

2009 Patent Damages Study

Preliminary Results

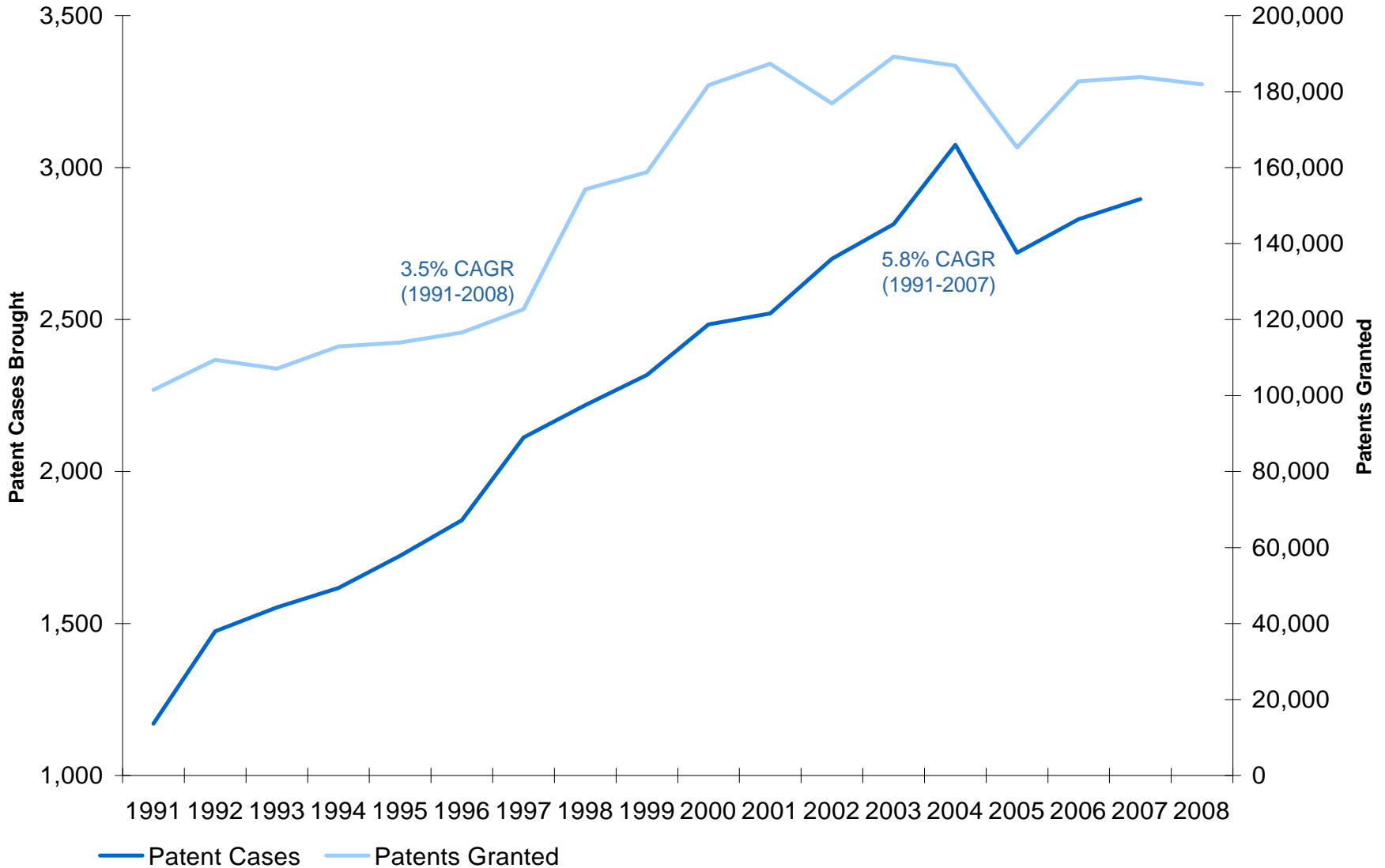
FTC Panel Discussion
February 11, 2009

Aron Levko



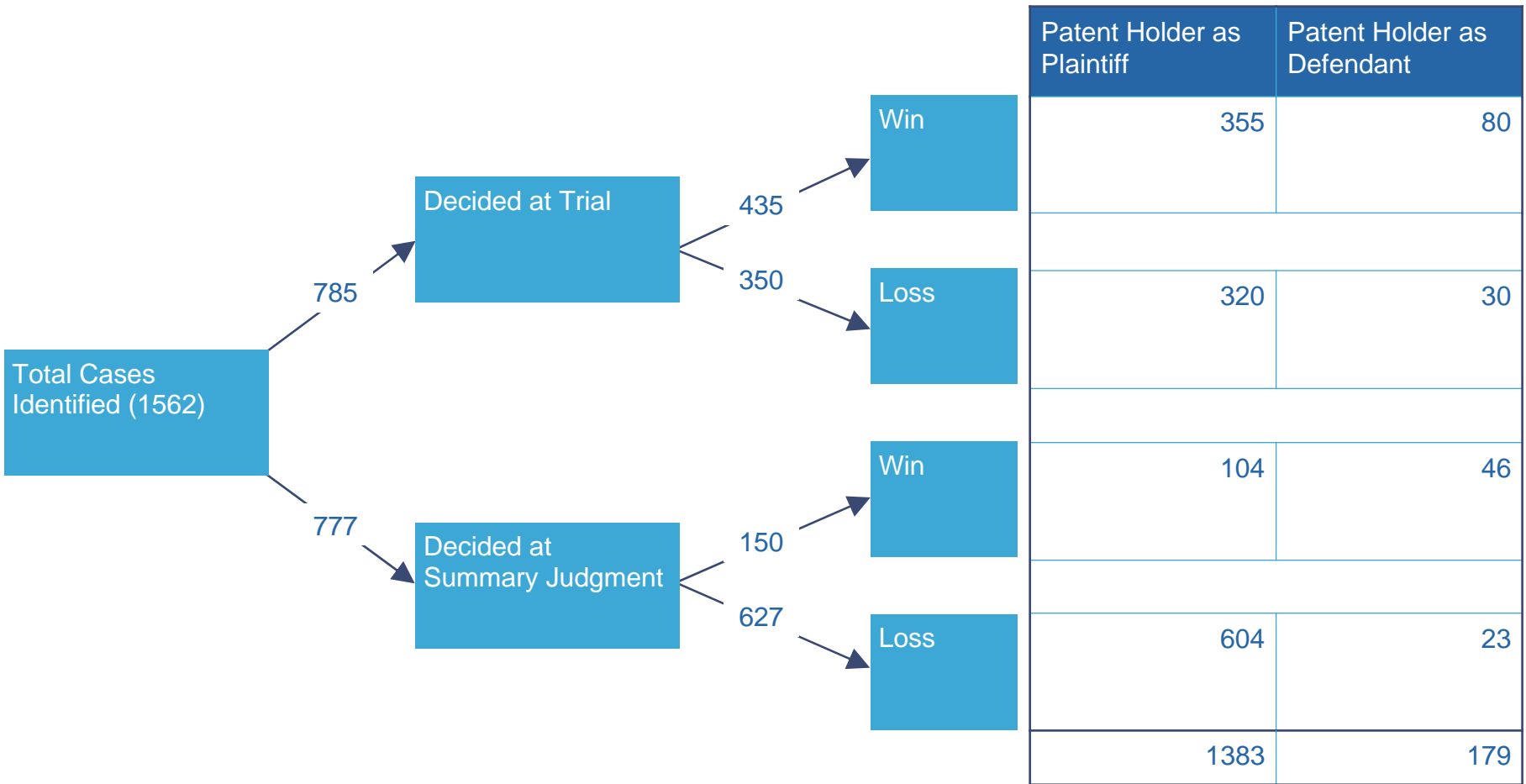


The number of patent grants are leveling off, while patent cases continue to rise, albeit more slowly in recent years





