

# 2012 NPE Activity Report

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## Introduction

In 2012, patent monetization, including that by non-practicing entities (NPEs), once again made significant headlines. Despite the increasing prominence of patent monetization and the role NPEs play, limited information regarding the industry exists. With this in mind, RPX has decided to produce an annual report (this is the first) that includes comprehensive data on cases filed by NPEs. RPX hopes that an annual report will provide much needed transparency into significant economic activities that have long fallen under the radar.

This report includes a comprehensive set of charts, tables, and commentary regarding NPE activity that is RPX's initial foray into presenting a clear picture of the industry and has been made possible only by the significant resources RPX has invested into developing an NPE litigation database of unparalleled breadth and quality. RPX anticipates that it will continue to refine and expand the information presented herein each year and looks forward to continuing to increase transparency in the industry.

#### A Few Key Observations from 2012:

1. NPEs sued nearly 2,500 different companies in 2012. NPEs filed 3,054 patent infringement cases against 4,351 defendants, which was over 80% more than the number of defendants in 2008. 2,465 unique companies were affected. See Charts 4-6.
2. NPEs filed more than half (61%) of new patent litigation (measured by total defendants). This is the third straight year that NPEs were responsible for the majority of all new patent litigation. See Charts 7-9.
3. Most companies sued by NPEs were small/private companies. Over half (63%) of unique defendants added in NPE cases in 2012 earn less than \$100M in revenue, and 76% of unique defendants added in NPE cases in 2012 were private companies. See Charts 25-26. However, data collected in RPX's separately released 2012 NPE Cost Study: High-Level Findings suggests that large companies still bear most of the economic burden of NPE activity.
4. NPE activity affected many industries not commonly thought to have an NPE problem. While companies were most commonly sued in E-commerce and Software cases (34% of total defendants added in NPE cases in 2012), NPE litigations targeted a diverse set of industries including Financial Services, Automotive, and Medical. See Charts 23-24.
5. At the end of 2012, companies faced more than double the NPE litigation than they did only four years ago. The backlog of active NPE defendants, a proxy for the overall size of NPE activity, increased once again in 2012 and has grown 110% from year-end 2008 to year-end 2012. See Chart 10.
6. Enactment of the America Invents Act (the "AIA") in September 2011 affected the rate and timing of NPE assertions in 2012. While there was an increase in total cases filed (1,551 to 3,054), total defendants added—a better proxy for the volume of NPE litigation—decreased (5,329 to 4,351) from 2011 to 2012. See Charts 4-6, 11-13.
7. By year-end 2012, NPE assertions appear to have returned to a long-term growth trend, as the fourth quarter was one of the most active quarters in history with 1,069 cases filed and 1,445 total defendants added. See Charts 11-13.
8. In 2012, NPEs targeted companies with significant activities in the mobile and consumer electronics sectors most frequently. Apple was sued almost once per week (51 new cases in 2012) and Samsung was targeted in more than 10 new suits per quarter (42 new cases in 2012). See Tables 29-30.
9. NPE litigation was often carried out in the ordinary course of business as well-known and serial NPEs, Acacia and IP Navigation, topped the charts for 2012 NPE activity. Acacia filed 222 cases and added 317 defendants in 2012. IP Navigation filed 305 cases and added 357 defendants in 2012. The top 10 NPEs by cases filed accounted for 36% of all NPE cases filed in 2012. See Tables 40-43; Charts 44-45.
10. More than half of NPE cases were filed in Eastern Texas and Delaware district courts with 985 and 740 cases filed in 2012 and 1,105 and 771 cases pending at year-end 2012 respectively, providing credence to industry perception that those venues are favorable for plaintiffs and/or NPEs. The Northern District of California was the most common venue for declaratory judgment actions against NPEs with 24 declaratory judgment cases filed in 2012. See Charts 14-19.

11. The International Trade Commission (“ITC”) was a relatively popular venue for NPE activity for the second straight year. The ITC initiated 14 investigations in NPE cases in 2012 compared to five in each year from 2008 to 2010. While the ITC’s overall share of NPE litigation remains very small (less than 1% of cases filed), this suggests that NPEs may increasingly view the ITC as a strategic venue for assertions. See Charts 20-22.

12. Patents asserted by NPEs in 2012 most frequently claim priority to the late '90s technology boom. The four most common priority years for patents asserted in cases filed in 2012 were 1998 through 2001. The mean and median priority year was 1999. See Chart 32; Table 33.

13. The average NPE case ending in 2012 lasted less than a year. Cases ending in 2012 had a relatively short average duration as 53% completed within six months and 74% completed within a year. Terminated defendants in 2012 had similarly short periods of active litigation with 37% terminating within six months and 62% terminating within a year. See Charts 36-39.

RPX has made a conscious effort to present the subject data in the most straightforward and objective manner and has withheld its own potentially subjective views and analyses. However, to the extent the reader is interested in an additional level of analysis, we encourage the reader to browse RPX’s website ([www.rpxcorp.com](http://www.rpxcorp.com)) or reach out directly to RPX.

## Methodology

The 2012 NPE Activity Report includes an in-depth summary of NPE activity in 2012 based on the information compiled in RPX's proprietary patent litigation database. RPX believes that this database is the most comprehensive patent litigation database regarding NPE activity available in the industry. The following is a description of the methodology employed in the RPX patent litigation database and this report. More specific detail regarding methodology, when necessary, appears with the charts and tables in this report.

RPX strives to continuously improve the accuracy and scope of its data and may make minor changes to methodology and underlying data presented in future analyses and reports. In addition, certain aspects of our methodology, such as the treatment of severances and consolidations, may result in slight changes as time passes.

#### **NPE Definition**

For the purposes of this report the following are considered NPEs:

1. Patent assertion entities (PAEs): entities believed to earn revenue predominantly through asserting patents
2. Universities and research institutions
3. Individual inventors
4. Non-competing entities (NCEs): operating companies asserting patents outside their areas of products or services

#### **Cases Filed, Total Defendants Added and Unique Defendants Added Definitions**

This report refers to cases filed, total defendants added, and unique defendants added. Each of these terms has the specific meaning described below:

“Cases filed” refers to filed actions. A single case filed may include multiple defendants. The date for a case filed is the date that it was originally filed.

“Total defendants added” refers to the total number of case/defendant pairings added for a given criterion. New filings as well as amended complaints that add a defendant are taken into account in total defendants added.

“Unique defendants added” refers to the total number of entities that have been added as a defendant in a case (via original or amended complaint) for a given criterion. For example, if Company A has been added in seven cases in 2012 it still counts as one unique defendant added in 2012.

The date for determining total defendants added and unique defendants added is the date that a defendant was added to a case. This date may differ from the date the case was originally filed. For example, defendants added in amended complaints may be bucketed in a different time period than the period that applies for the case filed.

“NPE cases filed,” “total NPE defendants added,” and “unique NPE defendants added” have the same meaning as these terms but are limited to cases filed by NPEs.

#### **NPE Identification**

RPX identifies NPEs through a manual review process performed by experienced employees with sophisticated knowledge of the patent industry.

The process includes, among other things, searching for evidence of operating or patent monetization activities on the Internet, including company websites; reviewing complaints, with a focus on accused products and allegations regarding products and/or services sold by the patent owner; considering the outside counsel employed by the entity (e.g. does the outside counsel have a history of representing NPEs?); reviewing public filings; reviewing corporate disclosure statements filed in litigation; and soliciting market intelligence from patent professionals.

While there are elements of subjectivity in this approach, we believe that the process is robust based on feedback from other patent professionals.

### **Litigation Identification**

RPX has manually reviewed for inclusion in this report all litigations with a nature-of-suit code 830 (Patent) on PACER (Public Access to Court Electronic Records). Out of those cases RPX has only included cases with complaints that allege patent infringement. For example, RPX excludes false marking cases, misfiles, and ownership disputes.

### **Declaratory Judgment Actions**

Declaratory judgment actions are excluded unless otherwise expressly noted.

### **Corporate Families**

RPX has developed a proprietary database of corporate families. All entities in a corporate family are generally treated as a single unique entity. Portfolio companies owned by private equity firms are a notable exception; they are treated as independent entities. To the extent multiple members of a corporate family are defendants in a lawsuit, RPX counts those entities as a single defendant. Corporate families may change over time. For example, M&A activity may result in consolidation of entities.

### **NPE Roll-up**

RPX's proprietary litigation database rolls up certain related NPEs to a single NPE entity. RPX has manually identified these relationships by, among other things, reviewing corporate disclosures and patent assignment records and from RPX market intelligence. For example, Acacia has numerous subsidiaries that RPX has identified. These entities are all represented as Acacia in the analyses in this report concerning the most prolific NPEs.

### **Transfers, Severances, and Consolidations**

RPX takes into account transfers, severances, and consolidations as follows:

When a case is transferred, RPX counts the original action and the new action as a single case filed. RPX counts the case filed as having been filed on the filing date of the original action.

When several cases are consolidated, RPX counts the consolidation as one case filed but multiple total defendants added. RPX counts the case filed as having been filed as of the date of the earliest-filed consolidated case.

When a case is severed into multiple cases, RPX counts multiple cases filed. RPX counts each case filed as having been filed as of the date of the original case.

Consolidations and severances may happen after the year of filing and, in such circumstances, RPX's count of the number of cases filed for the year of filing will change as described above.

### **Market Sector Classifications**

RPX has created a proprietary list of market sectors. RPX manually categorizes each case filed into a market sector based on a review of the accused products, defendants, and asserted patents.

In certain portions of this report, defendants are also classified into an RPX market sector. Classification of defendants is based on the type of NPE litigation that the defendant appears in most often.

### **Data Set**

This report uses data from the RPX database as of January 31, 2013. The additional month following the end of 2012 accommodates the lag time between when cases are filed and when PACER makes case information available to the public. As a result of using a January 31, 2013 dataset, transfers, severances, and consolidations that occurred between January 1, 2013 and January 31, 2013 may have had a small effect on reported data.



## Charts and Highlights

The following pages feature charts and highlights of key report facts.

## Record Volume of Patent Infringement Cases Filed but Fewer Total Defendants Added

### Chart 1

Courts were kept busy with a record volume of new patent infringement cases filed in 2012. Cases filed in 2012 was up 40% from 2011 and has increased at an annualized rate of 19% since 2008, more than doubling during that period.

### Chart 2

In contrast to cases filed, total defendants added in 2012 decreased by 17% from the 2011 total. But the 2012 total was still 3% higher than the five-year average. Total defendants added has increased at an annualized rate of 6% since 2008.

As explored further in Charts 11-13, the reduction in total defendants added in 2012 appears to be a consequence of limitations on joinder of multiple defendants in a single lawsuit implemented by Section 299 of the AIA in September 2011 and a race to file before that section became effective.

### Chart 3

Unique defendants added in 2012 also decreased by 14% from 2011. Unique defendants added has grown slower than total defendants added over the past five years (1% annualized increase). A substantial increase in the number of cases per unique defendant added is primarily responsible for the overall increase in total defendants added.

Chart 1: Cases Filed

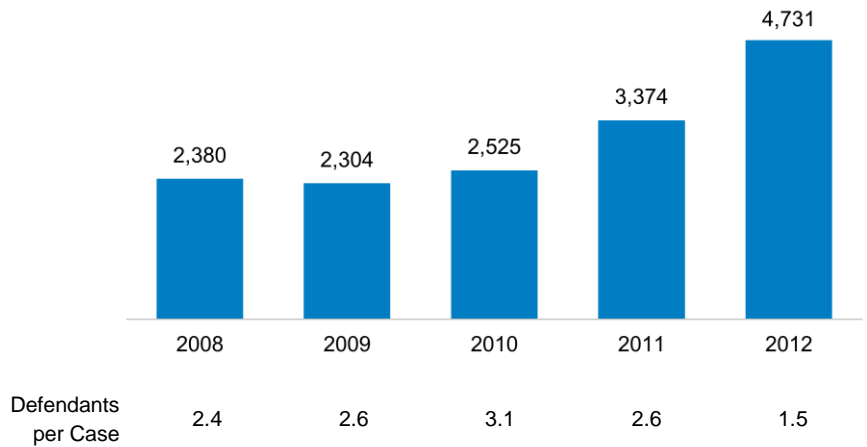


Chart 2: Total Defendants Added

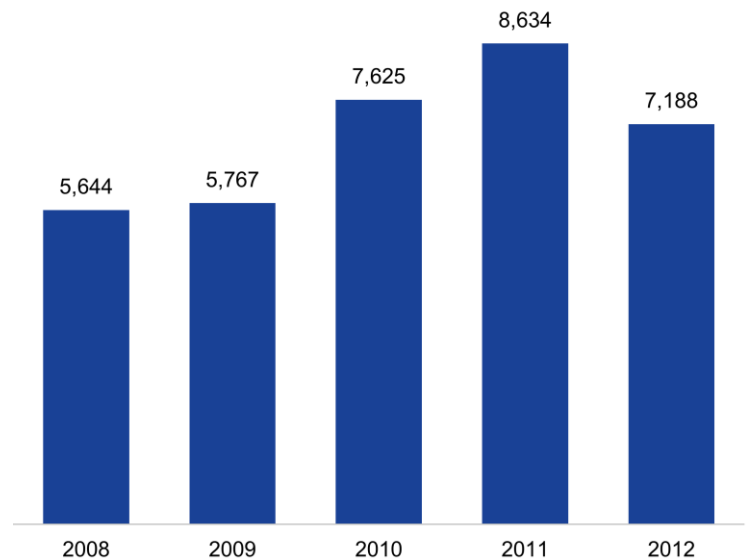
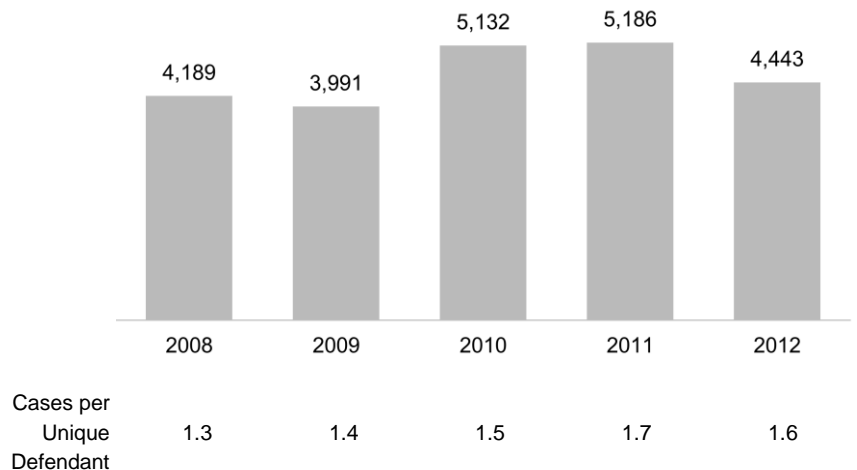


Chart 3: Unique Defendants Added



## Volume of NPE Cases Filed Also Up Significantly

### Chart 4

NPE cases filed nearly doubled from 2011 to 2012 (97% increase) and has increased by 388% since 2008 (49% annualized growth). The record number of cases filed in 2012 was offset by a 61% reduction in the number of defendants in each case since 2011.

