

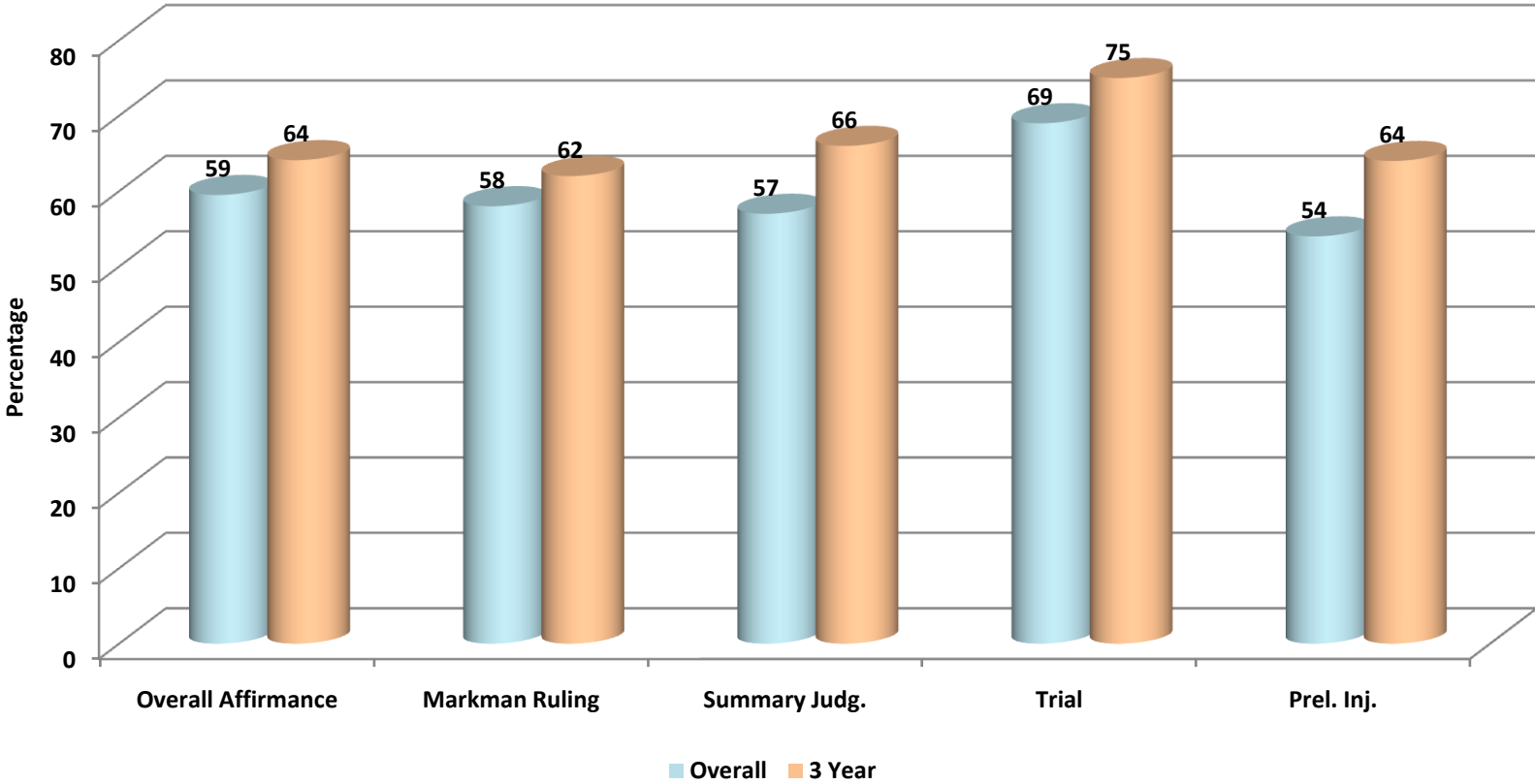
*LegalMetric*<sup>®</sup>

# Claim Construction in the Federal Circuit

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# Claim Construction on Appeals from Trial Most Likely to be Affirmed