FDC patent actions 1995 to 2008 indicate a fairly even split between cases decided at trial v. summary judgment, with patentees winning more often at trial and less often at summary judgment



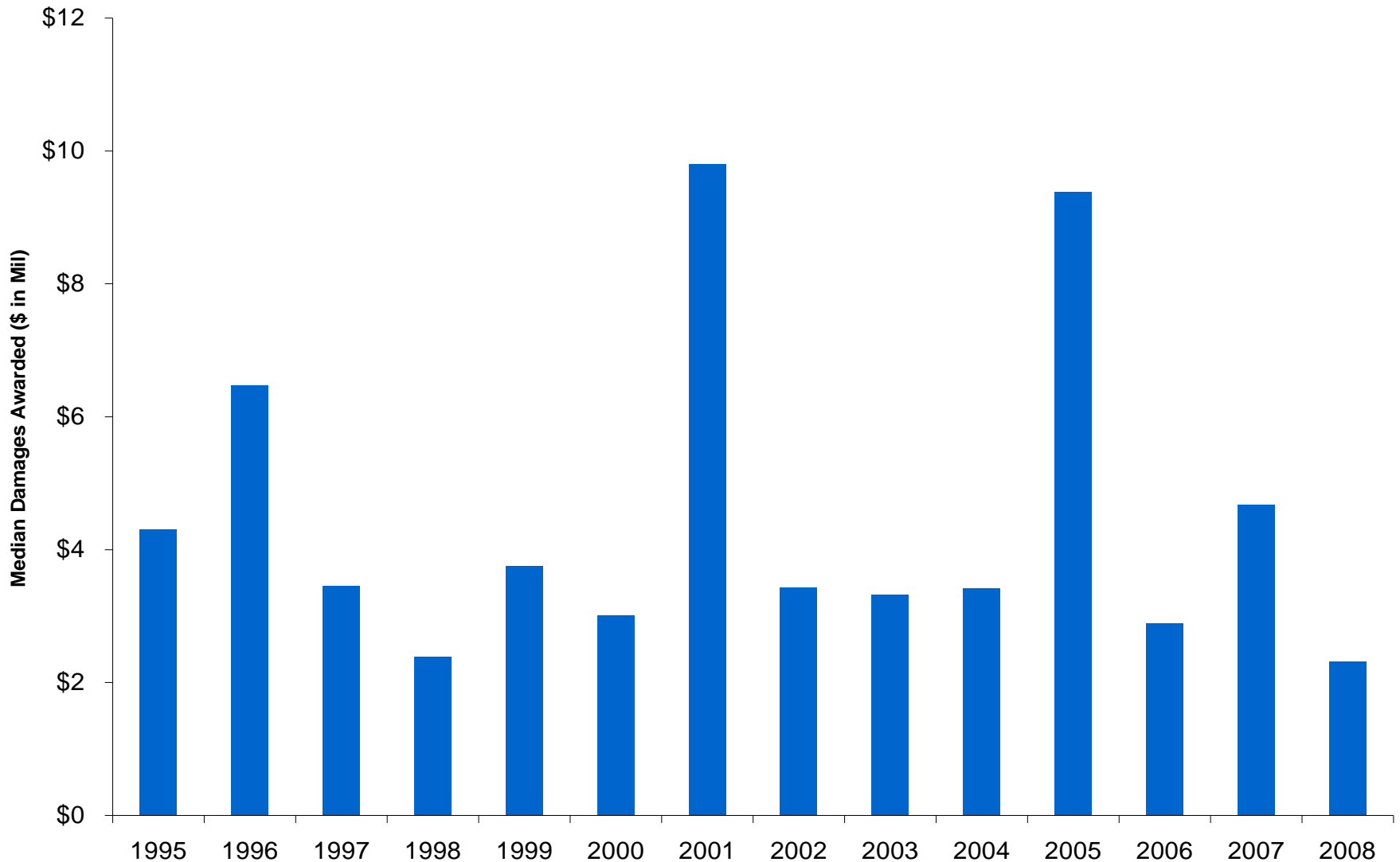


Key findings

1. Median damages awards since 1995 have remained fairly consistent, although have been higher in jury v. bench trials and trending higher for non-practicing v. practicing entities
2. The disparity in damages awards between jury and bench trials has widened since 1995
3. The use of jury v. bench trials has increased
4. Reasonable royalties have become the predominant measure of damages awarded
5. Patentees' success rate is 36% overall and 56% at trial, trending higher, with juries providing and non-practicing entities receiving favorable rates
6. The Virginia Eastern, Pennsylvania Eastern and Texas Eastern districts continue to be more favorable to patent holders, and make up about 25% of all non-practicing entity decisions



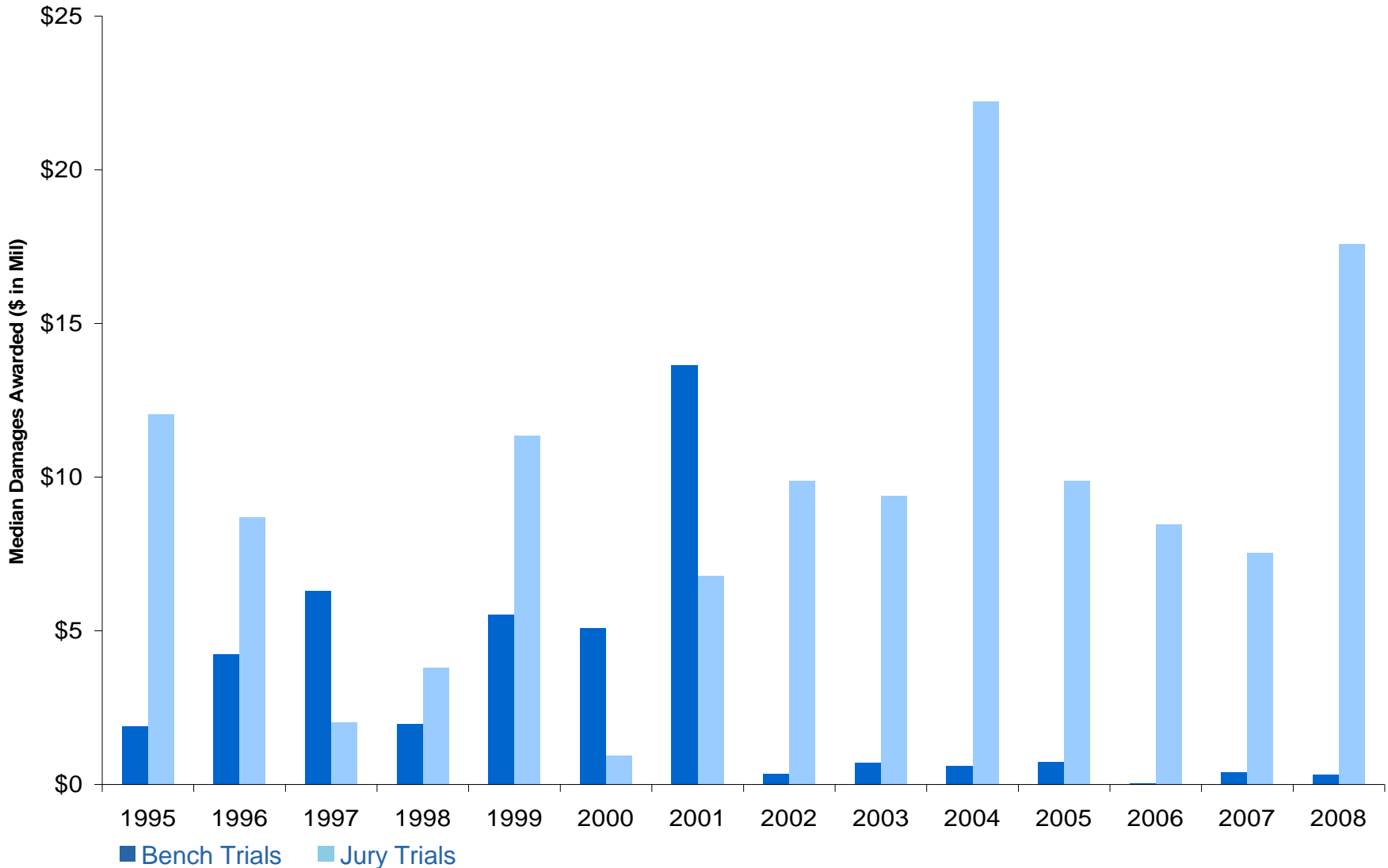
Median damages awards since 1995 have been fairly consistent, with 2008 showing a slight decline