### Chart 5

Total NPE defendants added decreased by 18% from 2011 to 2012. Despite the year-over-year decline, total defendants added in 2012 was still 82% higher than 2008 levels (16% annualized growth).

Again, enactment of the AIA likely played a role in the reduction in 2012 total defendants added. The average of 2011 and 2012 total defendants added, a rough manner of controlling for the AIA, is 16% higher than 2010.

### Chart 6

Unique NPE defendants added decreased by 17% from 2011 to 2012 but has increased 49% since 2008 (10% annualized growth). Again, roughly controlling for the effects of the AIA, the average number of unique defendants added in 2011 and 2012 was up 4% from 2010.

In addition to the increased number of unique defendants added, companies sued by NPEs in 2012 faced, on average, 22% more suits than they did in 2008.

Chart 4: NPE Cases Filed

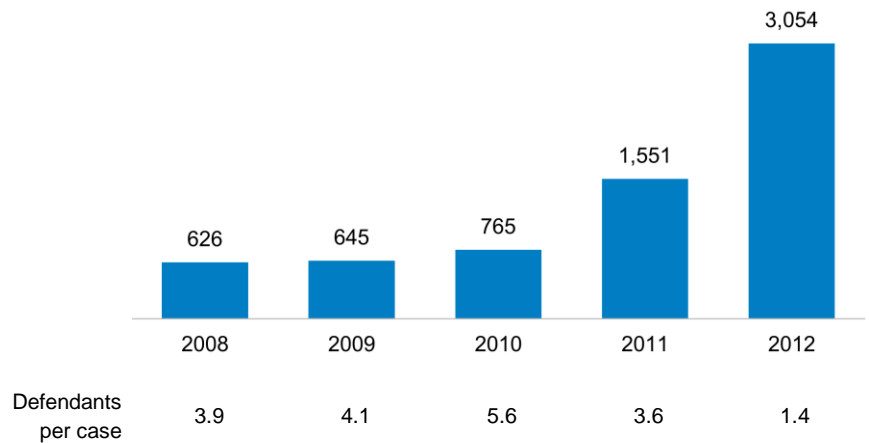


Chart 5: Total Defendants Added in NPE Cases

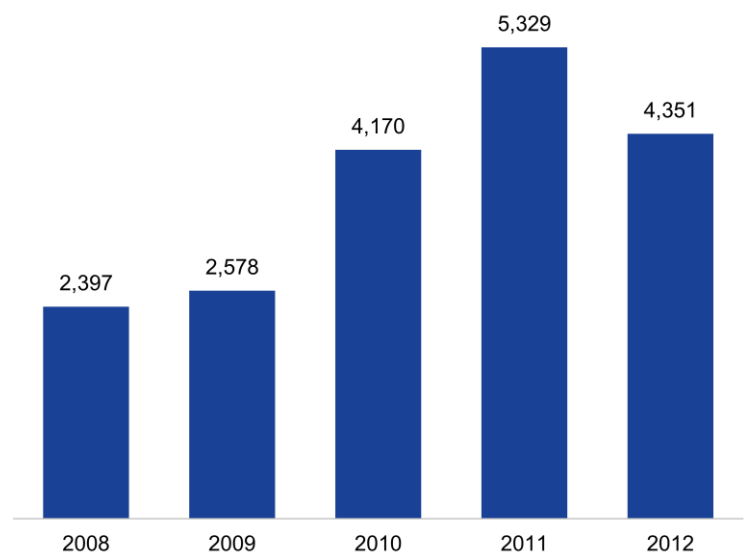
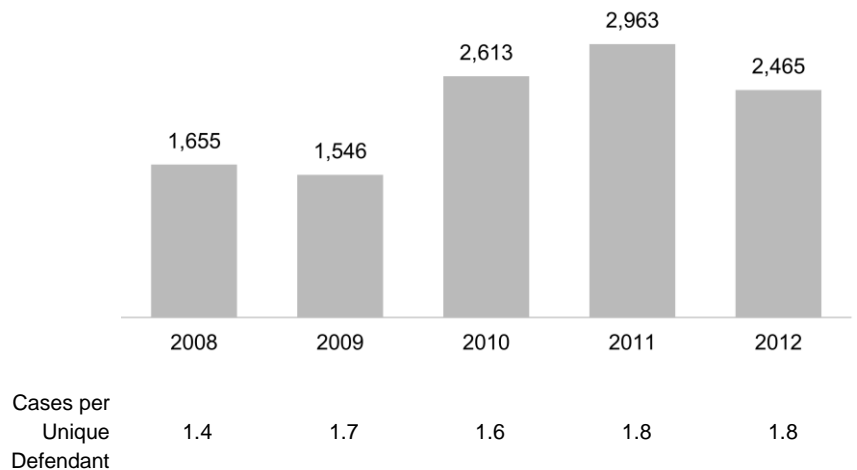


Chart 6: Unique Defendants Added in NPE Cases



## NPE Litigation Accounted for a Majority of Patent Litigation

### Chart 7

In 2012, for the first time, NPE cases filed accounted for the majority of all patent infringement cases filed. The NPE share of cases filed has more than doubled since 2008. A substantial portion of the increase occurred after enactment of the AIA and likely reflects a disproportionate effect of the AIA's joinder rule on NPE cases filed.

### Chart 8

NPE share of total defendants added remained around 60% for the second straight year and has increased by 19 percentage points since 2008. The increase has been driven primarily by an expansion in NPE litigation rather than a decline in non-NPE litigation over the past five years.

### Chart 9

NPE share of unique defendants added exhibited similar trends to total defendants added. More than half of the companies that were added as a defendant in a patent infringement case in 2012 were added in an NPE case, an increase of 15 percentage points from 2008.

Chart 7: NPE Cases Filed as Percentage of All Patent Infringement Cases Filed

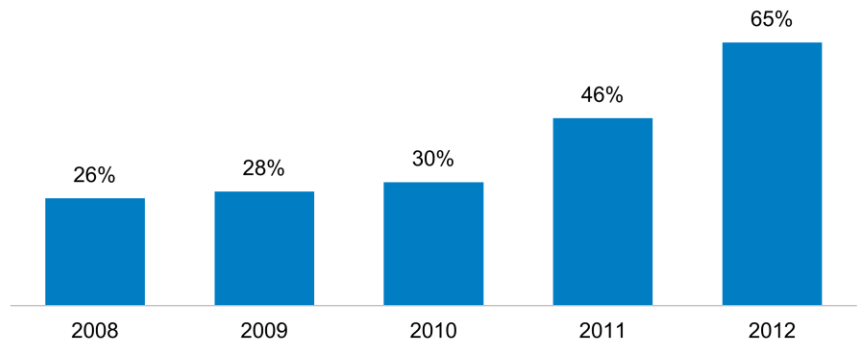


Chart 8: Total NPE Defendants Added as Percentage of Total Patent Infringement Defendants Added

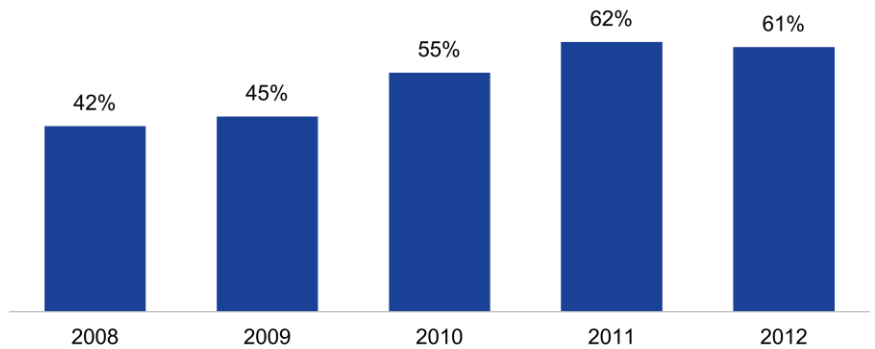
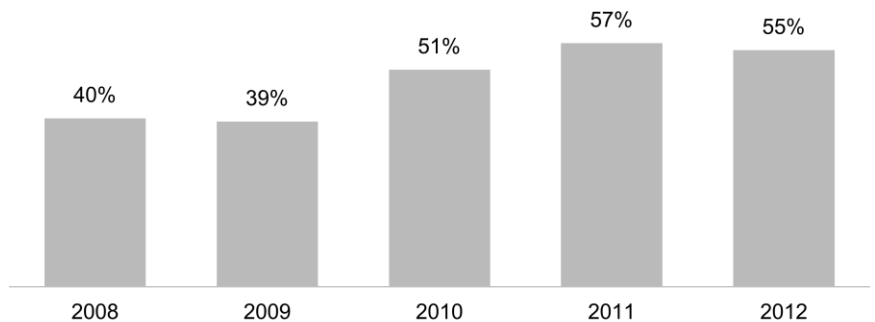


Chart 9: Percentage of Unique Defendants Added in at Least One NPE Case



## NPE Total Defendants Backlog Increases Again

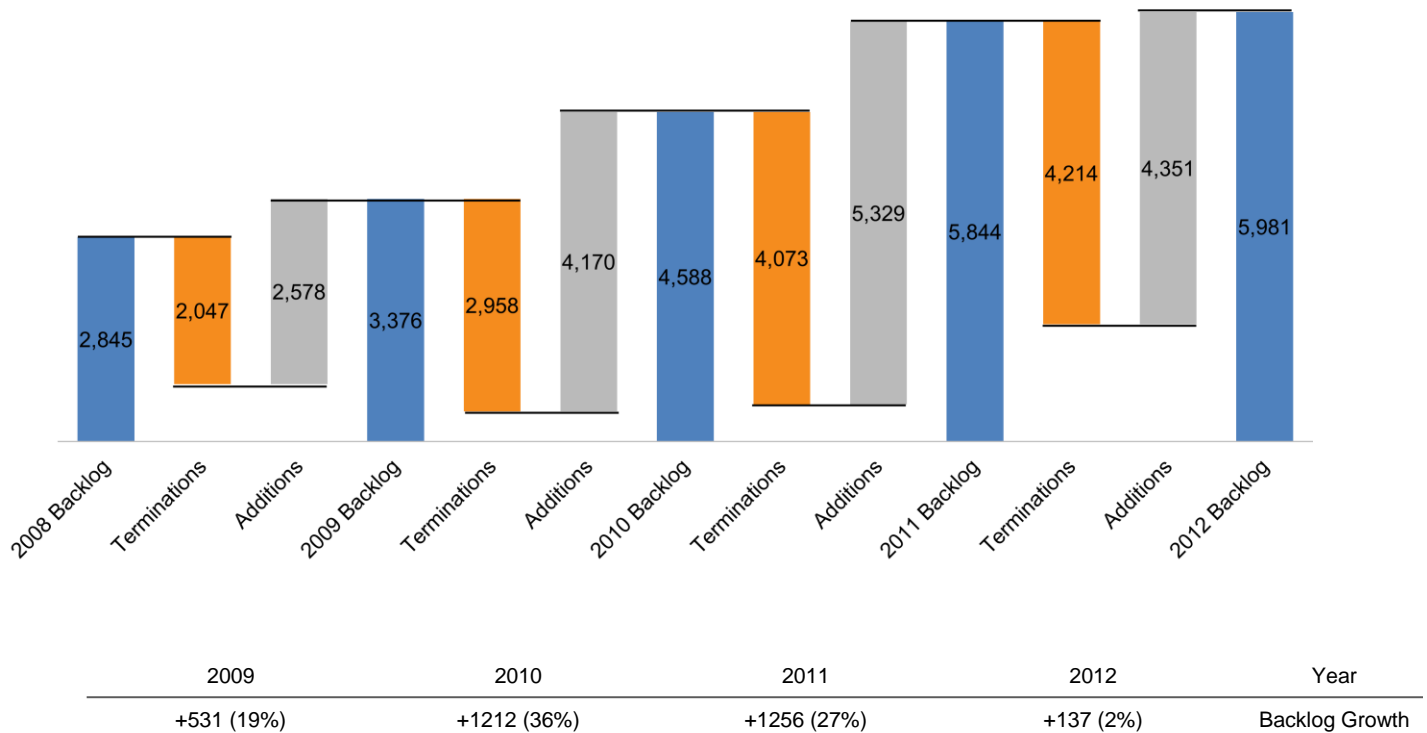
The 2012 year-end backlog set a record with 5,981 total active NPE defendants. The year-end backlog of total active NPE defendants, a proxy for the overall scope and cost of NPE litigation, increased by 137 defendants from 2011 to 2012 despite a likely one-time reduction in new filings attributable to the AIA.

