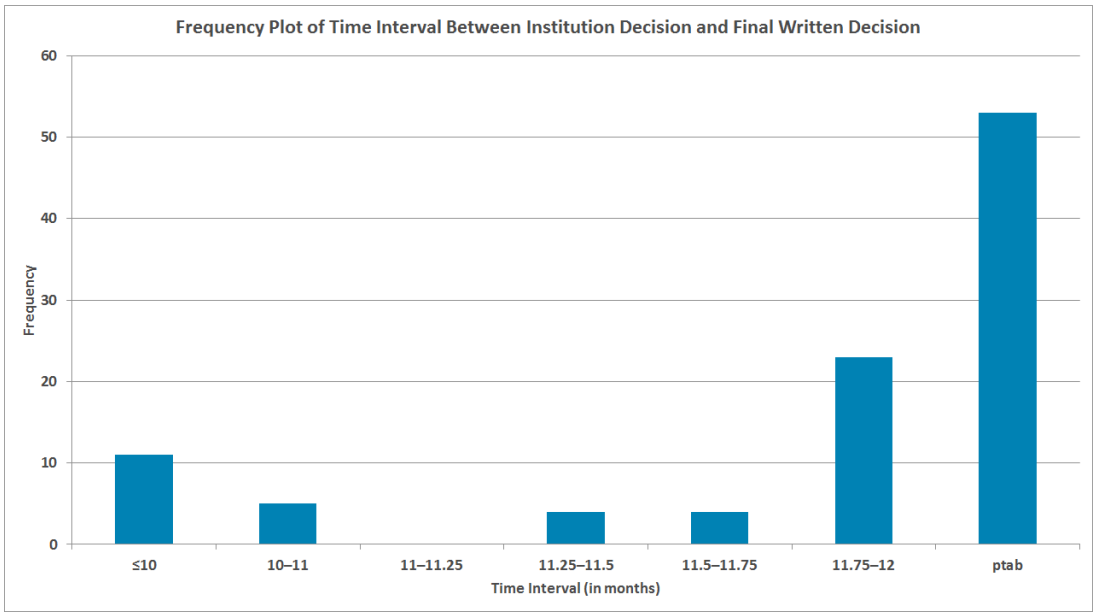
The second data set evaluated the time from the PTAB's decision to institute until its final written decision. For ease of calculation, it was assumed that each month of the year had exactly 30 days. Thus, those proceedings in which the time interval between institution decision and final decision was 364 days are expressed in these results as 12.13 months. Table 2 provides some summary statistics for this set.

Table 2

Summary Statistics for Time Interval Between Issuance of Institution Decision and Issuance of Final Written Decision*	
Mean Time Interval	11.67
Median Time Interval	12.03
Mode Time Interval	12.10
Minimum Time Interval	9.23
Maximum Time Interval	12.13
Count (*n*)	100
*All time intervals expressed in months of 30 days each. Thus, the maximum time interval of 12.13 months is 364 days.	

Chart 2 provides a frequency plot for this set.

Chart 2



Conclusion

Surprisingly, some institution decisions have come as swiftly as one month after the patent owner's preliminary response and more than 10% of the institution decisions studied were issued by the 2 month mark. As for the final written decisions, fully 16% were issued by 11 months from institution, with some coming just over 9 months from institution.

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[1] The data was collected and the tables and charts were prepared by Foley Summer Associate Jonathan E. Robe.

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