¹Median damages are adjusted for inflation and represented in 2008 U.S. dollars.



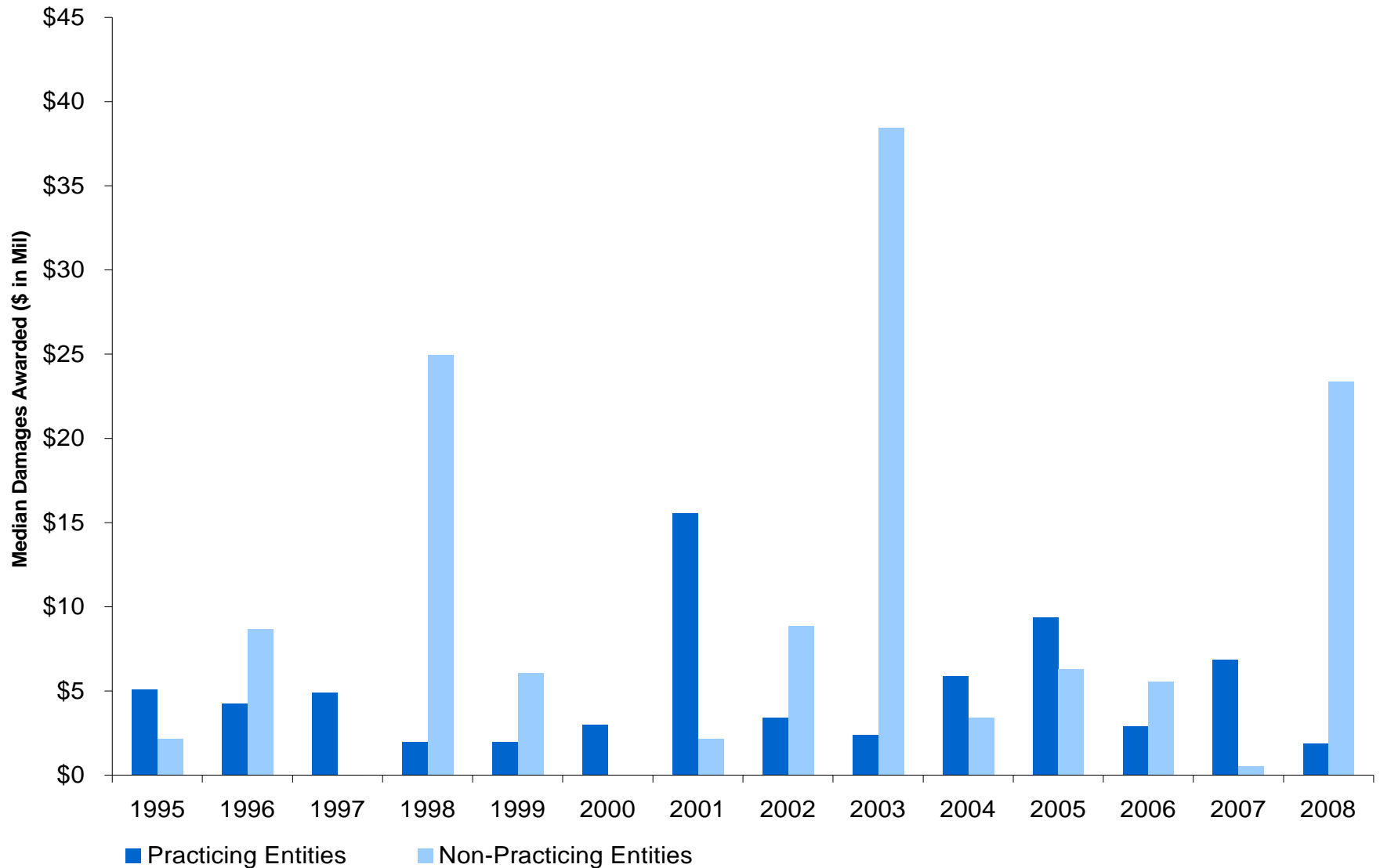
Recent awards by juries have been running many multiples of amounts awarded by judges



¹Median damages are adjusted for inflation and represented in 2008 U.S. dollars.