### Methodology Notes:

Total active NPE defendants is the total number of NPE case/active defendant pairings. Backlog is the number of total active NPE defendants at the end of a given year. For example, at the end of 2008 there were 2,845 total active NPE defendants.

The backlog has increased each year since 2008, growing at an annualized rate of 20%, and has more than doubled from year-end 2008 to year-end 2012. Terminations of active defendants have increased at an annualized rate of 27% from 2009 to 2012, while new additions have grown at an annualized rate of 19%.

Chart 10: Active NPE Defendants Backlog

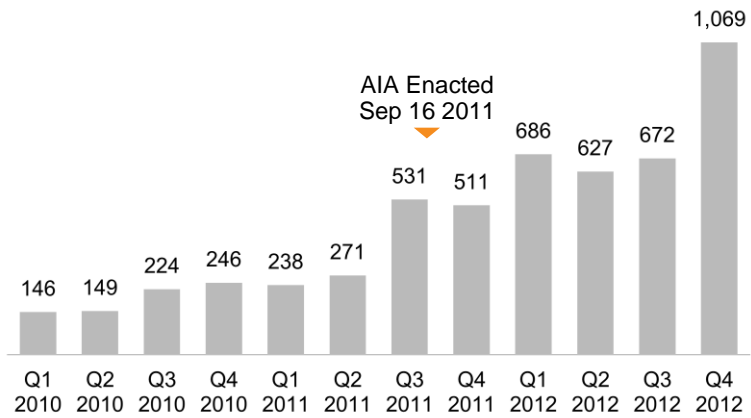


## NPE Litigation Volume Appears to Have Returned to Pre-AIA Trends

### Chart 11

NPE cases filed rose dramatically following the September 16, 2011 enactment of the America Invents Act and the accompanying stricter standards for joinder of defendants. Cases filed in the fourth quarter of 2012 was more than three times the cases filed in the second quarter of 2011, the last quarter unaffected by AIA joinder rules.

Chart 11: Quarterly Impact of AIA on NPE Cases Filed



### Chart 12

Total defendants added in NPE cases spiked in Q3 2011 as NPEs rushed to file multi-defendant cases before AIA enactment. In the four quarters following AIA enactment (Q4 2011 to Q3 2012), total defendants added decreased by 27% compared to the four quarters prior to passage (Q3 2010 to Q2 2011), suggesting that the AIA caused a temporary reduction in NPE activity.

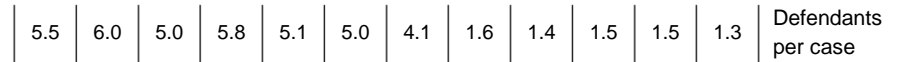
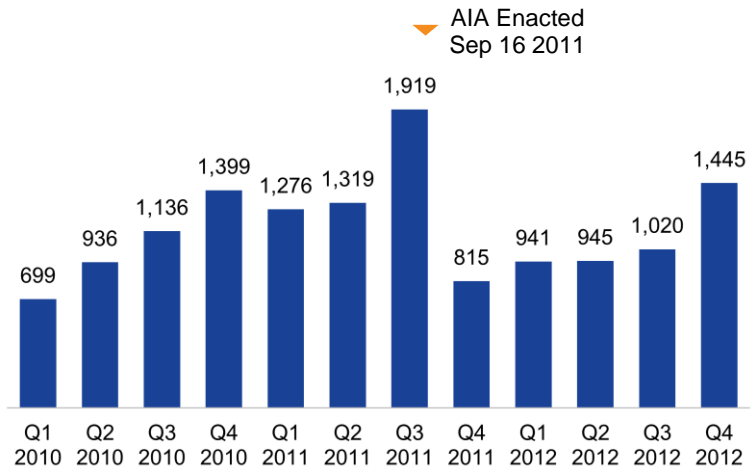


Chart 12: Quarterly Impact of AIA on Total Defendants Added in NPE Cases

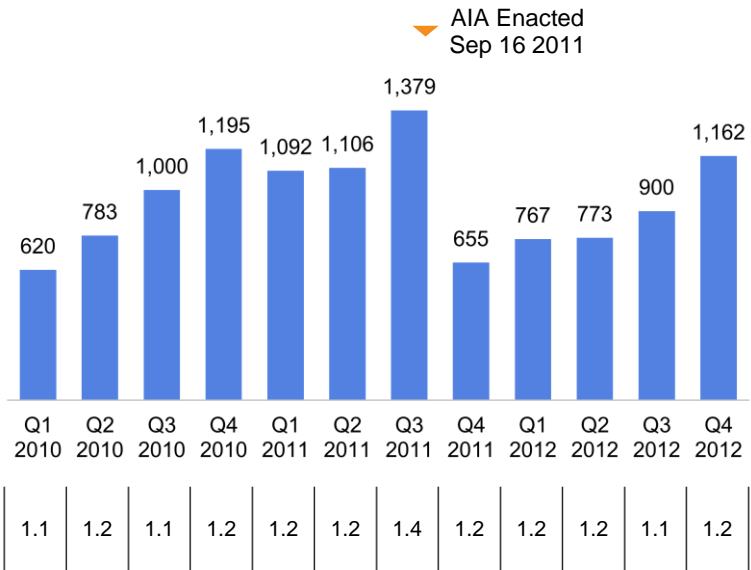
But NPE activity appears to have returned to pre-AIA growth trends by the end of 2012, as total defendants added in Q4 2012 was the second highest ever.



### Chart 13

Unique defendants added followed similar trends to total defendants added. An increase in the third quarter of 2011 was followed by a substantial reduction in subsequent quarters, with a return to long-term trends occurring in the fourth quarter of 2012.

Chart 13: Quarterly Impact of AIA on Unique Defendants Added in NPE Cases



## The Majority of NPE Litigation Was in the Eastern District of Texas and Delaware

The Eastern District of Texas and District of Delaware were by far the most popular venues for NPE cases filed, together representing 56% of new cases filed and 56% of total defendants added in 2012. The popularity of these districts is consistent with the industry perception that these districts are favorable venues for plaintiffs and/or NPEs. The next five highest volume districts combined had 22% of cases filed—fewer cases than either of the top two districts—and 22% of total defendants added.

### Methodology Notes:

District court is based on the district of the original filing and does not take into account venue transfers.

Chart 14: NPE Cases Filed in 2012 by District Court

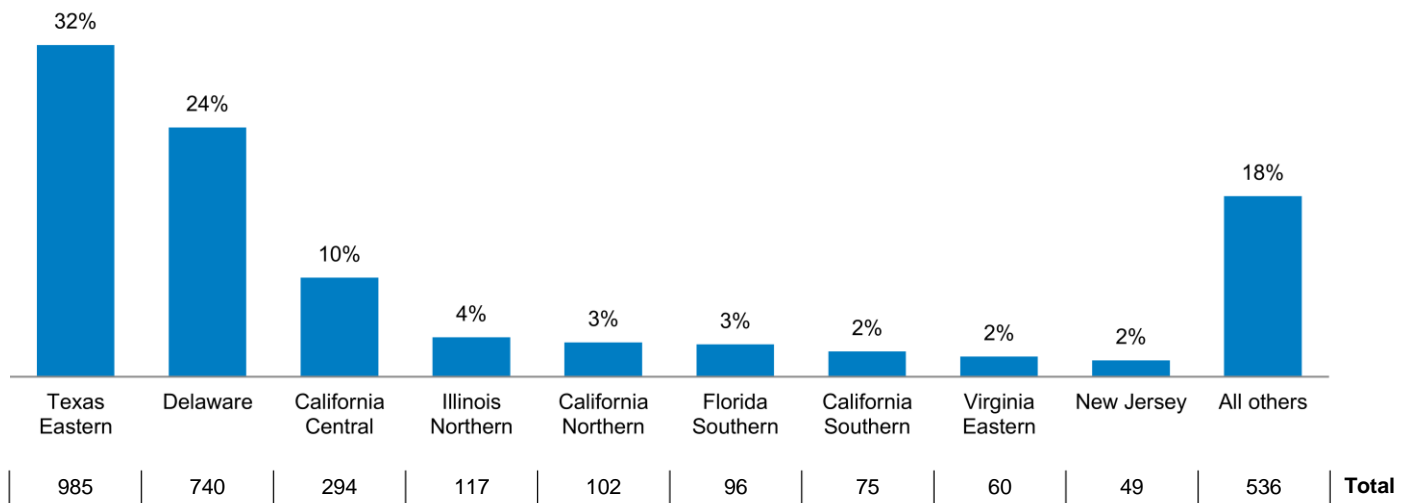
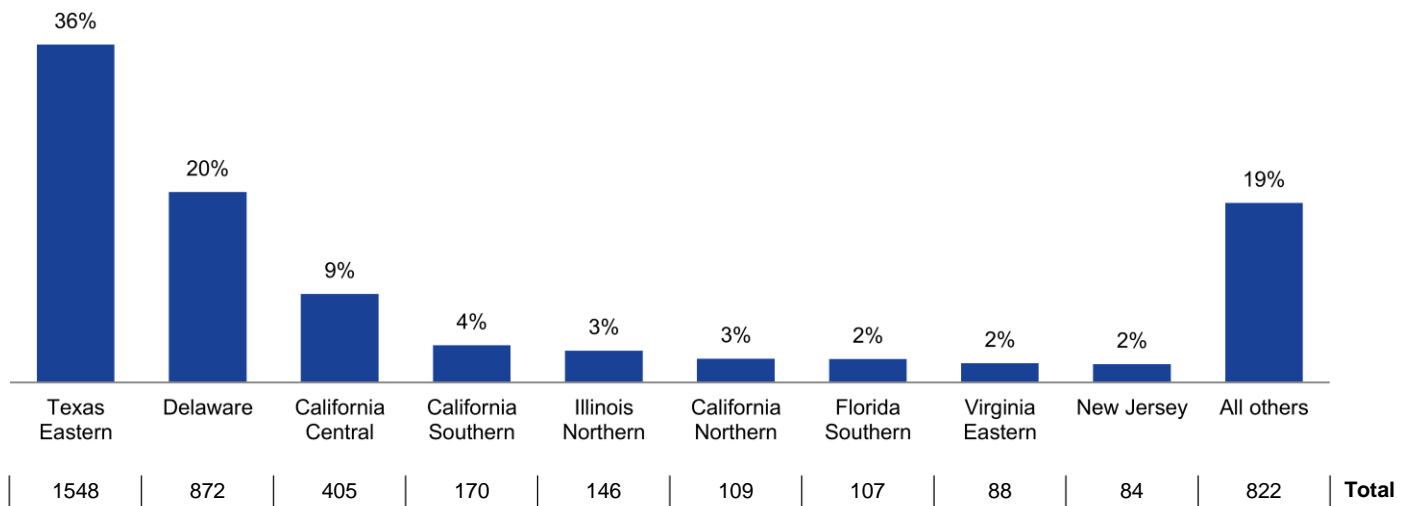


Chart 15: Total NPE Defendants Added in 2012 by District Court



## Districts with Highest NPE Litigation Volumes Also Have the Largest Backlogs

The Eastern District of Texas and District of Delaware also accounted for over half of the total pending cases (58%) and total active NPE defendants (57%) at the end of 2012. The next five districts accounted for 22% of pending cases and 22% of total active NPE defendants.

### Methodology Notes:

District court is based on the district where a case was pending at year-end, which may differ from the district court of the original filing. Total active NPE defendants is the total number of NPE case/active defendant pairings.

