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Is the Patent Pilot Program Doomed to Fail?

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Patent Pilot Program

- On January 4, 2011, Congress passed an Act establishing a Patent Pilot Program for “developing expertise in patent and plant variety protection cases” and
- “improving the efficiency of the courts involved by reason of such expertise”

Patent Pilot Program Metrics

- To determine whether the Patent Pilot judges develop the desired expertise, the Program is required to measure “rate of reversal by the Court of Appeals for the Federal Circuit, of such cases on the issues of claim construction and substantive patent law”
- To measure efficiency, the Program looks at time to trial and time to disposition by summary judgment

Patent Pilot Program Courts

- The Program has been implemented in 14 district courts
- These courts have designated 91 judges and magistrates to participate in the Program, not counting designated judges who have already retired.

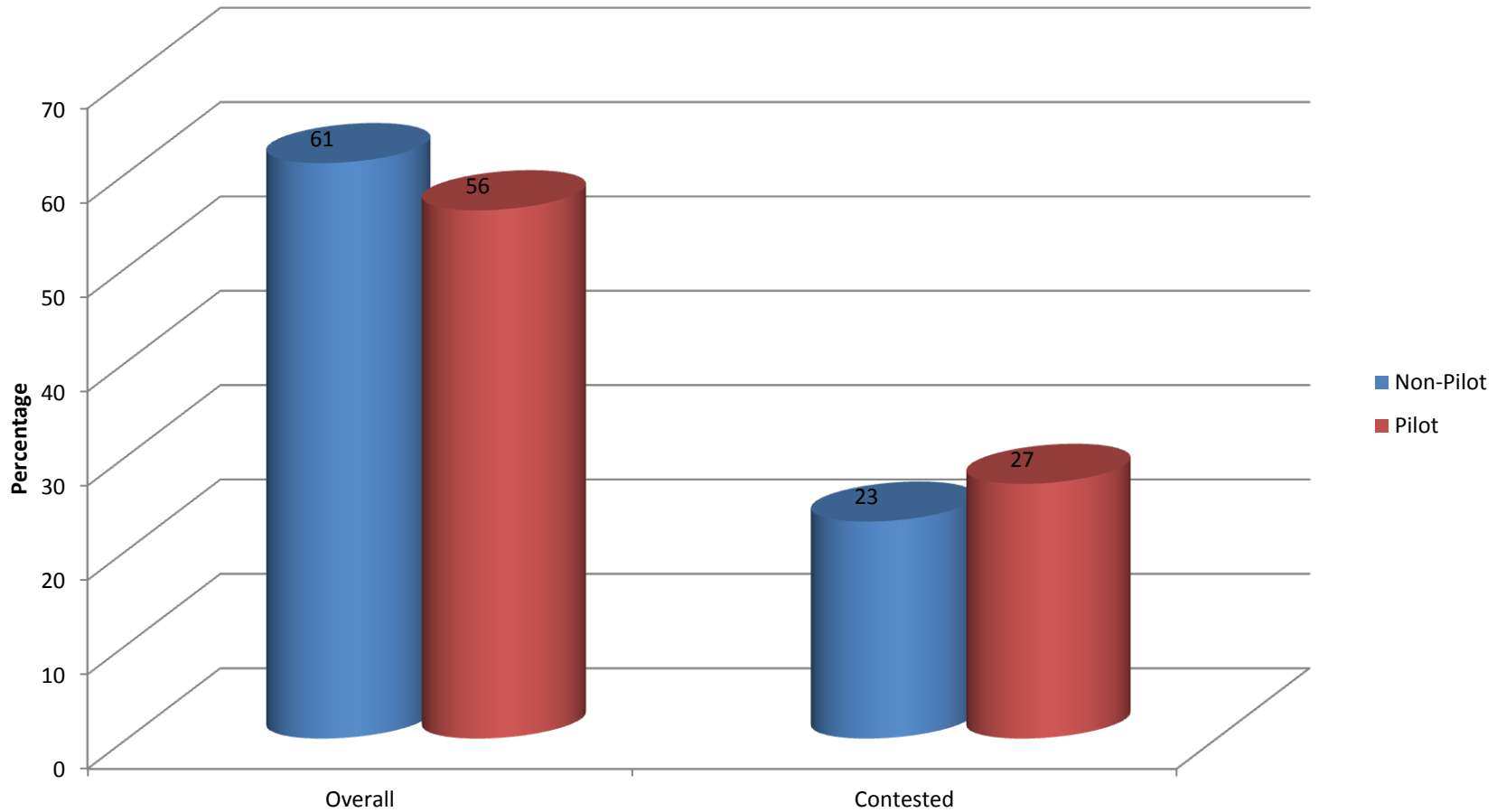
Comparison of Program Judges with Non-Program Judges

