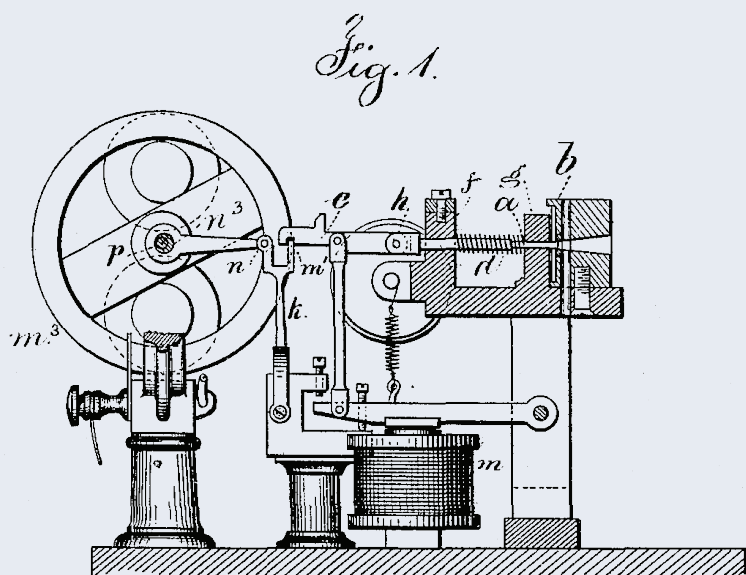


# the ip record

Your Annual Source for Intellectual Property Developments

3rd Annual



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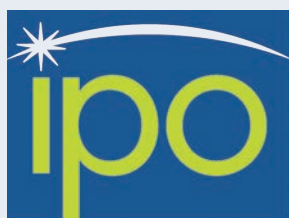
*Witnesses*

*Charles Smith  
Harold Terrell*

*Inventor*

*Thomas A. Edison  
per Lemuel W. Terrell atty.*

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Intellectual  
Property  
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Association

# 2010



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**Dear IPO Members and Colleagues:**

I am pleased to present the third annual IP Record, a publication which offers members a convenient compilation of annual IP statistics. I believe you will find the publication a useful reference tool, along with the other resources available on the IPO website including the IPO Daily News™ and IPO's Federal Circuit Summaries™.

IPO is continuing to expand membership benefits. In the past year, we have launched IPO Connect, a section of the website that facilitates committee interaction and offers professional networking opportunities to all IPO members. In the summer of 2010 we will be redesigning the IPO website. The new site will be easier to navigate and save you time.



In late 2009, IPO also introduced the IP Chat Channel, a weekly one hour webinar series on current IP topics that features panelists from industry, private practice, academia, and the government. I encourage you to view the IP Chat Channel schedule at <http://www.ipo.org/ipchatchannel> or check out the program archives, available for viewing on demand at <http://www.ipo.org/ipchatchannelarchives>.

This year the Board of Directors will continue to develop a greater international presence, work with the USPTO to improve patent quality, and expand educational programs. If you are a member of IPO and not taking advantage of all the membership benefits available to you, visit [www.ipo.org](http://www.ipo.org) or call the IPO office to find out how you can get more out of your membership. If you are not a member, I urge you to consider joining. Visit [www.ipo.org/joinipo](http://www.ipo.org/joinipo) or call the IPO office at 202/507-4500 for more information.

Sincerely,

A handwritten signature in dark ink that reads "Douglas K. Norman". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Douglas K. Norman  
IPO President

PS – Join us in Atlanta for the 2010 IPO Annual Meeting, September 12-14, at the Hyatt Regency Atlanta. Registration opens in June!

**SAVE THE DATES - MARK YOUR CALENDAR FOR IPO AND IPO EDUCATION  
FOUNDATION PROGRAMS!**



**SEPTEMBER 12-14, 2010**  
IPO Annual Meeting  
*Atlanta, GA - Hyatt Regency Atlanta*

**FALL, 2010**  
Corporate IP Management Roundtables  
*Philadelphia, PA*  
*Houston, TX*

**SEPTEMBER 11-13, 2011**  
IPO Annual Meeting  
*Los Angeles, CA - JW Marriott Los Angeles at L.A. Live*

**SEPTEMBER 9-11, 2012**  
IPO Annual Meeting  
*San Antonio, TX - JW Marriott San Antonio Hill Country Resort & Spa*

**SEPTEMBER 15-17, 2013**  
IPO Annual Meeting  
*Boston, MA - Sheraton Boston Hotel*



**JUNE 10, 2010**  
Foundation Awards Dinner  
*Washington, DC - Smithsonian Museum of Natural History*

**DECEMBER 6, 2010**  
PTO Day  
*Washington, DC - Ronald Reagan Building and International Trade Center*

**MAY 23-25, 2011**  
International Judges Conference  
*Brussels, Belgium - Hotel Plaza*

For event updates and registration information, please visit the IPO meetings and events calendar at **[www.ipo.org/calendar](http://www.ipo.org/calendar)**.

## **IPO Membership Benefits**

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### **IPO Members:**

- **Promote** more certain, effective IP rights and lower IP costs worldwide.
- **Network** with peers in more than 220 corporations and 250 law firms.
- **Support** IP law improvements and adequate USPTO funding.
- **Receive** free e-mail subscriptions to the *IPO Daily News™*.
- **Access** members-only features at [www.ipo.org](http://www.ipo.org).
- **Attend** CLE conferences for education opportunities.
- **Join** one of 31 Standing IP committees.
- **Participate** in the IP public awareness campaigns of IPO and its Education Foundation.

"IPO membership provides unparalleled networking opportunities for in-house counsel to interact with each other to develop trusting relationships. As a result, IPO members can feel secure in approaching each other in a mentoring capacity or opening a dialogue with each other to discuss business solutions." – *Cheryl J. Tubach, J.M. Huber Corporation, Corporate IP Management Committee Member*

Intellectual Property Owners Association (IPO) is a trade association for owners and others interested in patents, trademarks, copyrights, and trade secrets. IPO is the only global association that serves all intellectual property owners in all industries and all fields of technology.

Established in 1972, IPO advocates effective and affordable IP ownership rights and provides a wide array of services to members.

The association is governed by the 50-member Board of Directors, all of whom are chief intellectual property counsel of major companies. The Board, elected by the membership, sets IPO policy. IPO has an experienced staff of 13 full-time employees in Washington, DC.

For information on how to join, go to [www.ipo.org/joinipo](http://www.ipo.org/joinipo).

# Top 300 Organizations Granted U.S. Patents in 2009

*IPO DOES NOT INTEND TO ENCOURAGE MORE PATENTING IN THE U.S.*

*This annual report listing the organizations that received the most U.S. utility patents is being published by IPO for the 27th consecutive year. It is based on data obtained from the U.S. Patent & Trademark Office. Patents granted to parent and subsidiary companies are combined in some instances. See the end notes for background on how the report was prepared.*

*IPO does not intend for this report to encourage or discourage patenting. The U.S. Patent & Trademark Office announced three years ago that it would no longer publish its own report on organizations receiving the most patents, because it wanted to discourage “any perception that we believe more is better.” IPO has opted to continue publishing this IPO report, however, because the number of patents granted is one of the few objective measures of the patent system as a whole and the patenting activities of individual industries and companies. IPO and others are studying ways to develop more reliable measures of patent quality.*

*May 17, 2010*

## 2009 Patent Owners Numerical Listing

Rank	Organization	Patents	Rank	Organization	Patents
1	International Business Machines Corp.	4,887	45	Silverbrook Research Pty. Ltd.	474
2	Samsung Electronics Co., Ltd.	3,592	46	Robert Bosch GmbH	465
3	Microsoft Corp.	2,929	47	STMicroelectronics, Inc.	447
4	Canon K.K.	2,241	48	Konica Minolta Holdings, Inc.	438
5	Hitachi, Ltd.	2,146	49	Sanyo Electric Co., Ltd.	433
6	Panasonic Corp.	1,759	50	Fuji Xerox Co., Ltd.	425
7	Toshiba Corp.	1,669	51	Samsung SDI Co., Ltd.	421
8	Sony Corp.	1,656	52	Medtronic Inc.	421
9	Fujitsu Ltd.	1,615	53	Industrial Technology Research Institute, Taiwan	389
10	Intel Corp.	1,534	54	SAP AG	381
11	General Electric Co.	1,379	55	United Technologies Corp.	379
12	Seiko Epson Corp.	1,328	56	Ford Global Technologies, LLC	375
13	Siemens AG	1,311	57	Renesas Technology Corp.	369
14	Hewlett-Packard Co.	1,269	58	Freescale Semiconductor, Inc.	368
15	LG Electronics Inc.	1,064	59	Applied Materials, Inc.	359
16	NEC Corp.	1,035	60	Qualcomm, Inc.	356
17	Ricoh Co., Ltd.	985	61	TDK Corp.	342
18	Micron Technology, Inc.	966	62	Oracle International Corp.	342
19	Cisco Technology, Inc.	913	63	Merck & Co., Inc.	340
20	Fujifilm Corp.	873	64	Motorola, Inc.	339
21	Honeywell International Inc.	862	65	Tokyo Electron Ltd.	329
22	AT&T Corp.	862	66	3M Innovative Properties Co.	322
23	Honda Motor Co., Ltd.	725	67	Taiwan Semiconductor Manufacturing Co., Ltd.	311
24	Alcatel-Lucent	715	68	Delphi Technologies, Inc.	308
25	Broadcom Corp.	714	69	Research In Motion Ltd.	306
26	Denso Corp.	710	70	Electronics and Telecommunications Research Institute	305
27	Xerox Corp.	699	71	Eastman Kodak Co.	296
28	Hon Hai Precision Ind. Co., Ltd.	666	72	Apple Computer, Inc.	289
29	Texas Instruments, Inc.	649	73	Hong Fu Jin Precision Industry (Shenzhen) Co., Ltd.	286
30	Nokia Corp.	648	74	Olympus Corp.	282
31	Sharp Corp.	639	75	Pfizer Inc.	280
32	General Motors Corp.	621	76	Schlumberger Technology Corp.	274
33	Koninklijke Philips Electronics N.V.	618	77	Nvidia Corp.	271
34	Toyota Jidosha K.K.	601	78	NXP B.V.	271
35	LG Display Co., Ltd.	596	79	Xilinx, Inc.	262
36	Infineon Technologies AG	595	80	Monsanto Co.	259
37	Hynix Semiconductor Inc.	585	81	Hoffmann-La Roche Inc.	257
38	DuPont	585	82	Nissan Motor Co., Ltd.	253
39	Sun Microsystems, Inc.	579	83	University of California, The Regents of	251
40	Semiconductor Energy Laboratory Co., Ltd.	545	84	Boston Scientific Corp.	250
41	Boeing Co.	532	85	EMC Corp.	250
42	Brother Kogyo K.K.	529	86	Telefonaktiebolaget LM Ericsson	248
43	Mitsubishi Denki K.K.	521			
44	Johnson & Johnson	487			



2009 Patent Owners  
Numerical Listing

Rank	Organization	Patents	Rank	Organization	Patents
87	Baker Hughes Inc.	247	134	Sumitomo Electric Industries Co., Ltd.	156
88	Nortel Networks Ltd.	245	135	Nikon Corp.	153
89	Marvell International Ltd.	244	136	Deere & Co.	153
90	AU Optronics Corp.	239	137	United Microelectronics Corp.	151
91	Sandisk Corp.	239	138	Bridgestone Corp.	151
92	Exxon Mobil Corp.	239	139	Kyocera Mita Corp.	149
93	United States of America, Navy	232	140	Bristol-Myers Squibb Co.	145
94	Illinois Tool Works Inc.	230	141	Yamaha Hatsudoki K.K., Yamaha Motor Co., Ltd.	145
95	Funai Electric Co., Ltd.	228	142	ADC Telecommunications, Inc.	142
96	Samsung Electro-Mechanics Co., Ltd.	223	143	Eaton Corp.	141
97	Altera Corp.	219	144	Google, Inc.	141
98	Sprint Communications Co. L.P.	217	145	Pioneer Corp.	141
99	Symantec Corp.	215	146	Shell Oil Co.	141
100	Halliburton Energy Services, Inc.	214	147	Sony Ericsson Mobile Communications AB	141
101	Lockheed Martin Corp.	213	148	Yazaki Corp.	140
102	Yamaha Corp.	211	149	Elpida Memory, Inc.	139
103	Agere Systems Inc.	210	150	Juniper Networks, Inc.	138
104	ASML Netherlands B.V.	205	151	LG Chemical Ltd.	138
105	NTT Docomo, Inc.	202	152	Commissariat a l'Energie Atomique	134
106	National Semiconductor Corp.	200	153	Massachusetts Institute of Technology	134
107	Seagate Technology, LLC	198	154	Shin Etsu Chemical Co., Ltd.	134
108	Samsung Mobile Display Co., Ltd.	196	155	Black & Decker Inc.	134
109	Procter & Gamble Co.	195	156	International Game Technology (IGT)	131
110	LSI Logic Corp.	194	157	Battelle Memorial Institute	129
111	Hoya Corp.	193	158	Finisar Corp.	127
112	Dow Chemical Co.	193	159	Lexmark International, Inc.	126
113	OKI Semiconductor Co., Ltd.	192	160	Hyundai Motor Co.	125
114	Dell Products, L.P.	191	161	Yahoo, Inc.	125
115	Thomson Licensing S.A.	190	162	Chevron Corp.	125
116	Dongbu Electronics Co., Ltd.	187	163	NGK Insulators Ltd.	124
117	Caterpillar Inc.	186	164	Tyco Electronics Corp.	124
118	Interdigital Technology Corp.	186	165	Realtek Semiconductor Corp.	122
119	Agilent Technologies, Inc.	182	166	Rockwell Automation Technologies, Inc.	121
120	Advanced Micro Devices, Inc.	181	167	Nitto Denko Corp.	118
121	Cardiac Pacemakers, Inc.	181	168	Rockwell Collins, Inc.	118
122	VIA Technologies, Inc.	179	169	United States of America, Army	116
123	BASF AG	177	170	Dai Nippon Printing Co. Ltd.	115
124	Corning Inc.	177	171	Dongbu Hitek Co., Ltd.	115
125	Murata Manufacturing Co., Ltd.	173	172	L'Oreal S.A.	115
126	Casio Computer Co. Ltd.	171	173	Wisconsin Alumni Research Foundation	115
127	GlaxoSmithKline	171	174	Rohm Co. Ltd.	114
128	Raytheon Co.	167	175	Advantest Corp.	113
129	Adobe Systems, Inc.	164	176	Aptina Imaging Corp.	113
130	Avago Technologies IP (Singapore) Pte. Ltd.	163	177	Fujinon Corp.	111
131	Macronix International Co., Ltd.	161	178	Stanford University	110
132	Kimberly-Clark Worldwide, Inc.	159	179	Aisin Seiki K.K.	109
133	Mediatek Inc.	157			

## 2009 Patent Owners Numerical Listing

Rank	Organization	Patents	Rank	Organization	Patents
180	United States of America, Department of Health & Human Services	108	224	Avaya Technology Corp.	79
181	Sumitomo Chemical Co., Ltd.	107	225	Rambus, Inc.	79
182	Merck Patent GmbH	106	226	Hamamatsu Photonics K.K.	77
183	Inventec Corp.	105	227	Synopsys Inc.	77
184	Fu Zhun Precision Industrial (Shenzhen) Co., Ltd.	104	228	Daikin Industries Ltd.	76
185	Kyocera Corp.	104	229	Thales	76
186	Seiko Instruments Inc.	104	230	Trading Technologies International, Inc.	76
187	CNH America LLC	103	231	American Express Travel Related Services Co., Inc.	75
188	Symbol Technologies, Inc.	103	232	Goodyear Tire & Rubber Co.	75
189	Delta Electronics Inc.	102	233	Netapp, Inc.	75
190	Daimler AG	98	234	Sumitomo Wiring Systems, Ltd.	75
191	University of Texas	98	235	Abbott Laboratories	74
192	ZF Friedrichshafen, AG	98	236	Ciba Specialty Chemicals Corp.	74
193	Sabic Innovative Plastics, IP B.V.	97	237	Mitsubishi Heavy Industries, Ltd.	74
194	Societe Nationale d'Etude et de Construction de Moteurs d'Aviation	95	238	Rolls-Royce PLC	74
195	Amgen, Inc.	95	239	Fairchild Semiconductor Corp.	73
196	Northrop Grumman Corp.	94	240	Nike, Inc.	73
197	Sharp Laboratories of America, Inc.	94	241	Whirlpool Corp.	73
198	California Institute of Technology	93	242	Zymogenetics, Inc.	73
199	Japan Science and Technology Agency	93	243	Atmel Corp.	72
200	Jtekt Corp.	93	244	NCR Corp.	72
201	LAM Research Corp.	93	245	Takata Corp.	72
202	Verizon Communications Inc.	93	246	Boehringer Ingelheim International GmbH	71
203	Cadence Design Systems, Inc.	92	247	Institut Francais du Petrole	71
204	Alps Electric Co., Ltd.	91	248	NTN Corp.	71
205	International Rectifier Corp.	90	249	Chunghwa Picture Tubes, Ltd.	70
206	Showa Denko K.K.	90	250	ITT Manufacturing Enterprises, Inc.	70
207	Pitney Bowes Ltd.	88	251	KLA-Tencor Technologies Corp.	70
208	Astrazeneca AB	87	252	Asahi Glass Company, Ltd.	69
209	Kao Corp.	87	253	Novartis AG	69
210	Victor Company of Japan, Ltd.	87	254	Silicon Laboratories Inc.	69
211	Alstom Technology Ltd.	86	255	Tyco Healthcare Group LP	69
212	Genentech, Inc.	86	256	Cheng Uei Precision Industry Co., Ltd.	68
213	United States of America, National Aeronautics and Space Administration	86	257	Eastman Chemical Co.	68
214	Sanofi-Aventis	86	258	Eli Lilly and Co.	68
215	Analog Devices, Inc.	84	259	Lear Corp.	68
216	Toyota Gosei K.K.	84	260	Shimano Inc.	67
217	Spansion LLC	83	261	Goodrich Corp.	67
218	Huawei Technologies Co., Ltd.	82	262	Bayerische Motoren Werke AG	66
219	OKI Electric Industry Co., Ltd.	82	263	Sony Computer Entertainment Inc.	66
220	Omron Corp.	82	264	Continental Automotive Systems US, Inc.	65
221	Pacesetter, Inc.	81	265	Lite-On Technology Corp.	65
222	Acushnet Co.	80	266	University of Illinois	65
223	AOL LLC	80	267	Fraunhofer-Gesellschaft Zur Foerderung Der Angewandten Forschung E.V.	64
			268	Air Liquide Corp.	64