Chart 16: NPE Cases Pending at Year-end 2012 by District Court

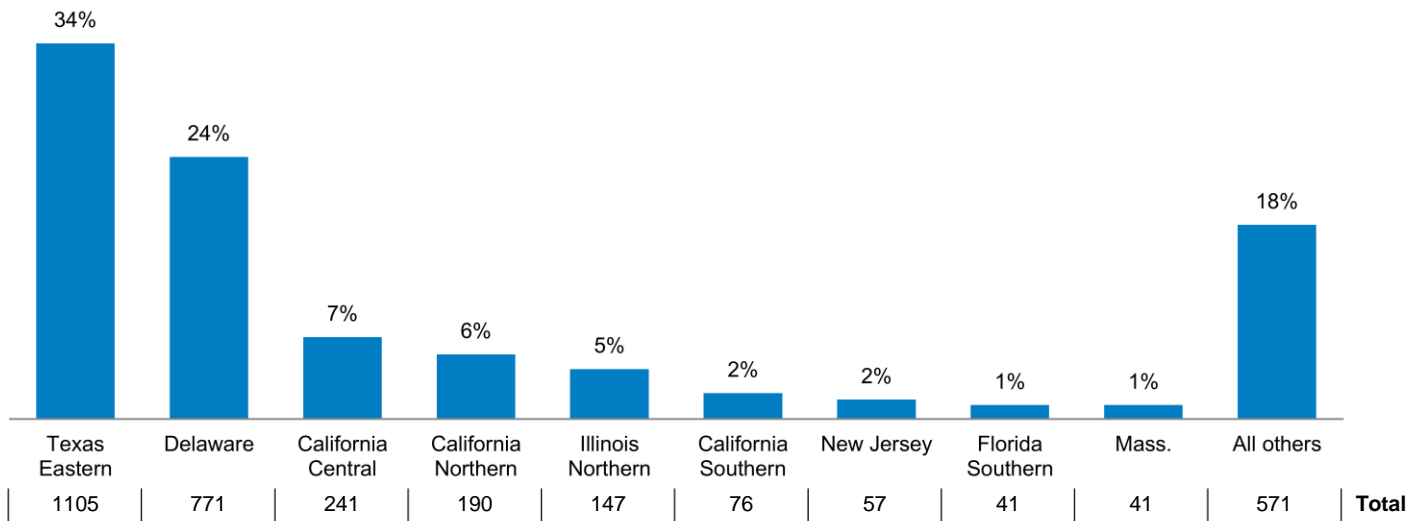
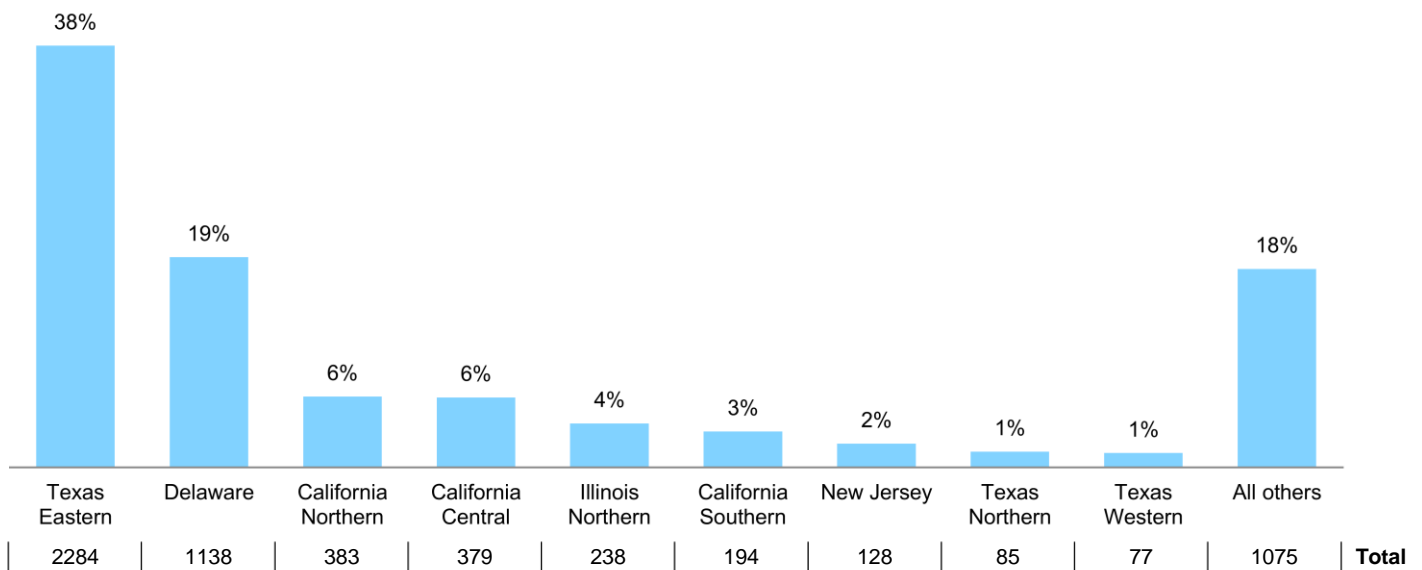


Chart 17: Total Active NPE Defendants at Year-end 2012 by District Court





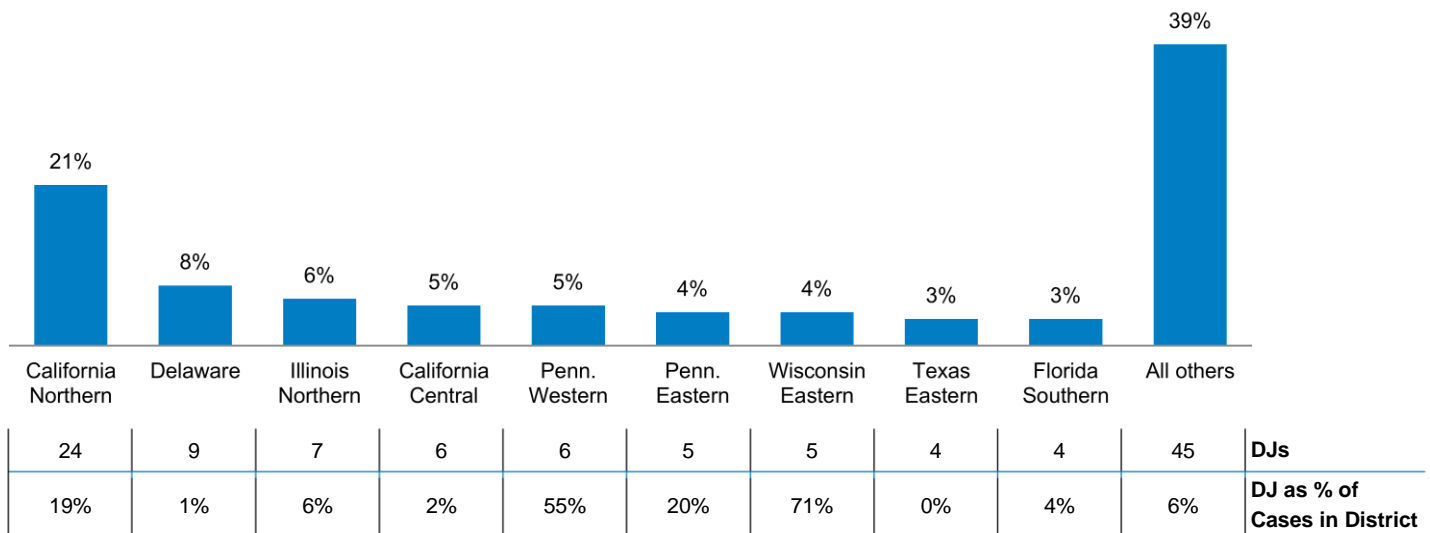
## Declaratory Judgments Actions Were Concentrated in the Northern District of California

The Northern District of California accounted for approximately one fifth of NPE declaratory judgment cases filed in 2012. While many technology companies are located in the Northern District of California, making it a natural venue for declaratory judgments for those companies, the relatively large number of declaratory judgment cases may also indicate that the Northern District of California is viewed as a favorable venue for defendants and/or unfavorable venue for NPEs.

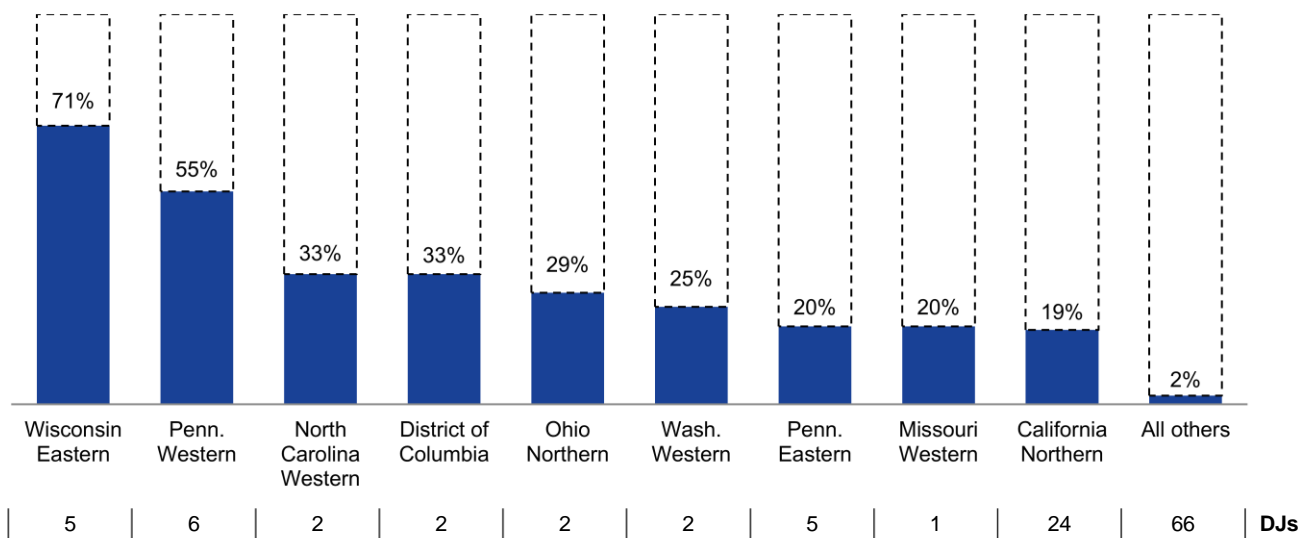
### Methodology Notes:

Districts expressly denoted in Chart 19 are limited to those with at least five NPE cases filed in 2012.

**Chart 18: District Courts with Largest Volume of Declaratory Judgment NPE Cases Filed in 2012**



**Chart 19: District Courts with Largest Proportion of Declaratory Judgment NPE Cases in 2012**



## The ITC Was a Relatively More Popular Venue for NPE Litigation for the Second Straight Year

### Chart 20

Total initiated ITC patent investigations have fluctuated over the past five years with a spike in 2010 and 2011 and a return to 2008-2009 levels in 2012.

### Chart 21

NPE litigation in the ITC has shown a markedly different trend, increasing significantly in 2011 and 2012, indicating that NPEs have viewed the ITC as an increasingly attractive venue in at least some circumstances. While there were fewer NPE patent investigations initiated in 2012 than 2011, 2012 NPE patent investigations initiated was still more than double the NPE investigations initiated in 2008, 2009 or 2010.

### Chart 22

The NPE share of initiated ITC patent investigations in 2012 was a record 38% and has grown by 24 percentage points from 2008 to 2012.

#### Methodology Notes:

RPX reviewed all initiated Section 337 ITC investigations and identified those involving allegations of patent infringement to compile the RPX data set. Investigations were counted based on the year an investigation was initiated, and complaints that had not led to an investigation by the end of 2012 were not included in the data set.

Chart 20: Total Initiated ITC Patent Investigations

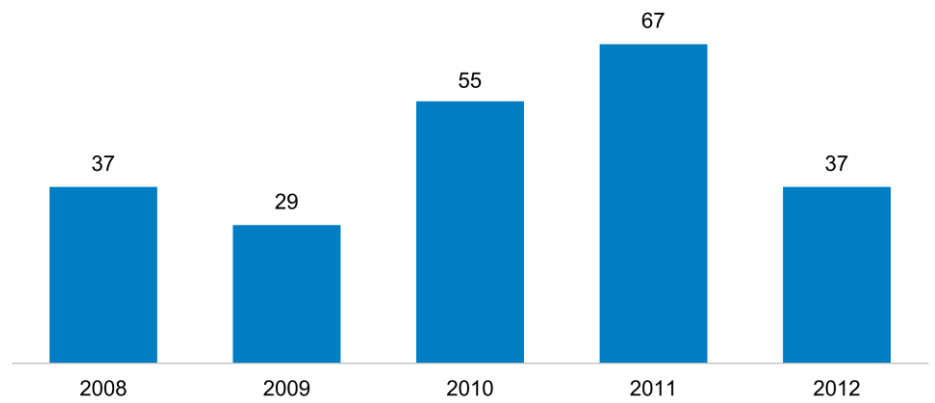


Chart 21: Total Initiated ITC NPE Patent Investigations

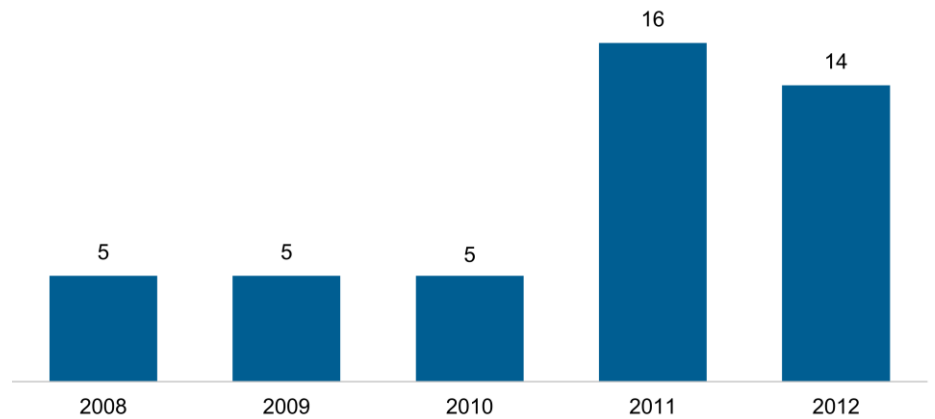
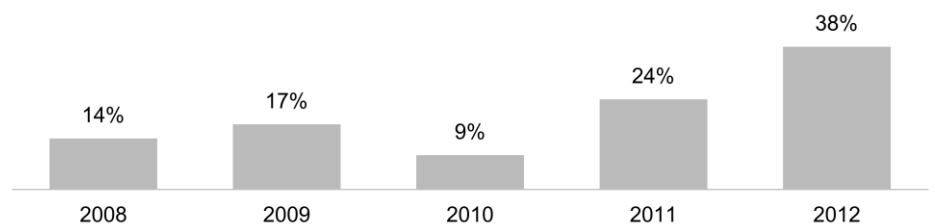