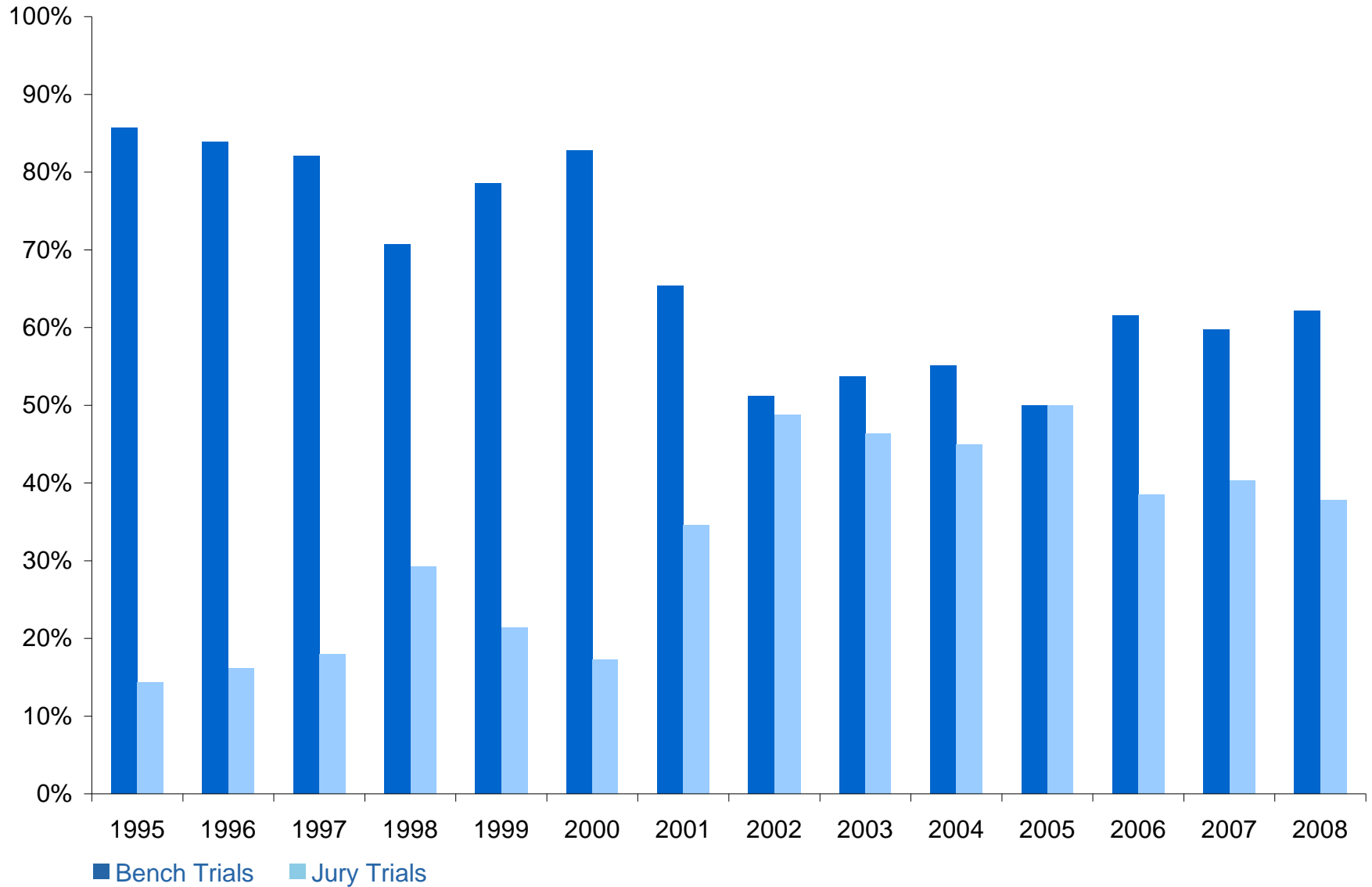
Median damages awarded to non-practicing entities have been volatile, but have been a bit higher than practicing entities in the past few years



¹Median damages are adjusted for inflation and represented in 2008 U.S. dollars.

