

Patent Litigation Trends:

Some Statistical Observations

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UHLIC

There are three kinds of lies:
lies, damned lies, and statistics.

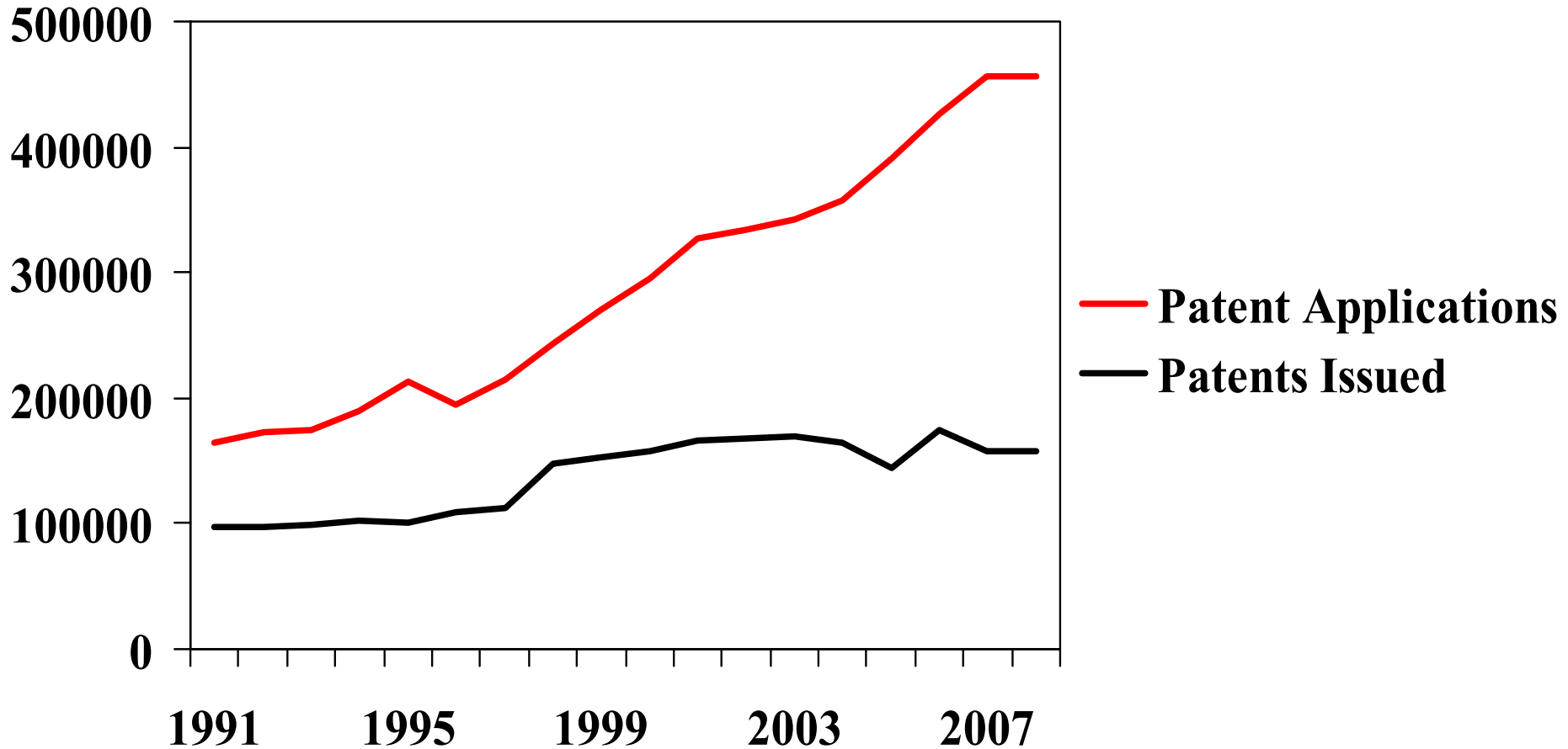
Benjamin Disraeli

Patstats.org

- Issue Oriented Statistical Review of U.S. Patent Cases
- Quarterly and Yearly Data
- Commentary on Trends
- University of Houston Law Center's Institute for Intellectual Property and Information Law