Chart 22: Initiated NPE Investigations as Percent of Initiated ITC Patent Investigations



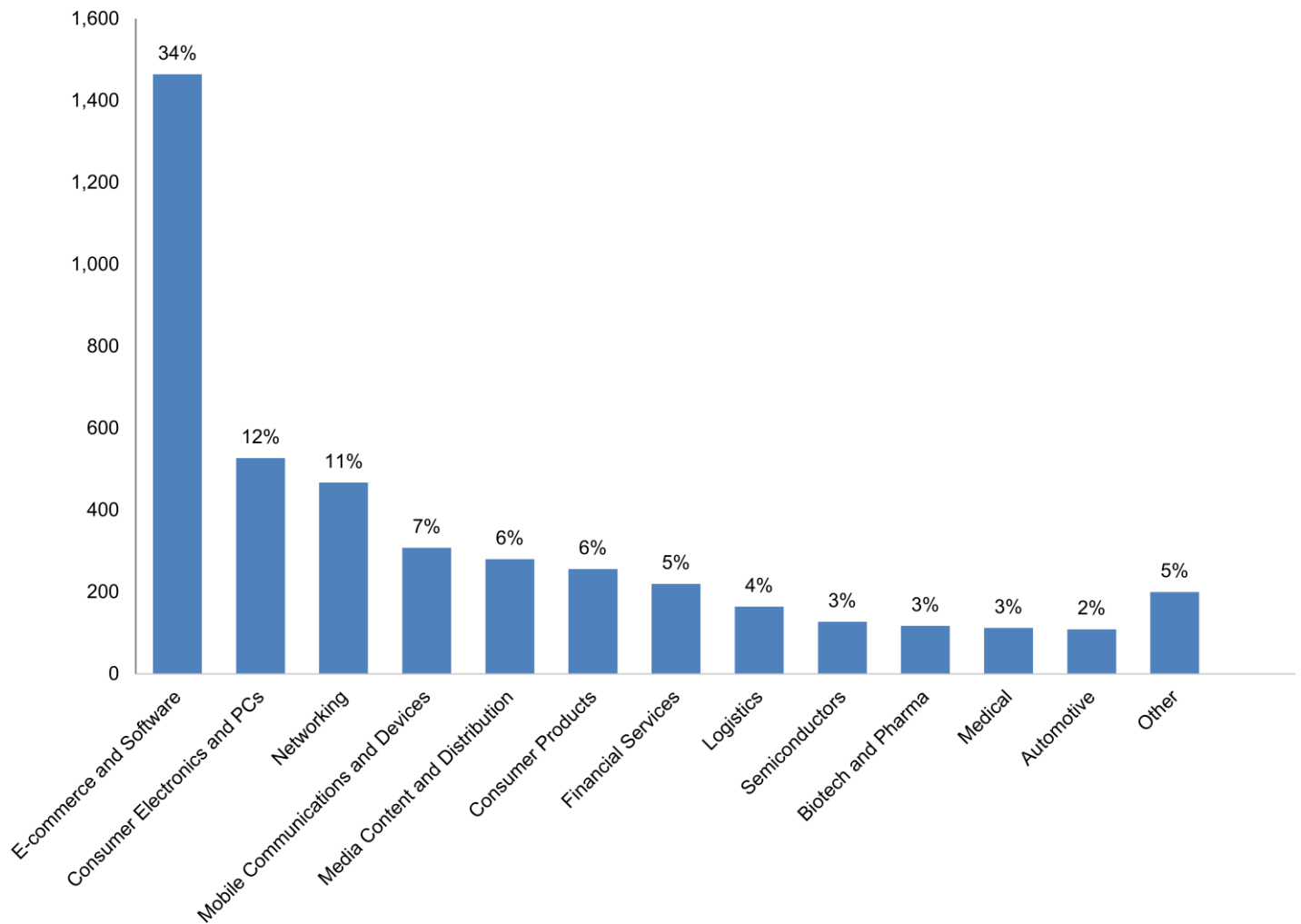
## NPEs Targeted a Broad Range of Sectors but Focused on Information Technology

Total NPE defendants added in E-commerce and Software litigation accounted for over a third of total NPE defendants added in 2012 and accounted for nearly three times as many total NPE defendants added as the next largest category, Consumer Electronics and PCs. NPE litigation touched a broad range of sectors in 2012, including those that may be less commonly thought of as targeted by NPEs such as Consumer Products, Financial Services, Logistics, and Automotive.

### Methodology Notes:

Total NPE defendant added sector is based on the classification of the relevant case. Accordingly a company may be included as an NPE defendant added in multiple sectors to the extent it was in cases classified in multiple sectors.

Chart 23: Total NPE Defendants Added by Sector



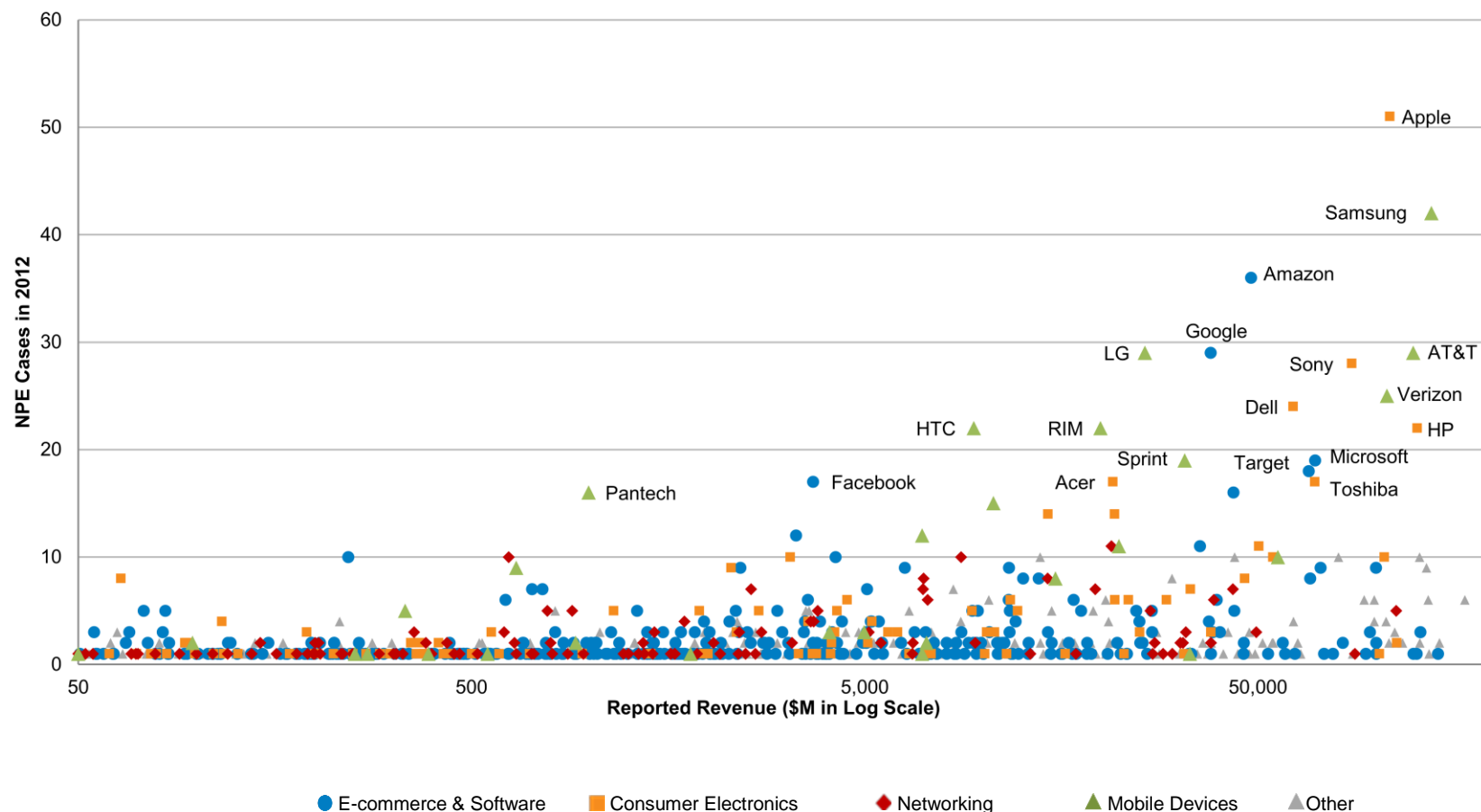
## There Is Some Correlation Between NPE Risk and Sector/Revenue

In 2012 companies that were sued most frequently by NPEs generated high revenues and most commonly were defendants in E-commerce, Mobile, or Consumer Electronics cases. But there was significant variation among companies; many high-revenue companies did not have any NPE cases in 2012, and some smaller companies, such as Pantech, had a significant new caseload.

### Methodology Notes:

Companies were categorized based on the most common RPX sector of cases they were added to in 2012. Revenue is based on data from third party providers and is for annual results available at year-end 2012 (typically 2011 results).

Chart 24: NPE Case Frequency per Company by Sector and Revenue



## Smaller and Private Companies Were Most Common Defendants Added in 2012

### Chart 25

Three fourths of the unique NPE defendants added and over one half of the total NPE defendants added in 2012 were private companies.

### Chart 26

Small companies were also often targeted by NPEs in 2012. Companies with less than \$100M in revenue accounted for over half of the unique NPE defendants added and nearly half of total NPE defendants added.

*Methodology Notes: Revenue is based on data from third party providers and is for annual results available at time of report (typically 2011 results). Ownership type is also based on data from third party providers. Ownership type may change across time as companies switch from private to public and vice versa.*

Chart 25: NPE Defendants Added by Ownership Type

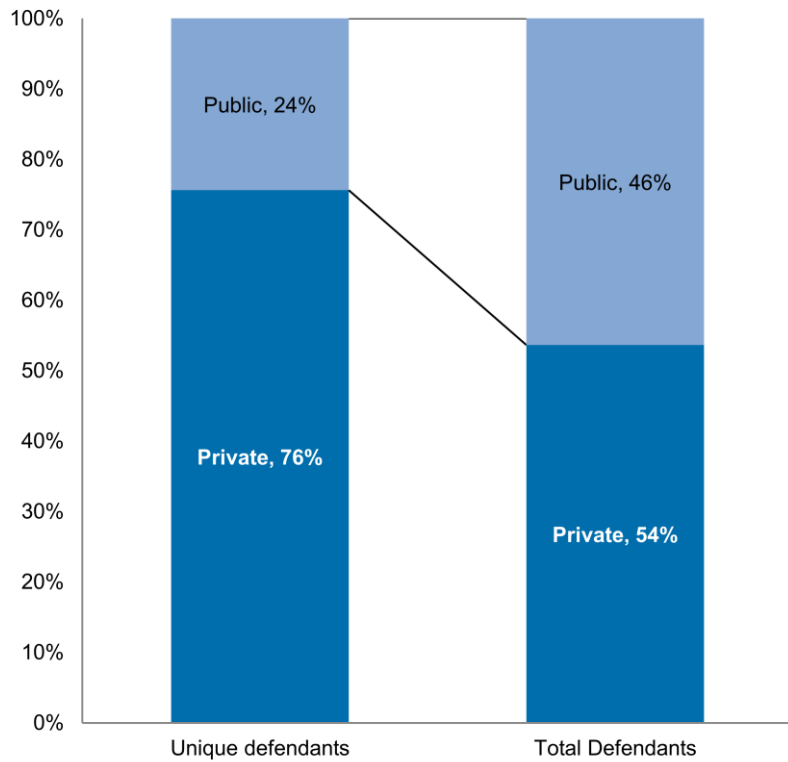
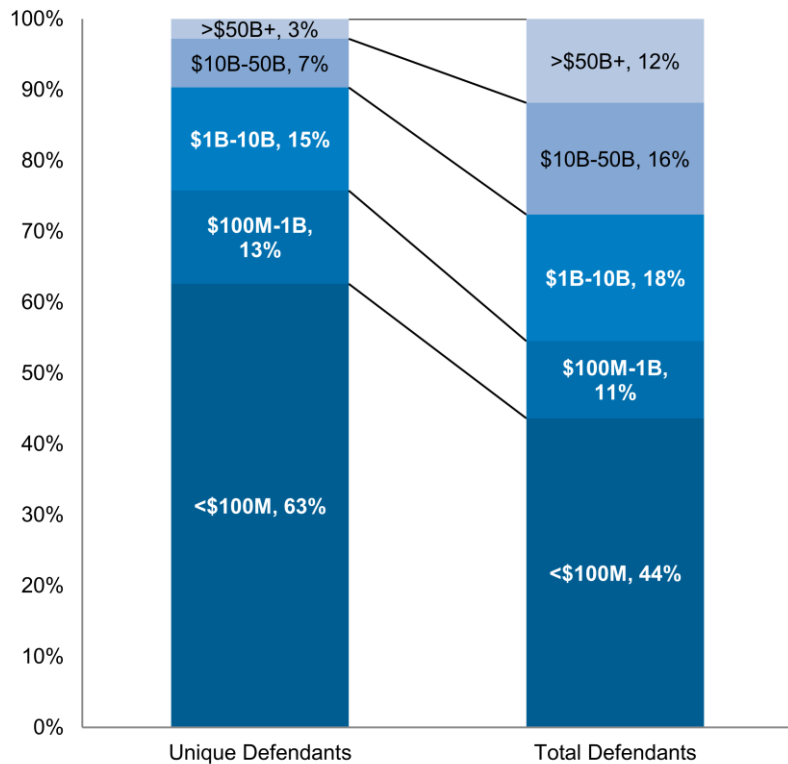


Chart 26: NPE Defendants Added by Company Revenue



## Larger and Public Companies Had Highest Frequency of NPE Suits

### Chart 27

Public companies experienced the highest frequency of new suits in 2012. Public companies with at least one new NPE case in 2012 averaged 3.3 new cases while private companies with at least one new NPE case averaged just 1.2 new cases.