2009 Patent Owners  
Numerical Listing

Rank	Organization	Patents
269	BAE Systems Information and Electronic Systems Integration, Inc.	63
270	Carl Zeiss SMT AG	63
271	Centre National de la Recherche Scientifique - CNRS	63
272	Cree, Inc.	63
273	Lenovo Pte. Ltd.	63
274	Nippon Telegraph & Telephone Corp.	63
275	Sandia Corp.	63
276	Advanced Cardiovascular Systems, Inc.	62
277	Asustek Computer Inc.	62
278	Cooper Technologies Co.	62
279	Cypress Semiconductor Corp.	62
280	Epson Imaging Devices Corp.	62
281	HRL Laboratories, LLC	62
282	Mitsubishi Electric Research Laboratories, Inc.	62
283	Network Appliance, Inc.	62
284	Semiconductor Components Industries, LLC	62
285	Advanced Semiconductor Engineering, Inc.	61
286	ARM Ltd.	61
287	Qisda Corp.	61
288	Shinko Electric Industries Co., Ltd.	61
289	Ajinomoto Co. Inc.	60
290	Foxconn Technology Co., Ltd.	60
291	K.K. Topcon	60
292	National Institute of Advanced Industrial Science and Technology	60
293	Western Digital Technologies, Inc.	60
294	Allergan, Inc.	59
295	Digimarc Corp.	59
296	Ibiden Co., Ltd.	59
297	National Instruments Corp.	59
298	Palm, Inc.	59
299	Air Products and Chemicals, Inc.	58
300	Panduit Corp.	58
301	Toshiba Matsushita Display Technology Co., Ltd.	58

## 2009 Patent Owners

### Alphabetical Listing

Rank	Organization	Patents	Rank	Organization	Patents
66	3M Innovative Properties Co.	322	246	Boehringer Ingelheim International GmbH	71
235	Abbott Laboratories	74	41	Boeing Co.	532
222	Acushnet Co.	80	84	Boston Scientific Corp.	250
142	ADC Telecommunications, Inc.	142	138	Bridgestone Corp.	151
129	Adobe Systems, Inc.	164	140	Bristol-Myers Squibb Co.	145
276	Advanced Cardiovascular Systems, Inc.	62	25	Broadcom Corp.	714
120	Advanced Micro Devices, Inc.	181	42	Brother Kogyo K.K.	529
285	Advanced Semiconductor Engineering, Inc.	61	203	Cadence Design Systems, Inc.	92
175	Advantest Corp.	113	198	California Institute of Technology	93
103	Agere Systems Inc.	210	4	Canon K.K.	2,241
119	Agilent Technologies, Inc.	182	121	Cardiac Pacemakers, Inc.	181
268	Air Liquide Corp.	64	270	Carl Zeiss SMT AG	63
299	Air Products and Chemicals, Inc.	58	126	Casio Computer Co. Ltd.	171
179	Aisin Seiki K.K.	109	117	Caterpillar Inc.	186
289	Ajinomoto Co. Inc.	60	271	Centre National de la Recherche Scientifique - CNRS	63
24	Alcatel-Lucent	715	256	Cheng Uei Precision Industry Co., Ltd.	68
294	Allergan, Inc.	59	162	Chevron Corp.	125
204	Alps Electric Co., Ltd.	91	249	Chunghwa Picture Tubes, Ltd.	70
211	Alstom Technology Ltd.	86	236	Ciba Specialty Chemicals Corp.	74
97	Altera Corp.	219	19	Cisco Technology, Inc.	913
231	American Express Travel Related Services Company, Inc.	75	187	CNH America LLC	103
195	Amgen, Inc.	95	152	Commissariat a l'Energie Atomique	134
215	Analog Devices, Inc.	84	264	Continental Automotive Systems US, Inc.	65
223	AOL LLC	80	278	Cooper Technologies Co.	62
72	Apple Computer, Inc.	289	124	Corning Inc.	177
59	Applied Materials, Inc.	359	272	Cree, Inc.	63
176	Aptina Imaging Corp.	113	279	Cypress Semiconductor Corp.	62
286	ARM Ltd.	61	170	Dai Nippon Printing Co. Ltd.	115
252	Asahi Glass Company, Ltd.	69	228	Daikin Industries Ltd.	76
104	ASML Netherlands B.V.	205	190	Daimler AG	98
208	Astrazeneca AB	87	136	Deere & Co.	153
277	Asustek Computer Inc.	62	114	Dell Products, L.P.	191
22	AT&T Corp.	862	68	Delphi Technologies, Inc.	308
243	Atmel Corp.	72	189	Delta Electronics Inc.	102
90	AU Optronics Corp.	239	26	Denso Corp.	710
130	Avago Technologies IP (Singapore) Pte. Ltd.	163	295	Digimarc Corp.	59
224	Avaya Technology Corp.	79	116	Dongbu Electronics Co., Ltd.	187
269	BAE Systems Information and Electronic Systems Integration, Inc.	63	171	Dongbu Hitek Co., Ltd.	115
87	Baker Hughes Inc.	247	112	Dow Chemical Co.	193
123	BASF AG	177	38	DuPont	585
157	Battelle Memorial Institute	129	257	Eastman Chemical Co.	68
262	Bayerische Motoren Werke AG	66	71	Eastman Kodak Co.	296
155	Black & Decker Inc.	134	143	Eaton Corp.	141

2009 Patent Owners  
Alphabetical Listing

Rank	Organization	Patents	Rank	Organization	Patents
70	Electronics and Telecommunications Research Institute	305	118	Interdigital Technology Corp.	186
258	Eli Lilly and Co.	68	1	International Business Machines Corp.	4,887
149	Elpida Memory, Inc.	139	156	International Game Technology (IGT)	131
85	EMC Corp.	250	205	International Rectifier Corp.	90
280	Epson Imaging Devices Corp.	62	183	Inventec Corp.	105
92	Exxon Mobil Corp.	239	250	ITT Manufacturing Enterprises, Inc.	70
239	Fairchild Semiconductor Corp.	73	199	Japan Science and Technology Agency	93
158	Finisar Corp.	127	44	Johnson & Johnson	487
56	Ford Global Technologies, LLC	375	200	Jtekt Corp.	93
290	Foxconn Technology Co., Ltd.	60	150	Juniper Networks, Inc.	138
267	Fraunhofer-Gesellschaft Zur Foerderung Der Angewandten Forschung E.V.	64	291	K.K. Topcon	60
58	Freescale Semiconductor, Inc.	368	209	Kao Corp.	87
184	Fu Zhun Precision Industrial (Shenzhen) Co., Ltd.	104	132	Kimberly-Clark Worldwide, Inc.	159
50	Fuji Xerox Co., Ltd.	425	251	KLA-Tencor Technologies Corp.	70
20	Fujifilm Corp.	873	48	Konica Minolta Holdings, Inc.	438
177	Fujinon Corp.	111	33	Koninklijke Philips Electronics N.V.	618
9	Fujitsu Ltd.	1,615	185	Kyocera Corp.	104
95	Funai Electric Co., Ltd.	228	139	Kyocera Mita Corp.	149
212	Genentech, Inc.	86	201	LAM Research Corp.	93
11	General Electric Co.	1,379	259	Lear Corp.	68
32	General Motors Corp.	621	273	Lenovo Pte. Ltd.	63
127	GlaxoSmithKline	171	159	Lexmark International, Inc.	126
261	Goodrich Corp.	67	151	LG Chemical Ltd.	138
232	Goodyear Tire & Rubber Co.	75	35	LG Display Co., Ltd.	596
144	Google, Inc.	141	15	LG Electronics Inc.	1,064
100	Halliburton Energy Services, Inc.	214	265	Lite-On Technology Corp.	65
226	Hamamatsu Photonics K.K.	77	101	Lockheed Martin Corp.	213
14	Hewlett-Packard Co.	1,269	172	L'Oreal S.A.	115
5	Hitachi, Ltd.	2,146	110	LSI Logic Corp.	194
81	Hoffmann-La Roche Inc.	257	131	Macronix International Co., Ltd.	161
28	Hon Hai Precision Ind. Co., Ltd.	666	89	Marvell International Ltd.	244
23	Honda Motor Co., Ltd.	725	153	Massachusetts Institute of Technology	134
21	Honeywell International Inc.	862	133	Mediatek Inc.	157
73	Hong Fu Jin Precision Industry (Shenzhen) Co., Ltd.	286	52	Medtronic Inc.	421
111	Hoya Corp.	193	63	Merck & Co., Inc.	340
281	HRL Laboratories, LLC	62	182	Merck Patent GmbH	106
218	Huawei Technologies Co., Ltd.	82	18	Micron Technology, Inc.	966
37	Hynix Semiconductor Inc.	585	3	Microsoft Corp.	2,929
160	Hyundai Motor Co.	125	43	Mitsubishi Denki K.K.	521
296	Ibiden Co., Ltd.	59	282	Mitsubishi Electric Research Laboratories, Inc.	62
94	Illinois Tool Works Inc.	230	237	Mitsubishi Heavy Industries, Ltd.	74
53	Industrial Technology Research Institute, Taiwan	389	80	Monsanto Co.	259
36	Infineon Technologies AG	595	64	Motorola, Inc.	339
247	Institut Francais du Petrole	71	125	Murata Manufacturing Co., Ltd.	173
10	Intel Corp.	1,534	292	National Institute of Advanced Industrial Science and Technology	60
			297	National Instruments Corp.	59



## 2009 Patent Owners Alphabetical Listing

Rank	Organization	Patents	Rank	Organization	Patents
106	National Semiconductor Corp.	200	2	Samsung Electronics Co., Ltd.	3,592
244	NCR Corp.	72	108	Samsung Mobile Display Co., Ltd.	196
16	NEC Corp.	1,035	51	Samsung SDI Co., Ltd.	421
233	Netapp, Inc.	75	275	Sandia Corp.	63
283	Network Appliance, Inc.	62	91	Sandisk Corp.	239
163	NGK Insulators Ltd.	124	214	Sanofi-Aventis	86
240	Nike, Inc.	73	49	Sanyo Electric Co., Ltd.	433
135	Nikon Corp.	153	54	SAP AG	381
274	Nippon Telegraph & Telephone Corp.	63	76	Schlumberger Technology Corp.	274
82	Nissan Motor Co., Ltd.	253	107	Seagate Technology, LLC	198
167	Nitto Denko Corp.	118	12	Seiko Epson Corp.	1,328
30	Nokia Corp.	648	186	Seiko Instruments Inc.	104
88	Nortel Networks Ltd.	245	284	Semiconductor Components Industries, LLC	62
196	Northrop Grumman Corp.	94	40	Semiconductor Energy Laboratory Co., Ltd.	545
253	Novartis AG	69	31	Sharp Corp.	639
248	NTN Corp.	71	197	Sharp Laboratories of America, Inc.	94
105	NTT Docomo, Inc.	202	146	Shell Oil Co.	141
77	Nvidia Corp.	271	260	Shimano Inc.	67
78	NXP B.V.	271	154	Shin Etsu Chemical Co., Ltd.	134
219	OKI Electric Industry Co., Ltd.	82	288	Shinko Electric Industries Co., Ltd.	61
113	OKI Semiconductor Co., Ltd.	192	206	Showa Denko K.K.	90
74	Olympus Corp.	282	13	Siemens AG	1,311
220	Omron Corp.	82	254	Silicon Laboratories Inc.	69
62	Oracle International Corp.	342	45	Silverbrook Research Pty. Ltd.	474
221	Pacesetter, Inc.	81	194	Societe Nationale d'Etude et de Construction de Moteurs d'Aviation	95
298	Palm, Inc.	59	263	Sony Computer Entertainment Inc.	66
6	Panasonic Corp.	1,759	8	Sony Corp.	1,656
300	Panduit Corp.	58	147	Sony Ericsson Mobile Communications AB	141
75	Pfizer Inc.	280	217	Spansion LLC	83
145	Pioneer Corp.	141	98	Sprint Communications Co. L.P.	217
207	Pitney Bowes Ltd.	88	178	Stanford University	110
109	Procter & Gamble Co.	195	47	STMicroelectronics, Inc.	447
287	Qisda Corp.	61	181	Sumitomo Chemical Co., Ltd.	107
60	Qualcomm, Inc.	356	134	Sumitomo Electric Industries Co., Ltd.	156
225	Rambus, Inc.	79	234	Sumitomo Wiring Systems, Ltd.	75
128	Raytheon Co.	167	39	Sun Microsystems, Inc.	579
165	Realtek Semiconductor Corp.	122	99	Symantec Corp.	215
57	Renesas Technology Corp.	369	188	Symbol Technologies, Inc.	103
69	Research In Motion Ltd.	306	227	Synopsys Inc.	77
17	Ricoh Co., Ltd.	985	67	Taiwan Semiconductor Manufacturing Co., Ltd.	311
46	Robert Bosch GmbH	465	245	Takata Corp.	72
166	Rockwell Automation Technologies, Inc.	121	61	TDK Corp.	342
168	Rockwell Collins, Inc.	118	86	Telefonaktiebolaget LM Ericsson	248
174	Rohm Co. Ltd.	114	29	Texas Instruments, Inc.	649
238	Rolls-Royce PLC	74	229	Thales	76
193	Sabic Innovative Plastics, IP B.V.	97	115	Thomson Licensing S.A.	190
96	Samsung Electro-Mechanics Co., Ltd.	223			

2009 Patent Owners  
Alphabetical Listing

Rank	Organization	Patents
65	Tokyo Electron Ltd.	329
7	Toshiba Corp.	1,669
301	Toshiba Matsushita Display Technology Co., Ltd.	58
216	Toyoda Gosei K.K.	84
34	Toyota Jidosha K.K.	601
230	Trading Technologies International, Inc.	76
164	Tyco Electronics Corp.	124
255	Tyco Healthcare Group LP	69
137	United Microelectronics Corp.	151
169	United States of America, Army	116
180	United States of America, Department of Health & Human Services	108
213	United States of America, National Aeronautics and Space Administration	86
93	United States of America, Navy	232
55	United Technologies Corp.	379
83	University of California, The Regents of	251
266	University of Illinois	65
191	University of Texas	98
202	Verizon Communications Inc.	93
122	VIA Technologies, Inc.	179
210	Victor Company of Japan, Ltd.	87
293	Western Digital Technologies, Inc.	60
241	Whirlpool Corp.	73
173	Wisconsin Alumni Research Foundation	115
27	Xerox Corp.	699
79	Xilinx, Inc.	262
161	Yahoo, Inc.	125
102	Yamaha Corp.	211
141	Yamaha Hatsudoki K.K., Yamaha Motor Co., Ltd.	145
148	Yazaki Corp.	140
192	ZF Friedrichshafen, AG	98
242	Zymogenetics, Inc.	73

## NOTES:

1. The number of patents granted does not necessarily indicate the value of a company's technology, the effectiveness of its R & D, or whether it will be profitable. The number of patents per company varies widely from industry to industry and from company to company within an industry.
2. This report was compiled by IPO from data provided by the U.S. Patent and Trademark Office. Patents reported are utility patents granted during calendar year 2009 that listed the organization or a subsidiary as the owner on the printed patent document. If an assignment of rights to an organization or its subsidiary was recorded after the patent document was printed, the patent was not counted. Patents in the name of a majority-owned company are included with patents of the parent organization if the organization asked IPO by March 1, 2010 to include subsidiaries. Patents that were granted to two or more organizations jointly are attributed to the organization listed first on the patent document.
3. The number of utility patents granted by the USPTO increased to 165,213 in 2009 from 154,699 in 2008.
4. IPO has published this report annually since 1984 as a service to its members. For annual lists go to [www.ipo.org/TopPatentOwners](http://www.ipo.org/TopPatentOwners).
5. Next year IPO will list patents under the name of the parent organization that are granted to majority-owned subsidiaries if the organization provides the names of its majority-owned subsidiaries to IPO by March 1, 2011.
6. IPO makes reasonable efforts to avoid errors, but cannot assure complete accuracy.