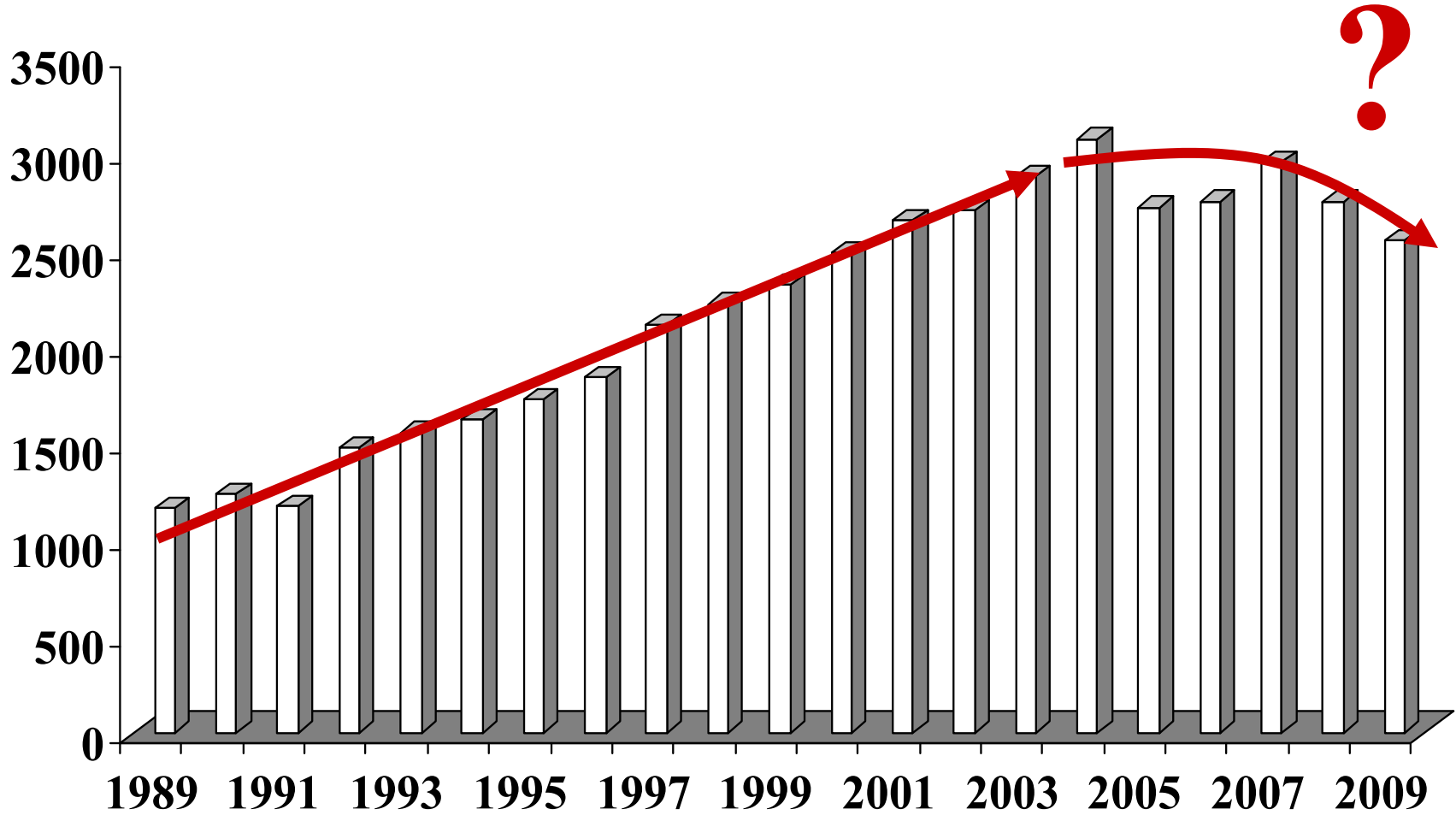
Applications vs. Grants

Last 3 Years Are Level



Source: www.uspto.gov

Patent Lawsuits



Not everything that can be counted counts; and not everything that counts can be counted.

Albert Einstein

2009 IPO Issues

Dispositions

Infringement/Validity

Damages

Permanent Injunctions (post *eBay*)

Trial Level: ~2700 Cases / Year

- 86% Settle before trial
- 1% Settle during trial
- 8% Summary judgment
- 3% Jury-based judgments
- 2% Bench trial

Excluding Settlements: Patentees continue to lose ground

	2000-2004	2005-2008
Literal	29 %	29 % --
DOE	16 %	13 % -3
102 (a), (b)	42 %	48 % +6
103	39 %	49 % +10



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3% Jury-Based Judgments

- \approx 50-70 Jury-based judgments per year
- \approx 75% win rate for patentee
- Many of the jury-based judgments are settled on appeal.

Appeals

- ~ 400 appeals per year to Federal Circuit
- ~ 200 actually decided by panels
 - most are **remanded** [damages set aside, due to errors on merits]
 - many others are disposed of on non-patent merits issues [personal jurisdiction, etc.]
 - only ~ 90 are really win/lose

Patentees Win More Reversals

- Infringement, where patentee lost below

Literal	56 %
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DOE	65 %
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- Validity

102(a), (b)	61 %
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103	48 %
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But . . . Affirmances Greatly Outnumber Reversals

- Infringement

Literal 427 for AI, 122 for patentee

DOE 266 for AI, 35 for patentee

- Validity

102(a), (b) 105 for AI, 86 for patentee

103 64 for AI, 65 for patentee

Bottom Line

- Patent Owners are getting beat in the district courts
- Mostly stemming from a unfavorable claim construction
- They recover a little on appeal, but not enough to overcome affirmances

Damages

- Data collected at the jury level
 - no interest, enhancement, or remittitur
- We update every 2-3 months, since 1/1/2005
- List case names and courts

Damages

Jury-based verdicts

- Counting only the “wins”
average is ~ \$ 46 M
median is \$ 6.5 M

BUT.....