### Chart 28

Companies with higher revenue were more likely to be repeat targets. Companies with at least one new case and at least \$50B in revenue averaged 7.3 new cases. Companies with at least one new case and revenue of \$100M or less averaged just 1.2 new cases.

**Methodology Notes:** Revenue is based on data from third party providers and is for annual results available at time of report (typically 2011 results). Ownership type is also based on data from third party providers. Ownership type may change across time as companies switch from private to public and vice versa.

Chart 27: Cases per Unique Defendant by Ownership Type

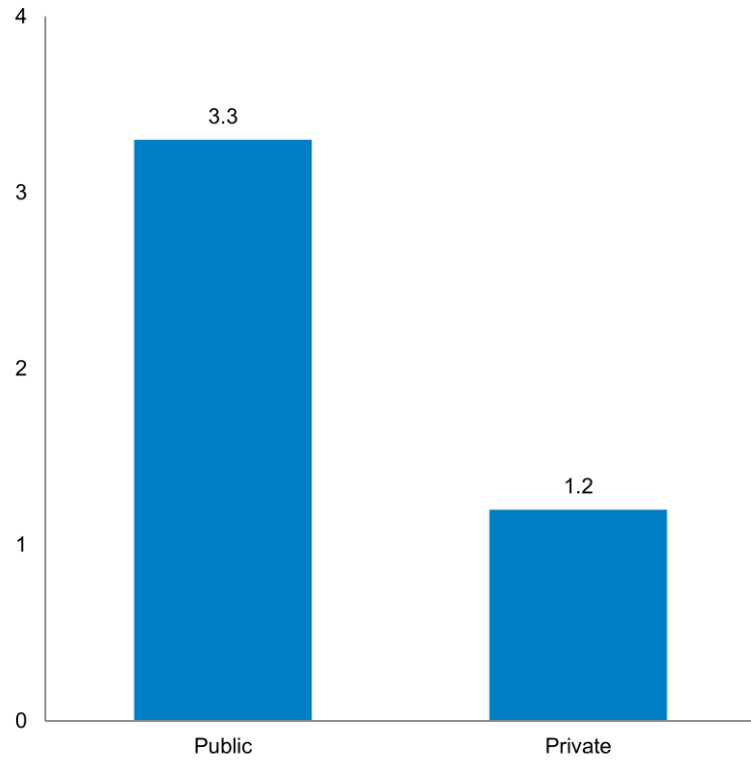
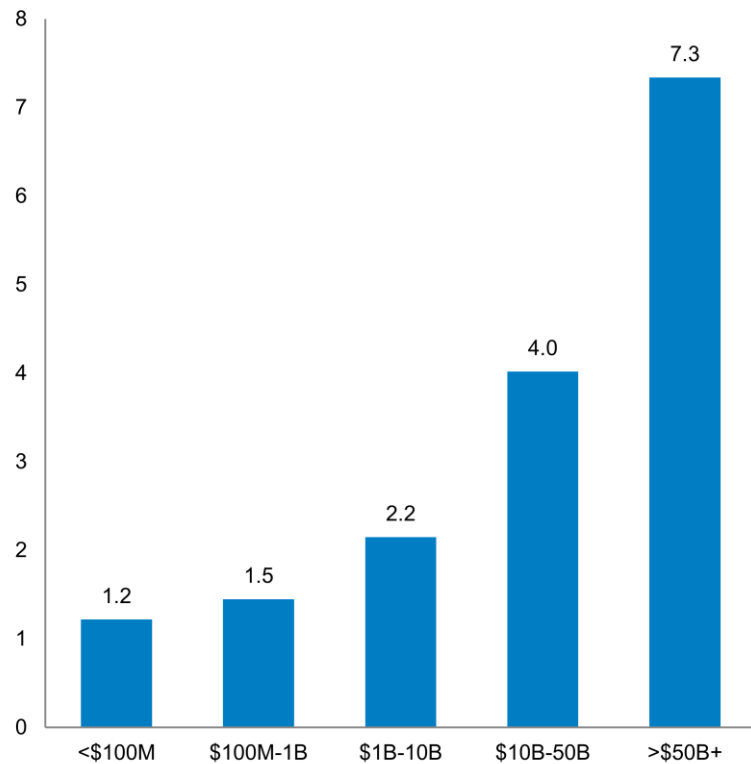


Chart 28: Cases per Unique Defendant by Company Revenue



## Top 15 Defendants in 2012 Were Concentrated in Mobile and/or Consumer Electronics

**Table 29**

The companies most commonly sued by NPEs in 2012 were concentrated in the mobile and consumer electronics industry. Wal-Mart was the only top 15 defendant without a significant presence in the mobile or consumer electronics industries.

All of the companies in the top 15 were also commonly targeted in 2011. Among the top 15, Wal-Mart saw the largest percentage increase (29%) and Microsoft saw the largest percentage decrease (46%) in 2012 new cases as compared to 2011.

Most companies (12 of 15) had fewer new cases in 2012 than 2011, reflecting the impact of the AIA on total NPE defendants added.

**Table 30**

Companies with the largest number of active cases at the end of 2012 were also concentrated in the mobile and consumer electronics industries. Apple saw the largest increase in active cases and had 82 suits pending at the end of 2012 (26 more than at the end of 2011).

Among the top 15 defendants by active cases at year-end, only four had fewer suits pending at year-end 2012 than year-end 2011 as new cases outpaced completed cases for most defendants.

**Methodology Notes:**

Google and Motorola Mobility included separately —Google's acquisition of Motorola Mobility closed mid-year 2012.

**Table 29: Top 15 NPE Defendants by New Cases**

Defendant	2012	2011
1 Apple	51	43
2 Samsung	42	43
3 Amazon.com	36	46
4 AT&T	29	36
5 Google, Inc.	29	36
6 LG Electronics, Inc.	29	25
7 Sony Corporation	28	49
8 Motorola Mobility Incorporated	26	32
9 Verizon Communications Incorporated	25	30
10 Dell Incorporated	24	35
11 Hewlett-Packard	22	37
12 HTC Corporation	22	27
13 Research In Motion Limited	22	28
14 Wal-Mart Stores	22	17
15 Microsoft	19	35

**Table 30: Top 15 NPE Defendants by Active Cases at Year-End**

Defendant	2012	2011
1 Apple	82	56
2 Sony Corporation	63	60
3 Samsung	60	52
4 Google, Inc.	58	51
5 Amazon.com	52	46
6 AT&T	51	43
7 HTC Corporation	50	41
8 Dell Incorporated	44	44
9 LG Electronics, Inc.	43	45
10 Hewlett-Packard	42	53
11 Motorola Mobility Incorporated	41	28
12 Toshiba Corporation	38	34
13 Verizon Communications Incorporated	36	40
14 Microsoft	35	39
15 Sprint Nextel Corporation	29	29

## Patents Related to Mobile and Software Were Most Frequently Asserted in NPE Suits

Patents asserted by NPEs in 2012 most commonly had USPC codes associated with telecommunications and data processing. The top five class codes accounted for 34% of unique patents asserted by NPEs in 2012.

**Methodology Notes:**  
Common RPX Categories are the most common RPX sector classifications for cases in which patents of the applicable United States Patent Classification ("USPC") code were asserted in 2012.

**Table 31: Most Frequent USPC Classes of Patents Asserted by NPEs in 2012**

USPC Code	Common RPX Categories*	Unique Patents	Total Defendants
455: Telecommunications	Networking, Mobile Communications, and Devices	135	650
709: Electrical Computers and Digital Processing Systems: Multicomputer Data Transferring	E-commerce and Software, Networking	128	844
705: Data Processing: Financial, Business Practice, Management, or Cost/Price Determination	E-commerce and Software, Financial Services	93	782
340: Communications: Electrical	Logistics, E-commerce and Software	76	459
370: Multiplex Communications	Networking, Mobile Communications and Devices	72	709
715: Data Processing: Presentation Processing of Document, Operator Interface Processing, and Screen Saver Display Processing	E-commerce and Software, Media Content and Distribution	64	498
701: Data Processing: Vehicles, Navigation, and Relative Location	Logistics, Automotive	57	627
345: Computer Graphics Processing and Selective Visual Display Systems	Mobile Communications and Devices, Consumer Electronics and PCs	38	195
707: Data Processing: Database and File Management or Data Structures	E-commerce and Software, Media Content and Distribution	32	142
713: Electrical Computers and Digital Processing Systems: Support	E-commerce and Software, Mobile Communications and Devices	32	285
379: Telephonic Communications	Networking, E-commerce and Software	29	218
348: Television	Consumer Electronics and PCs, E-commerce and Software	26	92
606: Surgery	Medical, Biotech and Pharma	25	37
235: Registers	Financial Services, E-commerce and Software	22	146
710: Electrical Computers and Digital Data Processing Systems: Input/Output	E-commerce and Software, Networking	22	231
375: Pulse or Digital Communications	Networking, Consumer Electronics and PCs	21	152
725: Interactive Video Distribution Systems	Media Content and Distribution, Consumer Electronics and PCs	19	46
362: Illumination	Consumer Products, Consumer Electronics and PCs	18	100
514: Drug, Bio-Affecting and Body Treating Compositions	Biotech and Pharma, Medical	18	310
All others		559	2812



## Asserted Patents Most Frequently Claim Priority to Technology Boom

Patents asserted in 2012 most commonly had a priority date between 1998 and 2001, a period generally considered as a technology boom (and that subsequently resulted in the bursting of a technology bubble). Over the past five years, the mean and median priority dates of asserted patents have not changed substantially. From 2008 to 2012, the mean and median priority dates have moved only two years later (1997 to 1999).

### Methodology Notes:

Priority date is based on filing date of earliest-filed family member.

Chart 32: Priority Date of NPE Asserted Patents in 2012

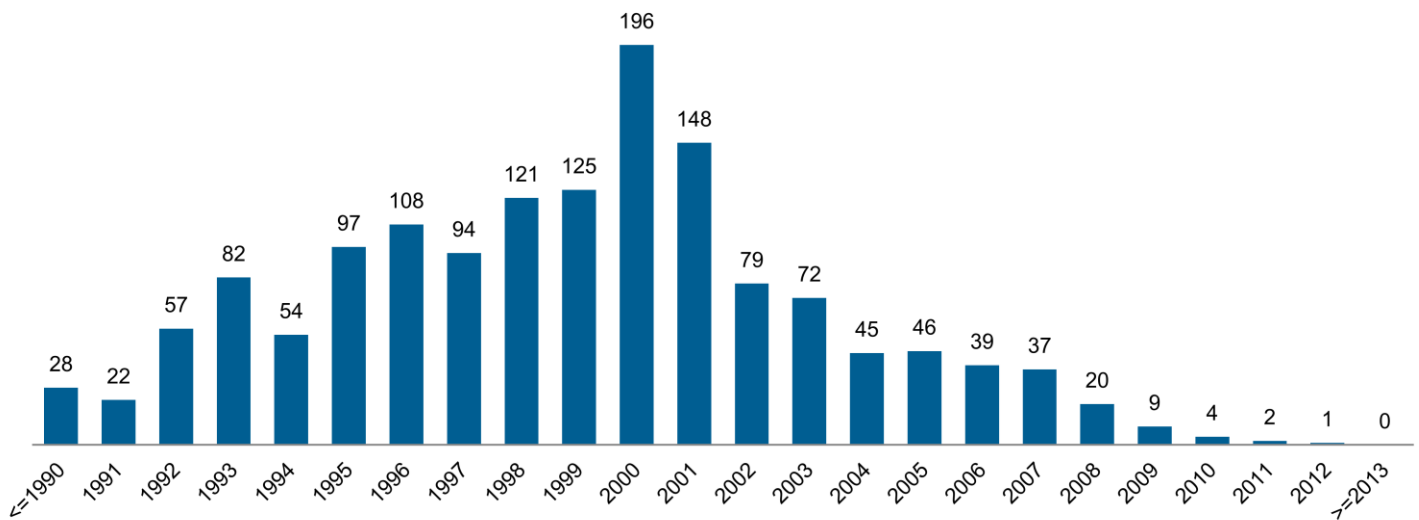


Table 33: Mean/Median Priority Date of NPE Asserted Patents by Year of Assertion

	2008	2009	2010	2011	2012
Mean Year	1997	1997	1998	1999	1999
Median Year	1997	1998	1998	1999	1999

## Over Half of NPE Cases Involved Only One Asserted Patent

NPEs asserted 2.2 patents on average in cases filed in 2012 but asserted a single patent in a majority of cases filed. Less than a third of cases filed had more than two asserted patents. In addition, patents asserted together tend to be related. Nearly 90% of cases filed in 2012 included asserted patents from a single family; 6% of cases filed included asserted patents from more than two patent families.