# Other Annual IP Statistics:

## **Patents, Trademarks, and Copyrights**

by Type, State, and Country, p. 16

## **U.S. District Courts Suits**

by Type and by Court, p. 24

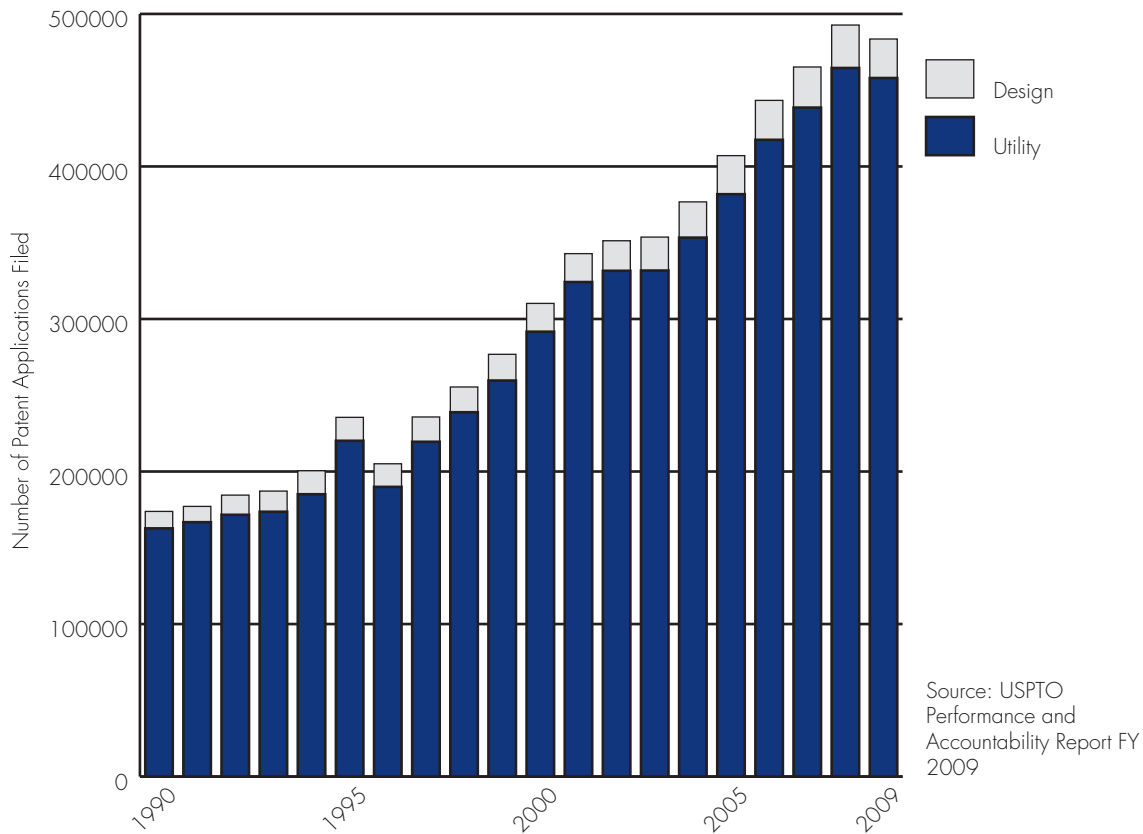
## **Cases in the U.S. Court of Appeals for the Federal Circuit**

by Category, with Time to Disposition, and Petitions for  
Certiorari to the Supreme Court, p. 26

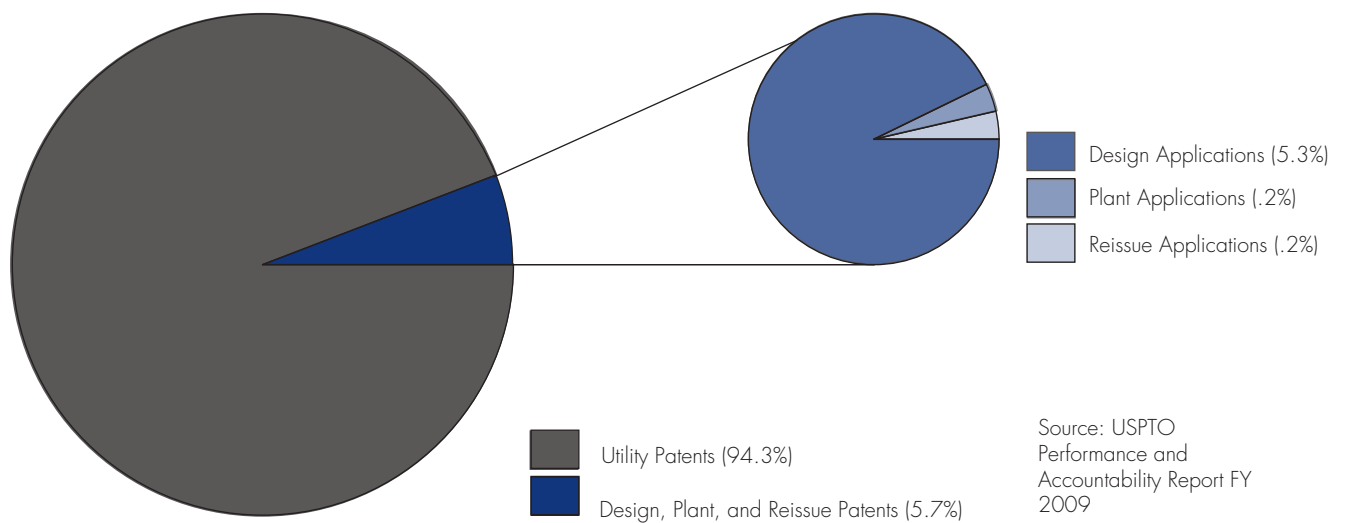
## **International Statistics**

Patent Filings by Country, PCT Filings, and Madrid  
System Registrations, p. 28

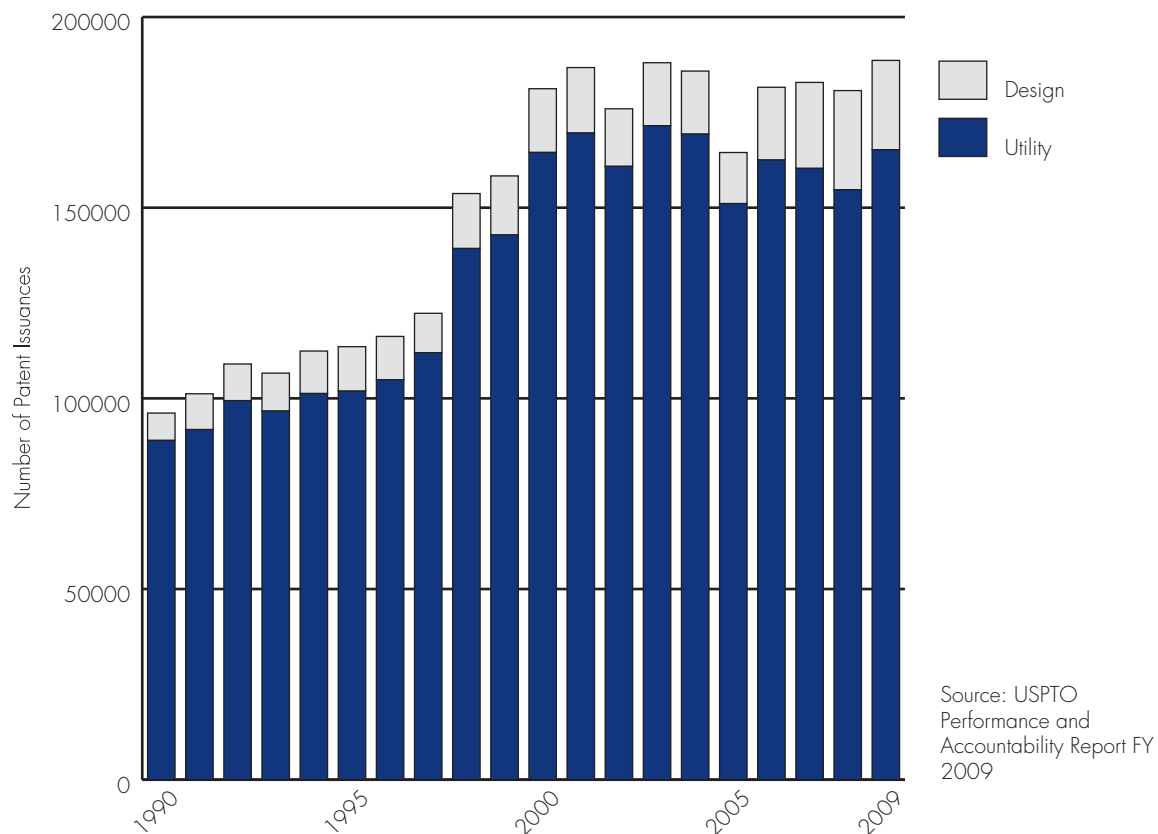
## U.S. Patent Applications, Utility and Design (1990 - 2009)



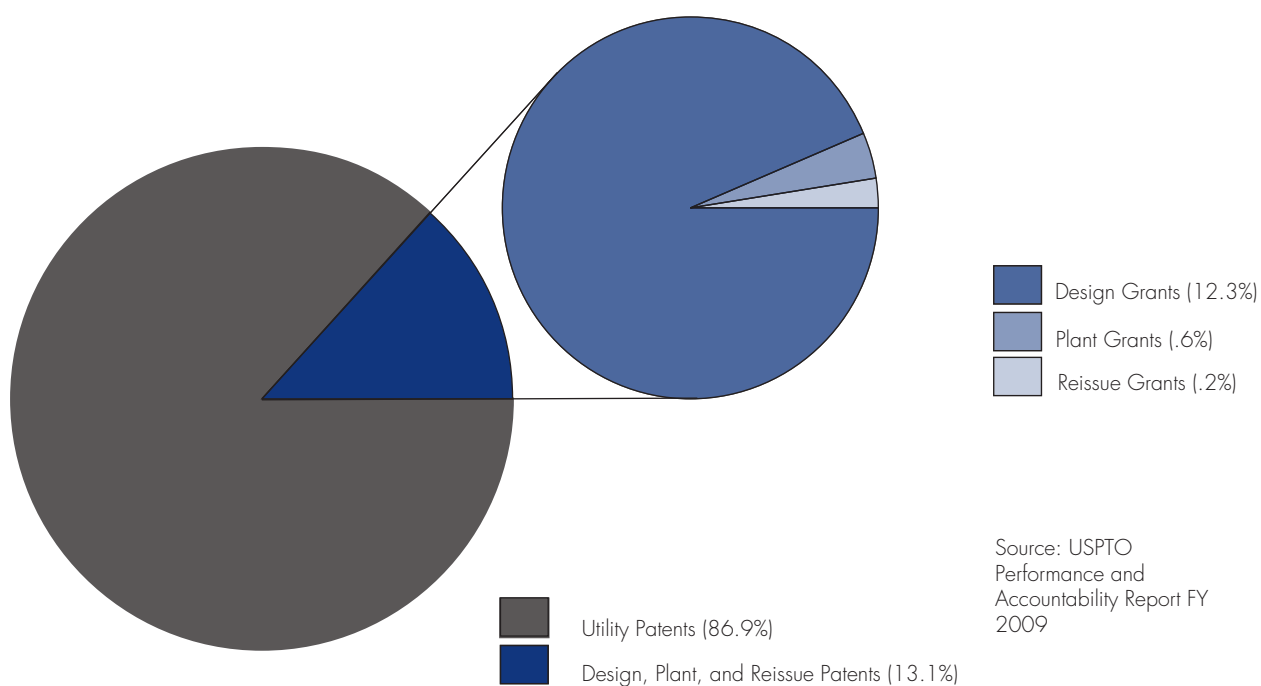
## U.S. Patent Applications, by Type (2009)



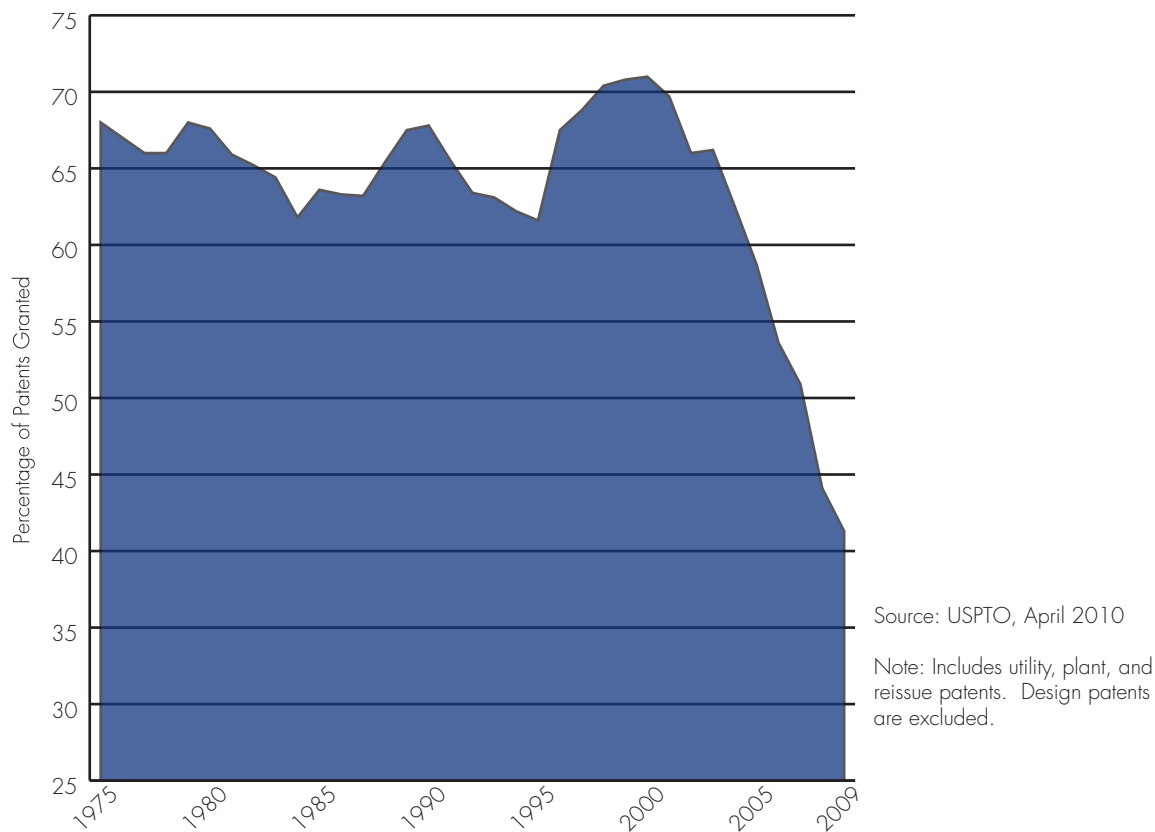
### U.S. Patent Grants, Utility and Design (1990 - 2009)



### U.S. Patent Grants, by Type (2009)

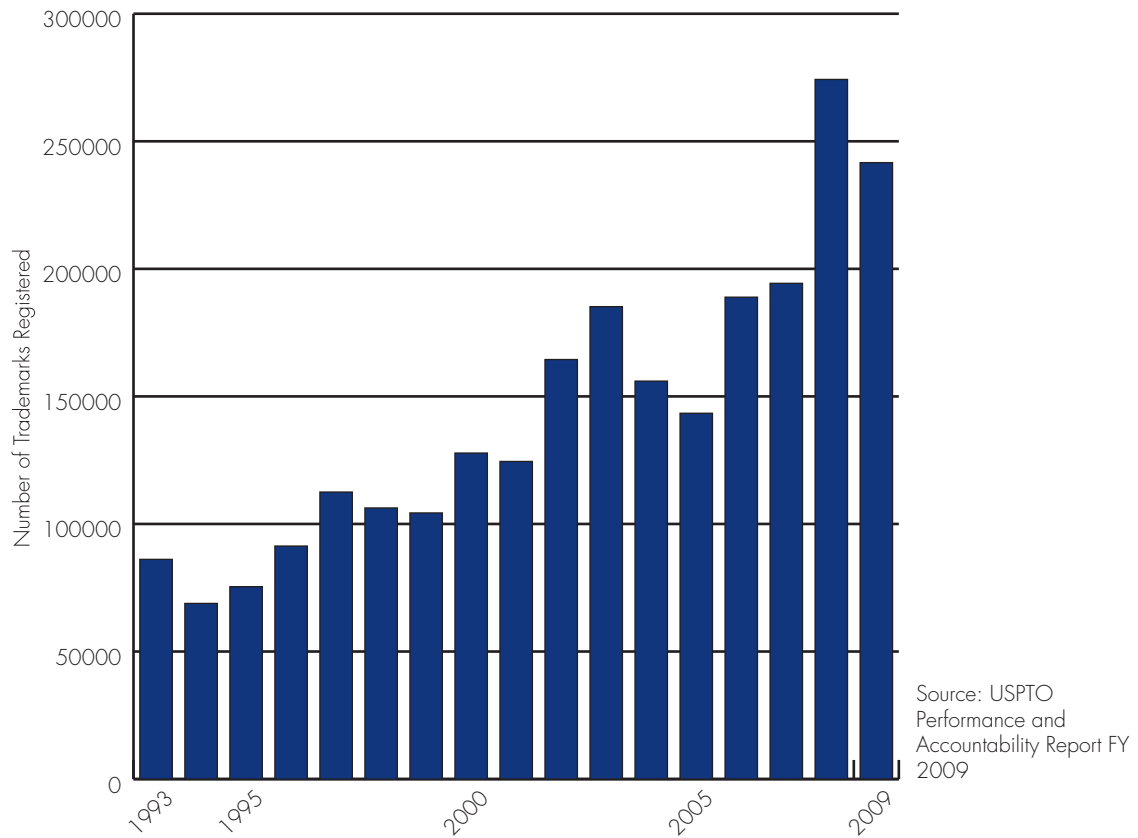


## USPTO Patent Applications Allowance Rate\* (FY 1975 - 2009)

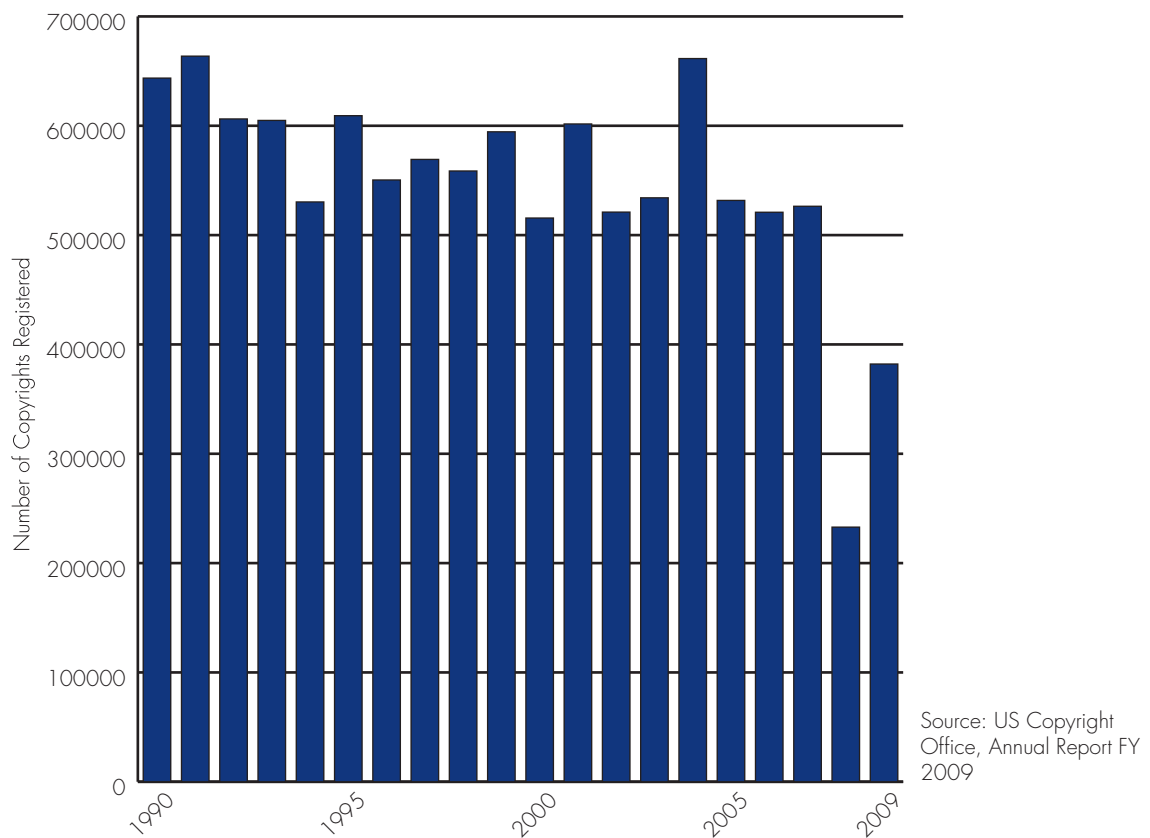


\* The allowance rate is the percentage of patent applications on which a patent is granted.