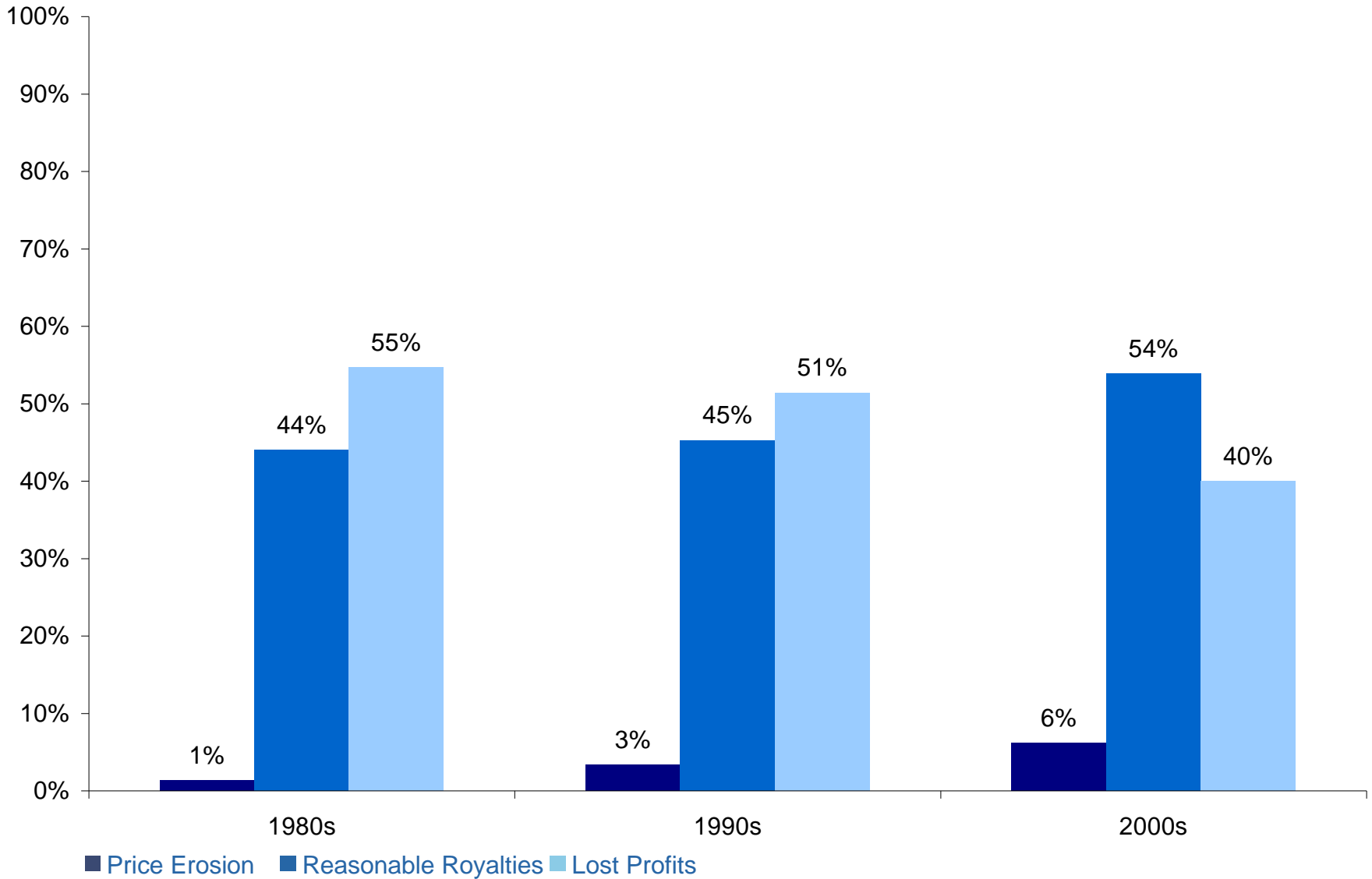


There has been a marked increase in the use of juries since 1995



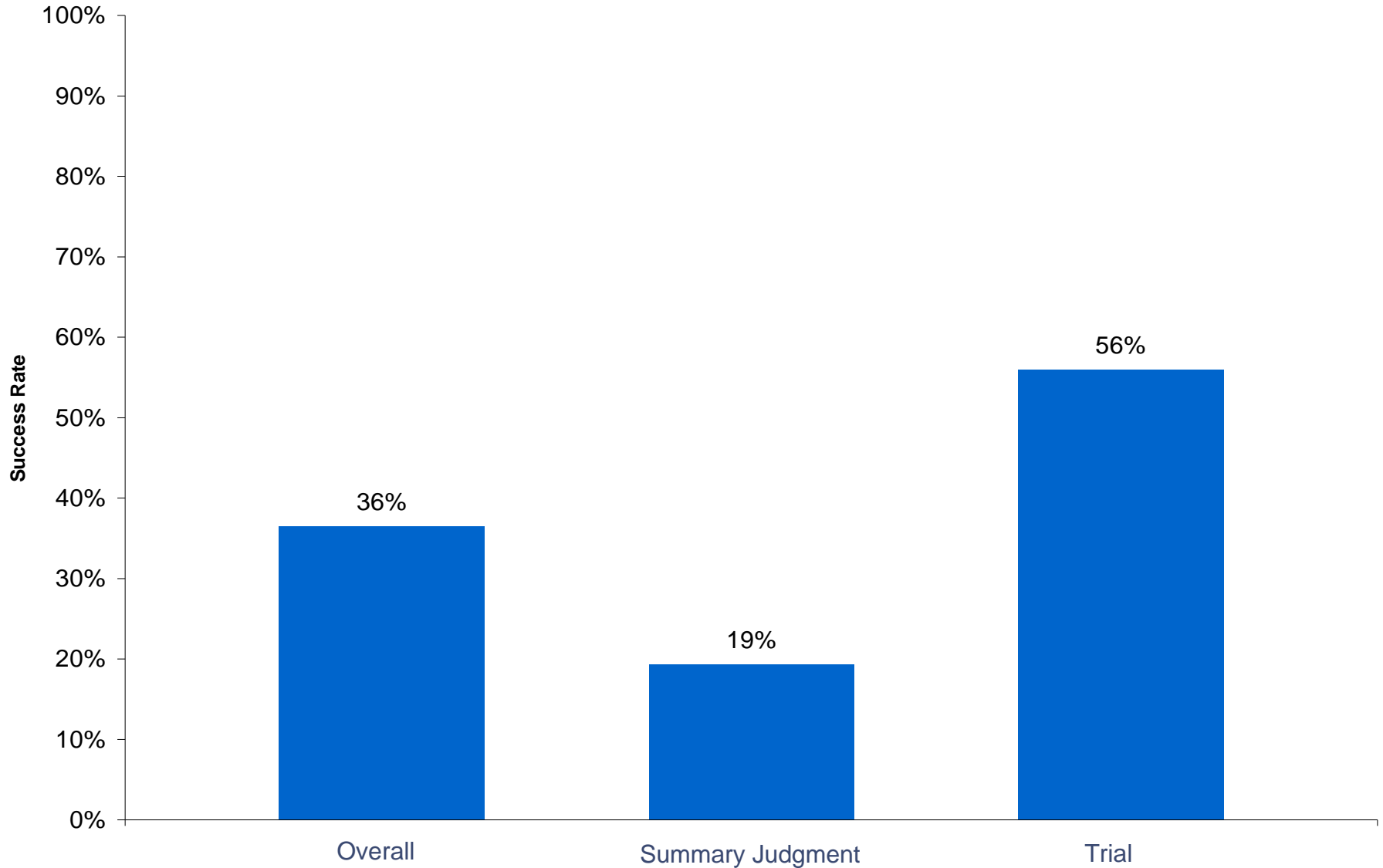


Reasonable royalties have become the predominant measure of damages awarded





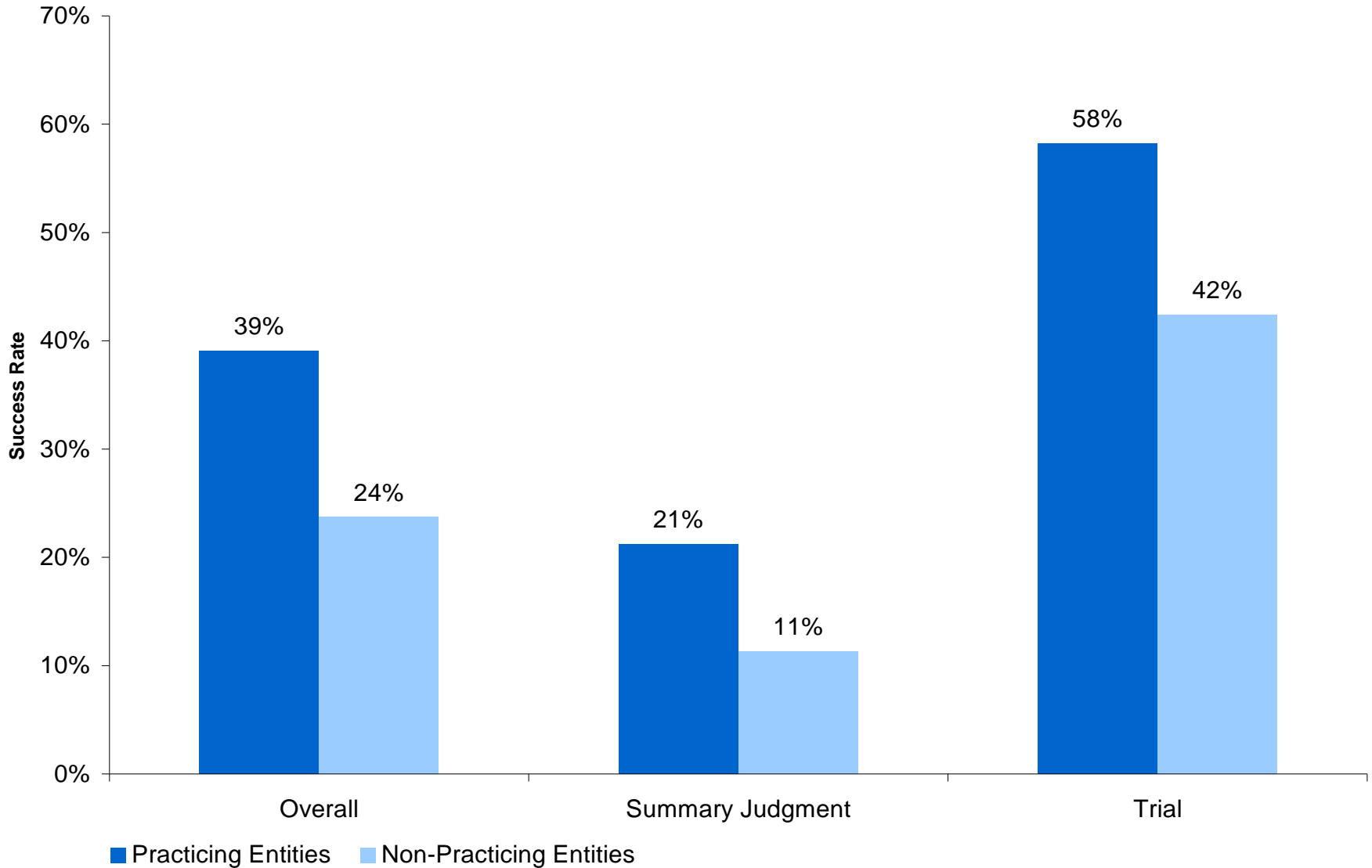
Patent holders win 36% overall and 56% at trial during 1995-2008



¹Success rate includes patent holder successes as both plaintiffs and defendants.