Claim Construction Affirmance Rates, by Type of Ruling Below

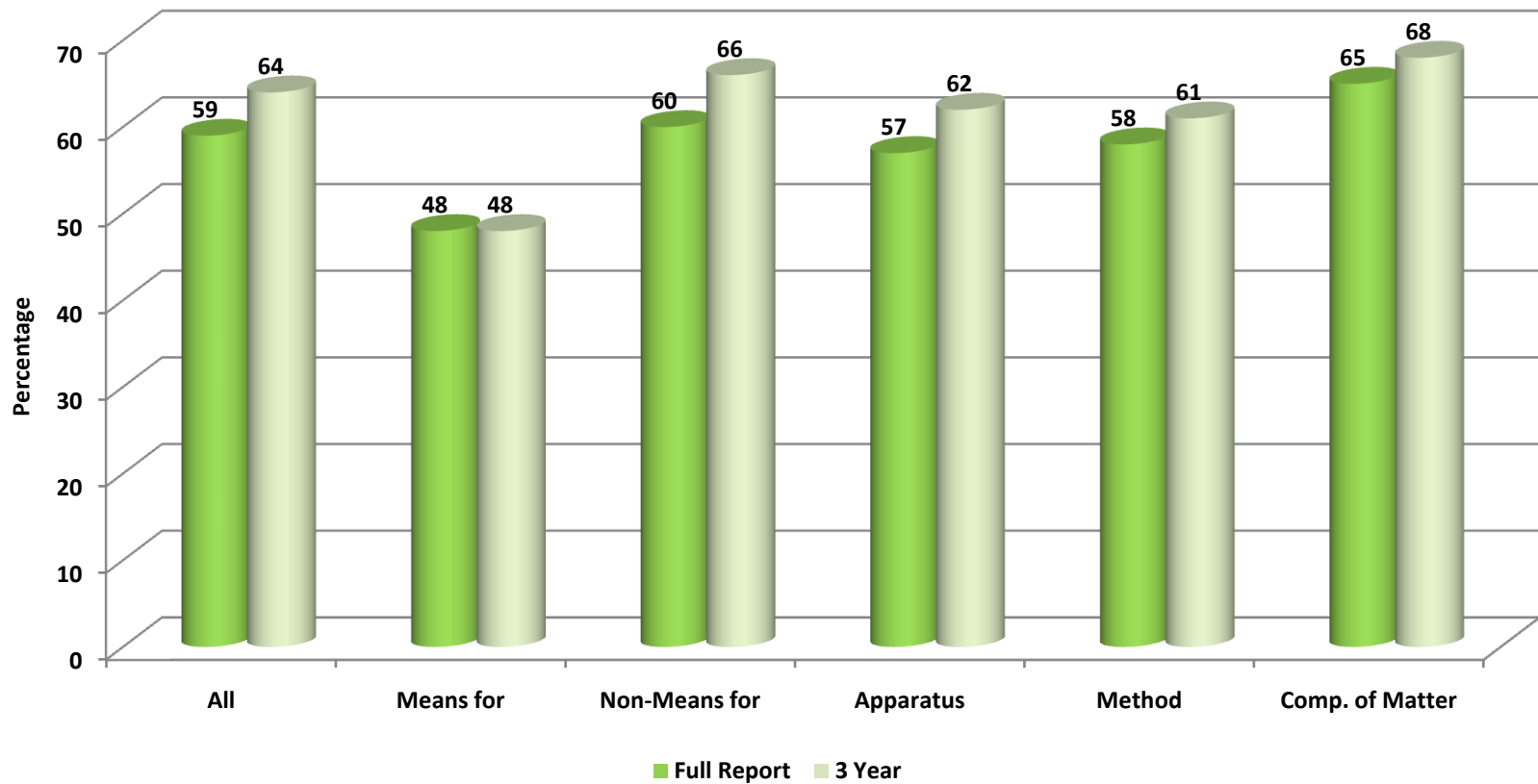


# Claim Construction on Appeals from Trial Most Likely to be Affirmed

- Claim Construction affirmed 69% of the time when appeal is from trial (75% for the last three years)
- Appeals based on Markman Ruling or Summary Judgment are significantly lower (57-58% overall, 62-66% for the last three years)
- Appeals from Preliminary Injunction Claim Construction somewhat lower (54% overall, 64% last three years)