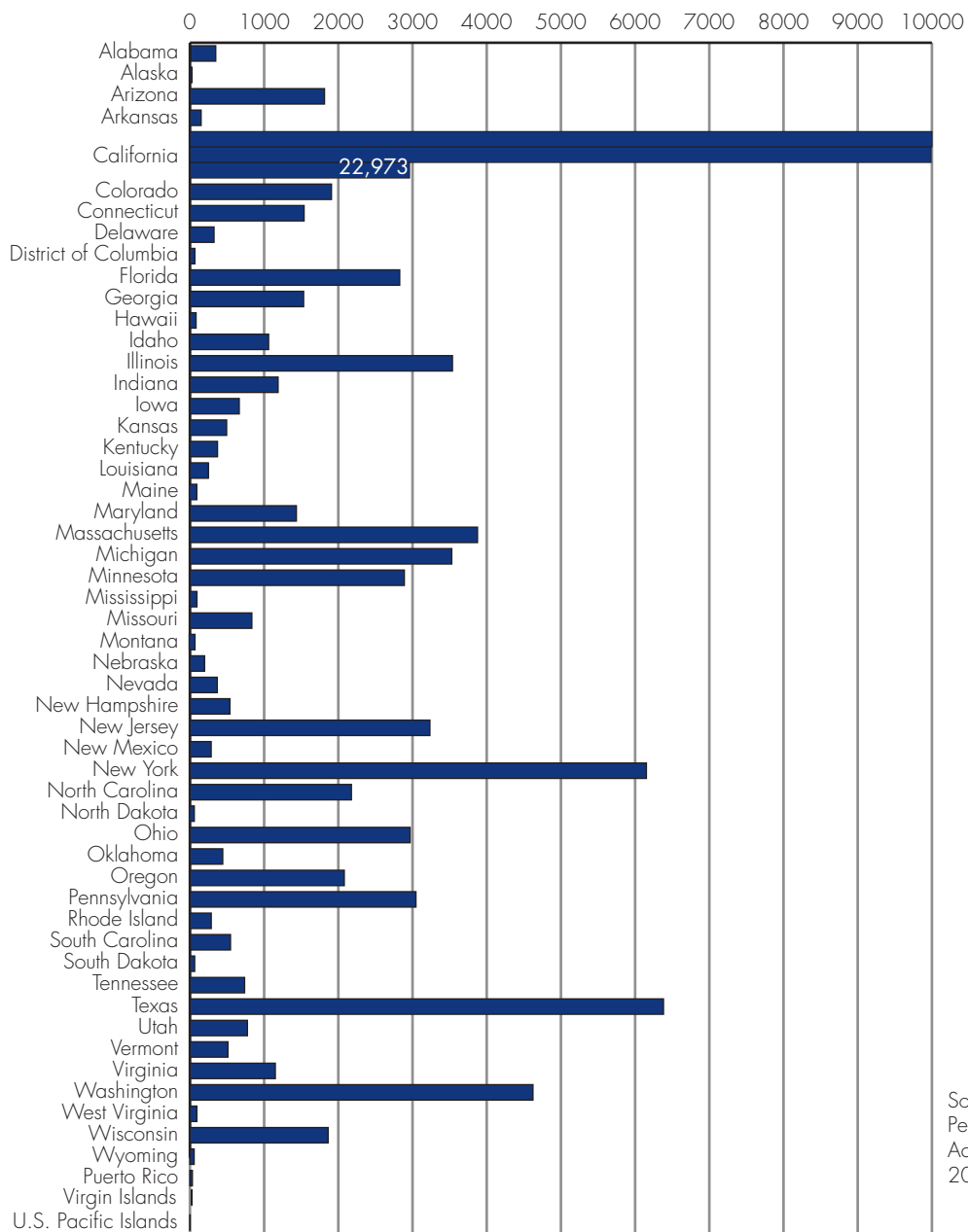
### U.S. Trademark Registrations (1993 - 2009)



### U.S. Copyright Registrations (1990 - 2009)



## U.S. Patents Granted by State of Residence (2009)



Source: USPTO  
Performance and  
Accountability Report FY  
2009

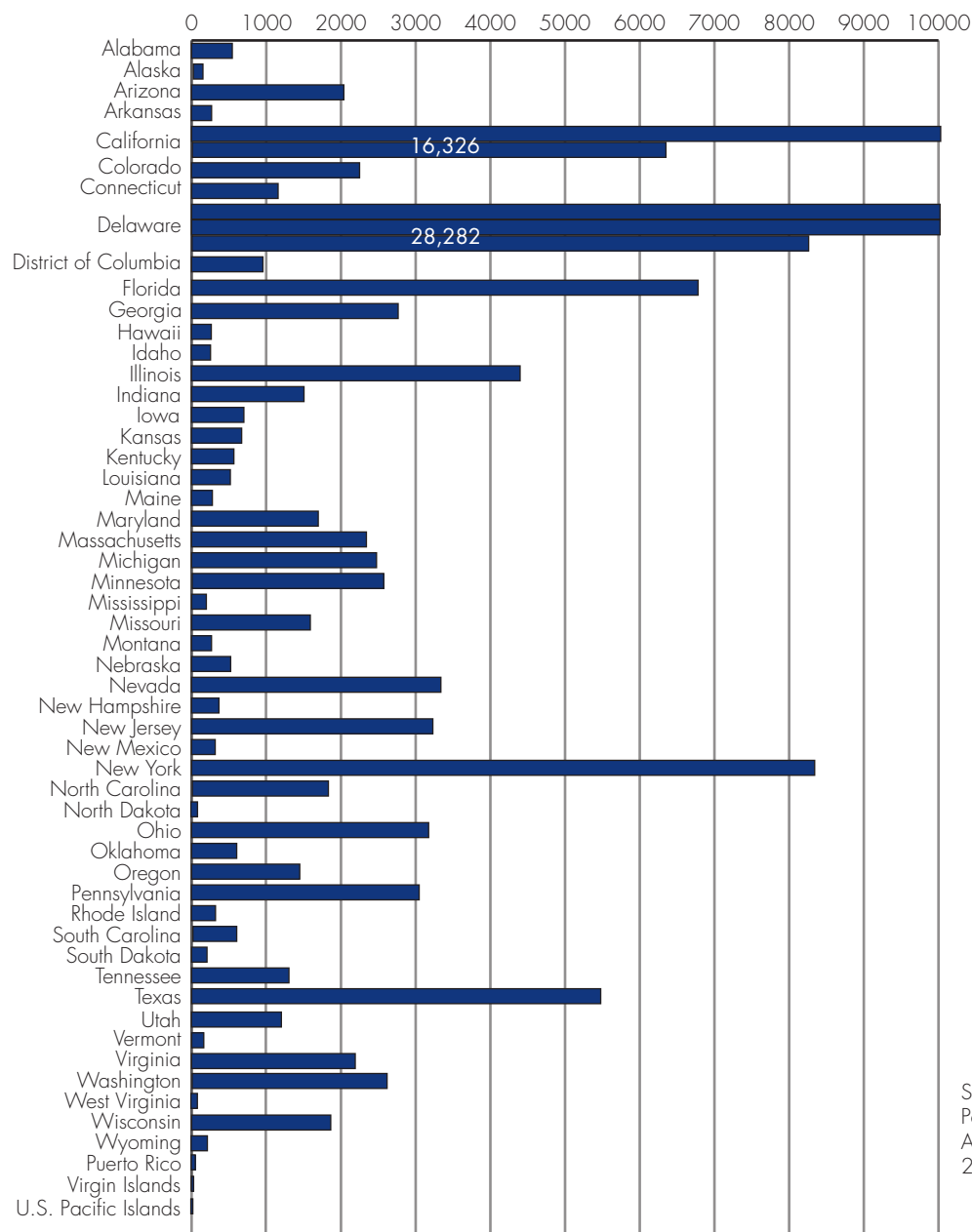
## Top 25 States Ranked by Patents Granted per Capita

Rank	State	Patents per 100,000 Inhabitants
1	Vermont	87.7
2	Washington	69.5
3	Idaho	67.5
4	California	62.2
5	Massachusetts	58.8
6	Minnesota	55.1
7	Oregon	54.7
8	Connecticut	46.8
9	New Hampshire	42.8
10	Colorado	38.5
11	Delaware	37.8
12	New Jersey	37.6
13	Michigan	35.4

14	Wisconsin	32.4
15	New York	31.8
16	Rhode Island	29.8
17	Utah	29.8
18	Arizona	28.1
19	Illinois	27.6
20	Ohio	25.9
21	Texas	25.9
22	Maryland	24.9
23	North Carolina	24.3
24	Pennsylvania	24.0
25	Iowa	23.0

Calculated using patent counts for FY 2009 and U.S. Census  
Bureau 2009 Population Estimates

## U.S. Trademark Registrations by State of Residence (2009)



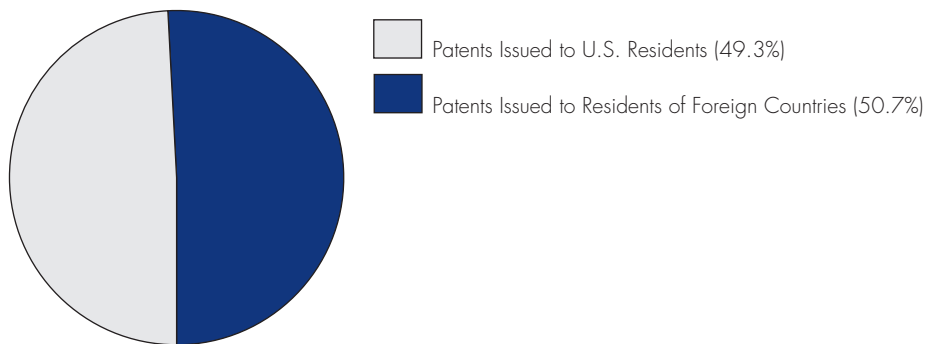
Source: USPTO  
Performance and  
Accountability Report FY  
2009

## Top 25 States Ranked by Trademark Registrations per Capita

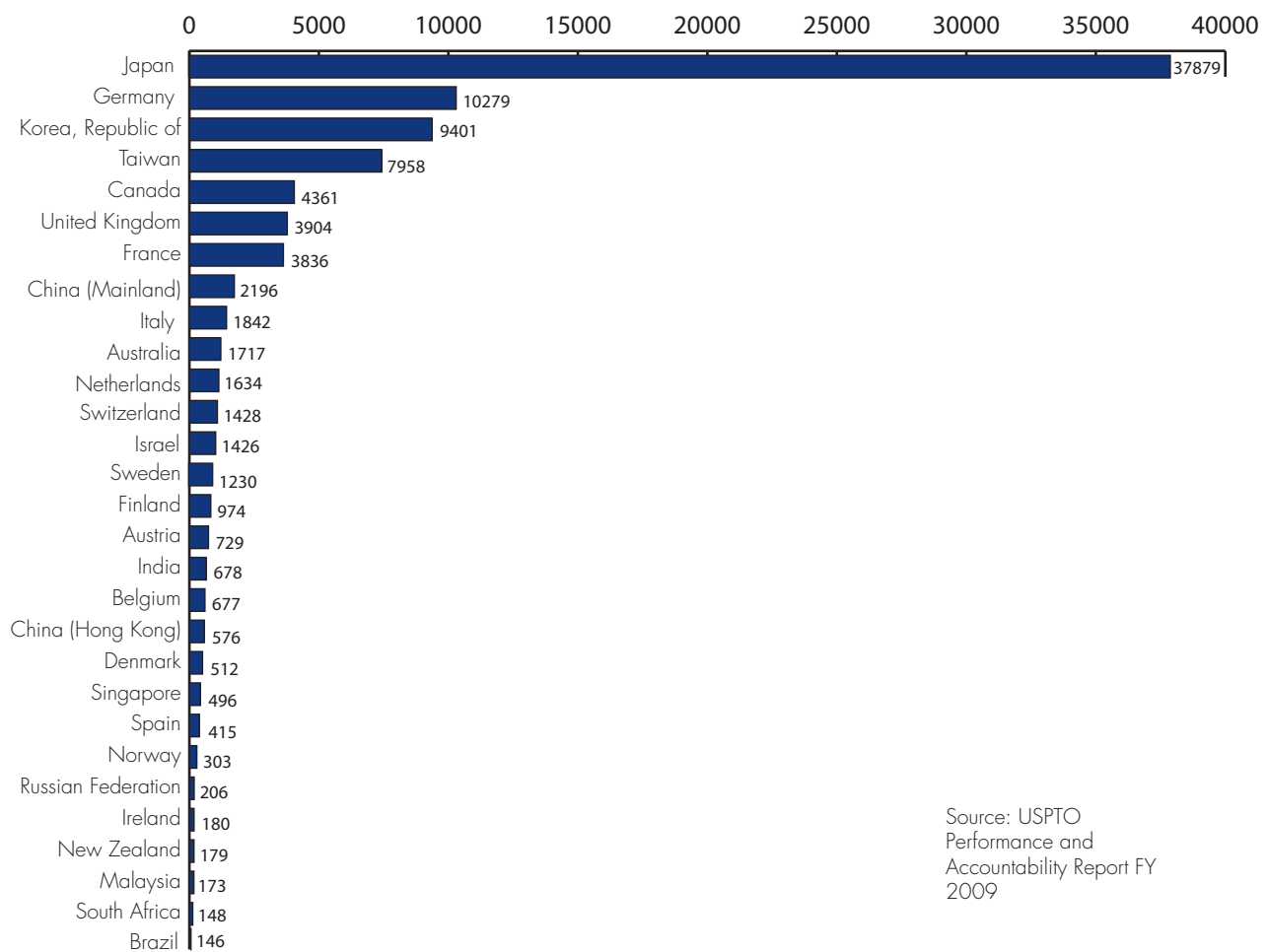
Rank	State	Trademarks per 10,000 Inhabitants
1	Delaware	319.6
2	District of Columbia	16.0
3	Nevada	12.8
4	Minnesota	4.8
5	Utah	4.5
6	Wyoming	4.5
7	Colorado	4.5
8	California	4.4
9	New York	4.2
10	Washington	3.9
11	Oregon	3.9
12	New Jersey	3.7
13	Florida	3.7
14	Massachusetts	3.6
15	Rhode Island	3.5
16	Vermont	3.5
17	Illinois	3.4
18	Wisconsin	3.3
19	Connecticut	3.3
20	Maryland	3.1
21	Nebraska	3.1
22	Arizona	3.1
23	South Dakota	2.8
24	Ohio	2.8
25	Missouri	2.8

Calculated using trademark counts for FY 2009 and  
U.S. Census Bureau 2009 Population Estimates

## U.S. Patents Granted by Country of Residence (2009)



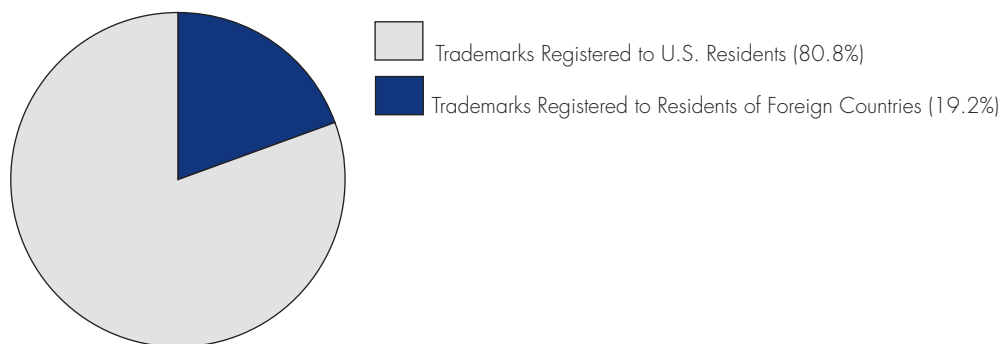
## U.S. Patents Granted to Residents of Foreign Countries (2009)



