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New USPTO Processes Put in Place Regarding PTAB Institution Decisions

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On March 26, 2025, the U.S. Patent and Trademark Office (USPTO) announced new interim procedures for handling discretionary denials of post-grant proceedings before the Patent Trial and Appeal Board (PTAB). These changes are significant and are expected to increase discretionary denials.

Under the new procedure, responsibility for assessing whether to exercise discretionary denial of institution of a PTAB trial will be handled by the USPTO Director, and not by the panel that would otherwise address the merits of the petition. PTAB judges still will handle merits and non-discretionary issues. A separate briefing schedule is provided to the parties to address the bases for discretionary denial of institution.

Acting Director Coke Stewart sent a memorandum to all PTAB judges yesterday announcing the new procedures and shifting responsibility between the Director and PTAB. The memorandum identifies an expansive set of considerations that may impact application of discretionary denial beyond the existence of parallel or serial proceedings on the same patent and well-known existing case precedent (*Fintiv*, *General Plastics* and *Advanced Bionics*). These changes go beyond the February memorandum that rescinded former Director Vidal's policy on discretionary denial review.

Acting Director Stewart has said that the changes are needed so that the PTAB can meet all its duties. These include handling its *ex parte* appeal docket along with conducting PTAB trials for post-grant proceedings. This is consistent with her remarks last week at the annual PTAB Bar Conference, where she stated that the Office needs to manage with an expectation of having fewer resources at the PTAB due to current Administration policies. In particular, she noted that PTAB staffing is down from a high of about 280 judges to about 200 judges. In addition, many PTAB employees are not covered by collective bargaining agreements and likely face return to work and other orders

that may lead to additional reduced staffing.

If you would like to discuss any of these changes in more detail, please contact one of the authors.

You can see the text of the new memorandum [here](#).