Chart 34: Number of Asserted Patents in NPE Cases Filed in 2012

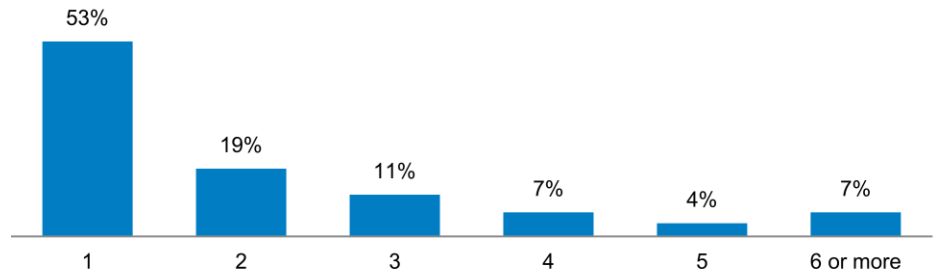
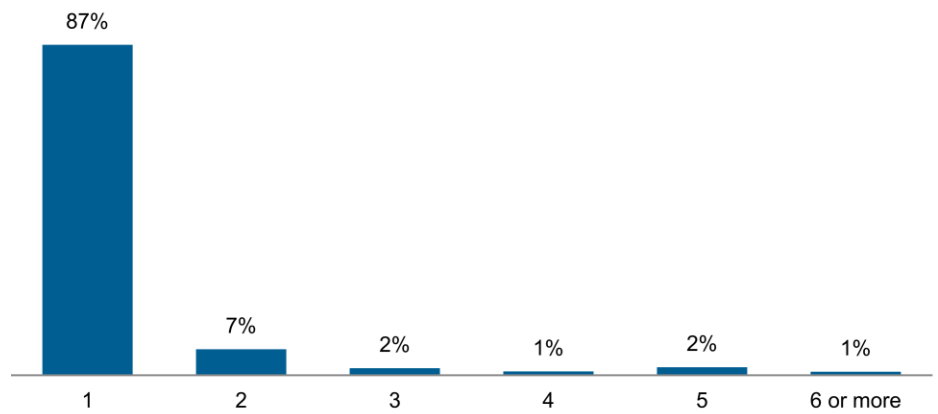


Chart 35: Number of Asserted Patent Families in NPE Cases Filed in 2012



## Over Half of NPE Cases That Ended in 2012 Lasted Less than Six Months

### Chart 36

Most NPE cases that ended in 2012 ended within six months of filing. Less than 30% of cases lasted more than a year. On average, cases that ended in 2012 lasted 11 months.

### Chart 37

Similarly, nearly half of active cases at year-end 2012 had been pending for less than six months. On average, cases active at year-end in 2012 had been pending for 11 months.

#### Methodology Notes:

Statistics regarding duration are likely skewed towards shorter periods due to a significant increase in NPE litigation over the past five years. By way of example, there was a much smaller set of cases that could have lasted five years than those that could have lasted six months or less in 2012 because there were fewer cases filed five years ago. This effect likely applies to all duration statistics.

Chart 36: Duration of NPE Cases Ended in 2012 (N=1,700)

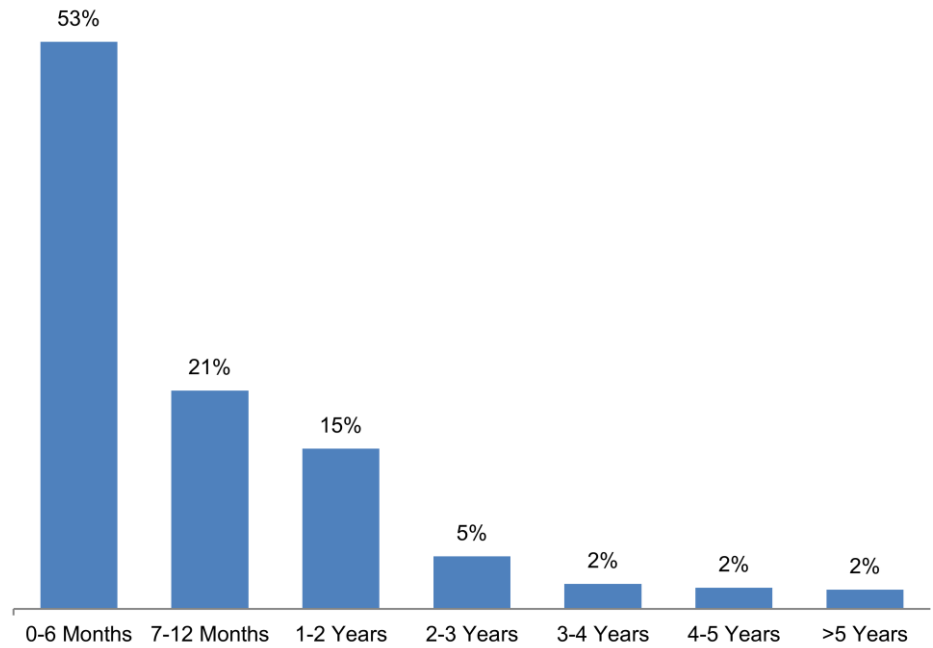
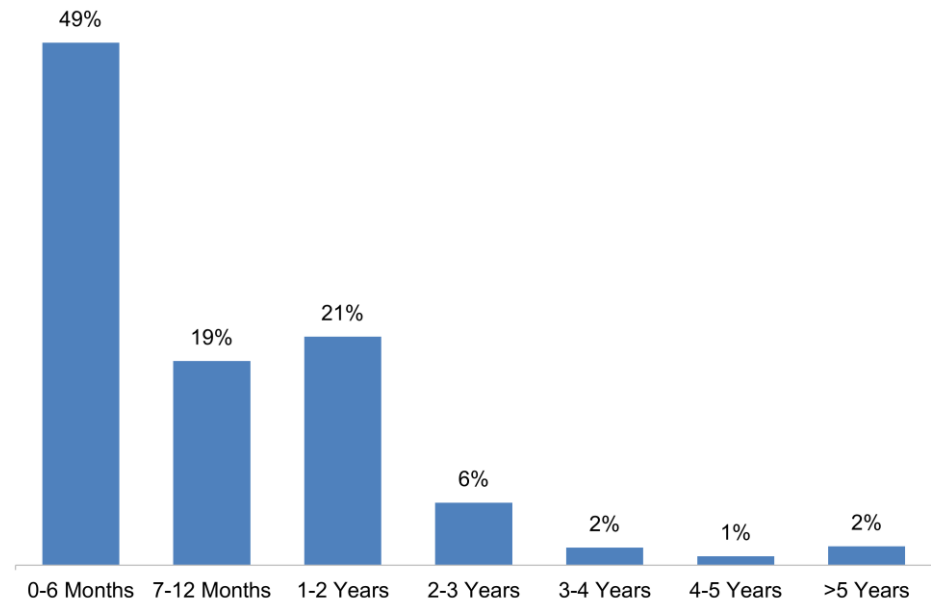


Chart 37: Duration of NPE Cases Active at Year-end 2012 (N=3,240)



## Most NPE Defenses Terminated in 2012 Lasted Less than One Year

### Chart 38

More than 60% of defendants terminated in 2012 terminated within one year of filing, and less than 15% lasted more than two years. The average time in litigation for defendants terminated in 2012 was 13 months.

### Chart 39

The distribution of active defendants at year-end 2012 was similar to active cases. On average, defendants active at year-end 2012 had been in litigation for 15 months.

#### Methodology Notes:

Duration of litigation for defendants is calculated for each defendant/case combination, starting on the date each defendant was added and ending on the date each defendant was terminated. As described on the prior page, statistics are likely skewed towards shorter periods.

Chart 38: Duration of Litigation for Defendants Terminated in 2012 (N=4,214)

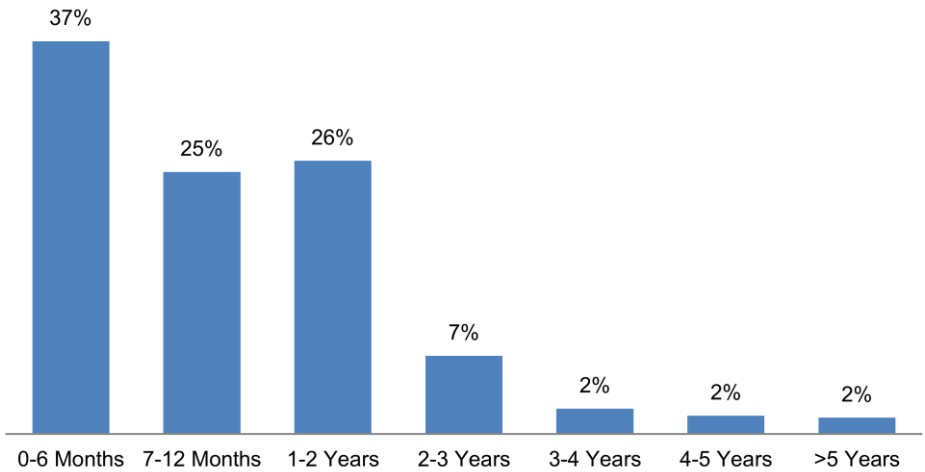
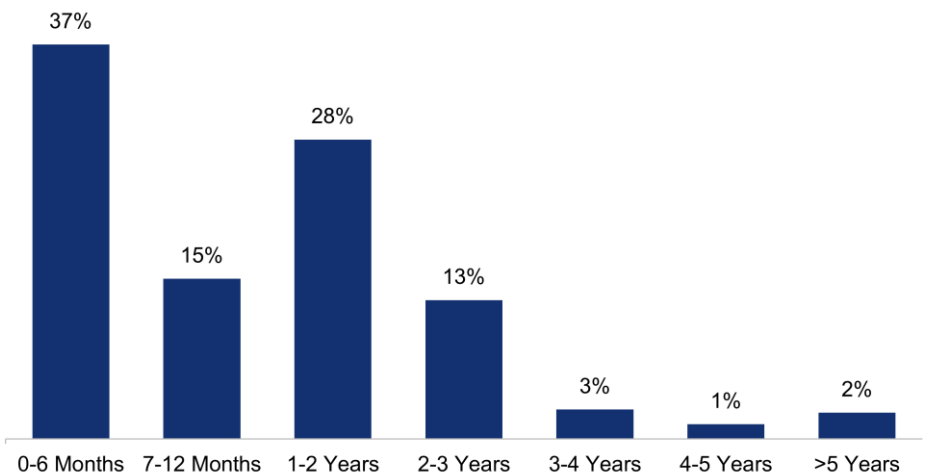


Chart 39: Duration of Litigation for Defendants Active at Year-end 2012 (N=5,981)



## IP Navigation and Acacia Were Top NPE Filers in 2012

Well known serial NPEs, IP Navigation and Acacia, led NPEs in both the number of NPE cases filed in 2012 and total NPE defendants added in 2012. Both entities have a substantial history of assertions prior to 2012. In contrast, many of the NPEs rounding out the top 10 filed all or substantially all of their cases in 2012.

**Table 40: Top 10 NPEs by Cases Filed in 2012**

Rank	NPE	2012	Active at YE 2012
1	IP Navigation Group LLC	305	280
2	Acacia Research Corporation	222	235
3	Empire IP	102	118
4	Arrivalstar SA / Melvino Technologies	98	32
5	The Tawnsaura Group LLC	74	53
6	Brandywine Communications Technologies LLC	66	69
7	Pragmatus Telecom LLC	66	50
8	Novelpoint Holdings LLC	55	27
9	Blue Spike LLC	55	52
10	Uniloc Corporation Pty Limited	51	53

**Table 41: Top 10 NPEs by Total Defendants Added in 2012**

Rank	NPE	2012	Active at YE 2012
1	IP Navigation Group LLC	357	506
2	Acacia Research Corporation	317	372
3	Empire IP	239	195
4	Arrivalstar SA / Melvino Technologies	111	40
5	Blue Spike LLC	83	79
6	The Tawnsaura Group LLC	80	55
7	Brandywine Communications Technologies LLC	69	68
8	Pragmatus Telecom LLC	68	59
9	e.Digital Corporation	67	67
10	Novelpoint Holdings LLC	64	26

## IP Navigation and Acacia Also Were Also Top NPEs by Filings over Past Five Years

IP Navigation and Acacia were also the top NPEs by NPE cases filed and total NPE defendants added over the past five years. The list of top NPEs by cases filed in the past five years is largely similar to 2012 due to a dramatic increase in cases filed in 2012 after enactment of the AIA (8 out of 10 the same).

Among top NPEs by total defendants added over the past five years, five of the top ten appear to be winding down their campaigns with less than 10% of total defendants added occurring in 2012.

**Table 42: Top 10 NPEs by Cases Filed from 2008-2012**

Rank	NPE	Past 5 Years	2012 Only
1	IP Navigation Group LLC	446	305
2	Acacia Research Corporation	402	222
3	Arrivalstar SA / Melvino Technologies	212	98
4	Empire IP	137	102
5	Geotag Incorporated	105	1
6	Brandywine Communications Technologies LLC	93	66
7	Network Signatures	81	9
8	The Tawnsaura Group LLC	74	74
9	Pragmatus Telecom LLC	67	66
10	Uniloc Corporation Pty Limited	61	51

**Table 43: Top 10 NPEs by Total Defendants Added from 2008-2012**

Rank	NPE	Past 5 Years	2012 Only
1	IP Navigation Group LLC	1638	357
2	Acacia Research Corporation	1276	317
3	Geotag Incorporated	423	7
4	Arrivalstar SA / Melvino Technologies	409	111
5	PJC Logistics LLC	322	7
6	Empire IP	304	239
7	Select Retrieval LLC	223	16
8	Uniloc Corporation Pty Limited	166	55
9	Stambler	162	15
10	Parallel Networks LLC	133	0

## Top 10 NPEs Were Responsible for over One Third of Cases and Defendants

The top 10 NPEs in 2012 accounted for about 35% of NPE cases filed and total NPE defendants added. Serial NPEs, a group that overlaps with the top 10 NPEs, accounted for about 30% of NPE cases filed and total NPE defendants added in 2012.

