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17th Annual Berkeley - Stanford Advanced Patent Law Institute

Perspectives from the USPTO

December 9th, 2016

John Cabeca

West Coast Regional Director
United States Patent and Trademark Office

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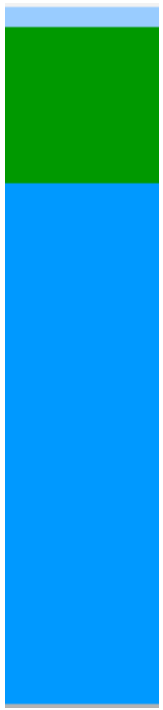
Agenda

- 2016 Year in Review
- Enhancing Patent Quality
- Subject Matter Eligibility
- Open Data Portal

FY 2016 Patent Filings



608,555 Utility, Plant & Reissue

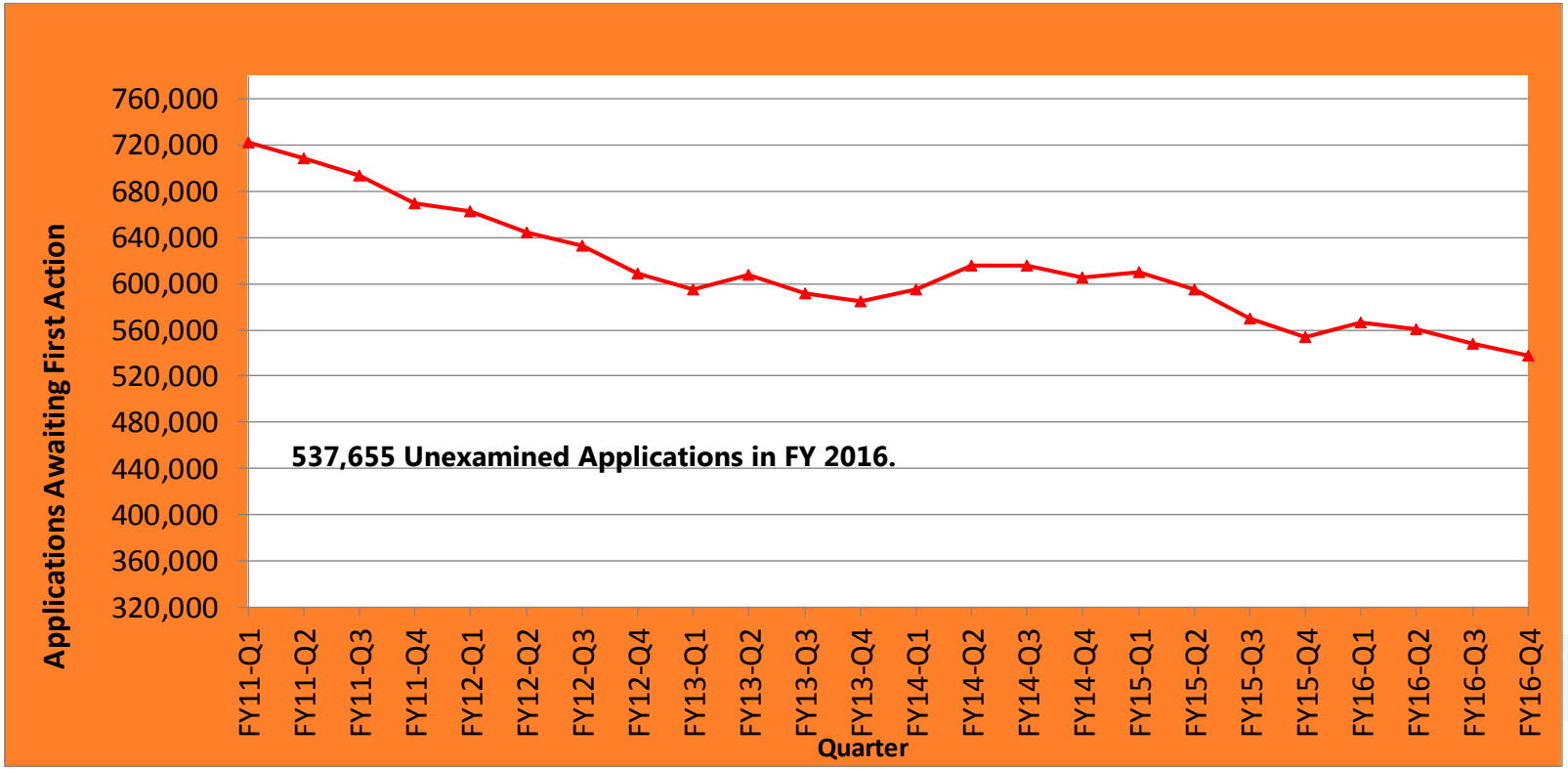
+ 5.1% over FY 2015

+ 1.6% Serialized over FY 2015

75% Large 21.8% Small 3.2% Micro

Unexamined Patent Application Inventory

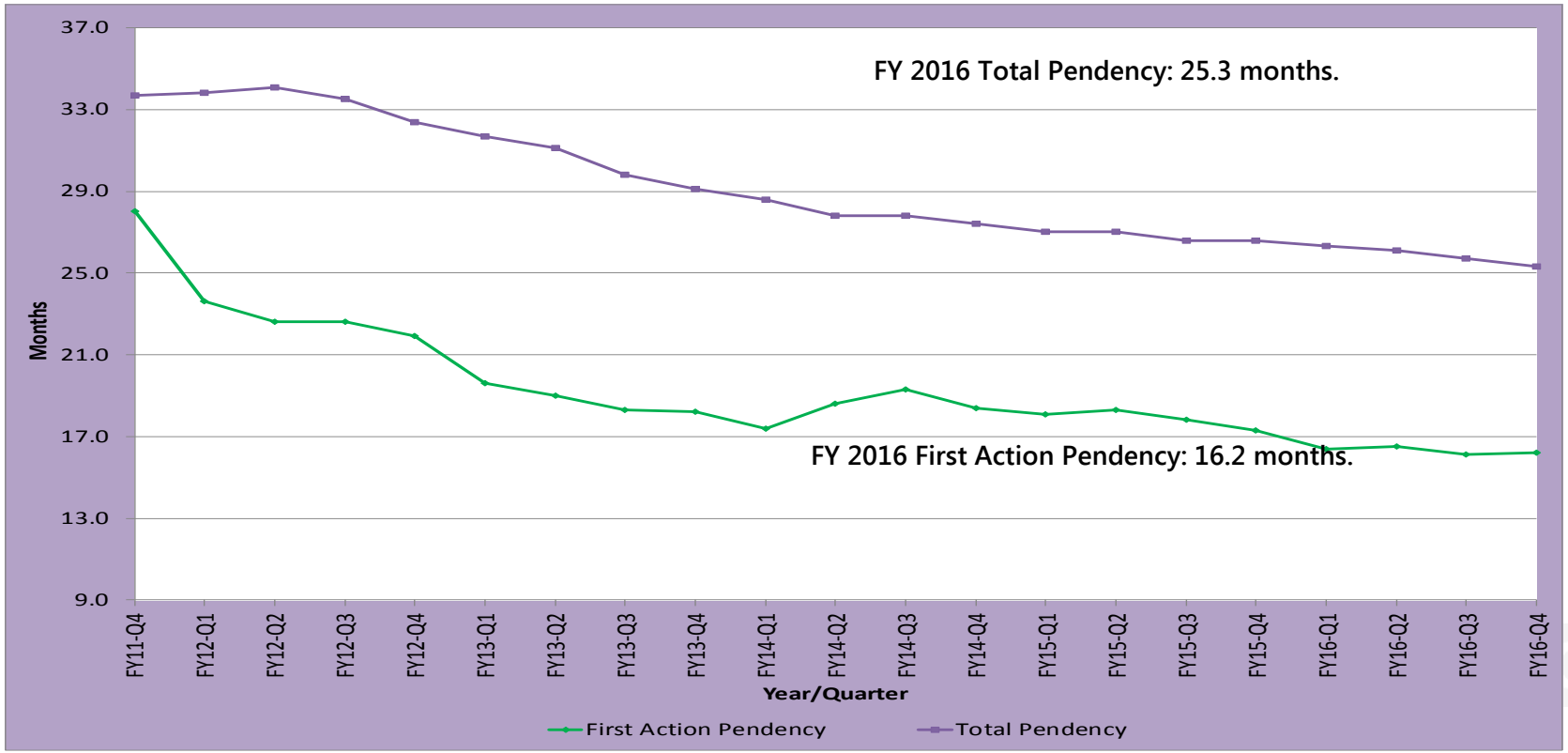
FY 2011 – FY 2016



FY 2015 Result: 553,221.

First Action Pendency and Total Pendency

FY 2011 – FY 2016



Enhancing Patent Quality

Update on Pilots and Initiatives

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Patent Quality Pillars

Pillar 1 – Excellence in Work Products

Pillar 2 – Excellent in Measuring Patent Quality

Pillar 3 – Excellence in Customer Service

EPQI Programs

Focused on three implementation areas:

Data Analysis

Pillar 1

- **Topic Submission for Case Studies**

Pillar 2

- **Clarity and Correctness Data Capture (Master Review Form or MRF)**
- **Quality Metrics**

Examiners' Resources, Tools & Training

Pillar 1

- **Automated Pre-Examination Search Pilot**
- **STIC Awareness Campaign**
- **Improving Clarity and Reasoning in Office Actions Training (ICR Training)**
- **Post Grant Outcomes**

