# David McCombs, Eugene Goryunov, Jonathan Bowser and Judy He in World IP Review: 'Analysing Takings Clause' Challenges to PTAB Reviews'

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The U.S. Supreme Court denied *writ of certiorari* in *Christy v. US* (2021), declining to consider a constitutional challenge under the Fifth Amendment's "Takings Clause" to Patent Trial and Appeal Board (PTAB) post-grant review proceedings.

This leaves in place decisions by the Court of Appeals for the Federal Circuit as controlling law. Consequently, this article reviews Takings Clause-based constitutional challenges to America Invents Act (AIA) post-grant proceedings.

The AIA established three new post-grant review proceedings: *inter partes* reviews (IPRs), covered business method reviews (CBMRs), and post-grant reviews (PGRs).

These proceedings allow the PTAB to review the patentability of one or more issued patent claims challenged by a petitioner. IPR proceedings have proved to be a popular tool for petitioners, often used in response to a patent infringement litigation. More than 12,000 IPR petitions have been filed since IPRs first became available.

In *Oil States Energy Services v. Greene's Energy Group* (2018) the U.S. Supreme Court held that IPR "falls squarely within the public-rights doctrine," that patents are "public franchises," and that IPR proceedings do not violate Article III or the Seventh Amendment. The court, however, "emphasi[s]e[d] the narrowness of [its] holding" and cautioned that its "decision should not be misconstrued as suggesting that patents are not property for purposes of the due process clause or the Takings Clause."

Excerpted from *World IP Review*. To read the full article, click here.

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