Damages: Top 10

1,500,000,000

431,867,351

368,043,056

306,900,000

250,000,000

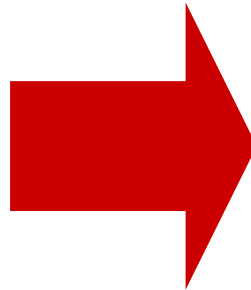
226,300,000

185,000,000

184,044,048

156,000,000

133,000,000



1,500,000,000

431,867,351

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250,000,000

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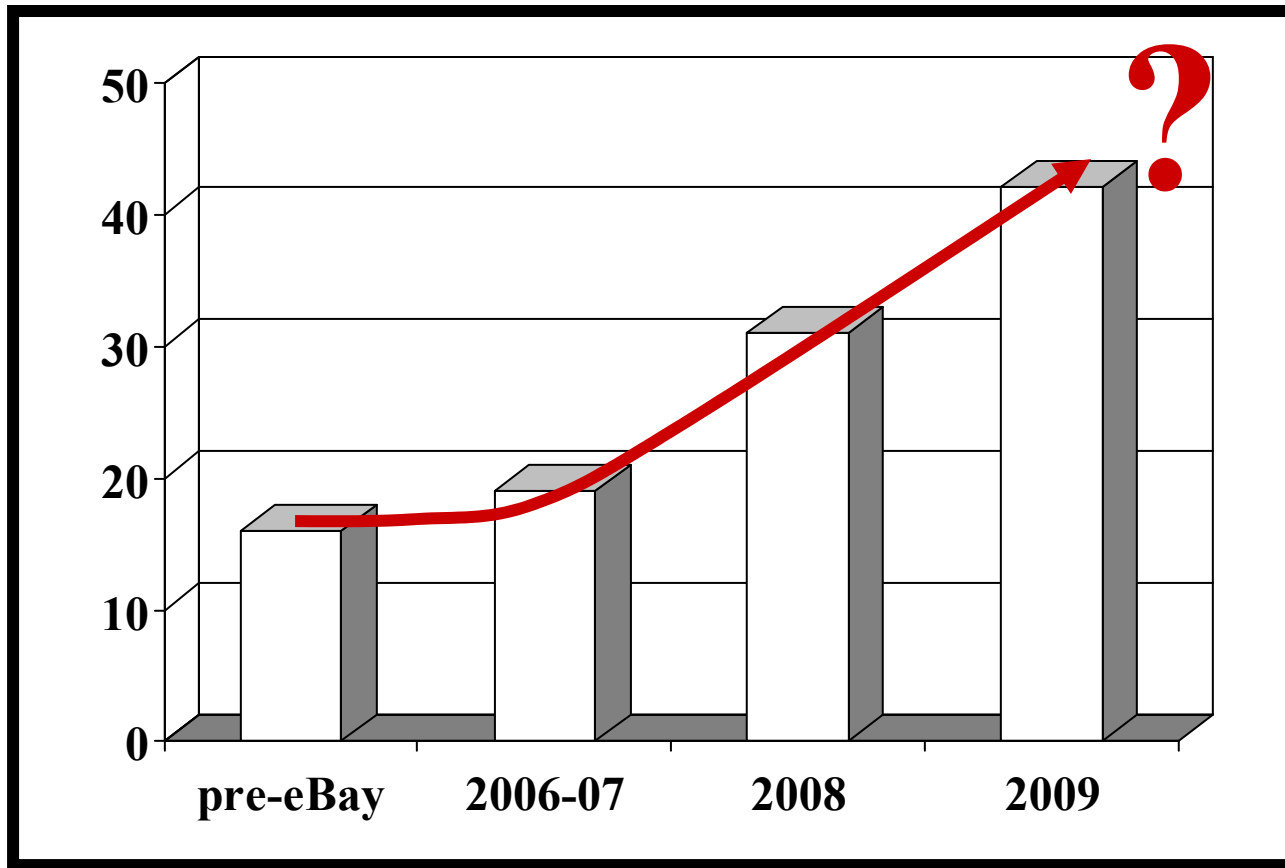
185,000,000

184,044,048

156,000,000

133,000,000

Impact of *eBay* on Permanent Injunctions



Denials

O most lame and impotent
conclusion!

William Shakespeare

THE RESULTS ARE PRETTY CONCLUSIVE, IT SEEMS THAT 75.8% OF THE 65.2% OF GPs WHO BOTHERED TO VOTE WERE 29.3% HAPPY WITH 14.2% OF THE PROPOSALS...AND THE REST WEREN'T SURE!