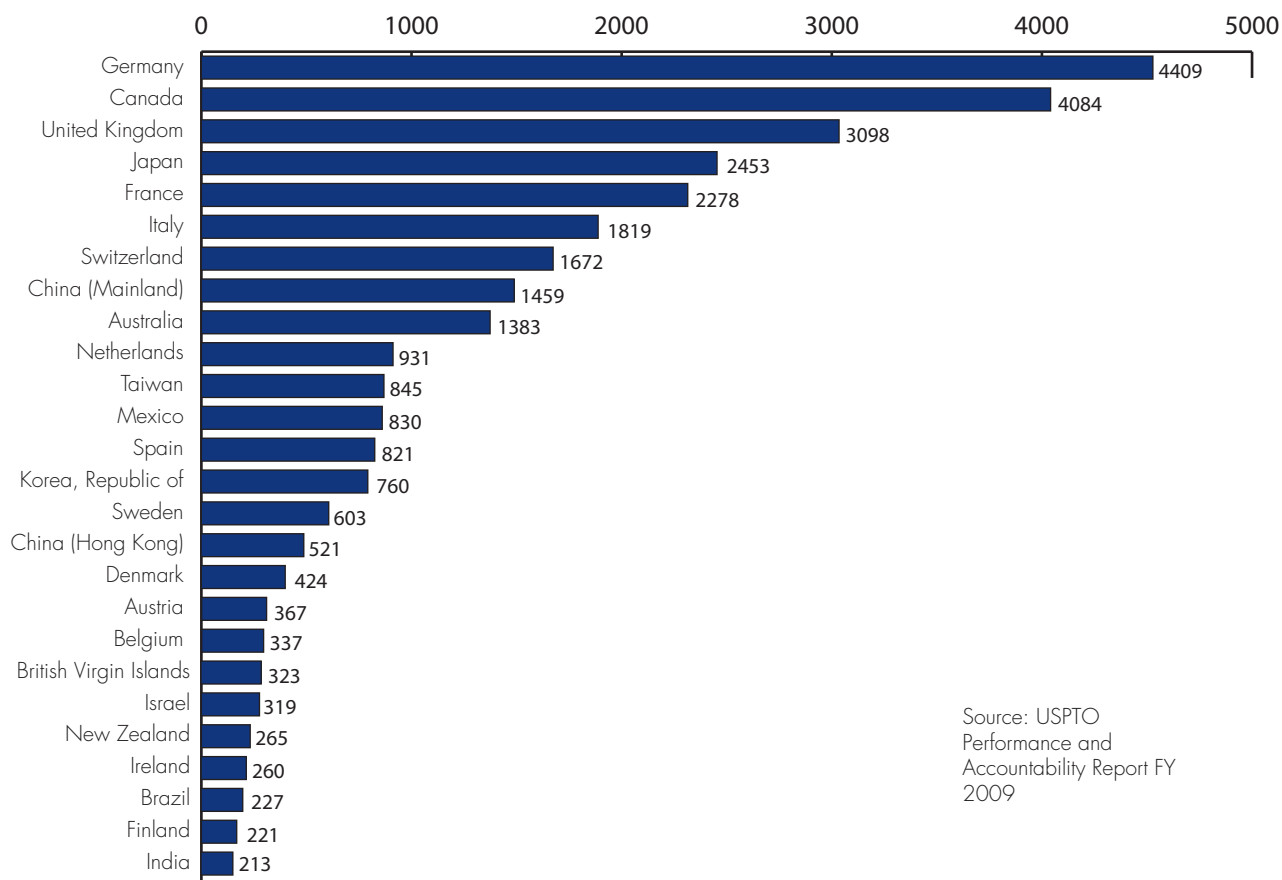
Source: USPTO  
Performance and  
Accountability Report FY  
2009



## U.S. Trademark Registrations by Country of Residence (2009)

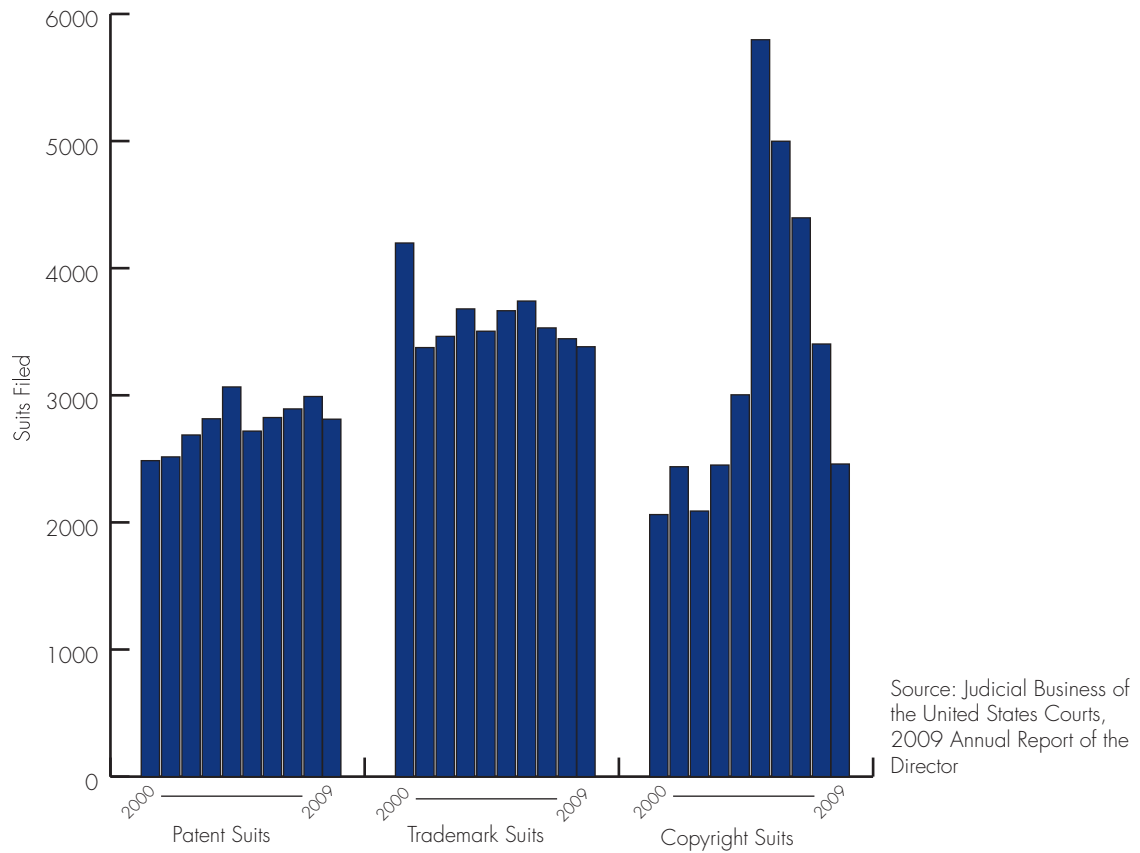


## U.S. Trademark Registrations to Residents of Foreign Countries (2009)



Source: USPTO  
Performance and  
Accountability Report FY  
2009

## Patent, Trademark, and Copyright Suits in U.S. District Courts, by Year (2000 - 2009)



## U.S. District Courts with Most Patent Suits Filed in 2009

Rank	District	Suits Filed
1	California, Central	285
2	Texas, Eastern	242
3	Delaware	214
4	California, Northern	181
5	New Jersey	165
6	Illinois, Northern	153
7	New York, Southern	122
8	California, Southern	75
9	Massachusetts	62
10	Virginia, Eastern	61
11	Michigan, Eastern	58
12	Georgia, Northern	57
13	Florida, Middle	55
14	Ohio, Northern	46

## U.S. District Courts with Most Trademark Suits Filed in 2009

Rank	District	Suits Filed
1	California, Central	478
2	New York, Southern	296
3	Florida, Southern	174
4	California, Northern	148
5	Illinois, Northern	129
6	Texas, Northern	97
7	New York, Eastern	93
8	New Jersey	90
9	Nevada	84
10	Georgia, Northern	83
11	Florida, Middle	81
12	Arizona	80
13	Texas, Southern	78
14	Colorado	74

## U.S. District Courts with Most Copyright Suits Filed in 2009

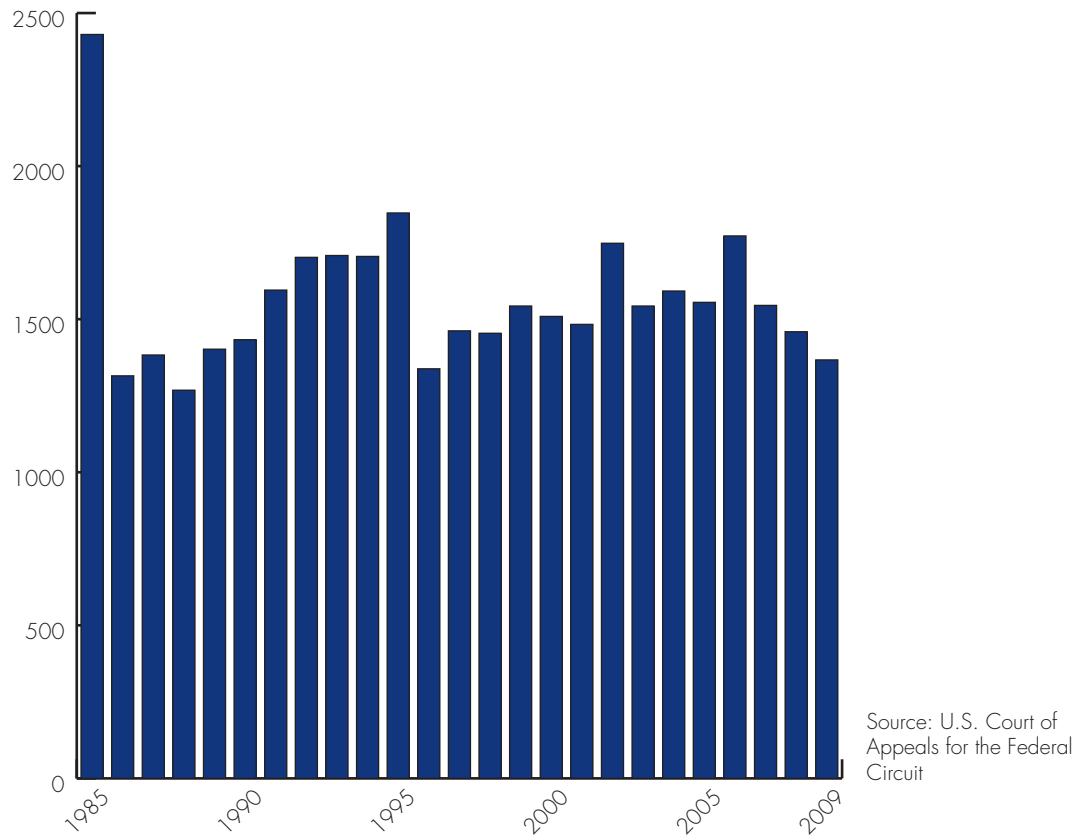
Rank	District	Suits Filed
1	California, Central	387
2	New York, Southern	272
3	California, Northern	119
4	Massachusetts	58
5	New York, Eastern	55
6	Florida, Southern	51
7	Georgia, Northern	50
8	Colorado	49
9	Illinois, Northern	48
10	Washington, Western	47
11	Pennsylvania, Eastern	44
12	Maryland	44
13	Texas, Southern	43
14	Florida, Middle	43

## U.S. District Courts with Most IP Suits Filed in 2009

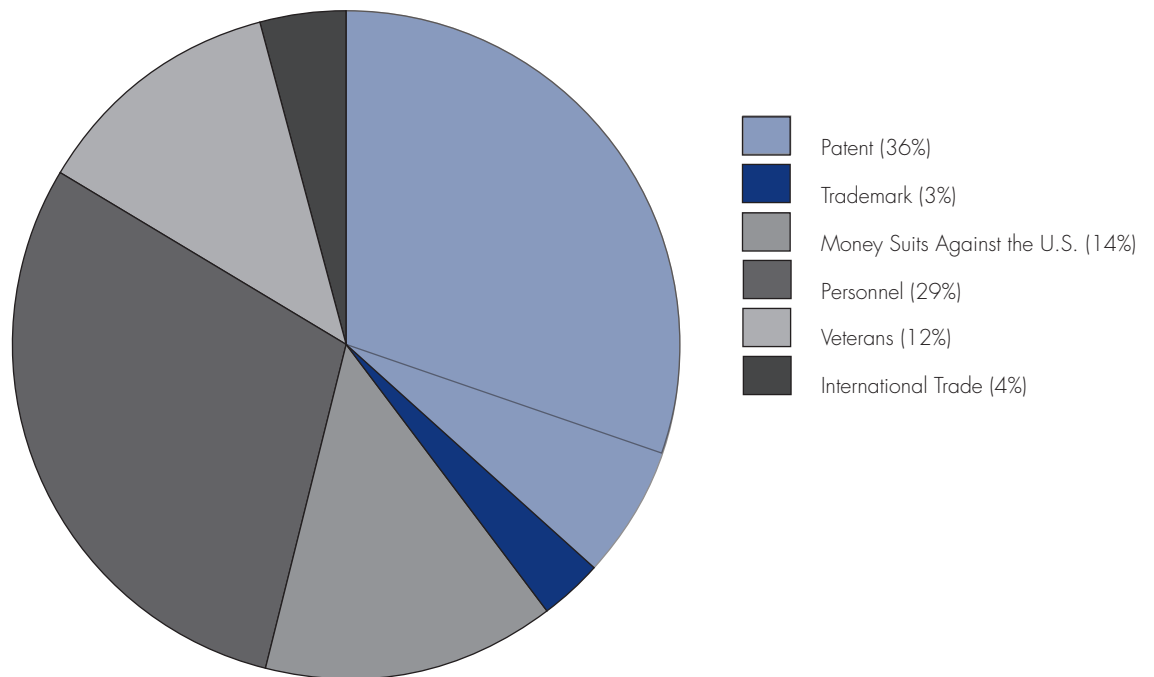
Rank	District	Suits Filed
1	California, Central	1150
2	New York, Southern	690
3	California, Northern	448
4	Illinois, Northern	330
5	New Jersey	292
6	Texas, Eastern	282
7	Florida, Southern	269
8	Delaware	239
9	Georgia, Northern	190
10	Massachusetts	185
11	New York, Eastern	180
12	Florida, Middle	179
13	Texas, Northern	169
14	Colorado	167

Source: Judicial Business of the United States Courts, 2009 Annual Report of the Director

