



United States District Court District of Delaware

Patent Study Group (PSG)

Hon. Leonard P. Stark

Fed. Bar Ass'n – D. Del. Chapter – I.P. Section

May 13, 2014



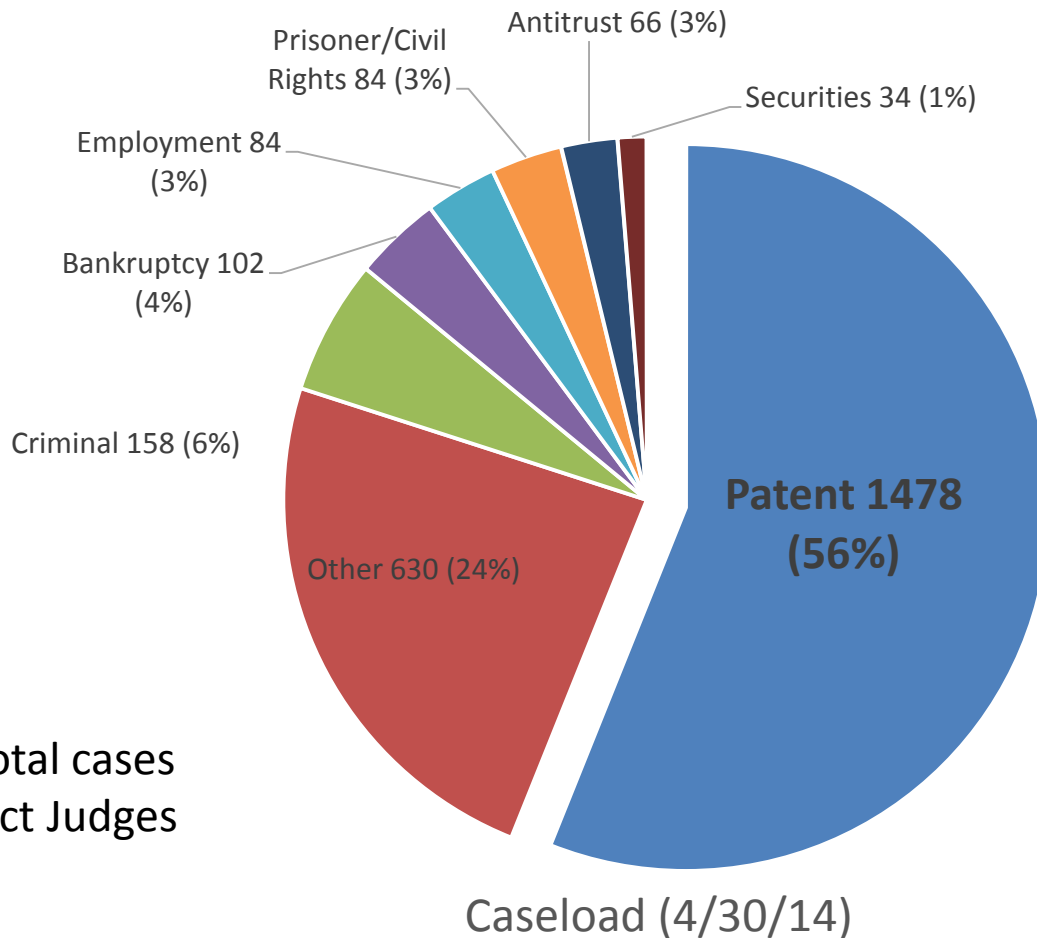
District of Delaware Patent Study Group (PSG)

- Context: D. Del. in Post-AIA World
- PSG: Why
- PSG: What We Did
- PSG: What We Learned
- How We Are Changing: SLR and LPS
- Next Steps?