- Most of the Program Judges have some experience with patent litigation and many have considerable patent experience
- The same is true of Non-Program Judges

Metrics to Compare Program and Non-Program Judges

- Program and Non-Program Judges are compared by:
 - Overall Win Rates (includes consent and default judgments)
 - Contested Win Rates (does not include consents and defaults)
 - Complete Affirmance Rates (affirmed only)
 - Reversal Rates (reversed on any issue)
 - Time to Trial
 - Time to Disposition by Summary Judgment

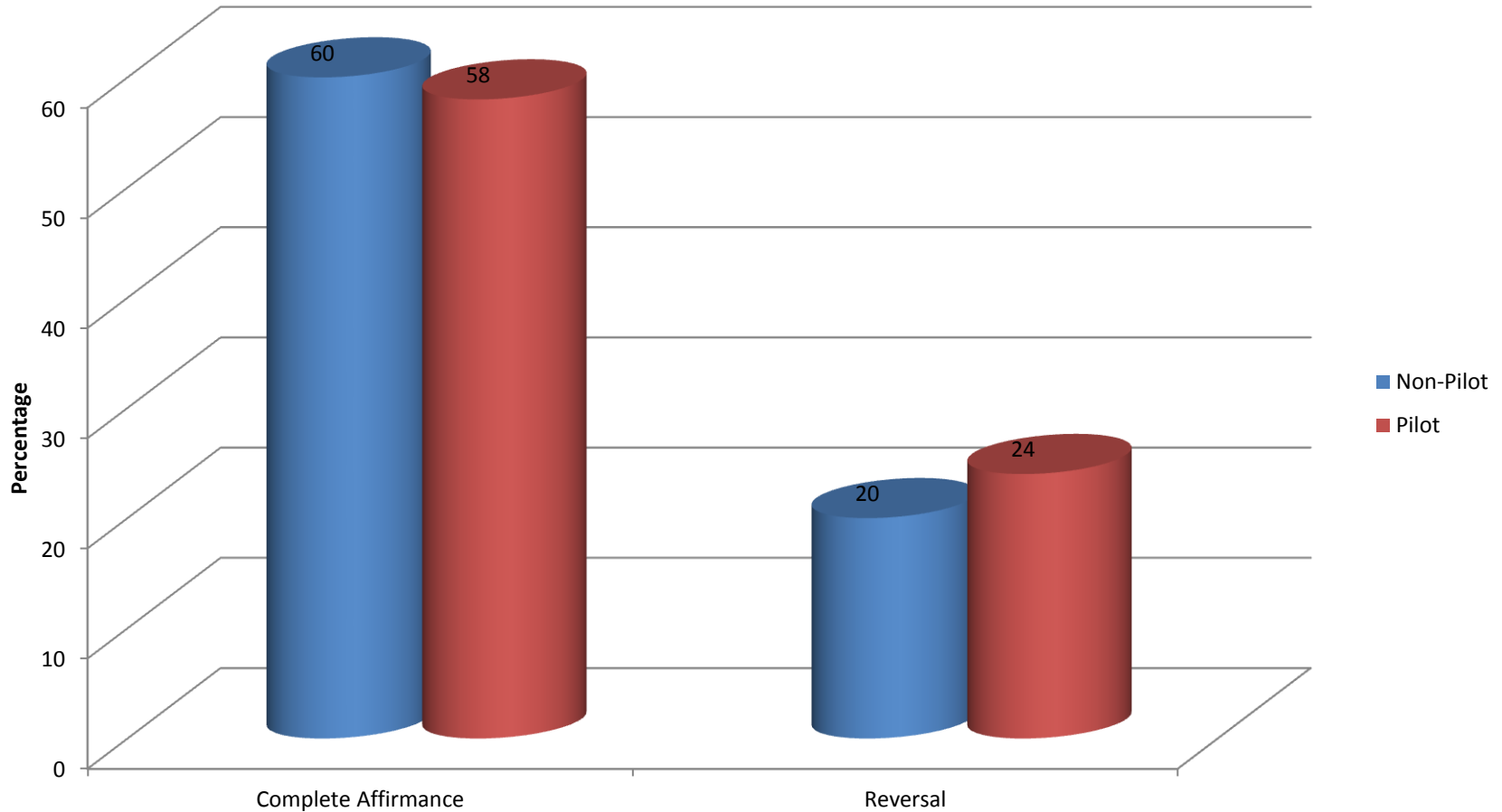
Overall and Contested Win Rates



Overall and Contested Win Rates

- Overall Win Rates
 - Non-Pilot Judges have a somewhat higher overall win rate than Pilot Program Judges (61% v. 56%).
Note: cases with no judgment entered in favor of a party are not included in win rates.
- Contested Win Rates
 - Conversely, Pilot Program Judges have a somewhat higher contested win rate than Non-Pilot Judges (27% for Pilot v. 23% for Non-Pilot)

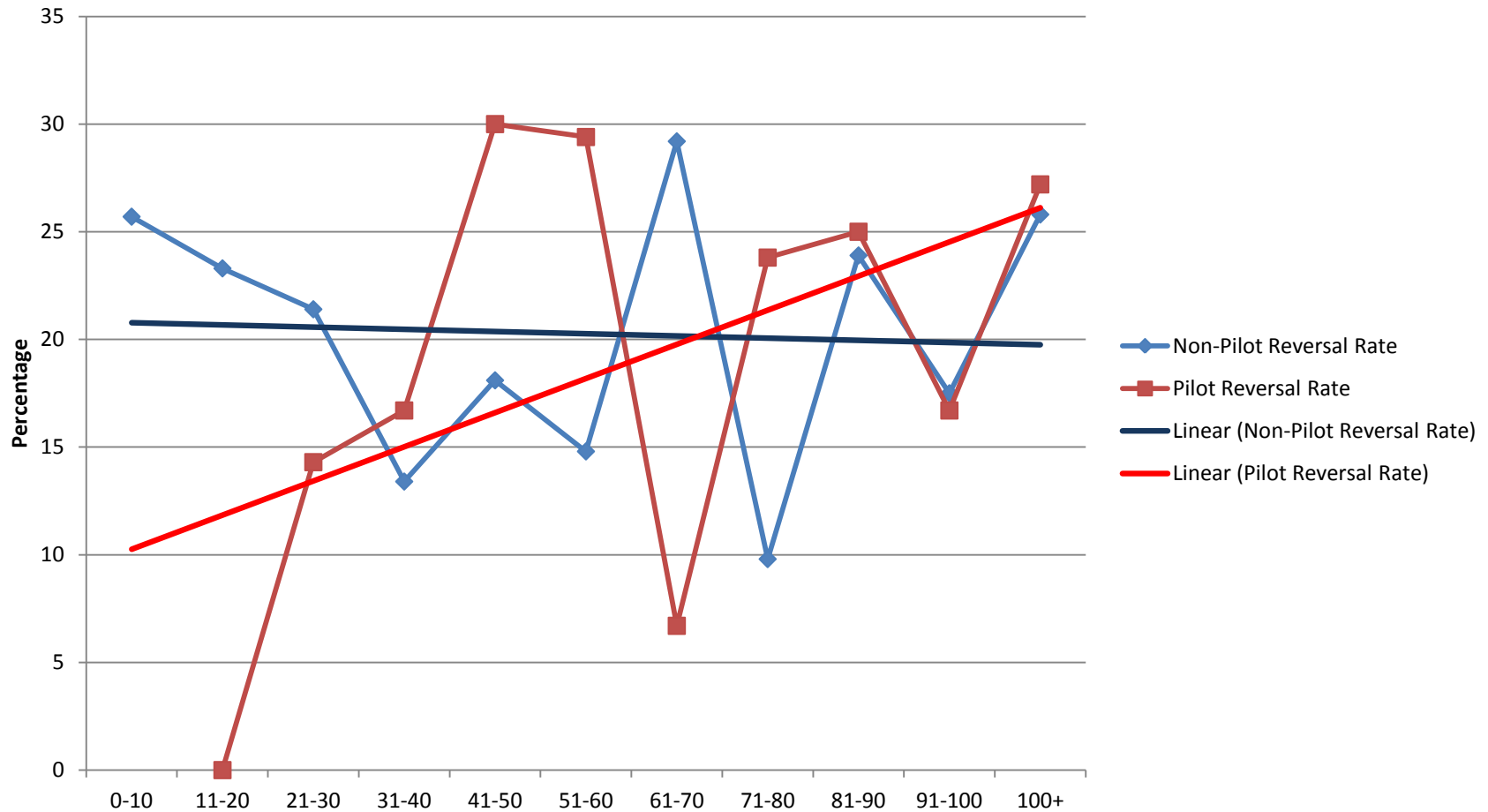
Complete Affirmance Rates and Reversal Rates



