

McCombs, Goryunov and Bowser in Reuters: The Impact of Chevron's Elimination on IPR Practice

August 28, 2024 David McCombs, Jonathan Bowser

PRACTICES Patent Litigation, Patent Office Trials, Patents, Intellectual Property

Haynes Boone Partners [David McCombs](#), [Eugene Goryunov](#) and [Jon Bowser](#) authored an article in *Reuters* discussing how the U.S. Supreme Court's recent decision in *Loper Bright Enterprises v. Raimond* could potentially lead to more cautious agency actions and increased scrutiny from courts.

Read an excerpt below.

In *Loper Bright Enterprises v. Raimond*, No. 22-451 (June 28, 2024), the U.S. Supreme Court overruled the Court's decades-old *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984) decision. *Chevron*, and its deference framework, has guided review of certain types of administrative agency rulings.

While the *Loper Bright* decision sounds earth shattering, the reality is that — according to *Loper Bright* — earlier cases decided under the Court's *Chevron* framework remain "lawful [and] are still subject to statutory *stare decisis* despite the Court's change in interpretive methodology."

Loper Bright, however, will undoubtedly result in more cautious agency action, including from the U.S. Patent and Trademark Office (USPTO), and open the door to more appeals while impacted parties test the water.

Under *Loper Bright*, the USPTO, like other executive agencies, will no longer be afforded deference in interpreting statutes it enforces in conducting IPR (inter partes review) trials if the statute is silent or ambiguous about the agency's implementation of that statute.

Chevron has long been recognized as the seminal case for how an agency's statutory interpretation is to be reviewed. The U.S. Supreme Court there expressed a two-part framework for examining such agency decisions.

First, the reviewing court asks whether Congress has directly spoken to the precise statutory question at issue. If congressional intent is clear, the inquiry ends and congressional intent controls; the agency's decision on how to interpret a statute is given no deference. If, however, the statute is silent or ambiguous with respect to the question at issue, the reviewing court moves on to the second step. There, the court must defer to an agency's interpretation of a statute so long as the interpretation reflects a "permissible construction of the statute."

Throughout the years, *Chevron* has divided legal thought leadership. Defenders of *Chevron* deference argued that an agency, charged with enforcing a congressional statute, is more familiar with the statute it administers every day than a court would be. It is also well recognized that agencies oftentimes work with Congress to develop legislation and these agencies may have a better idea of what Congress was trying to accomplish.

Chevron defenders have also argued that it encourages political accountability in that issues that may be left open by Congress should be resolved by appointed agency personnel enforcing that statute. On the other hand, critics have argued that *Chevron* leaves statutory interpretation with agencies that are not equipped to properly wield such authority. Moreover, it can be argued that the deference itself is ambiguous because it uses the word "ambiguous." In other words, how does a reviewing court know, with consistency among other courts, when a statute is, in fact, ambiguous.

To read the full article from *Reuters*, click [here](#).