We identified 276 rehearing decisions issued in 2017 (see fig. 1). That petitioners seek rehearing of institution decisions much more than patent owners is likely explained by the fact that decisions not to institute cannot be appealed to any tribunal, whereas patent owners have the rest of the trial to change the PTAB’s mind, and can appeal to the Federal Circuit on many issues in a final written decision.

The average time to issue a rehearing decision varies based on the type of underlying decision (see fig. 2). That rehearing decisions regarding instituted cases and other procedural matters issue faster than other types of decisions is likely explained by their involving instituted trials where the parties and the PTAB are actively conducting the trial, obtaining discovery, filing papers, and formulating their final written briefs. If the PTAB does change its mind, on average it takes longer for rehearing decisions to issue: over 155 days for changes to the final written decision, and over 85 days for changes to the institution decision.

Only 22 out of the 276 rehearing decisions resulted in at least one change sought by the requestor—slightly less than 8 percent.

Figure 3 summarizes the number of rehearing decisions received by petitioners and patent owners based on the underlying decision (e.g., institution granted, institution denied, etc.).

Perhaps surprisingly, both petitioners and patent owners experienced greater success in requesting rehearing of the PTAB’s final written decisions as compared to its generally nonappealable institution decisions. (The volume of rehearing requests for “other” grounds is too small to provide meaningful analysis and has therefore been excluded from figure 4.)

Observations
As many have noted, a request for rehearing is not an opportunity to present new evidence and arguments or mend gaps in a party’s evidence.4 It is “not intended as a vehicle simply to disagree with [the] outcome or to provide new arguments.”5 With that in mind, we examined the 2017 rehearing decisions that resulted in a change and have made observations regarding the successful rehearing requests. The relatively few successful rehearing requests in 2017 makes these observations necessarily anecdotal; regardless, the data provides illuminating examples to help parties weigh the merits of a potential rehearing request.