Complete Affirmance Rates and Reversal Rates

- The Complete Affirmance Rates (affirmance with no other action by the Federal Circuit) were similar, with the Non-Pilot Judges having a slight advantage (61% for Non-Pilot, 58% for Pilot Judges)
- The Reversal Rates (reversed in whole or in part) showed a larger advantage for the Non-Pilot Judges (20% Reversal Rate v. 24% Rate for Pilot Judges)

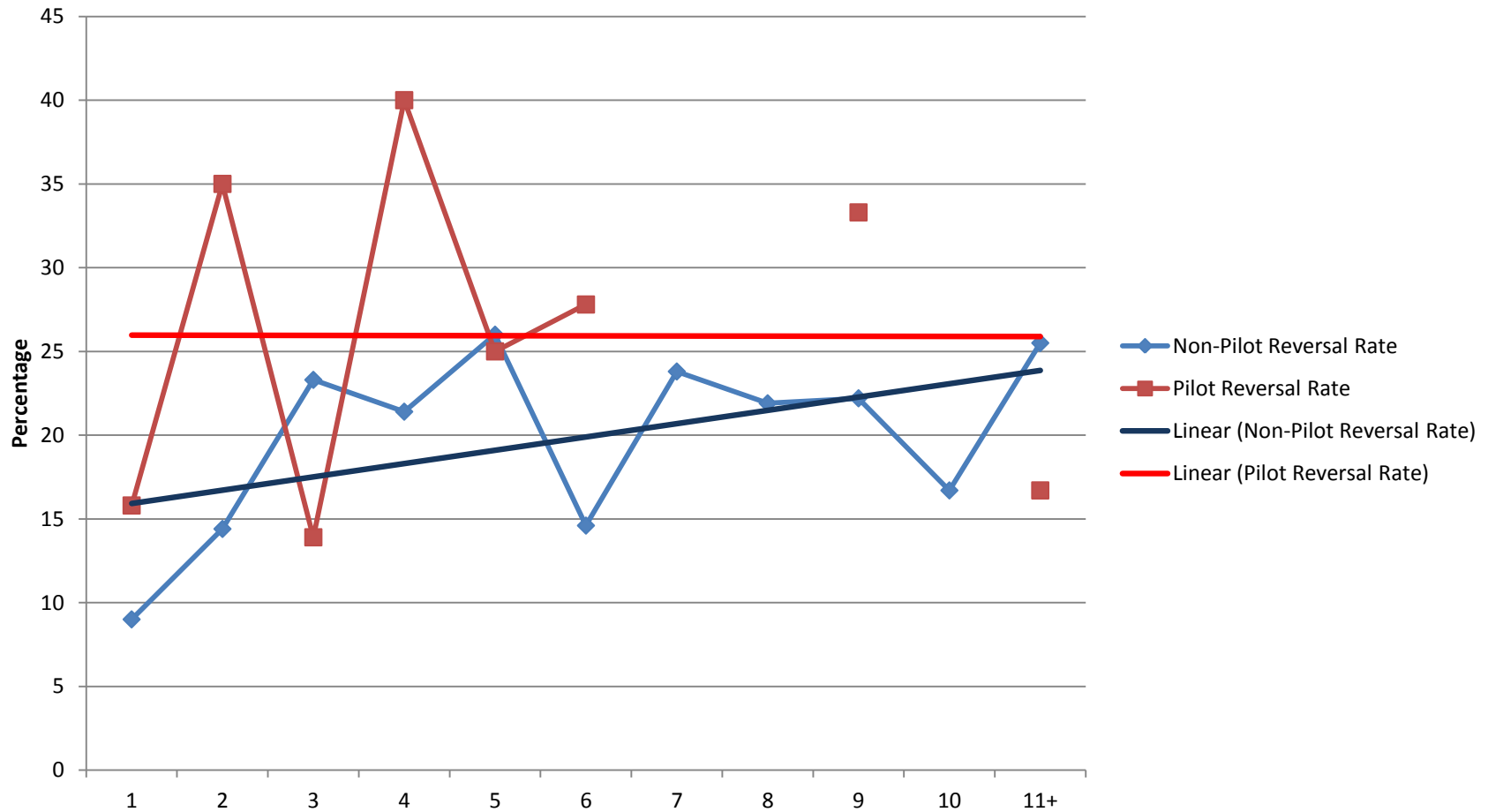
Reversal Rates by Experience: Number of Patent Cases