Pillar 3

- **Interview Specialist**

Changes to Process/Product

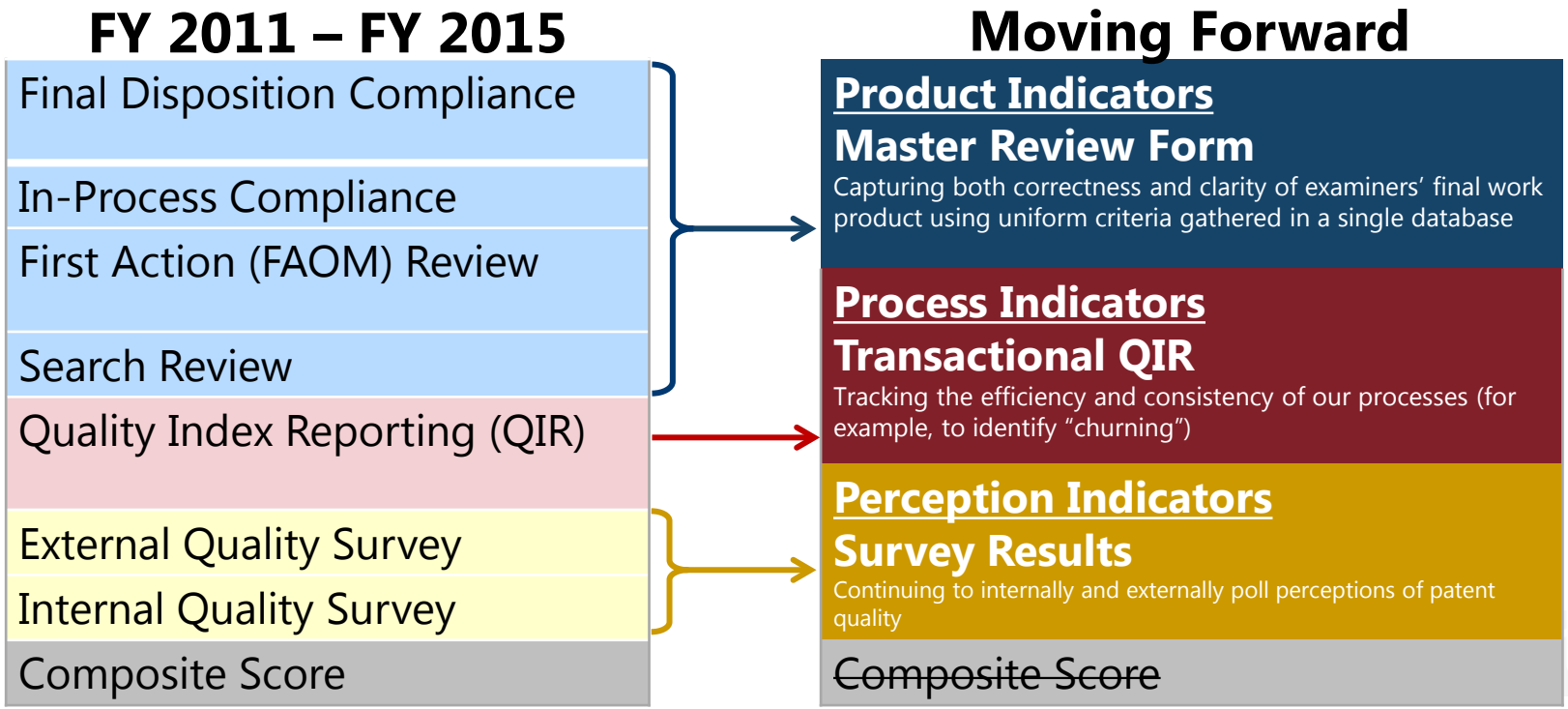
Pillar 1

- **Clarity of the Record Pilot**

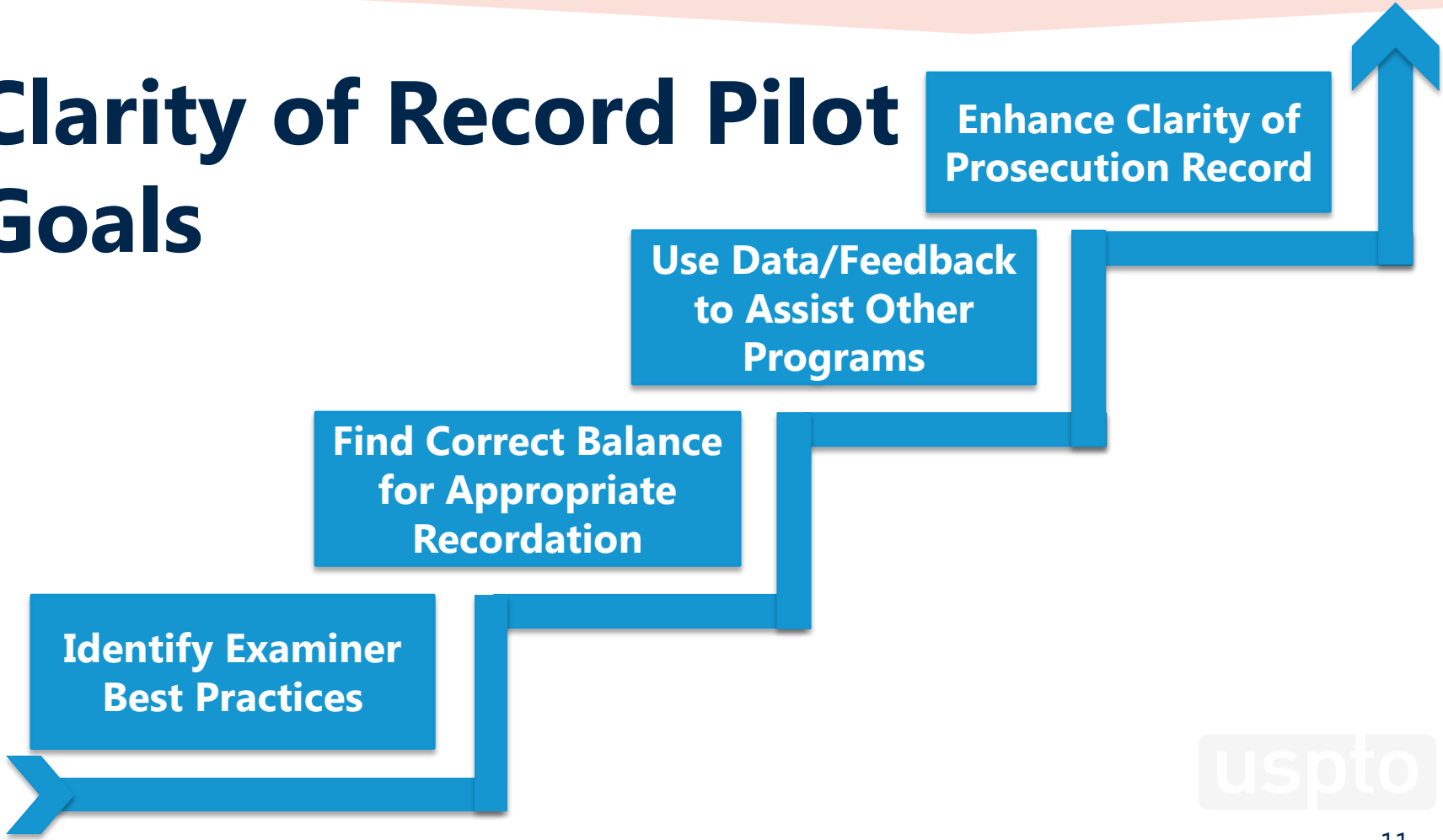
Pillar 3

- **Post-Prosecution Pilot (P3)**
- **Reevaluate QPIDS**
- **Design Patent Publication Quality**

Quality Metrics Redefined



Clarity of Record Pilot Goals



Clarity of Record Pilot - Areas of Focus

- More detailed interview summaries
- Enhanced documentation of claim interpretation

➢ **Special definitions of claim terms**	➢ **Optional language**
➢ **Functional language**	➢ **Non-functional descriptive material**
➢ **Intended use or result (preamble and body of claim)**	➢ **Computer-implemented functions that invoke 35 U.S.C. §112(f) ("specialized" or "non-specialized")**
➢ **"Means-plus-function" (35 U.S.C. §112(f))**	