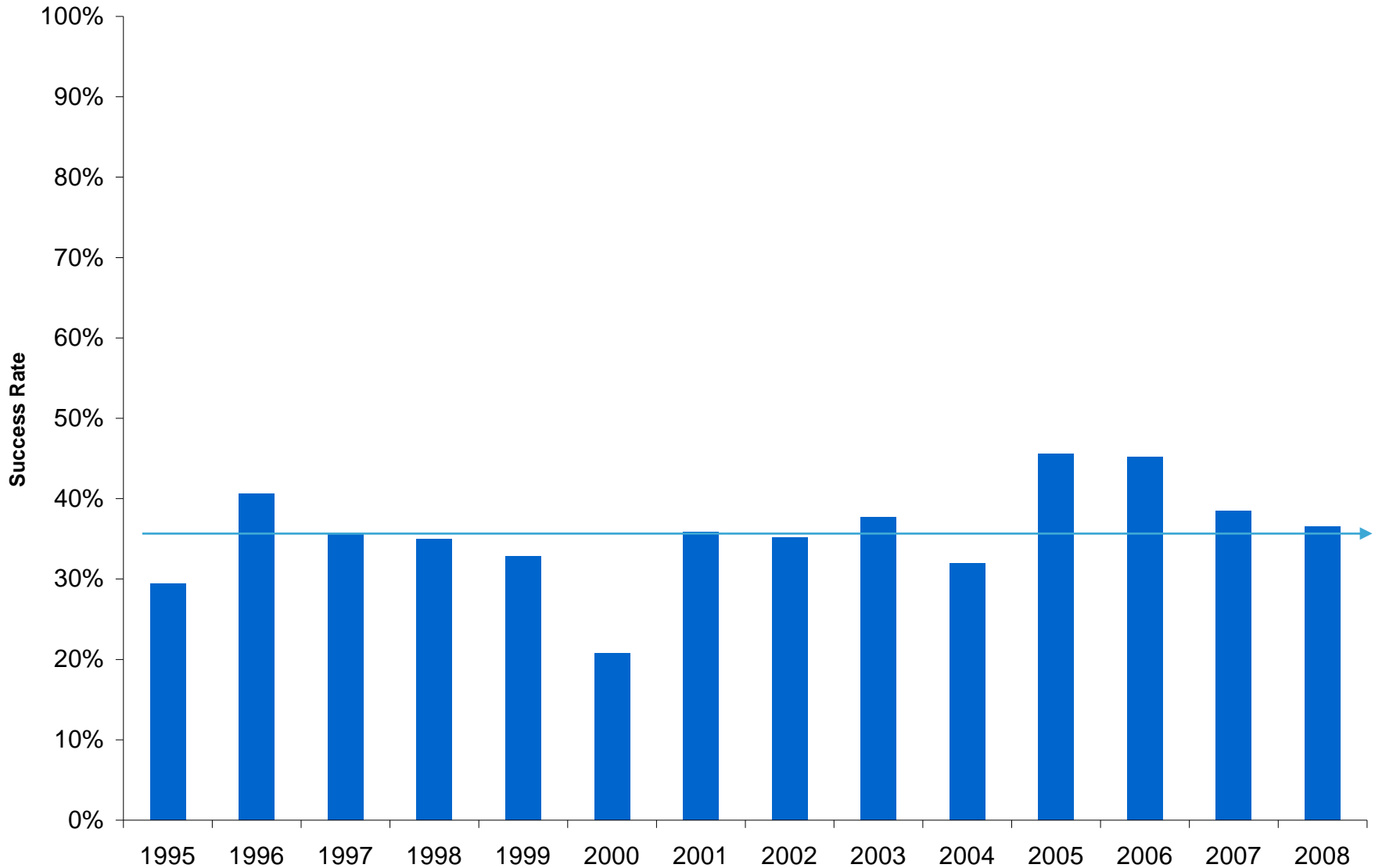


Patentees' success rate for practicing entities has been significantly higher than non-practicing entities during 1995-2008





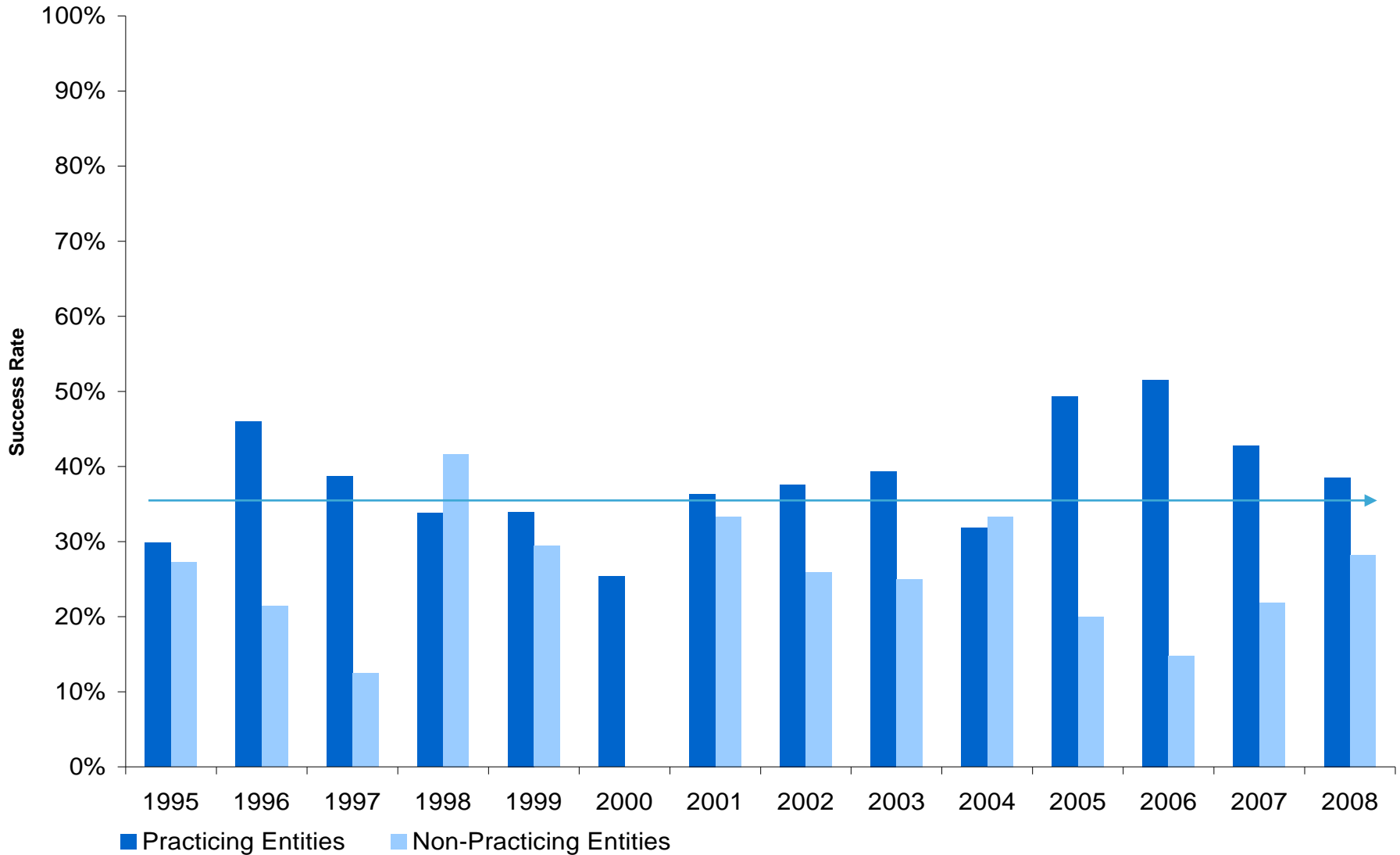
Patentees' success rate is 36% overall from 1995-2008



¹Success rate includes patent holder successes as both plaintiffs and defendants.