Reversal Rates by Experience: Number of Patent Cases

- Reversal Rates, the Chosen Metric for the Patent Pilot Program, Do Not Show the Expected Correlation Between Patent Experience and Reversal on Appeal
- For Pilot Judges (see red trendline in previous chart) the Reversal Rate goes up as the number of patent cases increases.
- For Non-Pilot Judges (see blue trendline in previous chart) the Reversal Rate is substantially independent of experience.
- Neither is consistent with the hypothesis that increased experience results in fewer reversals.

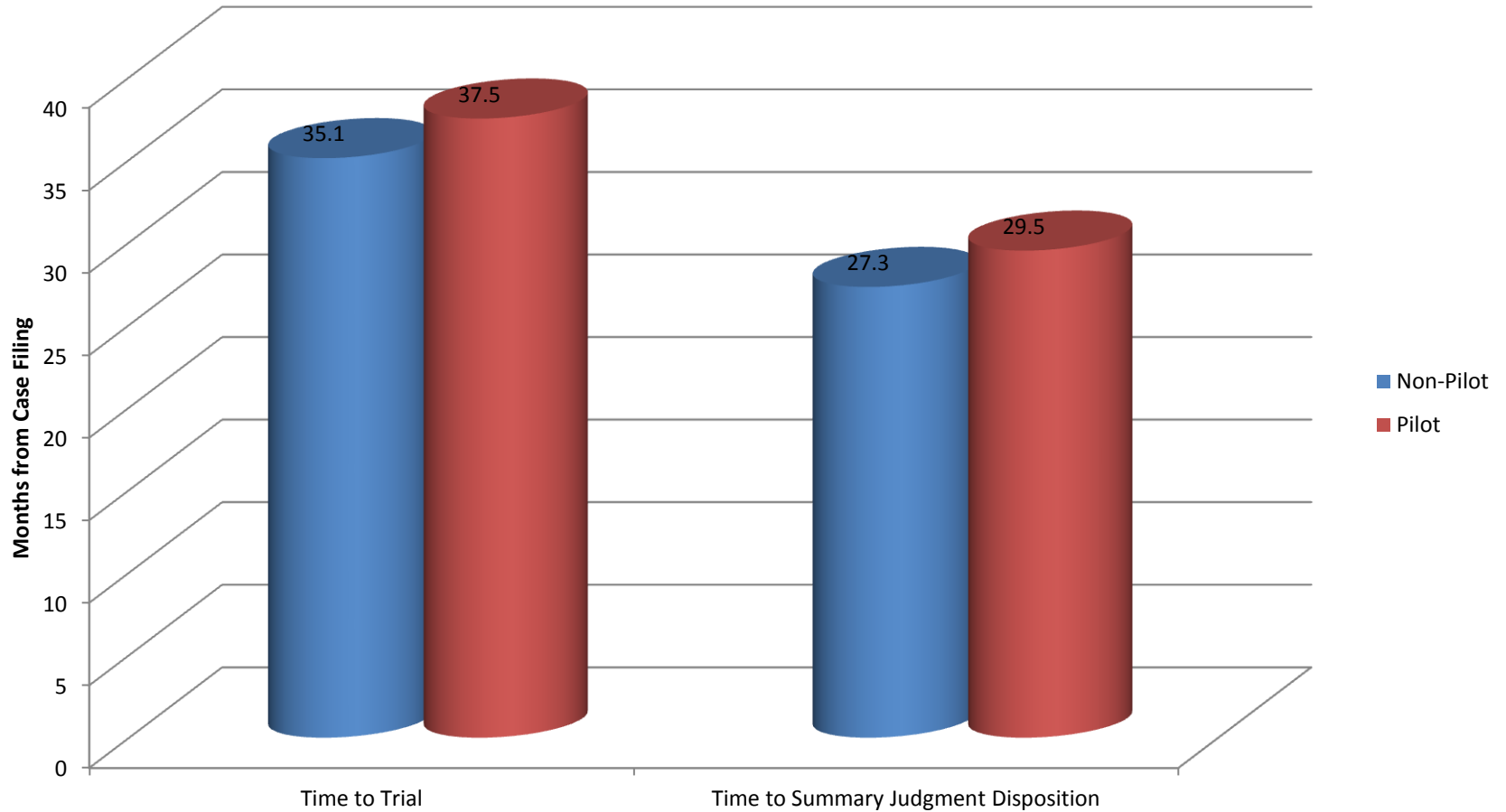
Reversal Rates by Experience: Number of Patent Appeals



Reversal Rates by Experience: Number of Patent Appeals

- When experience is measured by the number of appeal decisions, the Reversal Rates again do NOT support the hypothesis.
- The Pilot Judge Reversal Rate as a function of appeal decisions (red trendline) is basically independent of experience.
- The Non-Pilot Judge Reversal Rate (blue trendline) increases as the number of appeal decisions increases.

