Bowser in Westlaw Today: USPTO Director Clarifies Policy on IPR Discretionary Denials

By Jonathan R. Bowser | July 10, 2026

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Haynes Boone Partner **Jonathan Bowser** authored an article for *Thomson Reuters Westlaw Today* about a recent precedential decision from the U.S. Patent and Trademark Office that provides further guidance on the agency's evolving approach to discretionary denials of inter partes review (IPR) petitions.

Bowser explains how factors beyond the merits of a patent challenge, including parallel litigation, settled expectations and examiner error, are increasingly influencing whether an IPR petition moves forward.

Read an excerpt below.

A New Posture Toward Institution

In October 2025, Director Squires issued a policy memorandum, explaining that he will issue "summary notices" indicating whether IPR petitions are instituted or denied, including for discretionary reasons. The Director's summary notices often identify the proceeding number without explanation why the petition was instituted or denied.

In Magnolia, Director Squires outlined the policy considerations USPTO leadership considers in determining whether to discretionarily deny an IPR petition independent of the merits of the validity challenge raised by the petitioner. Magnolia is the most comprehensive explanation of the policy framework that now governs whether USPTO leadership will discretionarily deny an IPR petition.

The Governing Premise: An Alternative to Litigation

Director Squires explained that the foundational consideration is that IPRs should serve as "a quick and cost-effective alternative to district court patent litigation for resolving disputes over patent validity." He cited Congress' intent to prevent the use of IPRs "for harassment or a means to prevent market entry through repeated litigation and administrative attacks."

The Director indicated that, 15 years after the passage of the America Invents Act (AIA), IPRs often do not function as an alternative to validity challenges in district court. Rather, he explained that "many petitioners seek [IPR] in parallel with litigation to gain litigation leverage."

Director Squires cautioned that "the mere existence of co-pending litigation in and of itself may not necessarily raise concerns." However, he indicated that "all too often the co-pending litigation involves either the same arguments as the [IPR], or a petitioner asserts system art in the litigation that overlaps with the patents or printed publications asserted in the [IPR] — a tell-tale sign that the [IPR] is not functioning as a litigation alternative."

The Director expanded this concern for situations when IPR petitions present "substantially different" prior art or arguments in IPR and district court proceedings. In these cases, the Director

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indicated that an IPR "often simply serves as a means by which the petitioner presents additional invalidity arguments," and "when this occurs, the parties spend more time and resources litigating patent validity than they would have in the absence of AIA reviews."

Read the full *Westlaw Today* article **here**.

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