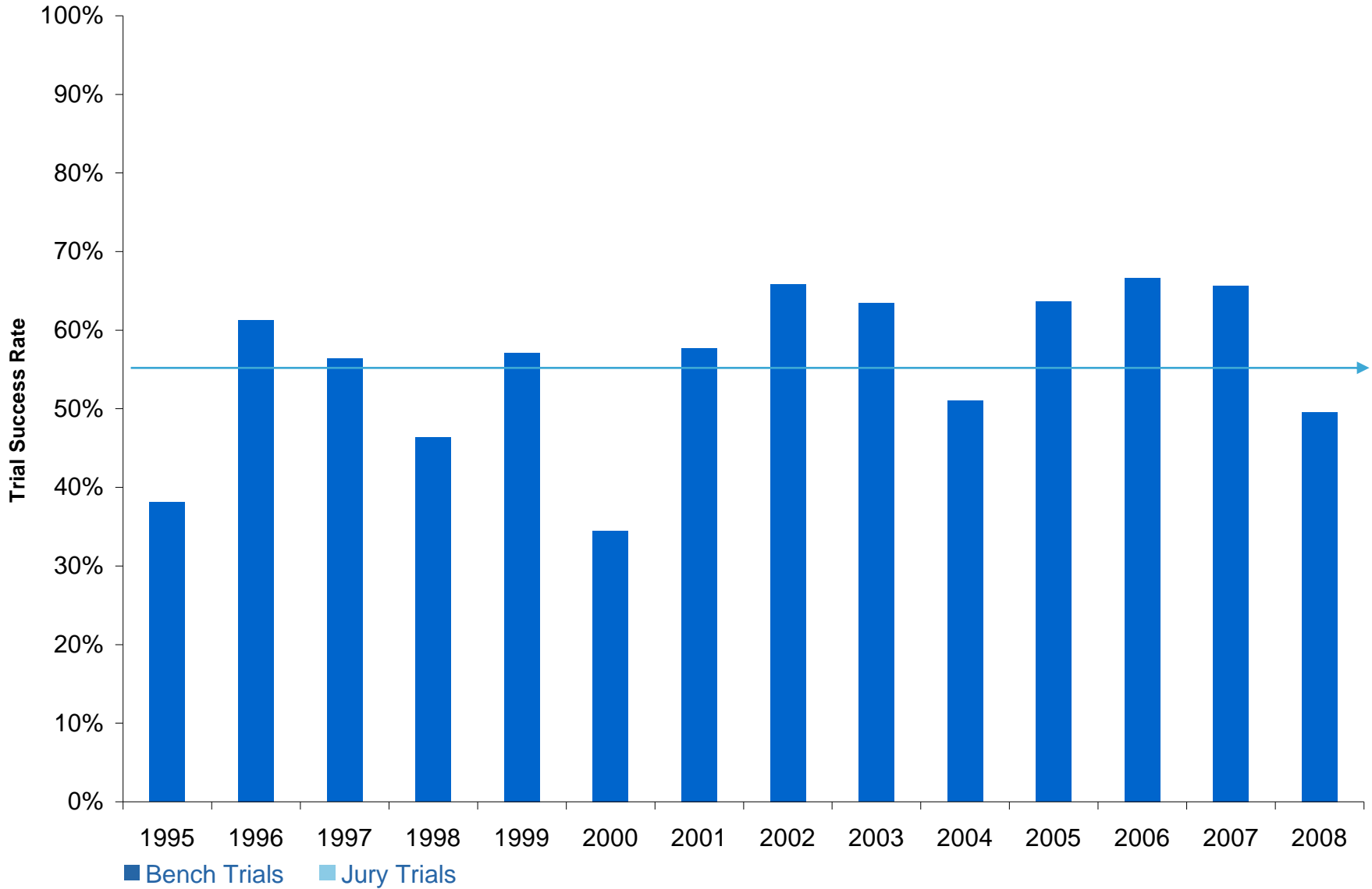
Patentees' success rate is 36% overall, with practicing entities at 39% and non-practicing entities at 24%



¹Success rate includes patent holder successes as both plaintiffs and defendants.