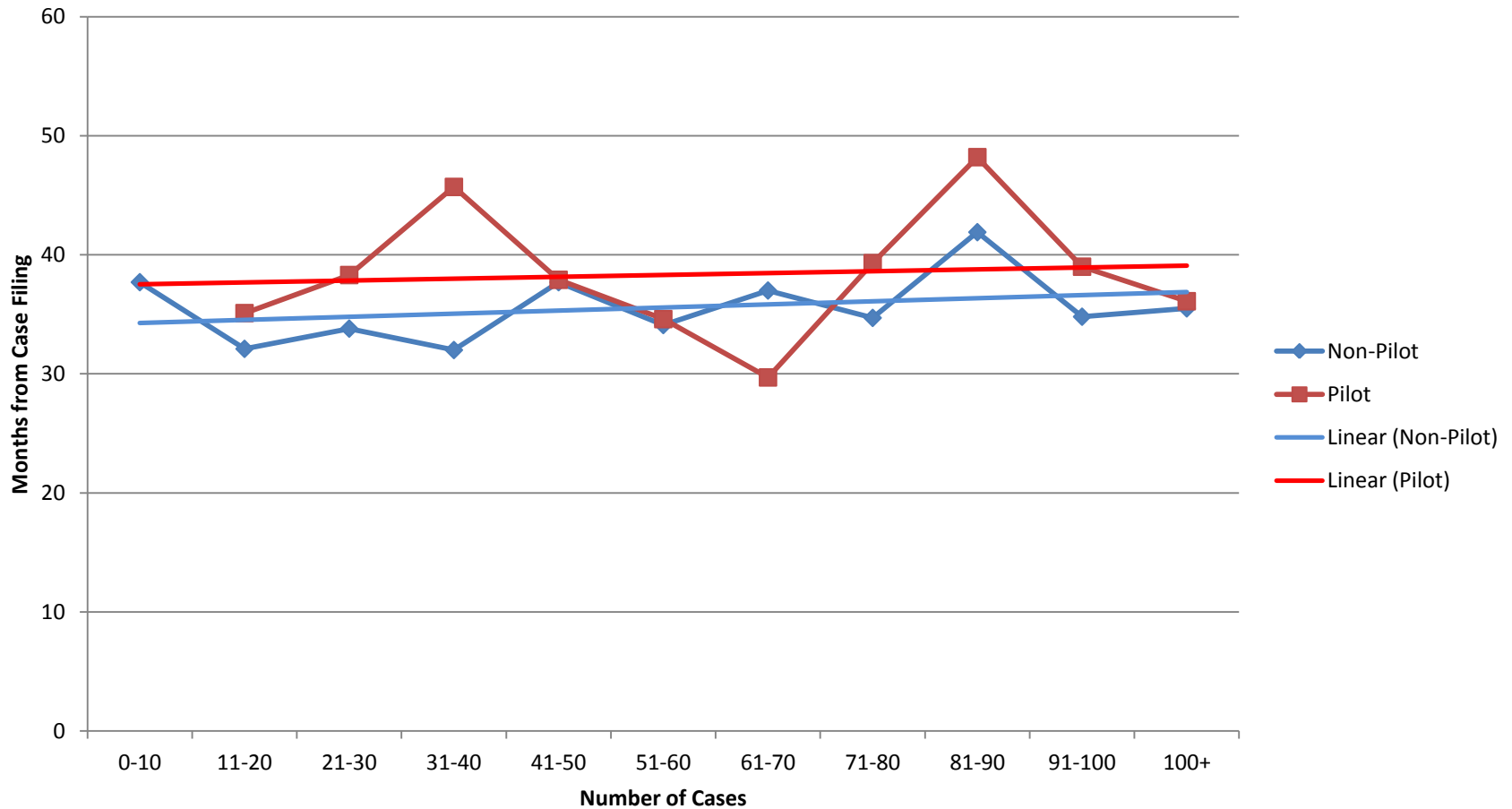
Time to Trial and Time to Summary Judgment Disposition



Time to Trial and Time to Summary Judgment Disposition

- The Time to Trial and Time to Disposition of Case by Summary Judgment were both shorter for Non-Pilot Judges than for Pilot Judges
 - Time to Trial (35.1 months from case filing for Non-Pilot Judges v. 37.5 months for Pilot Judges)
 - Time to Summary Judgment Disposition (27.3 months for Non-Pilot Judges v. 29.5 months for Pilot Judges)

