Bowser in Reuters: USPTO Director Returns Merits-Based Institution Decisions to PTAB Judges

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Haynes Boone Partner **Jon Bowser** authored an article for *Reuters* discussing the return of certain patent review obligations to Patent Trial and Appeal Board judges after being stripped of those responsibilities for more than a year.

Read an excerpt below.

For the past year, a party petitioning for *inter partes* review (IPR) or post-grant review (PGR) has had, at least formally, an audience of one. Since October 2025, the Director of the U.S. Patent and Trademark Office (USPTO) decided whether to institute every IPR or PGR petition, a job that judges of the Patent Trial and Appeal Board (PTAB) had performed since the America Invents Act (AIA) took effect in 2012.

In a November 10, 2026 memorandum (https://bit.ly/3UQb74a), Director John A. Squires announced that, effective November 16, 2026, he is "returning certain merits-based considerations for the PTAB to evaluate in the course of making institution decisions."

The Director remains the gatekeeper for discretionary denial considerations. The judges get the merits back, along with instructions on how to decide them.

From Delegation to Centralization
The AIA vests the institution decision in the Director. **35 U.S.C. §§ 314**, **324**. From the outset, however, the USPTO delegated that authority to the PTAB by rule (**37 C.F.R. § 42.4**), and for more than a decade the same panel of judges that decided whether to institute a review also conducted the trial. According to the memorandum, "the operational choice to delegate institution decisions to the PTAB was a practical one."

That model began to unwind in March 2025, when the USPTO's "Interim Processes for PTAB Workload Management" policy (https://bit.ly/4AEoSIO) "bifurcated decisions on whether to institute an IPR or PGR between discretionary considerations and merits-based considerations." The Director took the discretionary question, and petitions that survived went to a PTAB panel for consideration of the merits.

Then, on October 17, 2025, Director Squires took over (https://bit.ly/4zDM43k) the merits consideration as well, citing "structural, perceptual, and procedural issues seemingly inherent in the delegated-institution model."

Among his stated goals were to "[r]emove a perceived referral-signal bias by centralizing the institution decision point" and "[e]liminate the unfounded perception of self-interest by separating the power to institute from the body that conducts the trial."

To read the full article from *Reuters*, click **here**.

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