### Federal Circuit Court of Appeals Overall Caseload, by Year (1985 - 2009)

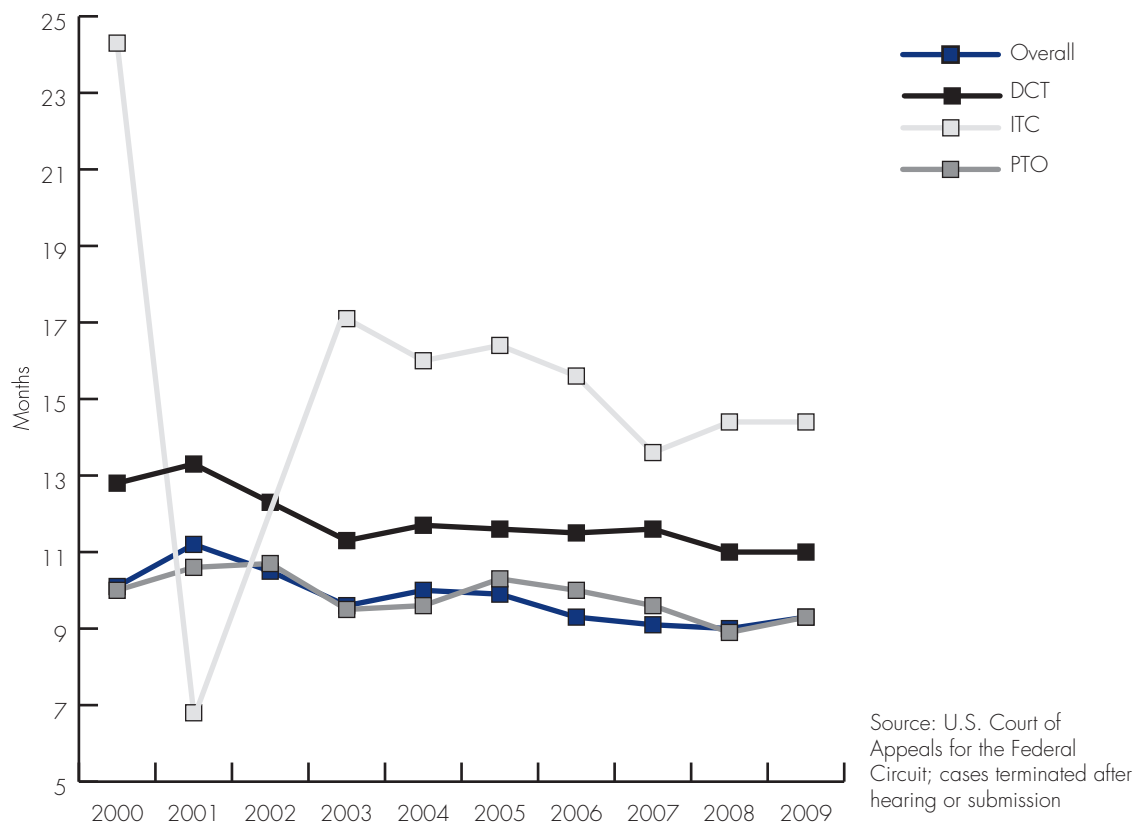


### Federal Circuit: Appeals Filed, by Category (FY 2009)

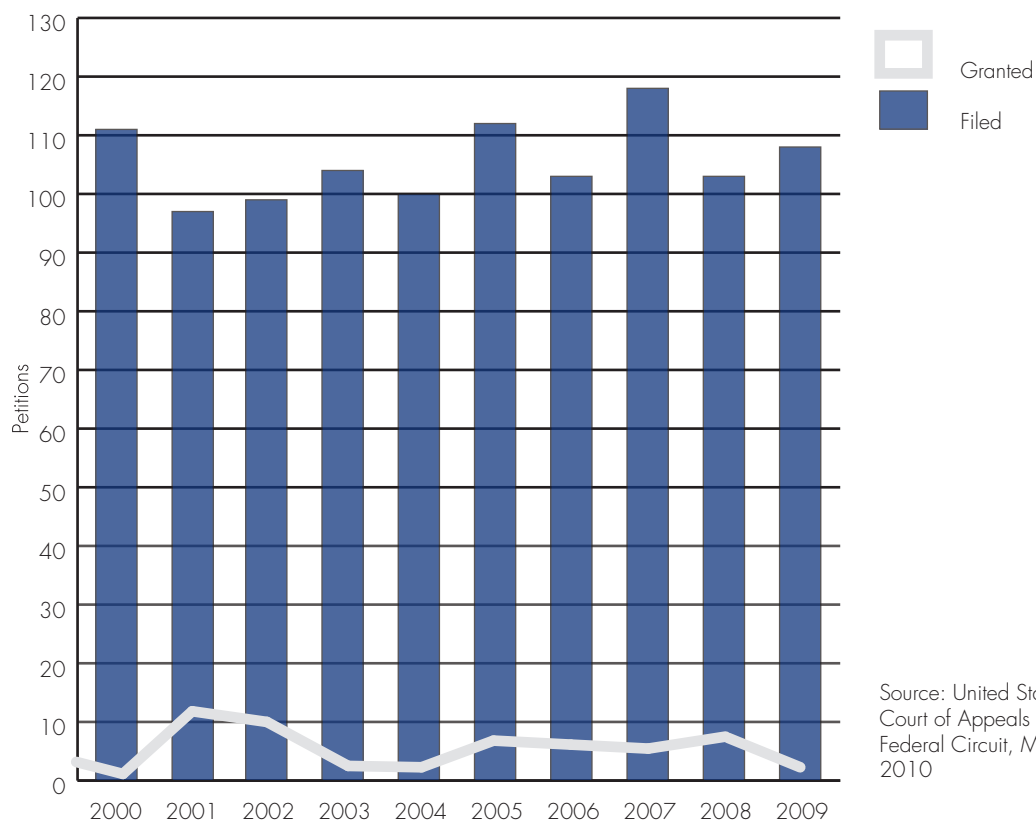


Source: United States  
Court of Appeals for the  
Federal Circuit, April  
2010

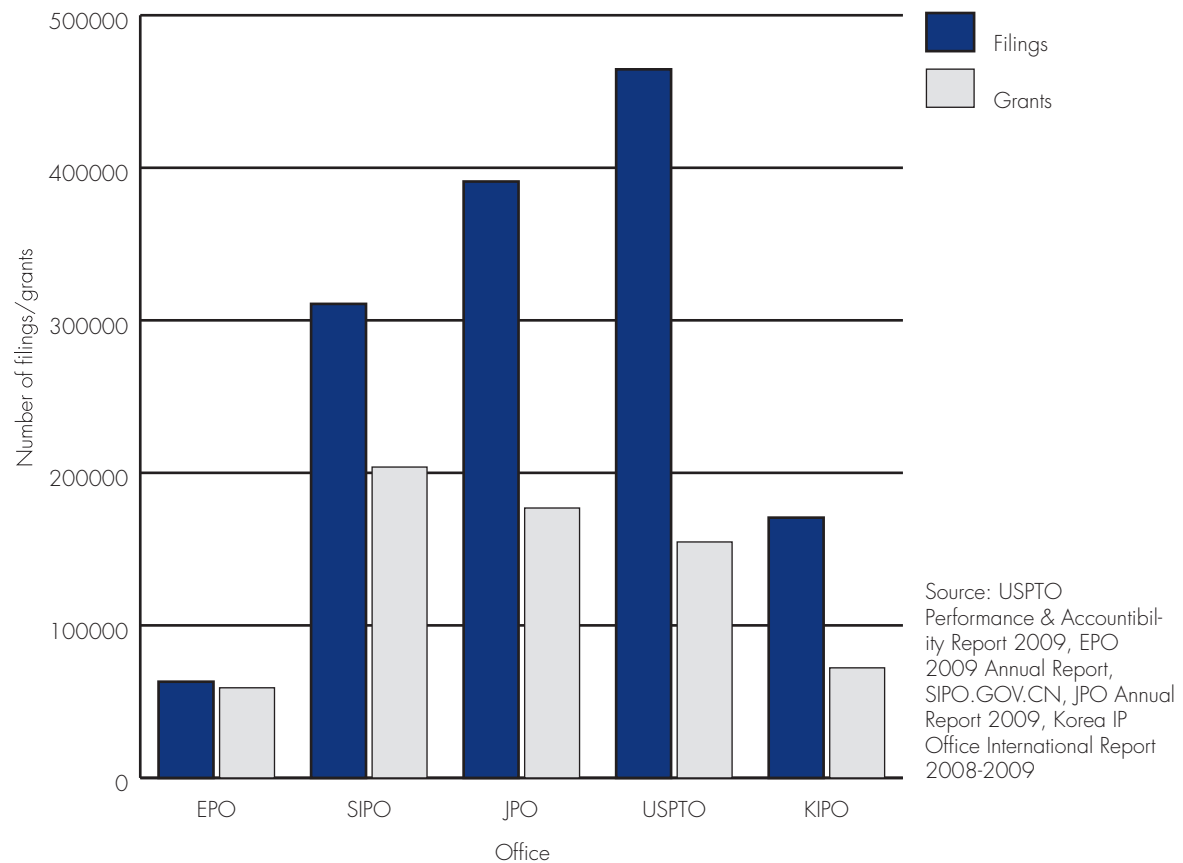
## Federal Circuit, Median Time to Disposition of Appeals



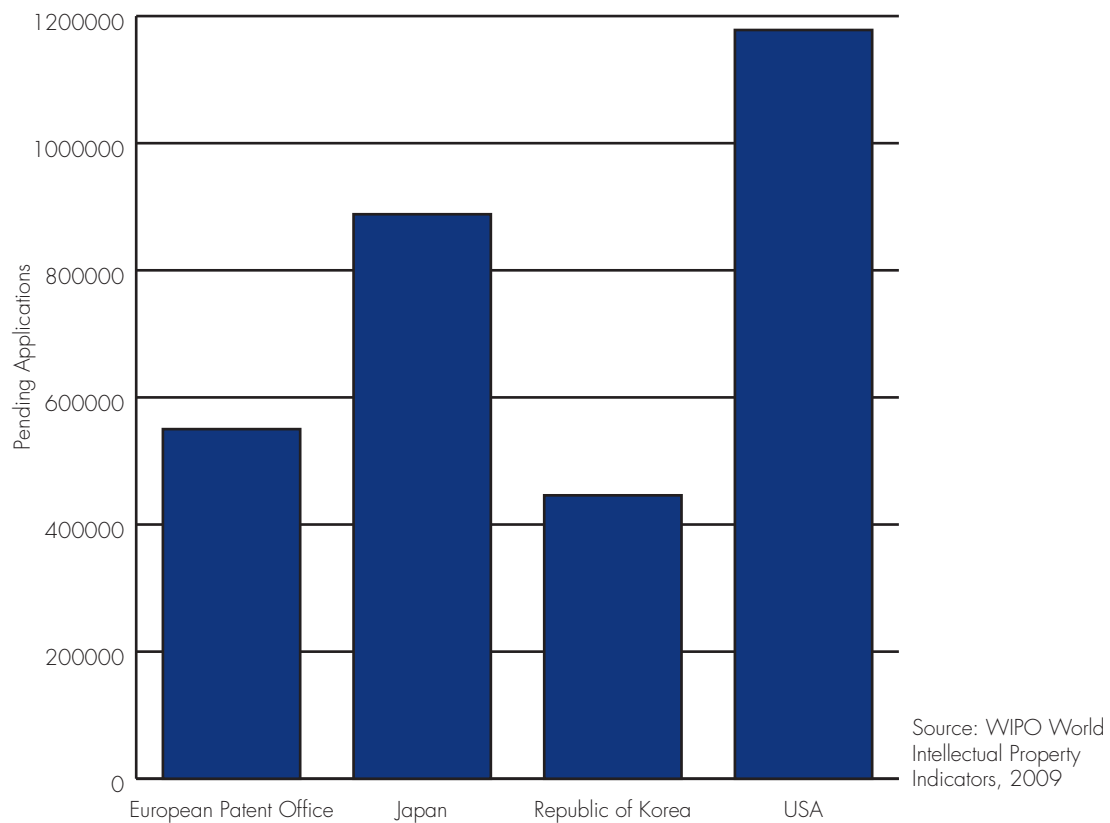
## Certiorari Petitions to U.S. Supreme Court from Federal Circuit (FY 2000 - FY 2009)



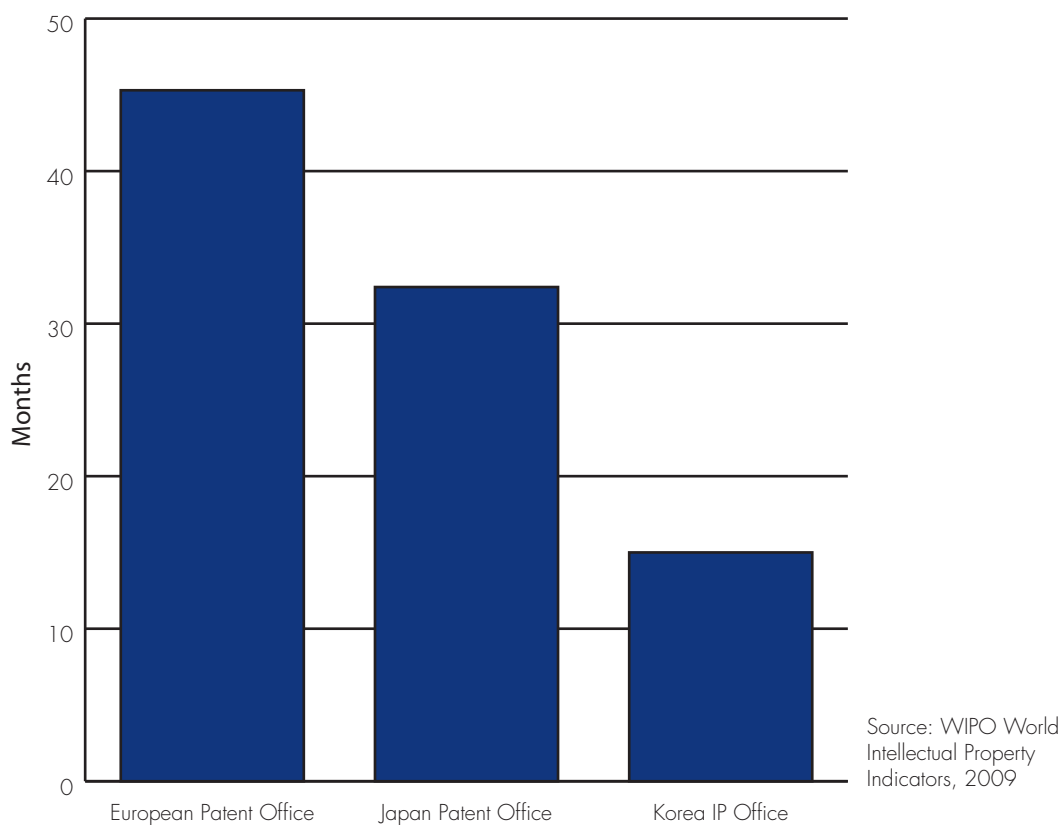
### Patent Filings v. Grants 2008 (Utility Patents Only)



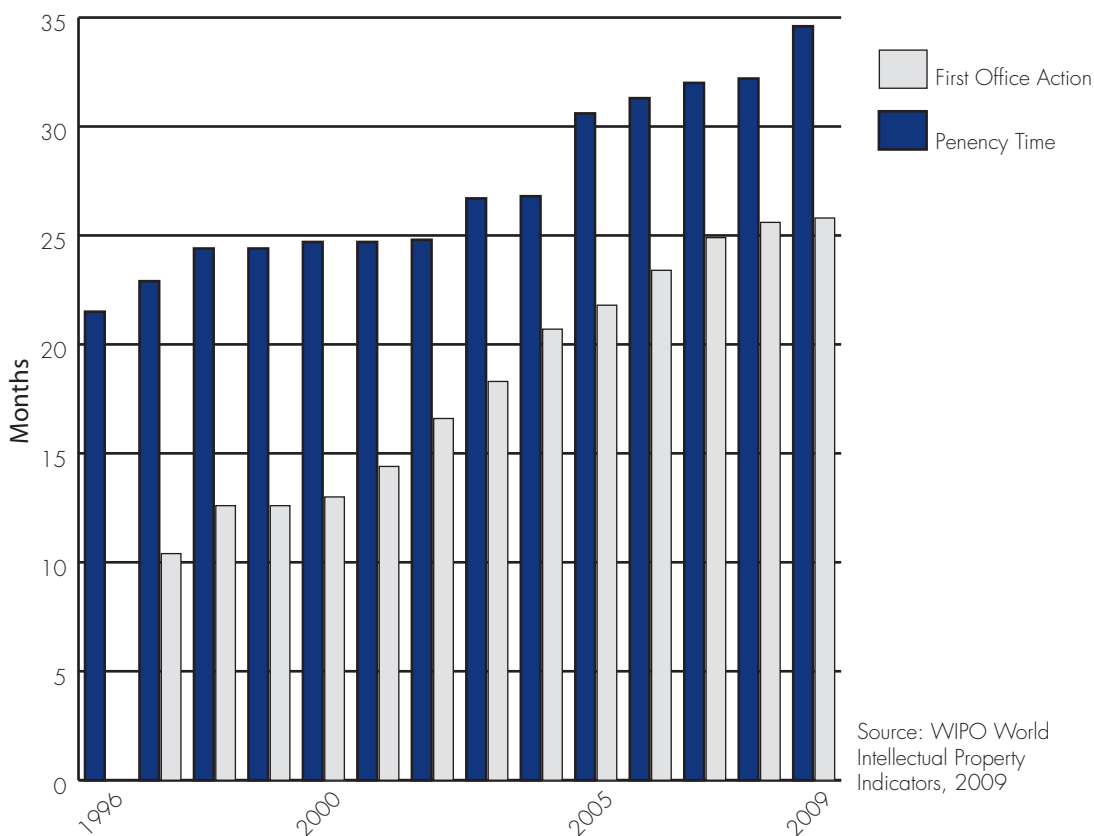
### Patent Backlogs (2007)



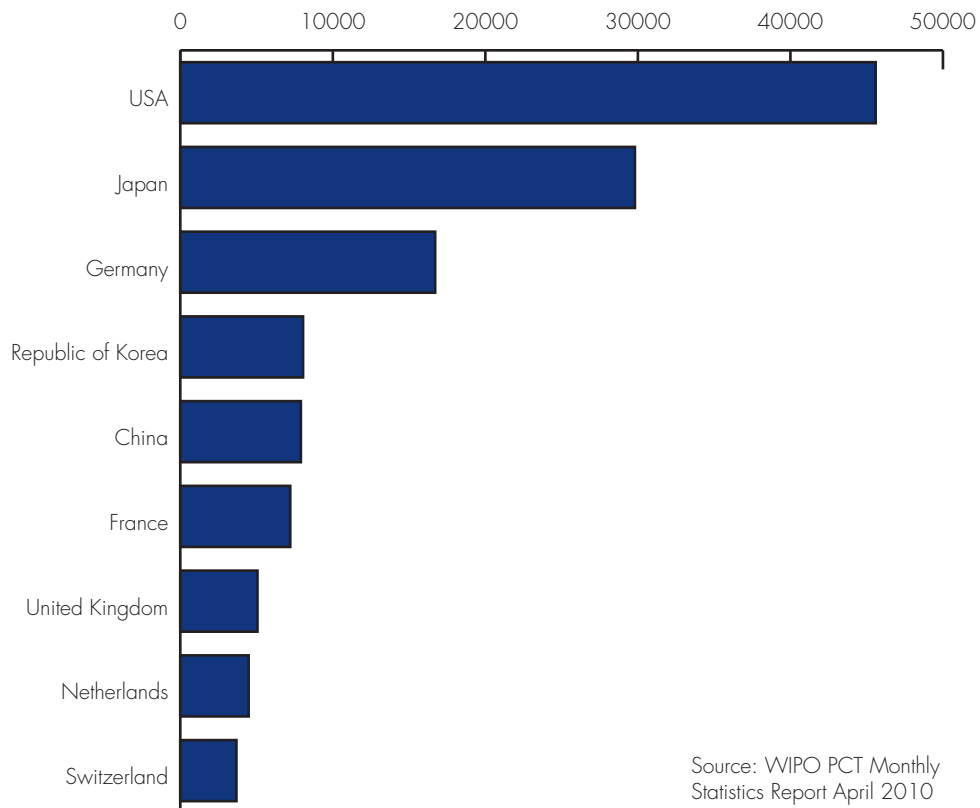
### Average Pendency Time by Patent Office (2007)



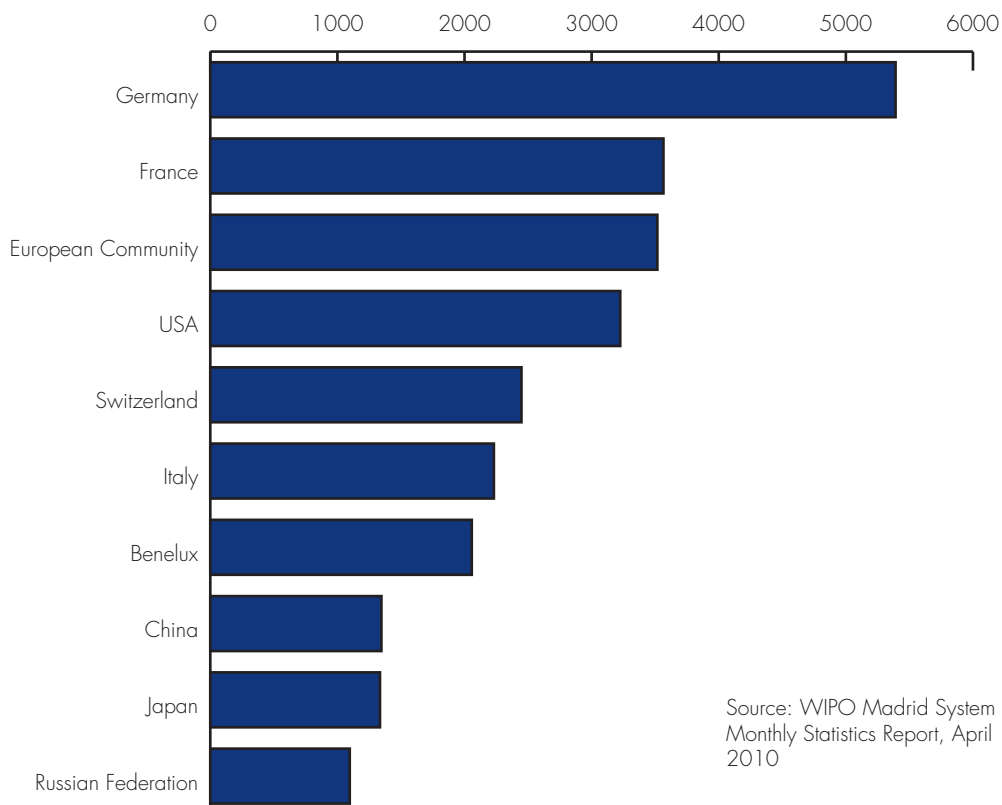
### Average Pendency Time in USPTO (1996-2009)