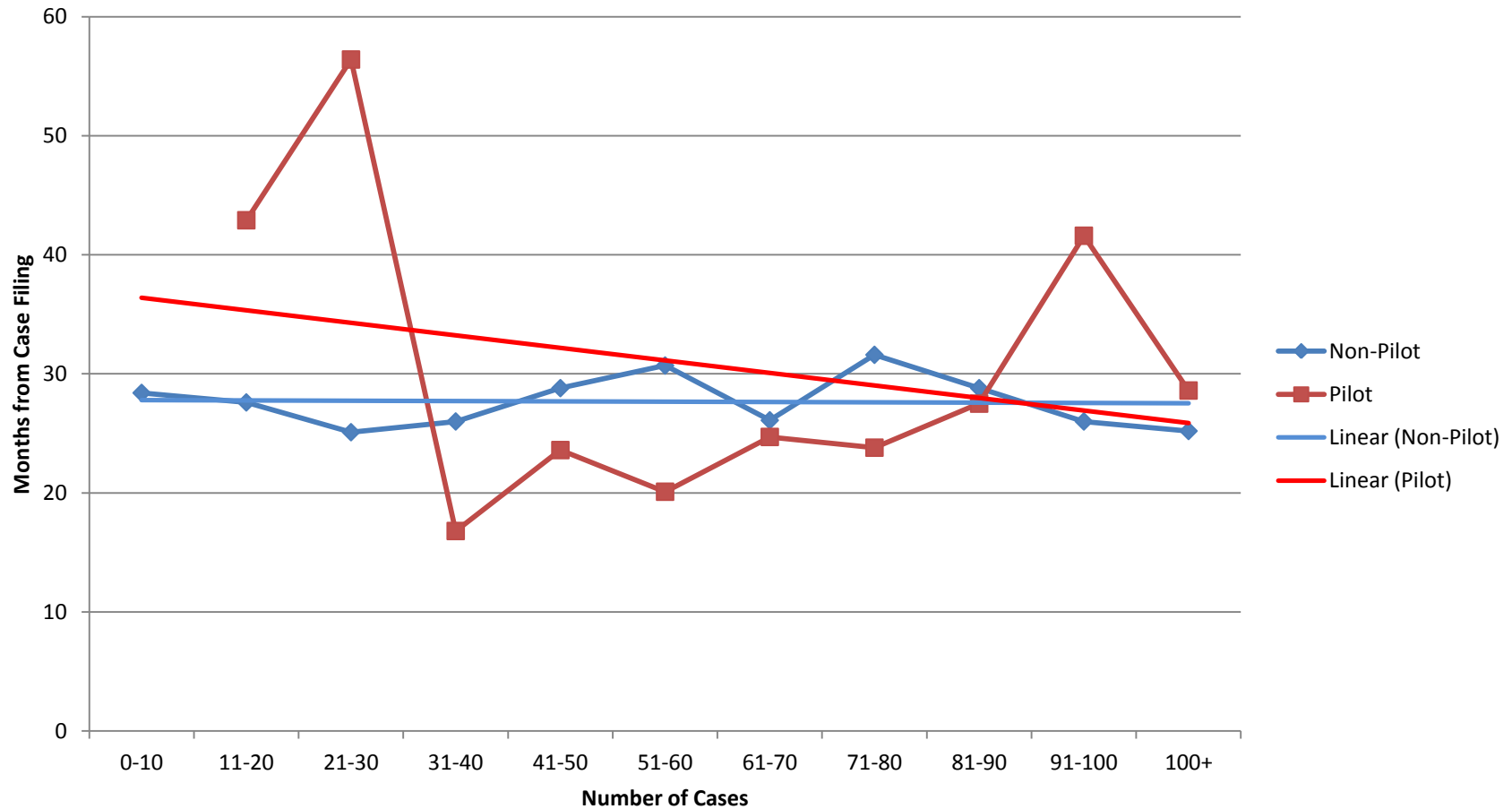
Time to Trial, by Number of Patent Cases



Time to Trial, by Number of Patent Cases

- As shown in the previous chart, the average time to trial (measured from case filing) tends to increase with an increased number of patent cases, both for Pilot Judges (red trendline) and Non-Pilot Judges (blue trendline)
- The average time to trial for Non-Pilot Judges is lower for most experience levels (measured by number of cases) than for Pilot Judges

Time to Disposition by Summary Judgment



Time to Disposition by Summary Judgment

- The time to case disposition by Summary Judgment for Pilot Judges (red trendline) shows a distinct downward trend
- The Summary Judgment time to disposition for Non-Pilot Judges shows no similar trend, and appears to be independent of experience.
- Query whether the Pilot Judge result is a function of outliers at 11-20 and 21-30 cases. Time will tell.

Conclusion

- There is no apparent correlation between the reversal rate by the Federal Circuit of a judge and the number of patent cases handled by the judge. If anything, the reversal rate appears to increase as the number of patent cases increases.
- The time to trial for Pilot and Non-Patent Judges appears to increase slightly with increased patent case load.
- The time to disposition by Summary Judgment appears to decrease with increasing patent case load for Pilot Judges, but no such trend is shown for Non-Pilot Judges.

Source

- Data Extracted from LegalMetric's database of over 50,000 patent cases