Context

D. Del. In a Post-AIA World

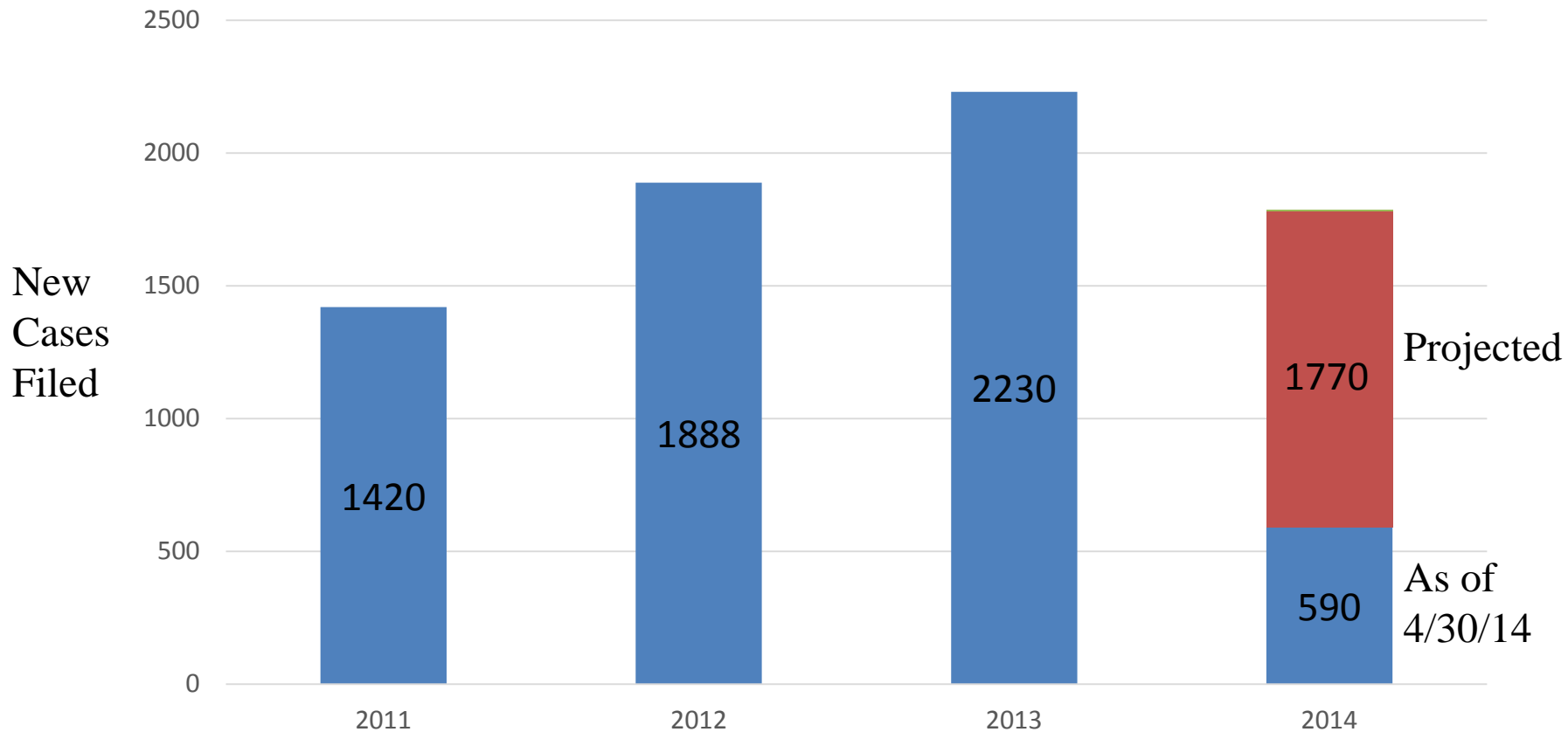


- Avg. 370 patent cases per District Judge
- #1 in nation
- Avg. per DJ nationwide: 10