- More precise reasons for allowance
- Pre-search interview - Examiner's option

Improving Clarity and Reasoning Training

35 U.S.C. 112(f): Identifying Limitations that Invoke § 112(f)	35 U.S.C. 112(f): Making the Record Clear	35 U.S.C. 112(f): Broadest Reasonable Interpretation and Definiteness of § 112(f) Limitations	35 U.S.C. 112(f): Evaluating Limitations in Software-Related Claims for Definiteness under 35 U.S.C. 112(b)	Broadest Reasonable Interpretation (BRI) and the Plain Meaning of Claim Terms
Examining Functional Claim Limitations: Focus on Computer/Software-related Claims	Examining Claims for Compliance with 35 U.S.C. 112(a): Part I Written Description	Examining Claims for Compliance with 35 U.S.C. 112(a): Part II – Enablement	35 U.S.C. 112(a): Written Description Workshop	§ 112(b): Enhancing Clarity By Ensuring That Claims Are Definite Under 35 U.S.C. 112(b)
2014 Interim Guidance on Patent Subject Matter Eligibility	Abstract Idea Example Workshops I & II	Enhancing Clarity By Ensuring Clear Reasoning of Allowance Under C.F.R. 1.104(e) and MPEP 1302.14	35 U.S.C. 101: Subject Matter Eligibility Workshop III: Formulating a Rejection and Evaluating the Applicant's Response	35 U.S.C. 112(b): Interpreting Functional Language and Evaluating Claim Boundaries - Workshop
		Advanced Writing Techniques utilizing Case Law		

Stakeholder Training on Examination Practice and Procedure (STEPP)

- 3-Day training on examination practice and procedure for junior patent practitioners
- Provide external stakeholders with a better understanding of how and why an examiner makes decisions while examining a patent application
- Aid in compact prosecution by disclosing to external stakeholders how examiners are taught to use the MPEP to interpret an applicant's disclosure

STEPP Course Schedule

Description	Date(s)	Duration	Location
3-Day Training on Examination Practice and Procedure	November 15-17, 2016	3 Days	Alexandria, VA Campus
3-Day Training on Examination Practice and Procedure	January 10-12, 2017	3 Days	Dallas, TX – Texas Regional Office
3-Day Training on Examination Practice and Procedure	March 14-16, 2017	3 Days	San Jose, CA – Sillicon Valley Regional Office
3-Day Training on Examination Practice and Procedure	May 9-11, 2017	3 Days	Denver, CO – Rocky Mountain Regional Office
3-Day Training on Examination Practice and Procedure	July 11-13, 2017	3 Days	Alexandria, VA Campus
3-Day Training on Examination Practice and Procedure	September 19-21, 2017	3 Days	Detroit, MI – Midwest Regional Office

Post Prosecution Pilot (P3) Pilot

The Office will contact applicant to schedule P3 conference

The applicant makes a 20 minute oral presentation to panel of examiners

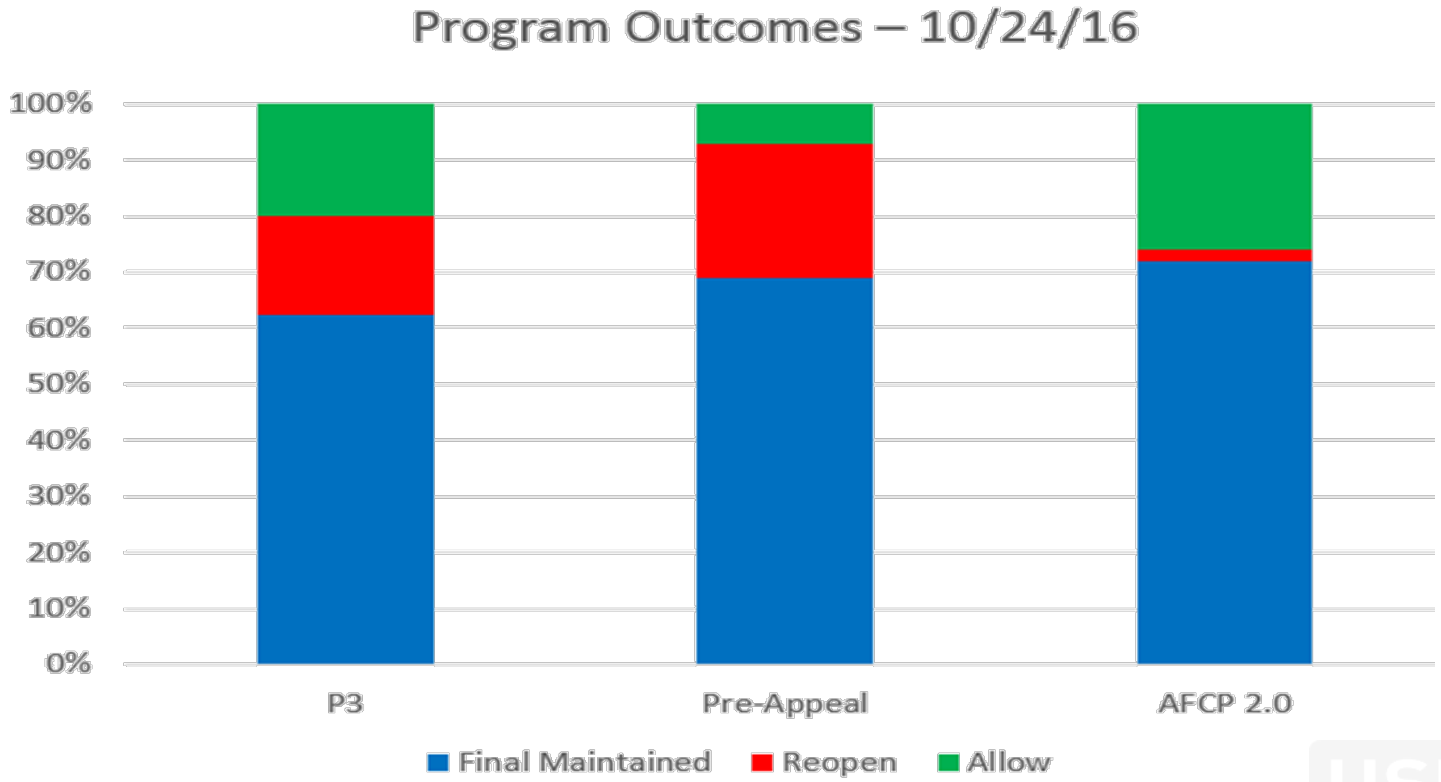
The Office will inform applicant in writing of decision