# “Means for” Claim Construction Least Likely to be Affirmed

Claim Construction Affirmance Rates, by Type of Claim

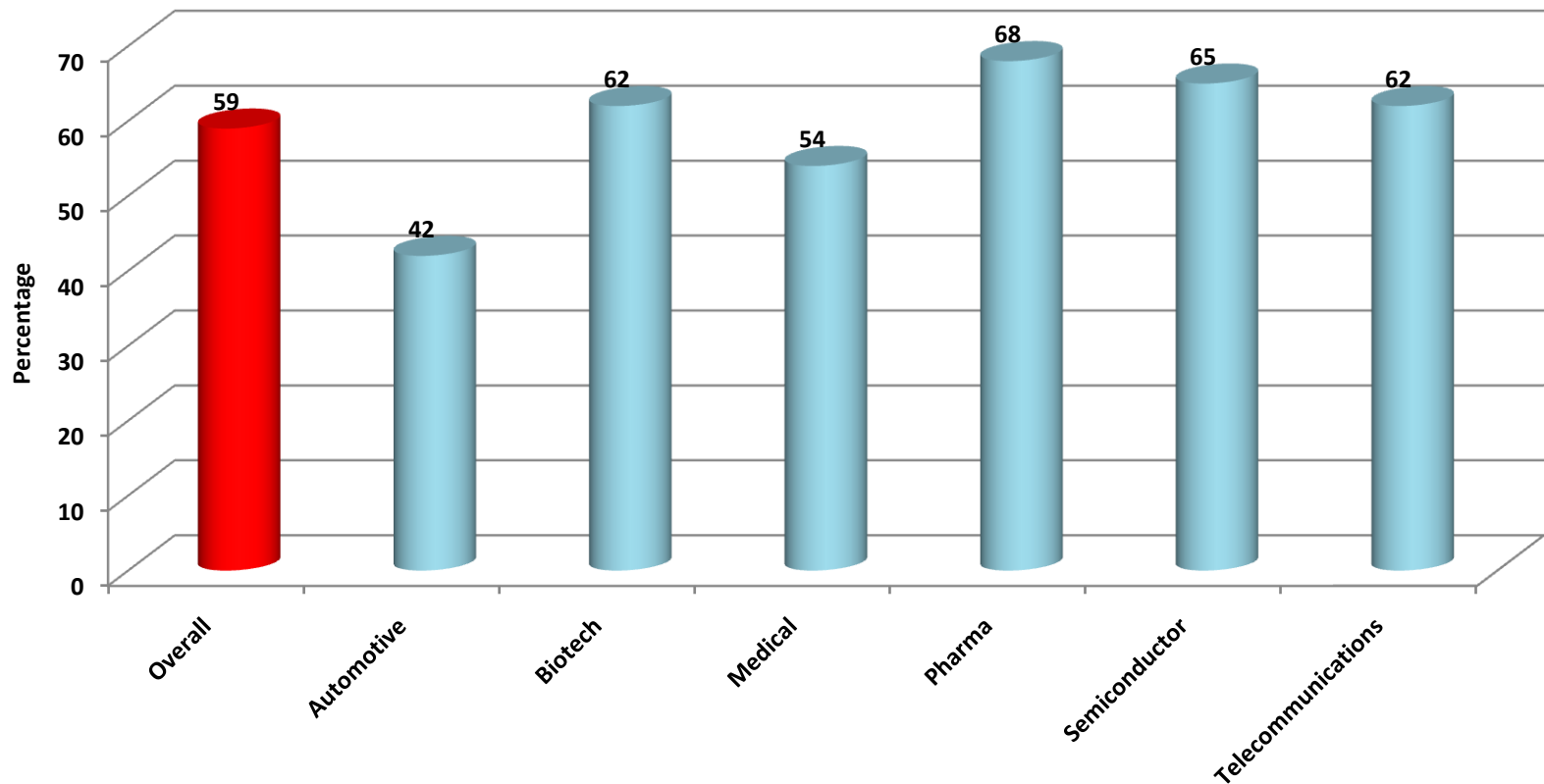


# “Means for” Claim Construction Least Likely to be Affirmed

- “Means for” affirmance rate: 48%
- Overall affirmance rate for claim construction: 59% (64% for last three years)
- Highest affirmance rate: Composition of Matter claims (65%)
- Method claims and apparatus claims have similar affirmance rates (57-58% overall, 61-62% for last three years)

# Claim Construction Affirmance Rate Highest for Pharma Patents

Claim Construction Affirmance Rates, by Technology



# Claim Construction Affirmance Rate Highest for Pharma Patents

- The affirmance rate for claim construction rulings in Pharma cases was 68%.
- Lowest claim construction affirmance rate was in Automotive cases: 42%
- Telecommunications, Semiconductor, and Biotech claim construction affirmance rates were all relatively high (62-65%)

# Time Frame and Source

- Figures are from LegalMetric's 2009 Federal Circuit Patent Report
- Federal Circuit decisions from July, 1995 to March, 2009 form the basis of the preceding charts.