### Methodology Notes:

The top 10 NPEs are those listed in Chart 40 (cases) and Chart 41 (defendants). Serial NPEs are NPEs that RPX has identified as having initiated three or more assertion campaigns, including campaigns before 2012. Using this definition, there were 64 serial NPEs at the end of 2012.

Chart 44: Share of NPE Filings from Top 10 NPEs in 2012

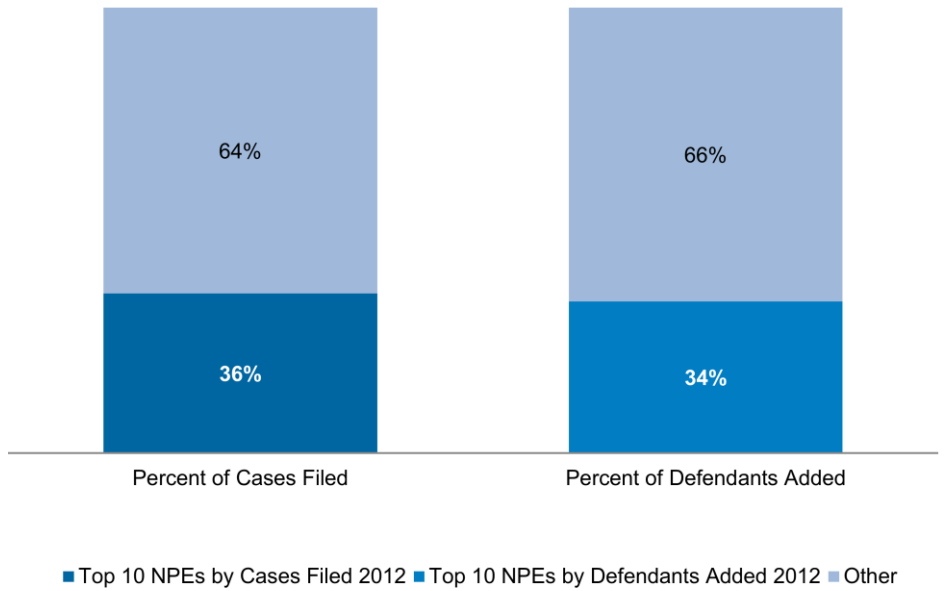
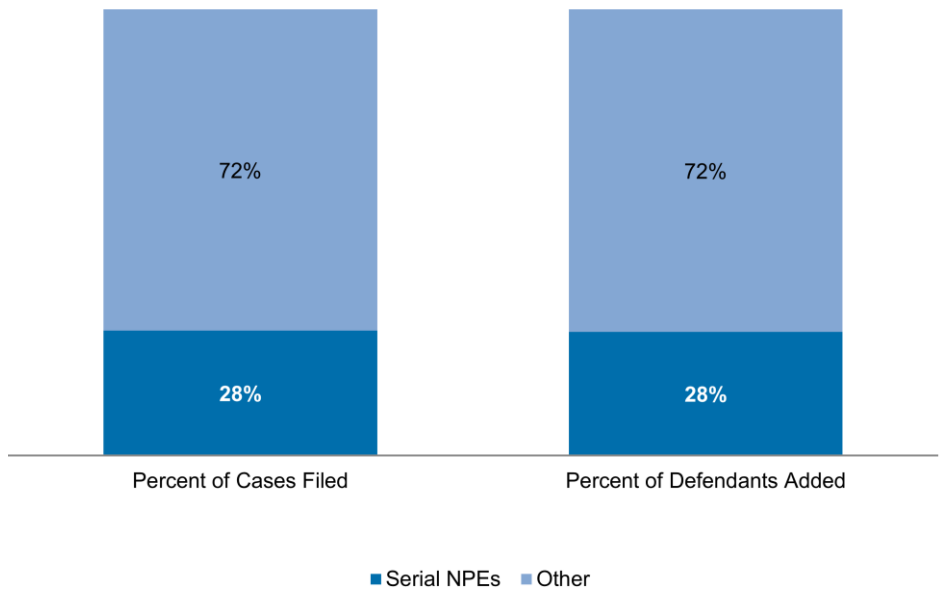


Chart 45: Share of NPE Filings from Serial NPEs in 2012



## Assertions by PAEs Accounted for the Overwhelming Majority of NPE Cases

Patent assertion entities dominated NPE activity in 2012. Inventors, non-competing entities, and universities together accounted for less than 10% of NPE cases filed and total NPE defendants added.

Chart 46: NPE Cases Filed in 2012 by NPE Type

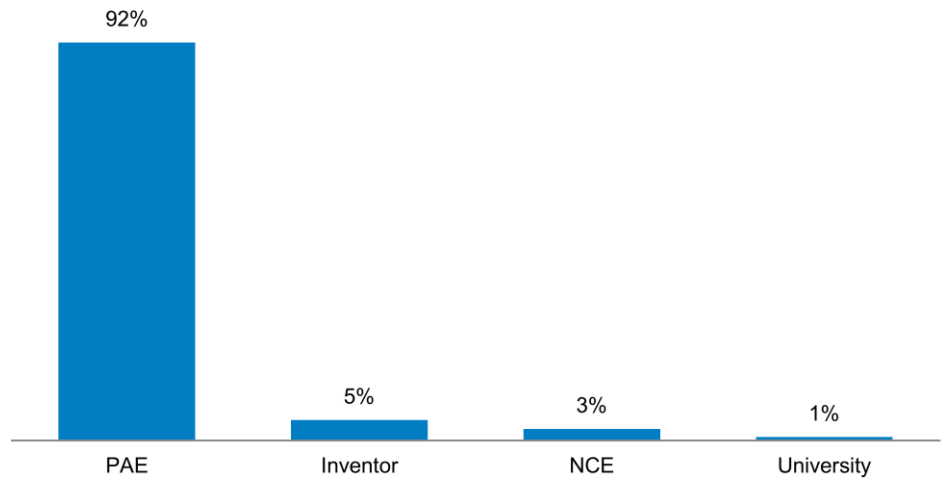
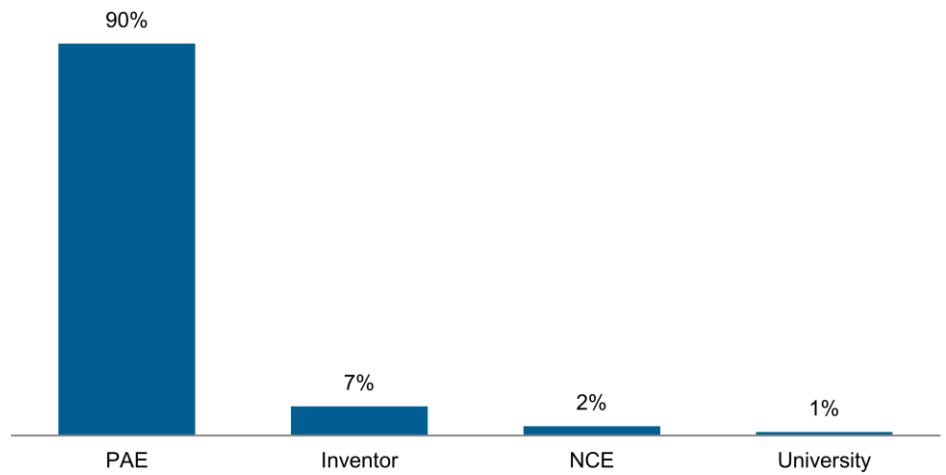


Chart 47: Total NPE Defendants Added in 2012 by NPE Type





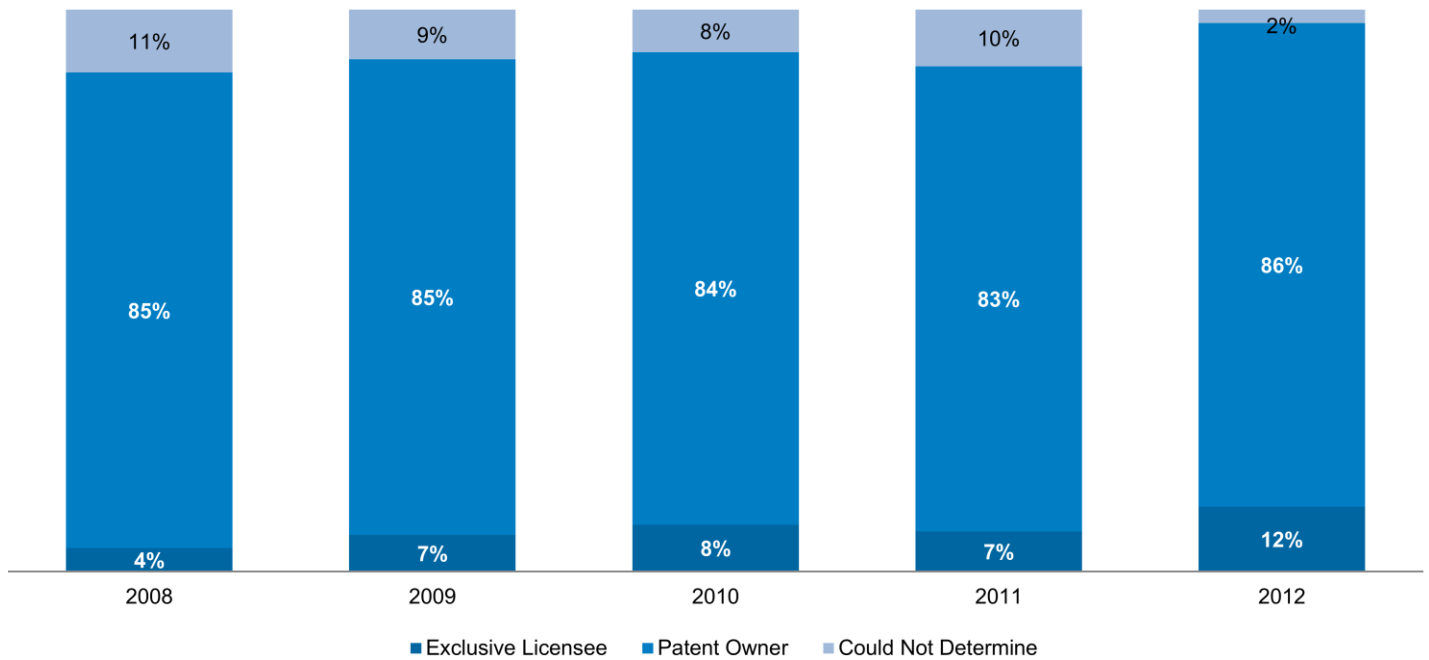
## NPE Suits Filed by Exclusive Assignee Rose from 2008–2012

The proportion of NPE suits filed by exclusive assignees more than doubled over the past five years. This was in line with the growth of serial NPEs, such as Acacia, which are often associated with assertion as an exclusive licensee.

### Methodology Notes:

RPX manually reviewed complaints to determine whether a patent owner or exclusive licensee filed a case. In some cases, RPX was not able to identify ownership of the asserted patents (for example, cases in which the complaint was not publicly available).

Chart 48: NPE Cases Filed by Type of Patent Rights



## About RPX

RPX Corporation (NASDAQ: RPXC) provides patent risk solutions, helping corporations reduce and manage the costs of patent risk. We provide a more rational and efficient alternative to the traditional litigation approach to patent assertion defense, offering defensive buying, acquisition syndication, patent intelligence, insurance services, and advisory services.

Defensive buying and acquisition syndication leverages the combined strength of companies facing NPE assertion. RPX acquires high-risk patents and rights in the open market and out of litigation—patents and rights that would otherwise be used against our members. For a set annual fee, each member in our network receives a license to all patents we have aggregated in the growing RPX portfolio. RPX also organizes syndicated acquisitions in which members cooperate to acquire high-value portfolios and rights at an attractive price.

In addition to risk reduction through patent acquisitions, RPX provides industry-leading market intelligence covering NPEs, litigation, and the patent marketplace. Through our intelligence, members gain visibility into company-specific patent risk, enabling them to make informed, strategic decisions on patent matters.

By year-end 2012, the RPX network had grown to 140 companies in under five years. The RPX membership consists of companies across a broad range of industries including consumer electronics and personal computing, E-commerce and software, media content and distribution, mobile communications and handsets, networking, semiconductors, and financial services. Our buying power, capacity for gathering and disseminating market intelligence, and expertise in valuing and acquiring patent assets continues to grow as our client network expands.

RPX is transforming how operating companies mitigate and manage NPE patent risk. Because we will never assert or litigate patents, our interests are 100% aligned with those of our clients. Our success depends entirely on our ability to provide our clients with high-value service that reduces their cost and risk of patent assertion.

As of year-end 2012, RPX had:

- Reviewed more than 4,100 patent portfolios
- Completed 120 acquisitions, deploying over \$620 million in capital, of which approximately \$400 million was RPX capital
- Achieved over 300 dismissals from over 40 litigations for members
- Mitigated an estimated \$1.2 billion in patent assertion defense cost for members
- Acquired or sub-licensed rights to over 3,300 patents

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