Post Prosecution Pilot – P3 (through Oct. 27, 2016)

Total Submissions	1222
Approved	1023
Defective	113
Conferences Held	614

Conference Outcomes	Count
Allowed	118
Final Maintained	368
Reopened	102
Awaiting Decision	588

P3 Outcomes



AFCP 2.0 data is from start of program; Final Maintained is RCEs + Advisories
Pre-Appeal data is for FY15 + FY16

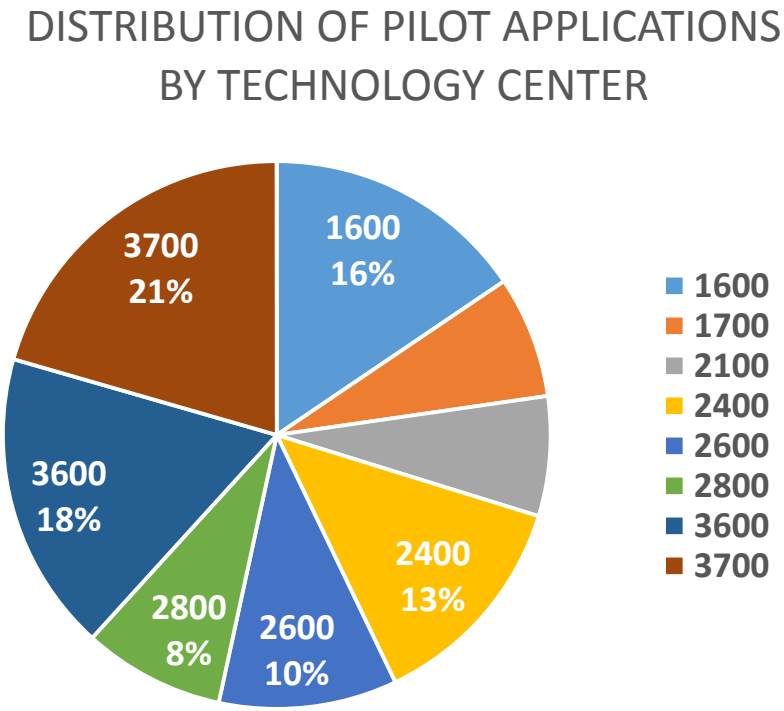
Post Grant Outcomes - Objectives

- **Purpose:** To learn from all post grant proceedings and inform examiners of their outcomes.

1. Enhanced Patentability Determinations in Related Child Cases
• Providing examiners with full access to trial proceedings submitted during PTAB post AIA Trials
2. Targeted Examiner Training
• Data collected from the prior art submitted and examiner behavior will provide a feedback loop on best practices
3. Examining Corps Education
• Provide examiners a periodic review of post grant outcomes focusing on technology sectors

Post Grant Outcomes

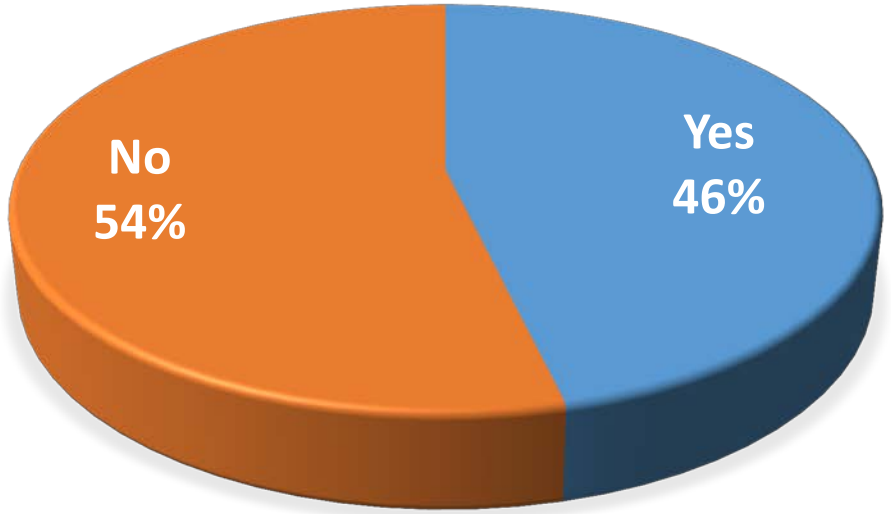
Pilot Statistics



Technology Center	Number of Pilot Applications
1600	121
1700	56
2100	55
2400	102
2600	82
2800	65
3600	138
3700	160
Grand Total	779

Objective 1 – Pilot Statistics cont.