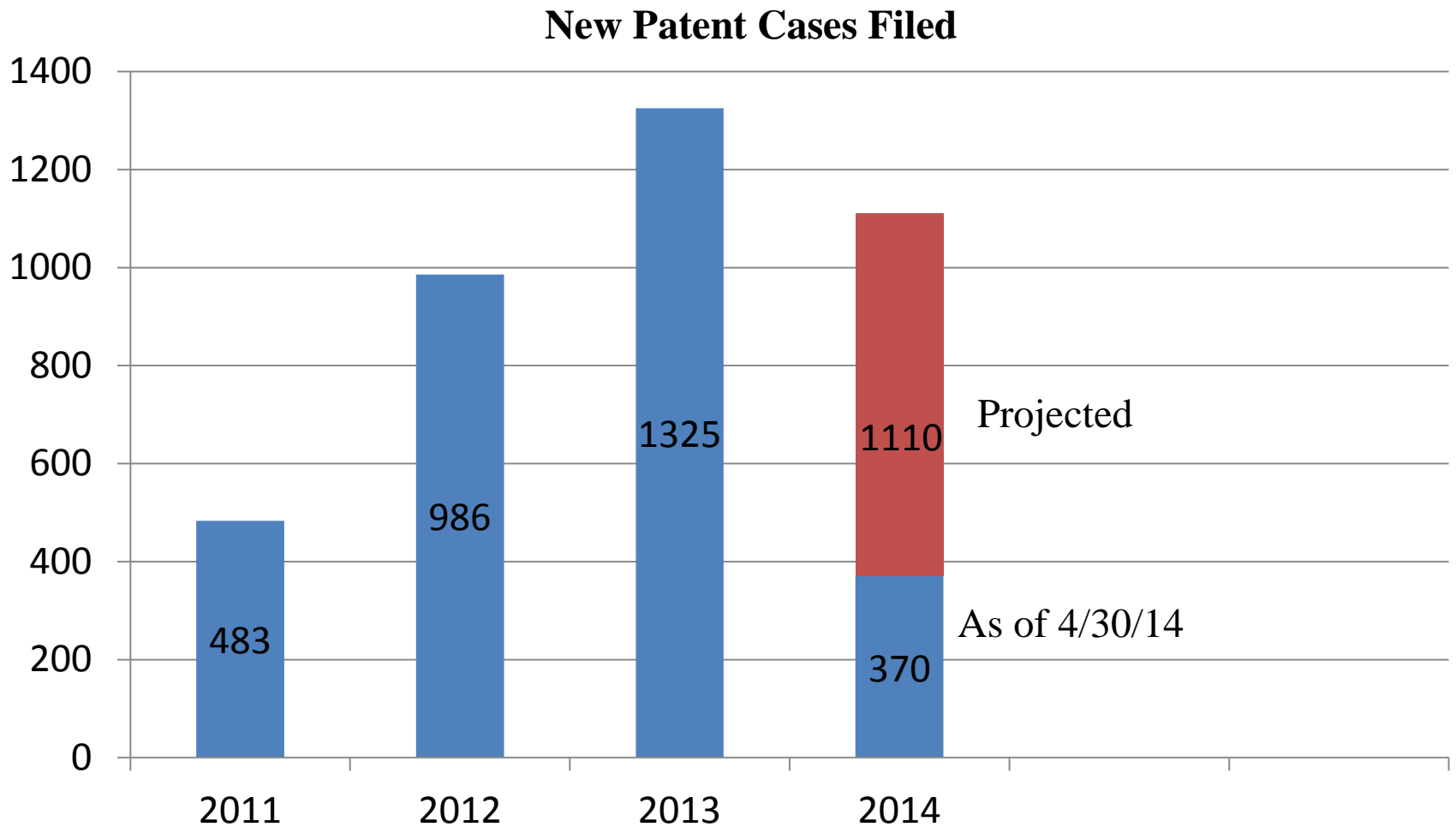
Context

Overall Caseload Trend





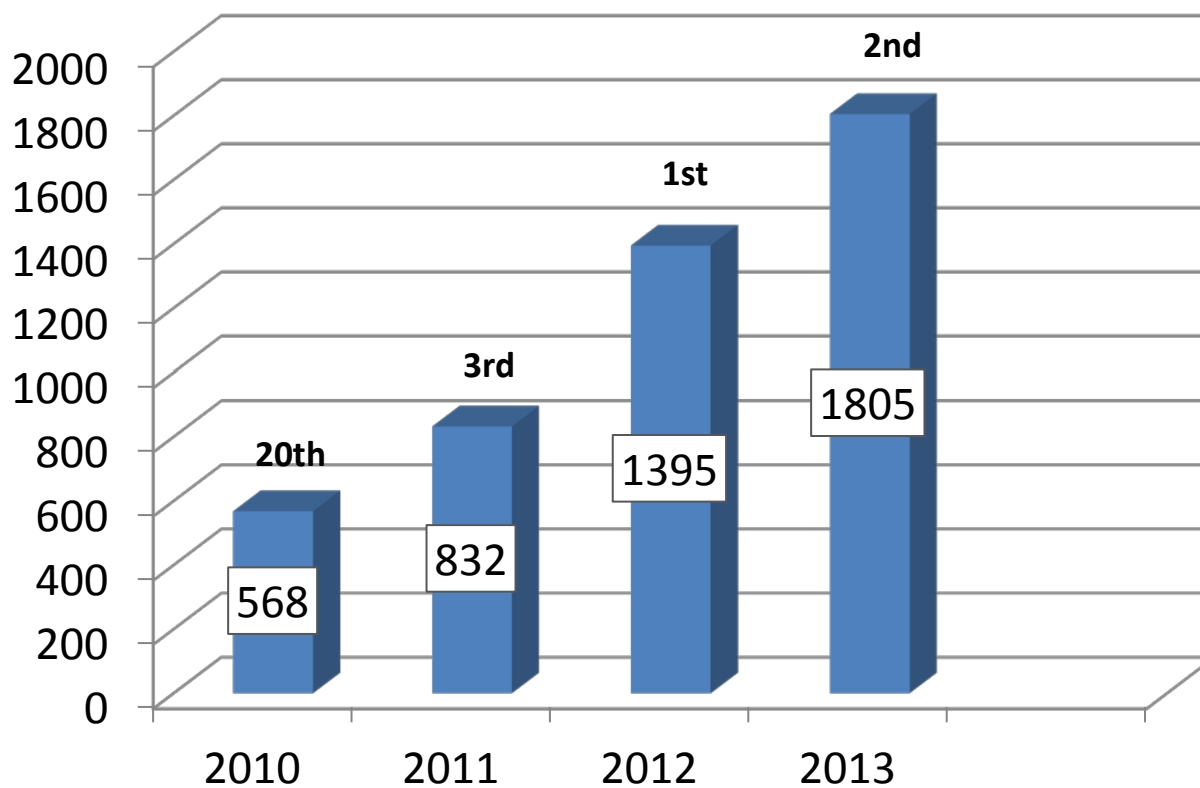
Context





Context

Weighted Case Average





Context

- Administrative Office of the U.S. Courts –
Goal: 430 cases (weighted) per District Judge





Context

Lots of Patent WORK

January 1, 2013 – April 30, 2014



29 trials:
16 jury, 13 bench



830 case-
dispositive
motions



113 Markman
hearings

+ ADR + Scheduling + Discovery Disputes + Post-Trial Motions



PSG: Why

- Improve how we handle our docket
- Opportunity to discern “best practices”
- Interact with Pilot Program and other initiatives, reflected in Congressional, Circuit, and public interest



PSG: What We Did

January – March 2014 SLR/LPS meet:

- 120+ attorneys
- 25+ firms
- 25+ companies (NPE, telecom, internet, consumer electronic, branded and generic pharmaceuticals)
- More than 15 hours of off-the-record discussions in 20 separate sessions