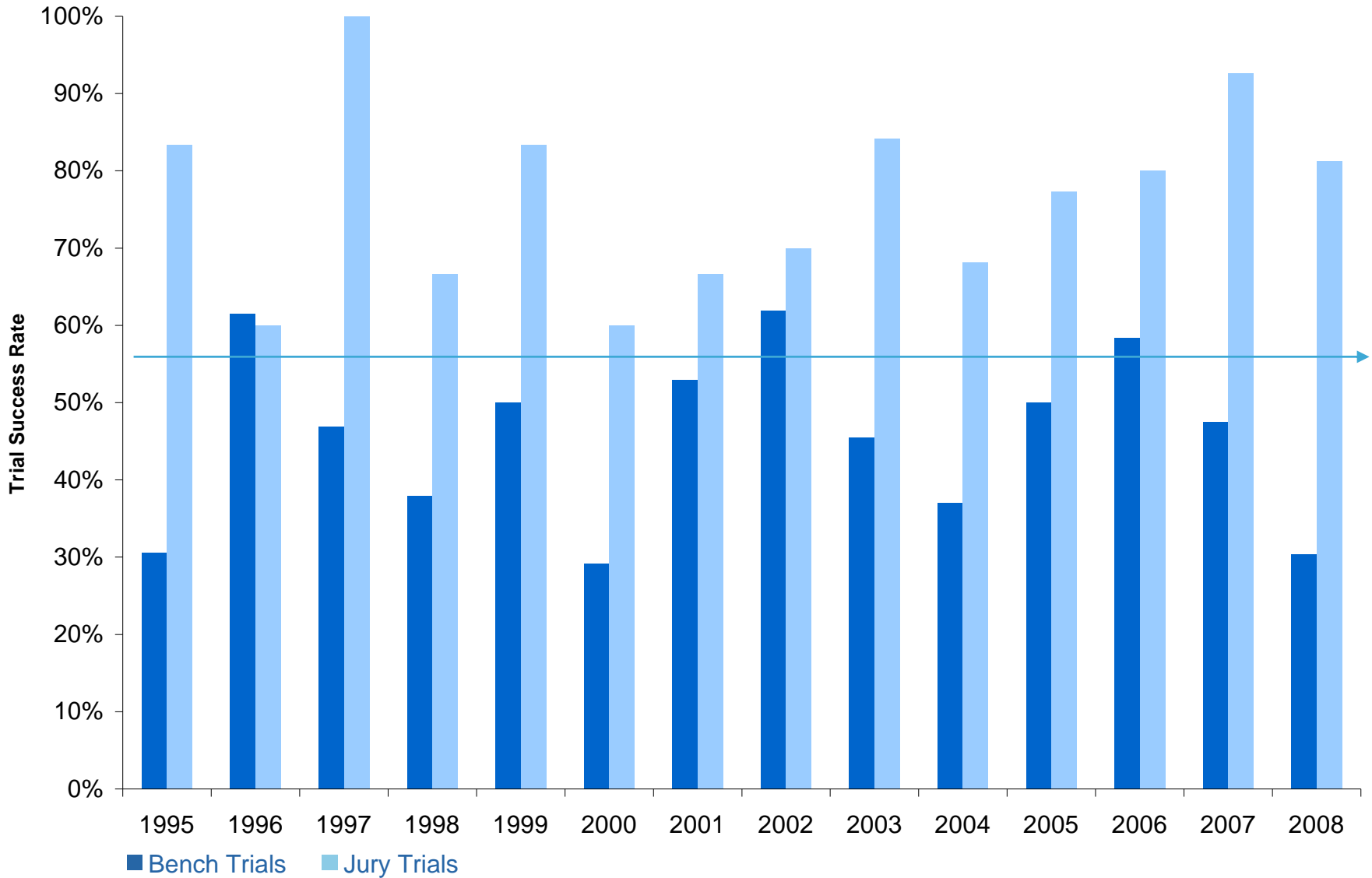


Patentee's success rate is 56% at trial from 1995-2008

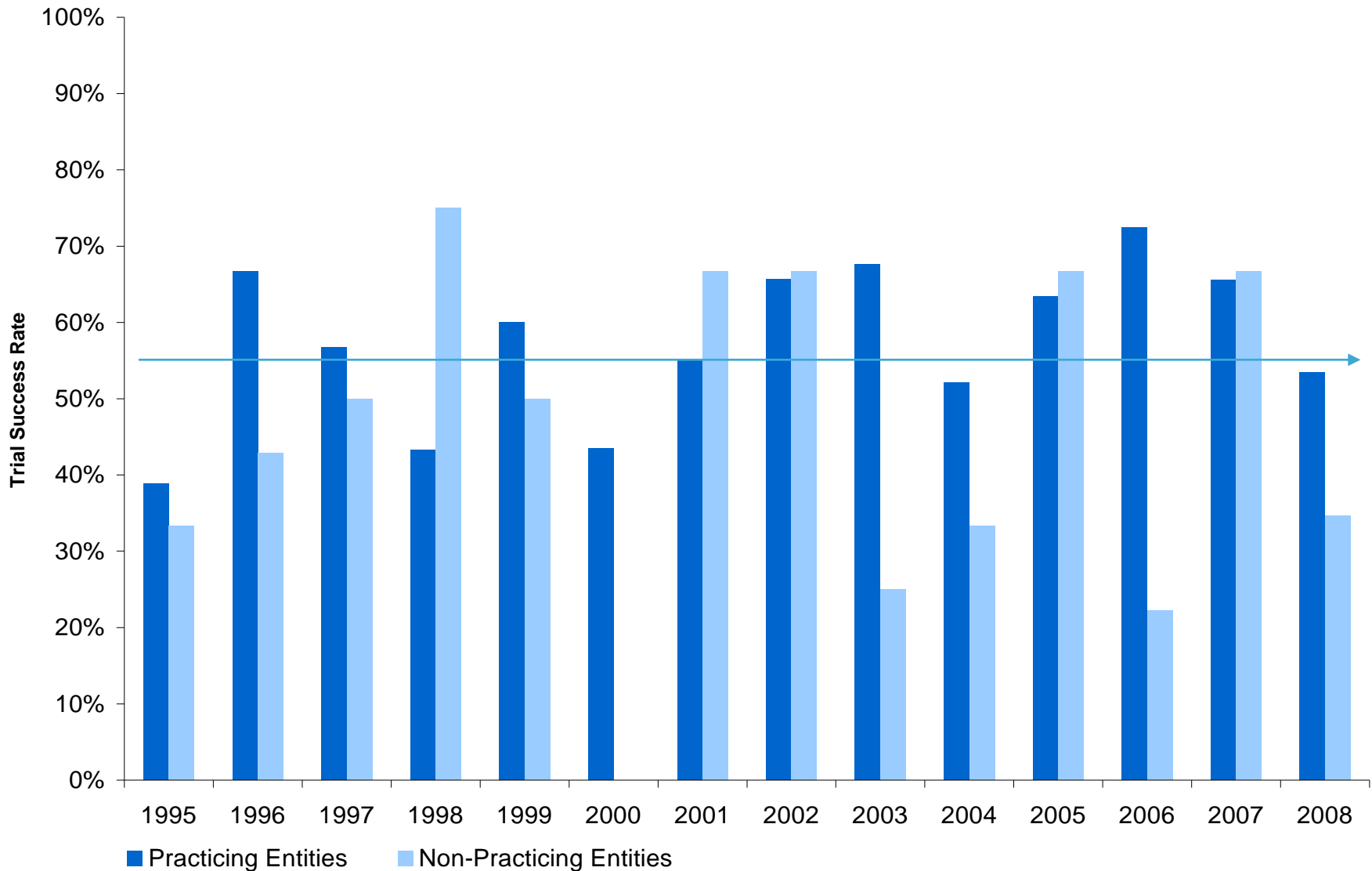




Patentee's success rate is 56% at trial, with juries consistently higher than bench trials at 79% v. 44%



Patentees' success rate is 56% at trial, with practicing entities somewhat more successful than non-practicing entities at 58%% v. 42%



¹Success rate includes patent holder successes as both plaintiffs and defendants.



The Virginia Eastern, Pennsylvania Eastern and Texas Eastern districts continue to be more favorable to patent holders

Overall Rank	District	Median Damages Awarded	Rank	Trial Success Rate	Rank	SJ Success Rate	Rank
1	Virginia Eastern	\$ 26,408,116	1	70.0%	1	26.7%	3
2	Pennsylvania Eastern	\$ 10,866,754	5	70.0%	1	23.1%	7
3	Texas Eastern	\$ 20,411,860	3	60.8%	7	23.8%	4
4	Wisconsin Western	\$ 4,533,086	10	66.7%	3	23.8%	4
5	California Central	\$ 3,019,509	13	58.8%	10	32.1%	2
5	Florida Middle	\$ 348,497	21	66.7%	3	33.3%	1
7	New Jersey	\$ 17,096,347	4	52.2%	14	22.2%	8
8	Delaware	\$ 8,758,189	7	58.2%	11	20.0%	9
9	Texas Southern/Bankruptcy Courts	\$ 10,576,567	6	60.0%	8	10.5%	15
10	Illinois Northern	\$ 5,525,665	9	50.0%	15	23.8%	6
10	Massachusetts	\$ 3,074,281	12	64.0%	6	17.6%	12
12	Minnesota	\$ 3,664,590	11	55.6%	12	19.2%	10
12	Indiana Southern	\$ 1,487,660	16	66.7%	3	12.5%	14
14	California Northern	\$ 7,787,933	8	53.4%	13	16.9%	13
15	US Court of Federal Claims	\$ 23,773,566	2	38.5%	21	10.0%	16
16	Florida Southern	\$ 755,663	17	44.4%	18	18.8%	11
17	Michigan Eastern	\$ 605,868	18	60.0%	8	0.0%	21
18	New York Southern	\$ 2,012,150	14	50.0%	15	7.5%	19
18	Texas Northern	\$ 1,575,154	15	47.8%	17	10.0%	16
20	Missouri Eastern	\$ 385,842	20	44.4%	18	9.1%	18
21	Connecticut	\$ 529,827	19	40.0%	20	6.7%	20

¹Median damages are adjusted for inflation and represented in 2008 U.S. dollars. The ranking for these courts are based on their relative ranking for each of the statistical measures.



For cases involving non-practicing entities, the top 3 districts comprise over 25% and the top 10 districts comprise over 50% of these cases

Rank	District	# of Cases
1	New York Southern	24
2	Illinois Northern	22
3	Texas Eastern	20
4	California Northern	11
5	Florida Southern	11
6	Massachusetts	10
7	California Central	9
8	Minnesota	9
9	Pennsylvania Eastern	8
10	DC	8
Total		132
	All Districts	249

Concluding thoughts

- Patent litigation continues to be an effective protection and monetization path for patentees
- The forum and the venue can have a substantial impact on the outcome of a case, with juries awarding patentees much higher damages at higher success rates and districts showing a great disparity
- Patentees are increasingly winning more often overall and at trial, with damages awards trending higher
- Non-practicing entities do not have higher success rates than practicing entities, but recently have had higher trending damages awarded

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