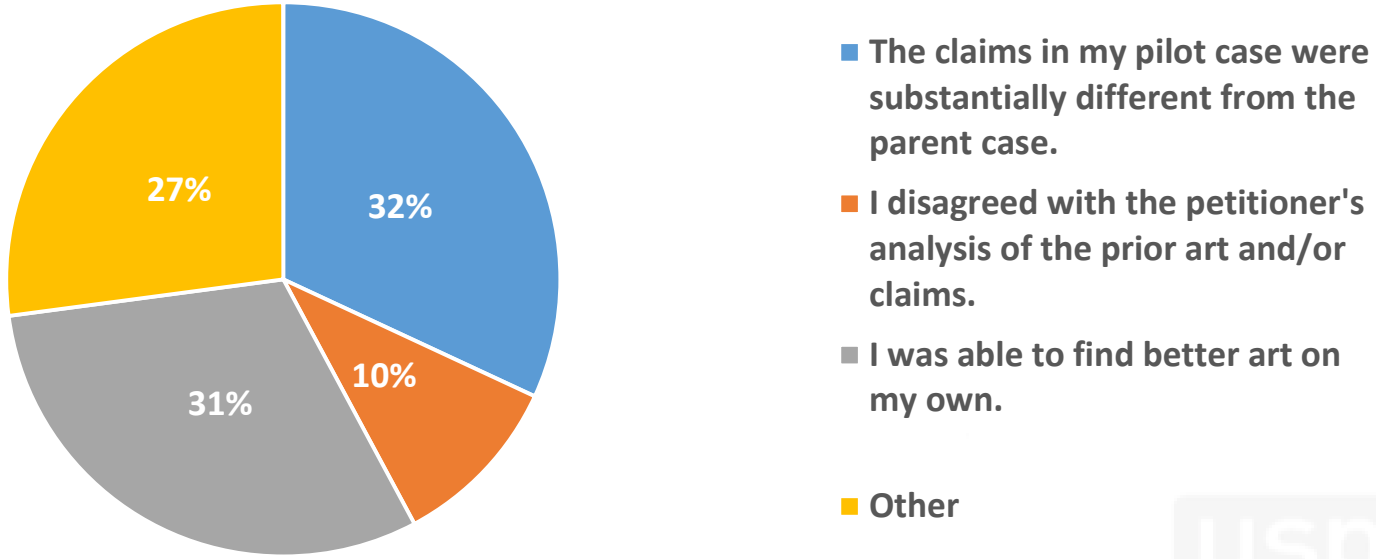
In the Office Action of the child case, did the examiner refer to any of the references cited in the AIA trial petition of the parent case?



Based on 270 Survey Responses

Pilot Statistics cont.

If the examiner did not use any references cited in the AIA Trial Petition, why?



Based on 136 Survey Responses

1 Hour Ethics CLE available!

Patent Quality Conference

Advancing Patent Quality across the IP Community

Tuesday, Dec 13, 2016 | 8:30 a.m. – 5 p.m. EST
USPTO Headquarters – Madison Auditorium

Livestream: Silicon Valley USPTO – 9:00 a.m. to 5:30 p.m.

Presentations, Panel Discussions, and Insights into the Future of Patent Quality

Examination Time Analysis - Roundtables

For additional information and ways to provide feedback please see our website at https://www.uspto.gov/patent/initiatives/eta-external-outreach

Patent Subject Matter Eligibility Roundtable Wrap-Up

Public Comment Period Closes Soon!

USPTO seeks public input on patent subject matter eligibility in view of recent decisions by the Supreme Court of the United States. The roundtable focused on receiving feedback regarding larger questions concerning the legal contours of eligible subject matter in the U.S. patent system.

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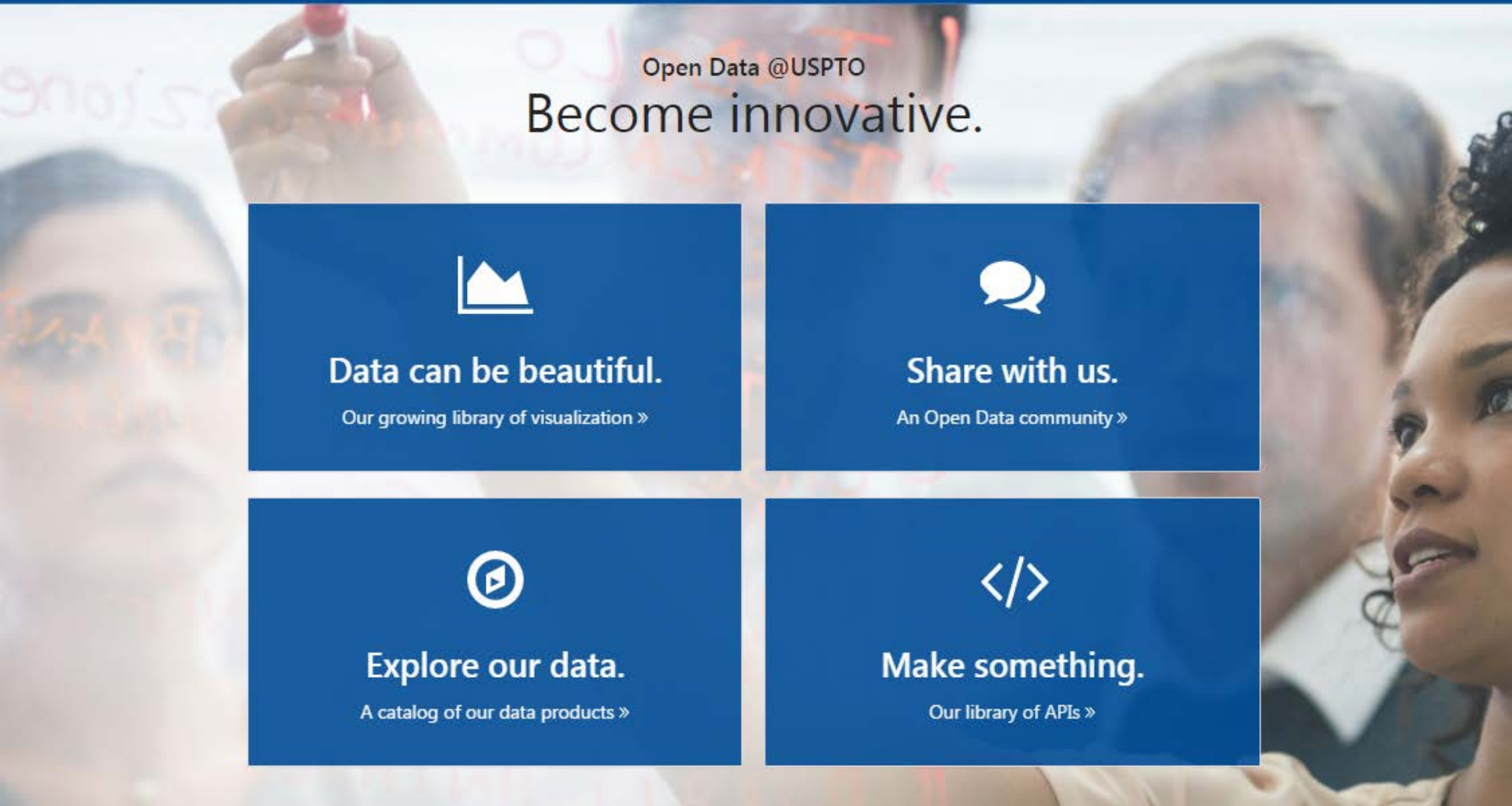