PSG: What We Did

Ashby & Geddes

Bayard

Cravath, Swain & Moore

Desmarais

DLA Piper

Farnan

Finnegan, Henderson, Garrett & Dunner

Fitzpatrick, Cella, Harper & Scinto

Fish & Richardson

Fox Rothschild



PSG: What We Did

Mayer Brown

McDermott Will & Emery

Morris James

Morris, Nichols, Arsht & Tunnell

Morrison and Foerster

Novak Druce Connolly Bove + Quigg

Paul Hastings

Potter Anderson & Corroon

Proctor Heyman

Ratner Prestia



PSG: What We Did

Richards Layton & Finger

Seitz Ross Aronstam & Moritz

Shaw Keller

Stamoulis & Weinblatt

Susman Godfrey

Weil, Gotshal & Manges

WilmerHale

Womble Carlyle Sandridge & Rice

Young Conaway Stargatt & Taylor



PSG: What We Learned

- We're succeeding, but could improve, and could help further reduce abusive litigation
- Invest more judicial resources earlier
- Set schedule and hold counsel to it
- Issue decisions quickly
- Remain involved and accessible



How We Are Changing SLR

March 24, 2014

- Letter
- Patent case order
- Patent case scheduling order



Applies to all non-ANDA patent cases with schedules entered after September 24, 2013



SLR

Dear Counsel:

As a direct result of the lively and informative discussions Judge Stark and I have had through the Court's Patent Study Group ("PSG"), I have determined to change the way I process patent cases. You will find my revised orders on my website. Any non-ANDA patent case that has had a scheduling order entered in the past six months will presumptively be switching to the new process, keeping to the extent possible the pretrial and trial dates, but probably having to add and/or change other status and hearing dates. I ask that you confer verbally with opposing counsel consistent with my new orders, which expand upon your responsibilities under Fed. R. Civ. P. 26(f) and 16, in order to conform your current order into the new format prior to meeting with me.

I apologize for the inevitable confusion and inefficiencies that come from these modifications. Clearly, however, the very nature of patent litigation has changed, and the message sent by virtually all participants in the PSG was that my process could better adjust to those changes. Judge Stark and I thank all the PSG participants for their candid observations, and I thank as well my colleagues for being supportive of my first efforts at putting the PSG lessons into practice.

I am setting aside time during the next several months to meet with counsel about the revisions to their scheduling orders. My staff will be in touch to schedule those meetings.



How We Are Changing: SLR

- Expanded requirements for Rule 26(f) conference, followed by in-person Rule 16 scheduling conference
- Early disclosure of damages model, accused products, core technical documents
- Referral to MJ for early case management, discovery, motions to dismiss/amend/transfer
- Markman separated from summary judgment and heard before expert discovery
- Aim to issue Markman within 30 days



How We Are Changing: SLR

- Status conference after Markman, before expert discovery, to narrow issues if appropriate
- Presumption against bifurcation of damages, to focus scope of case (e.g., identifying smallest saleable unit) and to encourage early, robust settlement discussions
- Daubert motions not permitted without approval, replaced in conference with court at the end of expert discovery
- 8 pm (east coast) deadline for timely filings



How We Are Changing: LPS

- Early case management conference, preceded by checklist discussion among counsel
- Presumption case will be scheduled once any defendant files responsive pleading
- Scheduling trials from initial scheduling order
- Refer scheduling and motions to transfer/stay/dismiss to MJ
- Less resistance to early and separate Markmans



How We Are Changing: LPS

- Motions to amend/strike channeled to discovery matters procedures
- Requirement that DE and lead counsel talk and provide agenda before discovery tc
- Aspirational goal for timing of Markman decisions
- Page limits for MSJ/Daubert/post trial mots
- Effort to provide post-trial inclinations



PSG: The Future

- Working Group: study and continued dialogue
- Further focus on Default Standards
- Further focus on “related case” management challenges
- Follow up FBA-CLE