### Countries with Most PTC Filings (2009)

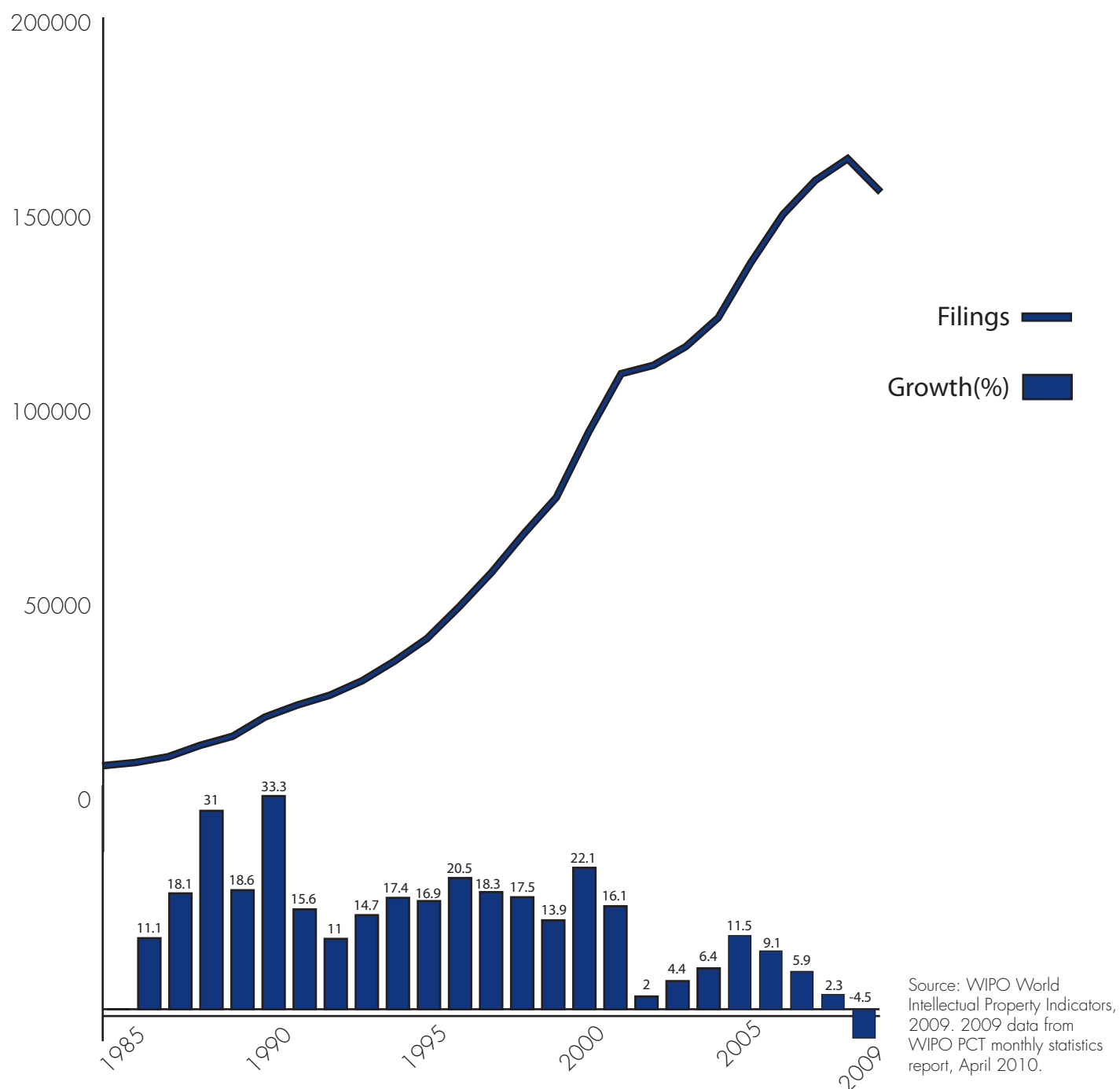


### Countries with Most Madrid System Registrations (2009)





## Trends in PCT International Filings (1985-2009)



## IPO's 4-Star Federal Circuit Summaries™ 2009 - 2010\*

IPO publishes one-paragraph summaries of every precedential patent and trademark opinion issued by the U.S. Court of Appeals for the Federal Circuit. The summaries are distributed via the IPO Daily News™ and archived on the IPO website. Each decision is ranked on importance with 4 stars being the highest ranking.

### Therasense, Inc. v. Becton, Dickinson & Co., 2008-1511

**Federal Circuit Grants En Banc Rehearing and Poses Fundamental Questions About Patent Inequitable Conduct Doctrine -- April 26, 2010** -- The Federal Circuit issued an order granting Therasense's petition for an en banc rehearing. A 3-judge panel on Jan. 25 had upheld a finding of inequitable conduct based on a failure to disclose statements made to the European Patent Office that were found to contradict statements made to the USPTO. In the April 26 order, the court asked the parties to address these questions: "1. Should the materiality-intent-balancing framework for inequitable conduct be modified or replaced? 2. If so, how? In particular, should the standard be tied directly to fraud or unclean hands? . . .

If so, what is the appropriate standard for fraud or unclean hands? 3. What is the proper standard for materiality? What role should the United States Patent and Trademark Office's rules play in defining materiality? Should a finding of materiality require that but for the alleged misconduct, one or more claims would not have issued? 4. Under what circumstances is it proper to infer intent from materiality? . . . 5. Should the balancing inquiry (balancing materiality and intent) be abandoned? 6. Whether the standards for materiality and intent in other federal agency contexts or at common law shed light on the appropriate standards to be applied in the patent context." [Note: Citation omitted. Order was classified non-precedential.]

### Ariad Pharmaceuticals, Inc. v. Eli Lilly & Co., 2008-1248

**Judges Newman, Gajarsa, Rader and Linn File Concurring and Dissenting Opinions on Issue of Written Description Requirement Separate From Enablement Requirement -- March 22, 2010** -- The March 22 en banc opinion of the Federal Circuit was accompanied by four concurring or dissenting opinions. Judge Newman, concurring, stressed that the patent owner "is obliged to describe and to enable subject matter commensurate with the scope of the exclusionary right." Judge Gajarsa in a concurring opinion said "this thicket [of

written description jurisprudence] is the result of our best efforts to construe an ambiguous statute; only Congress wields the machete to clear it." Judge Rader, dissenting in part, said, "If this court perceives a need for renewed attention to description requirements, it should strengthen its enablement jurisprudence instead of making new rules." Judge Linn, also dissenting in part, said, ". . . the majority leaves unanswered once again the critical question . . . of whether the asserted claims of the '516 patent meet the enablement requirement."

\* Through May 2010

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**IPO's 4-Star Federal Circuit Summaries™**

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## Ariad Pharmaceuticals, Inc. v. Eli Lilly & Co., 2008-1248

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**En Banc Federal Circuit Confirms That Patent Act Contains Written Description Requirement Separate From Enablement Requirement -- March 22, 2010** -- In an opinion by Judge Lourie, the Federal Circuit sitting en banc confirmed that section 112 of the Patent Act contains a written description requirement that is separate from the enablement requirement. The court read the language of section 112, first paragraph, to require two descriptions: a written description of the invention and a description sufficient to enable a person skilled in the art to make and use the invention. The court relied on earlier decisions un-

der the current Patent Act and the acts of 1836 and 1870. Ariad claimed methods for regulating certain genes in order to reduce the symptoms of diseases. The claims were genus claims encompassing the use of all substances that achieved the desired result. Hypotheses in the specification concerning three classes of molecules potentially capable of regulating genetic activity were not substantial evidence that the inventors were in possession of the broadly claimed invention. The invention therefore lacked a written description.

## i4i Limited Partnership v. Microsoft Corp., 2009-1504

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**Federal Circuit Issues Revised Opinion in Case Upholding \$200 Million Patent Infringement Award Against Microsoft Corp. But Decision Unchanged -- March 10, 2010** -- The Federal Circuit issued a revised, 50-page opinion by Judge Prost, replacing its opinion of December 22, 2009. The revised opinion added a section (slip opinion pp. 41-44) discussing the evidentiary basis for the holding of willfulness, but

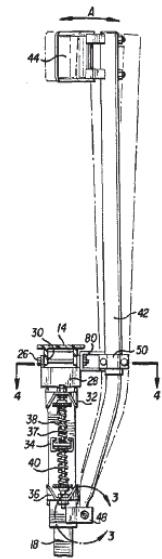
did not change the results of the original opinion, which upheld a \$200 million patent infringement damages award, \$40 million for willful infringement, and a limited injunction against Microsoft. The revised opinion is being circulated to the full court to consider Microsoft's petition for a rehearing en banc.

## IPO's 4-Star Federal Circuit Summaries™

### Forest Group, Inc. v. Bon Tool Co., 2009-1044

**Federal Circuit Interprets Patent Statute to Impose Fine for Falsely Marking Articles With a Patent Number on a Per Article Basis -- December 28, 2009** -- In an opinion by Judge Moore, the Federal Circuit construed the statutory fine for falsely marking an unpatented article with the number of a U.S. patent. The statute reads, “Shall be fined not more than \$500 for every such offense.” The patent at issue related to stilts used by construction workers. The court decided, “The plain language of the statute does not support the district court’s penalty of \$500 for a decision to mark multiple articles. Instead, the statute’s plain language requires the penalty

to be imposed on a per article basis.” The Federal Circuit declined to follow a 1910 case that interpreted an earlier statute to impose a single fine for continuous false marking. The Federal Circuit also said Congress “enacted a statute which sought to encourage third parties to bring qui tam suits to enforce the statute.” “In the case of inexpensive mass-produced articles, a court has the discretion to determine that a fraction of a penny per article is a proper penalty.”



### i4i Limited Partnership v. Microsoft Corp., 2009-1504

**Federal Circuit Upholds \$200 Million Patent Infringement Damages Award, \$40 Million for Willful Infringement, and Limited Injunction Against Microsoft Corp. -- December 22, 2009** -- In an opinion by Judge Prost, the Federal Circuit upheld findings of infringement and no invalidity of i4i’s patent that covered “add on” software for Microsoft Word. i4i creates and sells software. The patent claimed a method for editing markup languages such as XML. The Federal Circuit upheld a jury award of \$200 million in damages. The district court did not abuse its discretion in admitting i4i’s expert testimony and a survey on damages. The Federal Circuit

declined to consider the reasonableness of the damages award because Microsoft did not file a pre-verdict motion for judgment as a matter of law on damages. Under the much narrower standard applied to new trial motions – “clear showing of excessiveness” – the award was allowed to stand. The Federal Circuit upheld the judge’s award of \$40 million in enhanced damages for willful infringement, much less than triple damages, based on an analysis of the factors set out in the court’s 1992 Read Corp. opinion. The Federal Circuit also upheld an injunction against future Microsoft sales of infringing Word products, but modified the effective date of the injunction.

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**IPO's 4-Star Federal Circuit Summaries™**

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## In re Hoffman-La Roche Inc., Misc. Doc. No. 911

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**Federal Circuit Calls Argument Against Transfer of Patent Case From Eastern District of Texas a “Fiction” and Orders Transfer -- December 2, 2009** -- In an order by Judge Gajarsa, the Federal Circuit granted Hoffman-LaRoche's petition for a writ of mandamus to transfer a patent infringement suit from the Eastern District of Texas to the Eastern District of North Carolina. The plaintiff was Novartis Vaccines and Diagnostics, Inc. The Federal Circuit found “a stark contrast in relevance, convenience, and fairness between the two venues.” Several potential witnesses resided within 100 miles of the Eastern District of North Carolina

and no potential witnesses resided within 100 miles of the Eastern District of Texas. Novartis's counsel in California converted 75,000 pages of documents into electronic form and transferred them to the offices of litigation counsel in Texas. The Federal Circuit called the assertion that the documents were “Texas” documents “a fiction which appears to have been created to manipulate the propriety of venue.” This was the third precedential opinion in which the Federal Circuit ordered transfer of a case from the Eastern District of Texas. Earlier cases were TS Tech (2008) and Genentech (2009).

## Prometheus Laboratories, Inc. v. Mayo Collaborative Services, 2008-1403

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**Medical Treatment Method Met Bilski Patent-Eligible Subject Matter Test of “Transformation Into Different State or Thing” -- September 16, 2009** -- In an opinion by Judge Lourie, the Federal Circuit overturned a district court summary judgment that Prometheus claimed subject matter unpatentable under patent code section 101. The claims were for methods of “administering” 6-MP or another drug to a patient for treating autoimmune diseases, and “determining” the level in the patient to indicate whether the level was less or greater than specific claimed levels that indicated a need to change dosage. The Federal Circuit decided the

claims met the “machine or transformation” test of the Bilski case because the claimed methods “‘transform an article into a different state or thing’ and this transformation is ‘central to the purpose of the claimed process.’ . . . The transformation is of the human body following administration of a drug and the various chemical and physical changes of the drug's metabolites that enable their concentrations to be determined.” In a footnote the court said the opinion of three justices who dissented in 2006 from denial of U.S. Supreme Court review of the Laboratory Corp. of America Holdings case was not controlling law.

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### Lucent Technologies, Inc. v. Gateway, Inc., 2008-1485

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**Federal Circuit Vacates \$358 Million Patent Damages Award Based on Infringement by Small Feature of Microsoft Outlook and Explains Applicability of Georgia-Pacific factors and Entire Market Value Rule -- September 11, 2009 --** In a 64-page opinion by Chief Judge Michel, the Federal Circuit vacated a \$358 million reasonable royalty damages award against defendant Microsoft Corp. The patent claimed a method for inputting data using certain “tools” and entering the information into particular fields displayed on a computer form. Use of the calendar date-picker feature of Microsoft Outlook was found to infringe the patent. The Federal Circuit focused on the Georgia-Pacific factors. Factor 2 – rates paid for the use of other comparable patents – weighed strongly against the jury’s award. The same was true for factor 10 – the nature of the patented in-

vention – and factor 13 – the portion of the realizable profit that should be credited to the invention as distinguished from non-patented elements, etc. The court said “the infringing feature contained in Microsoft Outlook is but a tiny feature of one part of a much larger software program.” With regard to other factors, the evidence was speculative or the factors offset one another. The court assumed the jury applied the “entire market value rule” – that the entire market value of a product can be used if the patent owner can prove that “the patent-related feature is the basis for customer demand.” Lucent did not prove the entire market value rule was applicable. The Federal Circuit explained appropriate uses of the entire market value rule, including the use of a multiplier to account for “the proportion of the base represented by the infringing component or feature.

### In re Bose Corp., 2008-1448

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**Federal Circuit Rejects “Should Have Known” Standard for Proving Intent to Deceive in Trademark Fraud Case -- August 31, 2009 --** In an opinion by Chief Judge Michel, the Federal Circuit overturned a decision by the USPTO’s Trademark Trial and Appeal Board ordering cancellation of Bose’s WAVE trademark registration for fraud. Bose had filed an affidavit of continuing use in the USPTO that was false because Bose was no longer using the mark on audio tape recorders and players. The USPTO applied a “knew or should have known” standard for intent. The Fed-

eral Circuit concluded, “By equating ‘should have known’ of the falsity with a subjective intent, the Board erroneously lowered the fraud standard to a simple negligence standard.” A trademark is fraudulently obtained “only if the applicant or registrant knowingly makes a false, material representation with the intent to deceive the PTO.” Bose’s representative testified that he believed the affidavit was true at the time he signed it and the challenger did not produce evidence of subjective intent to deceive.

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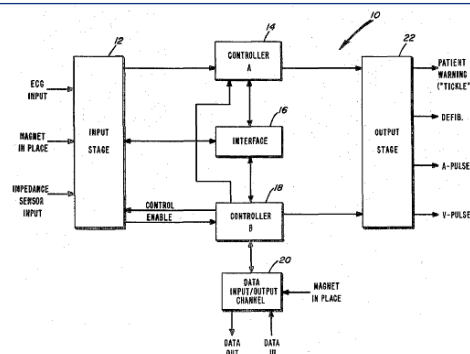
### Ariad Pharmaceuticals, Inc. v. Eli Lilly & Co., 2008-1248

**Federal Circuit Grants En Banc Review of Whether Patent Code Section 112 Contains Written Description Requirement Separate From Enablement Requirement -- August 21, 2009 --** The Federal Circuit granted a petition for a rehearing en banc on the following issues: (1) “Whether 35 U.S.C. 112, paragraph 1, contains a written description requirement separate from an enablement re-

quirement?”, and (2) “If a separate written description requirement is set forth in the statute, what is the scope and purpose of the requirement?” A three-judge panel opinion by Judge Moore on April 3 held Ariad’s single-step method biotech claim invalid for lack of written description. Judge Linn in a concurring opinion said the court should not engraft a separate written description requirement on section 112.

### Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 2007-1296

**Federal Circuit Rules That Section 271(f) on Supplying Components for Assembly Abroad Does Not Apply to Method Patents -- August 19, 2009 --** In an en banc opinion by Judge Lourie, the Federal Circuit held that patent code section 271(f) does not encompass method patents. Cardiac’s invention was a method for heart stimulation using an implantable cardioverter defibrillator. Section 271(f)(1) provides that “Whoever without authority supplies . . . in or from the United States . . . the components of a patented invention . . . in such manner as to actively induce the combination of such components outside the United States in a manner that would infringe the patent if such combination occurred within the United States, shall be liable as an infringer.” Cardiac asserted that St. Jude’s acts of supplying devices for practicing the method abroad infringed. The court analyzed the language and legislative history of section 271(f), which was enacted to overrule the



Supreme Court’s 1972 decision in the *Deepsouth* case. The *Deepsouth* defendant supplied components of a patented shrimp deveining machine for assembly abroad. The Federal Circuit also noted the “presumption against extraterritoriality” of U.S. patent law. The 2005 *Union Carbide* decision of the Federal Circuit and “any implication in *Eolas* or other decisions that Section 271(f) applies to method patents” were overruled. Judge Newman dissented.



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### Exergen v. Wal-Mart Stores, Inc., 2006-1491

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**Pleading of Inequitable Conduct in Patent Case Did Not Identify Specific “Who, What, When, Where, and How” or Allege Sufficient Underlying Facts -- August 6, 2009 --** In an opinion by Judge Linn, the Federal Circuit upheld a district court’s denial of a motion to add allegations of inequitable conduct to the answer. Exergen sued for infringement of patents on infrared thermometers for measuring human body temperature. The Federal Circuit ruled that a proposed amendment

adding seven paragraphs failed to allege inequitable conduct with particularity as required by Rule 9(b). “[W]e hold that in pleading inequitable conduct in patent cases, Rule 9(b) requires identification of the specific who, what, when, where, and how of the material misrepresentation or omission committed before the PTO.” The pleading must also “allege sufficient underlying facts from which a court may reasonably infer that a party acted with the requisite state of mind.”

### Tafas v. Doll, 2008-1352

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**Federal Circuit Agrees to Rehear USPTO Rulemaking Case En Banc -- July 6, 2009 --** In an order, the Federal Circuit granted a petition to rehear the controversial case on USPTO rulemaking authority en banc. Eleven judges participated in the decision to rehear en banc. On March 20 in an opinion by Judge Prost, the majority of a split, 3-judge panel held that the USPTO had authority to adopt rules to limit the number of patent claims in an application, limit the number of “requests for examination” (RCEs), and require “examination support documents,” although it could not limit the number of

continuation applications. Judge Rader, dissenting, said all of the USPTO rules at issue were substantive and outside the USPTO’s authority. Judge Bryson in a concurring opinion said the statute may allow the USPTO to impose different limitations on continuations. Plaintiff Tafas is an inventor. Pharmaceutical company GlaxoSmithKline is a co-plaintiff. Defendant John J. Doll is the acting Director of the USPTO. Doll’s brief for the en banc rehearing is due within 30 days after July 6, and Tafas’s and Glaxo-SmithKline’s briefs are due 20 days after Doll’s brief.



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### Abbott Laboratories v. Sandoz, Inc., 08-1400

**Federal Circuit Acting En Banc on Its Own Initiative Decides 8 to 3 that “Product-by-Process” Patent Claims Cover Only Products Prepared by the Process in the Claim** -- *May 18, 2009* -- In an opinion by Judge Rader, the Federal Circuit, acting en banc on its own initiative without notice to potential amicus parties, voted 8 to 3 to uphold a ruling that Abbott’s patent was not infringed. The patent included claims for crystalline cefdinir “obtainable” by process steps recited in the claims -- “product-by-process” claims. The majority relied on the Federal Circuit’s 1992 opinion in *Atlantic Thermoplastics* to hold that product-by-process claims cover only products prepared by the process set forth in the claim. The court

overruled its 1991 *Scripps Clinic* opinion that said such claims can cover the claimed product when made by a different process. Judge Newman, joined by Judges Lourie and Mayer, filed a 39-page dissenting opinion, sharply disagreeing with the majority’s interpretation of earlier cases and objecting to the procedure used by the majority, which, according to Newman, violated the Federal Rules of Appellate Procedure and the court’s internal operating procedures. Newman said innovation may be discouraged by overturning a body of case law that permitted a new product to be claimed by reference to a process used to make it when the chemical-biological structure of the product is not fully known at the time of patent filing.

### Carlsbad Technology Inc. v. HIF Bio, Inc., 07-1437

**U.S. Supreme Court Rules That Federal Circuit Had Jurisdiction to Review District Court’s Remand of Invention Ownership Claim to State Court** -- *May 4, 2009* -- In an opinion by Justice Thomas, the U.S. Supreme Court overruled a Federal Circuit holding that the Federal Circuit lacked jurisdiction to review a U.S. district court’s remand to a state court. The district court remanded a dispute over ownership of an invention

and inventorship - issues of state law - to the state court. The remand was ordered after the district court dismissed a RICO claim, a matter of federal law. The Supreme Court decided the district court retained “supplemental jurisdiction” over the state law claims, so the district court’s remand was discretionary and reviewable by the Federal Circuit. Three justices filed concurring opinions.

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### In re Kubin, 2008-1184

**Federal Circuit Relies on KSR and Older “Obvious to Try” Case to Hold Biotech Invention Obvious** -- *April 3, 2009* -- In an opinion by Judge Rader, the Federal Circuit upheld a USPTO ruling that Kubin’s DNA molecules encoding a protein known as “NAIL” were obvious over the combined teachings of prior art references. The Federal Circuit reviewed the “obvious to try” doctrine and repudiated its 1995 Deuel opinion in favor of its 1988 O’Farrell opinion and the Supreme Court’s KSR opinion. According to the Federal Circuit, quoting O’Farrell, “obvious to try” is erroneously equated to obviousness if

(1) the inventor is faced with “numerous possible choices . . . where the prior art gave either no indication of which parameters were critical or no direction as to which of many possible choices is likely to be successful” or (2) “the prior art gave only general guidance as to the particular form of the claimed invention or how to achieve it.” In the Kubin case, a skilled artisan would have had a “reasonable expectation of success” in obtaining the claimed invention in light of the prior art. The court declined to adopt “formalistic rules” that would categorize entire classes of prior art as predictable or unpredictable.

### Tafas v. Doll, 2008-1352

**Split Federal Circuit Holds USPTO Had Authority to Limit Number of Claims and RCEs and Require Examination Support Documents But Not to Limit Number of Continuations** -- *March 20, 2009* -- In a majority opinion by Judge Prost, a split 3-judge panel of the Federal Circuit overturned in part a summary judgment by the U.S. District Court for the Eastern District of Virginia that controversial patent rules proposed by the USPTO exceeded the scope of the USPTO’s rulemaking authority. The USPTO does not have “substantive” rulemaking authority, but courts should give “Chevron deference” to USPTO interpretations of statutes relating to exercise of “procedural” rulemaking authority. The Federal Circuit majority said that while it did not “purport to set forth a definitive rule for distinguishing between procedure and sub-

stance . . .,” the rules at issue were procedural. The majority upheld USPTO authority to adopt rules that (1) limit an applicant to one request for continuing examination (“RCE”), (2) limit an applicant to 5 independent and 25 total claims, in the absence of an examination support document (“ESD”), and (3) impose several requirements in an ESD including requirements to conduct a prior art search and explain why claims are patentable over the prior art. The majority upheld the district court on the rule limiting applicants to two continuation applications because the rule was inconsistent with patent code section 120. The section states that an application “shall” have the benefits of a continuation if the requirements of the section are met. The court remanded the case for decisions on other issues.

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### Tafas v. Doll, 2008-1352

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**Judge Rader in Dissent Says All Patent Rules in Suit Are Substantive and Exceed USPTO Authority; Judge Bryson Concurs With Majority But Says Statute May Allow USPTO to Impose Different Limit on Continuations** -- *March 20, 2009* -- The March 20 decision by the Federal Circuit included a majority opinion by Judge Prost, summarized earlier, a concurring opinion by Judge Bryson, and a dissenting opinion by Judge Rader. Bryson agreed with the result reached by the majority, but seemed to make a suggestion for how the USPTO might revise its rule limiting the number of continuations to

make it consistent with patent code section 120. Bryson distinguished between “serial” continuations and “parallel” continuations. Rader dissented in a 14-page opinion. He argued strongly that all of the rules were substantive and therefore exceeded the USPTO’s authority. The rules “drastically change the existing law and alter an inventor’s rights and obligations . . .” Rader said that with less ability to claim “myriad methods of making, methods of use, species and intermediates . . .,” an inventor will have less incentive to disclose the full dimension of the technological advance.

### In Re Comiskey, 06-1286

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**Federal Circuit by Vote of 7 to 5 Refuses En Banc Rehearing of Whether Business Method for Conducting Arbitration Was Patent-Eligible Subject Matter** -- *January 13, 2009* -- The Federal Circuit denied a rehearing en banc by a vote of 7 to 5, with two concurring and two dissenting opinions, but authorized the 3-judge panel that authored the court’s 2007 opinion to revise it. A revised panel opinion by Judge Dyk was issued on the same day. The claims at issue were for methods and systems for conducting mandatory arbitration involving legal documents such as wills and contracts. The original and revised opinions

held that Comiskey’s method claims, which depended entirely on the use of mental processes, did not contain patentable subject matter under patent code section 101. The revised opinion remanded system claims that could be interpreted to require the use of a machine for a USPTO determination of patentability under section 101. The concurring and dissenting opinions on whether to rehear the case en banc dealt in part with whether the Federal Circuit panel had authority to uphold the rejection of claims on an alternative ground, section 101, when the USPTO had rejected the claims as obvious under section 103.

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## IPO Amicus Briefs Filed in 2009 - 2010\*

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### In Re Bilski (U.S. Supreme Court, No. 08-964) - IPO brief filed on August 5, 2009

IPO supported the position that the machine or transformation test is one way of determining whether a claimed process-related invention is an abstract idea or a specific useful application of that idea; it is a sufficient test, but it is not an exclusive one.

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### Ariad Pharmaceuticals v. Eli Lilly and Co. (U.S. Court of Appeals for the Federal Circuit, No. 08-1248) - IPO brief filed on November 9, 2009

The IPO brief argued that section 112 *does* contain a written description requirement separate from the enablement requirement. IPO believed the written description requirement is satisfied if the description is sufficient to demonstrate that the patent owner was in possession of the invention that is claimed. The brief made clear, however, that claims should not be limited to disclosed embodiments and that unclaimed details of such embodiments should not necessarily be used to limit claim scope.

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### Princo Corp. v. International Trade Commission (U.S. Court of Appeals for the Federal Circuit, No. 07-1386), IPO brief filed on December 9, 2009

The IPO brief argued the patent misuse doctrine does not provide redress for the conspiratorial conduct alleged by Princo. The brief also said expansion of the misuse doctrine urged by Princo would discourage participation in standard setting.

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### Hyatt v. Kappos (U.S. Court of Appeals for the Federal Circuit, No. 07-1066), IPO brief filed on April 6, 2010

IPO's brief urged the *en banc* court to hold that Patent Act section 145 provides for a *de novo* review of USPTO patent decisions in the U.S. District Court for the District of Columbia. IPO's brief argued that the earlier decision in the case by a 3-judge panel: (1) improperly limits introduction of new evidence, (2) erroneously relies on the Administrative Procedure Act, (3) creates divergent admissibility standards in patent and trademark cases, and (4) will burden the USPTO with unnecessary evidentiary submissions.

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### Ferring B.V. et al v. Meijer, Inc. et al (U.S. Court of Appeals for the Federal Circuit, No. 09-1175), IPO brief filed on April 29, 2010

IPO's brief supported Ferring's petition for a *writ of certiorari*. IPO argued that the Second Circuit erred by finding that it, not the Federal Circuit, had jurisdiction over patent-related Sherman Act claims, including a *Walker Process* claim, simply because a non-patent-related Sherman Act claim was included in the same count. IPO said the Second Circuit's decision was inconsistent with the Supreme Court's 1988 opinion in the *Christianson* case. The Second Circuit's decision will erode the Federal Circuit's appellate jurisdiction in contravention of Congress's goal of creating uniformity in patent law, according to IPO.

For more information on IPO Amicus Briefs, see: <http://www.ipo.org/amicus>

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---

**IPO Staff Directory**As of May 2010

---

Melissa M. Allbritton  
Project Manager  
PH: 202/507-4502  
[mmarcucci@ipo.org](mailto:mmarcucci@ipo.org)

Susan E. Collen  
Administrative Assistant  
PH: 202/507-4513  
[scollen@ipo.org](mailto:scollen@ipo.org)

Nicholas W. Evans  
Operations Manager  
PH: 202/507-4505  
[nevans@ipo.org](mailto:nevans@ipo.org)

Megan R. Griggs  
Director of Meetings and Events  
PH: 202/507-4506  
[mgriggs@ipo.org](mailto:mgriggs@ipo.org)

Samantha G. Jakhelln  
Deputy Chief Operating  
Executive  
PH: 202/507-4507  
[samantha@ipo.org](mailto:samantha@ipo.org)

Jessica K. Landacre  
Chief Operating Executive  
PH: 202/507-4508  
[jessica@ipo.org](mailto:jessica@ipo.org)

Mary K. Lynch  
Administrative Assistant  
PH: 202/507-4504  
[mlynch@ipo.org](mailto:mlynch@ipo.org)

Robin L. Muthig  
Executive Assistant  
PH: 202/54514  
[rmuthig@ipo.org](mailto:rmuthig@ipo.org)

Elizabeth A. Richardson  
IP Counsel  
PH: 202/507-4503  
[erichardson@ipo.org](mailto:erichardson@ipo.org)

Gloria Simons-Epps  
Receptionist  
PH: 202/507-4500  
[gepps@ipo.org](mailto:gepps@ipo.org)

Clara L. Stanfield  
Manager of Meetings  
and Events  
PH: 202/507-4511  
[cstanfield@ipo.org](mailto:cstanfield@ipo.org)

Herbert C. Wamsley  
Executive Director  
PH: 202/507-4500  
[herb@ipo.org](mailto:herb@ipo.org)

Kirsten E. Zewers  
Government Relations  
Counsel  
PH: 202/507-4512  
[kzewers@ipo.org](mailto:kzewers@ipo.org)

**IPO Headquarters**

1501 M St., NW, Suite 1150  
Washington, DC 20005

Main Switchboard: 202/507-4500  
Fax: 202/507-4501

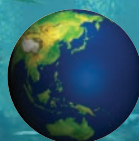
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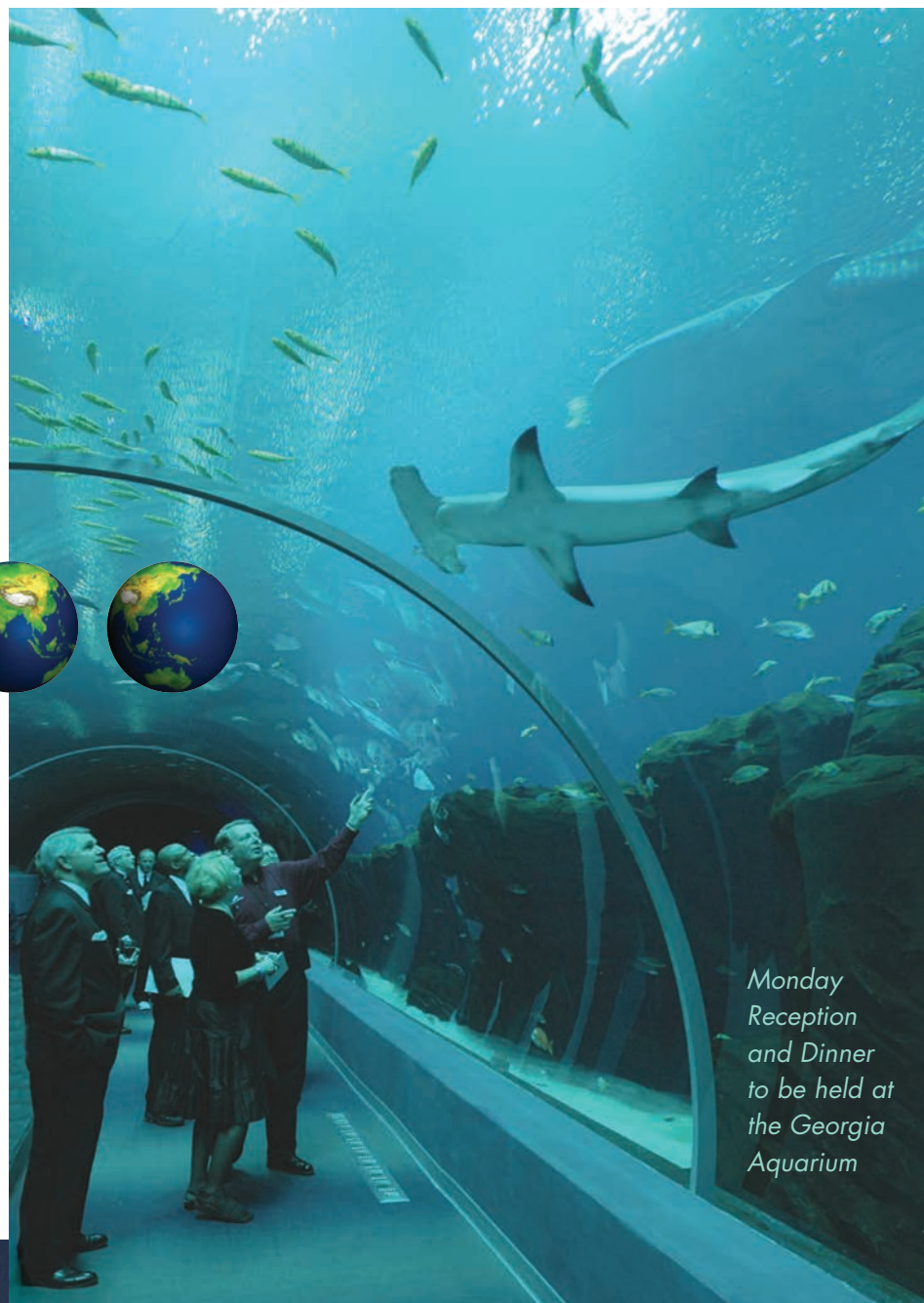
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