Open Data @USPTO

Become innovative.

Data can be beautiful.

Our growing library of visualization »

Share with us.

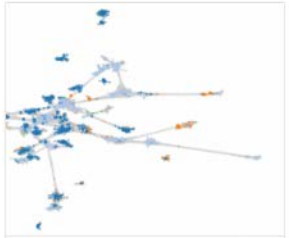
An Open Data community »

Explore our data.

A catalog of our data products »

Make something.

Our library of APIs »



Co-patenting Network of Top 100 Inventors in Cancer-Related Fields

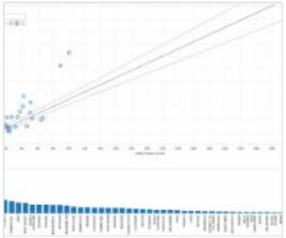
Published September 14, 2016

Cancer Moonshot

Worldwide Innovation in Cancer-Related Fields - Yearly Inventor Numbers and Patent Counts

Published September 14, 2016

Cancer Moonshot

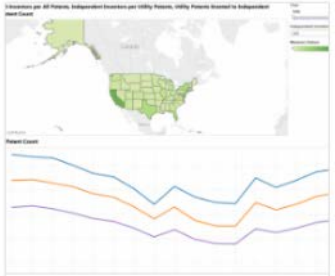


State GDP by Utility Patents

Published June 6, 2016

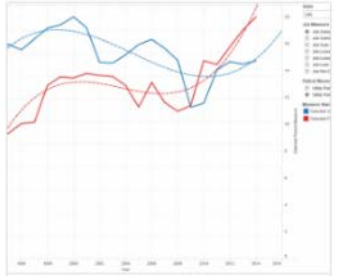
Patent Filing Data

Published June 6, 2016



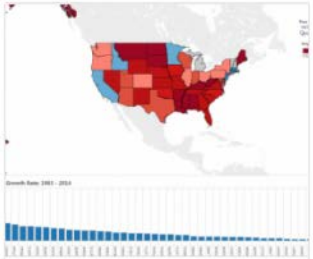
Independent Inventor Patent Count

Published June 6, 2016



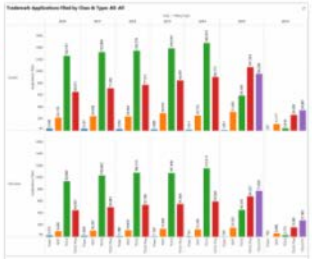
State Job Data Against Patents

Published April 25, 2016



Utility Patents per State over Time

Published April 22, 2016



Trademark Application Filing Statistics

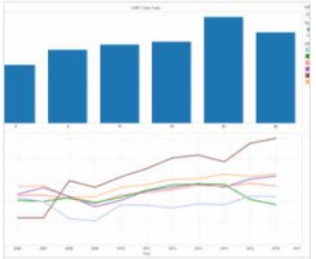
Published April 22, 2016

Technology Class Treemap by State

Published April 22, 2016

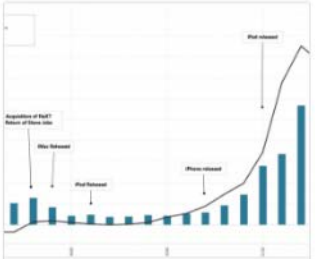
University Patent Count & Expenditures

Published April 22, 2016



Allowance Rate by USPC Class

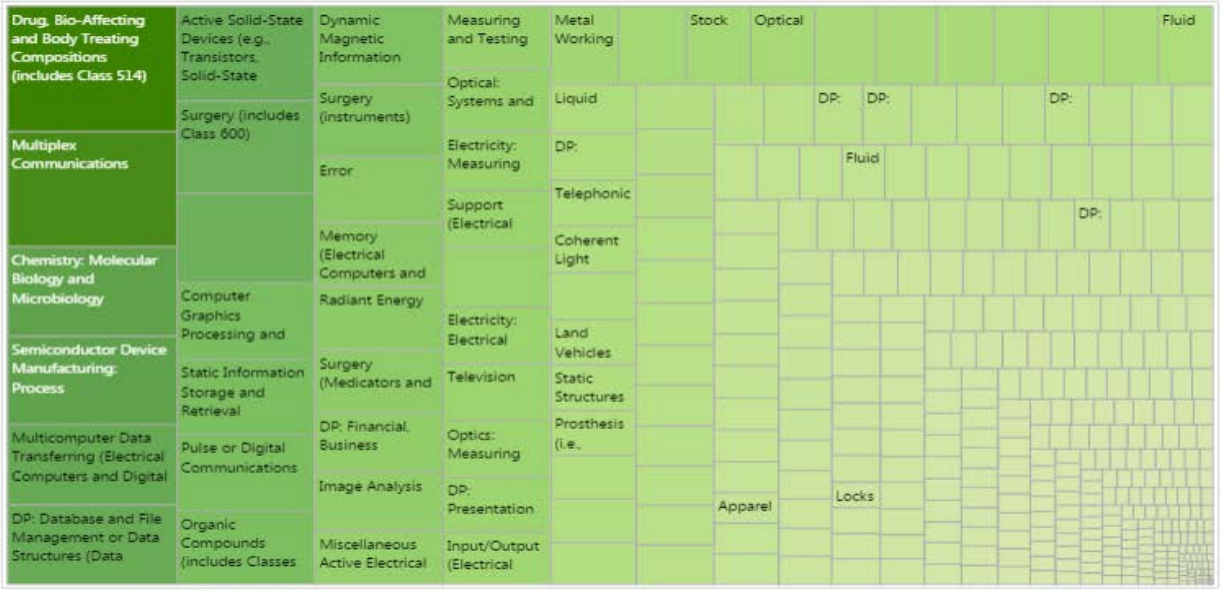
Published April 22, 2016



Apple Finances by Utility Patent Count

Published April 22, 2016

Technology Class Treemap by State



Utility Patent Count

1 — 18,907

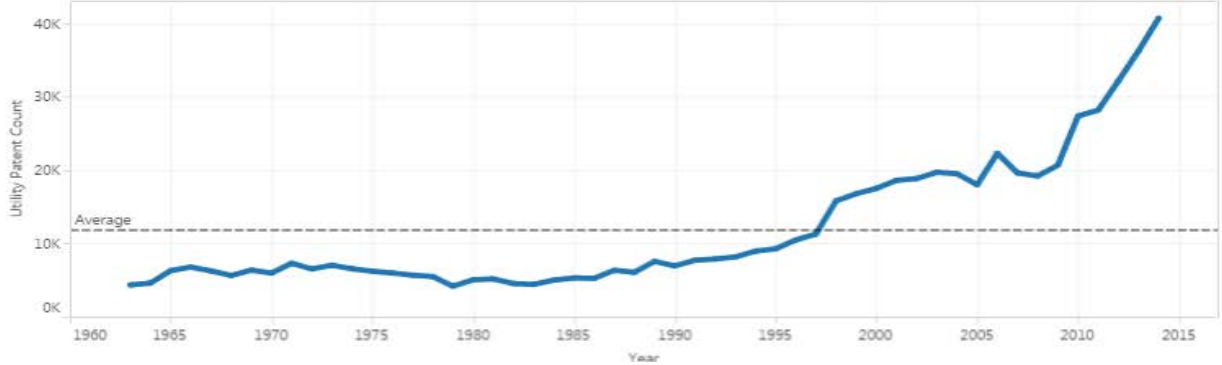
State

California

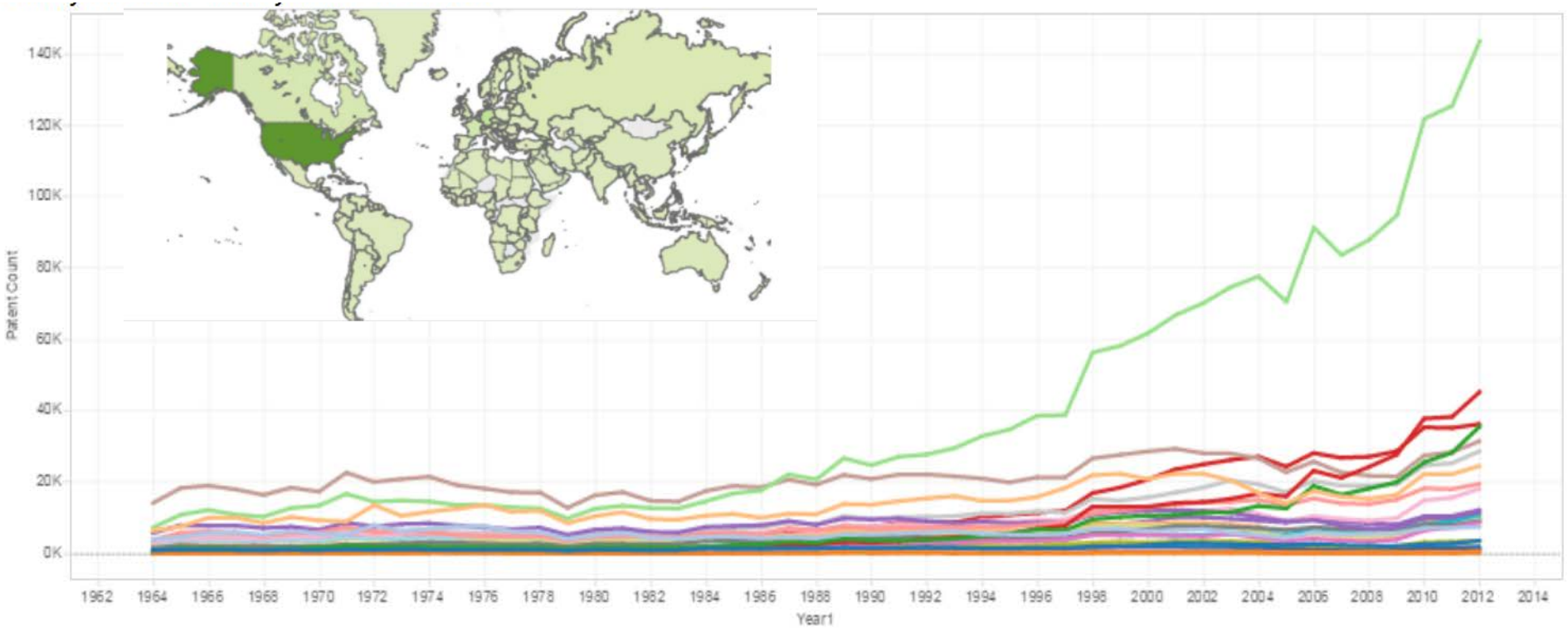
Year

1963 — 2014

TOTAL: 617497



NAICS Industry Classifications by Country & State (2 visuals)



Thank You

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