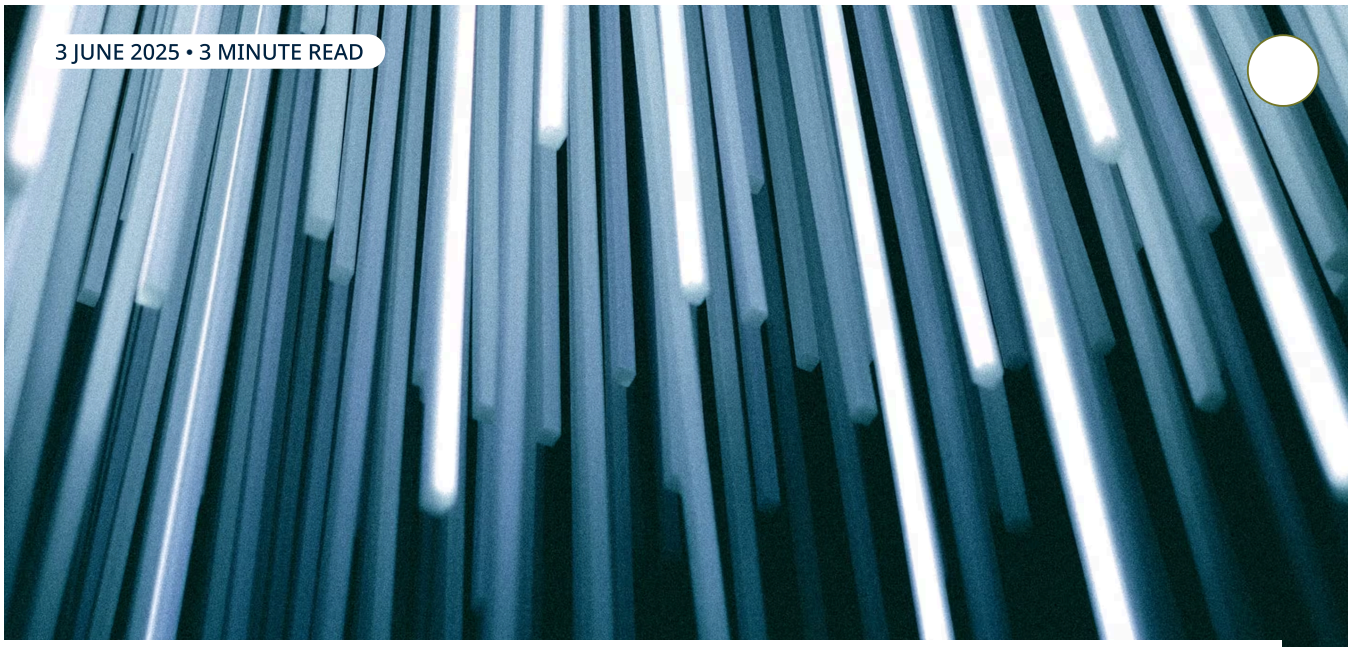
INTELLECTUAL PROPERTY NEWS



How delayed Notice of Date Accorded mailings may affect inter partes review

Written by: Jennifer Nall

Inter partes review (IPR) practices have seen significant changes since US Patent and Trademark Office Acting Director Coke Stewart assumed her current role in January 2025. Perhaps the most significant change has been Acting Director Stewart's "Interim Processes for PTAB Workload Management" (Interim Guidance) dated March 26, 2025.

Under the Interim Guidance, a IPR petition is more likely to be discretionarily denied if the deadline for the Final Written Decision exceeds the district court's scheduled trial date in parallel litigation. Notably, the Interim Guidance may suggest that a petition is more likely to be discretionarily denied if the district court in a parallel proceeding has already conducted a claim construction hearing. Additionally, a petitioner's issuance of a Sotera stipulation, where the petitioner stipulates that if IPR is instituted, the petitioner will not raise in district court litigation any grounds that it raised in the IPR petition or reasonably could have raised in the IPR petition, is no longer guaranteed to overcome such discretionary denial timing considerations.

However, one notable change that is not addressed in the Interim Guidance has been the delayed mailing of Notices of Date Accorded – formal notifications issued by the United States Patent and Trademark Office indicating the official filing dates of petitions or applications.

This seemingly minor administrative event has an outsized impact on inter partes review petitions filed when parallel litigation is pending.

IPR statutory timelines

IPR has a tight statutory timeline that puts constraints on all participants – not only the petitioner and patent owner, but also the Patent Trial and Appeal Board (PTAB). A Notice of Date Accorded may be considered a workaround to the statutory deadlines, potentially allowing the PTAB to better control the flow and number of petitions on a given day.

Specifically, the PTAB can delay the start of IPR timelines by using the mailing date of the Notice of Date Accorded – rather than the filing date of the petition – to calculate statutory deadlines.

Notice of Date Accorded mailing data

According to Docket Navigator, the processing time for Notice of Date Accorded mailings from February 1, 2025 to May 1, 2025 shows a significant increase from the same period last year:

- **February 1, 2024 to May 1, 2024:** ~19.77 days
- **February 1, 2025 to May 1, 2025:** ~43.9 days

Additionally, Docket Navigator data indicates that the historical average Notice of Date Accorded mailing processing time is approximately 19.05 days. Thus, since January 2025, the PTAB's average timeline for mailing a Notice of Date Accorded has more than doubled.

Key takeaways

Delayed Notice of Date Accorded mailings have a substantial impact on IPR petitions filed amid parallel pending litigation. Combined with the Interim Guidance, the added delay in mailing the Notice of Date Accorded for IPR petitions could greatly affect discretionary denial considerations.

For more information, please contact the author.

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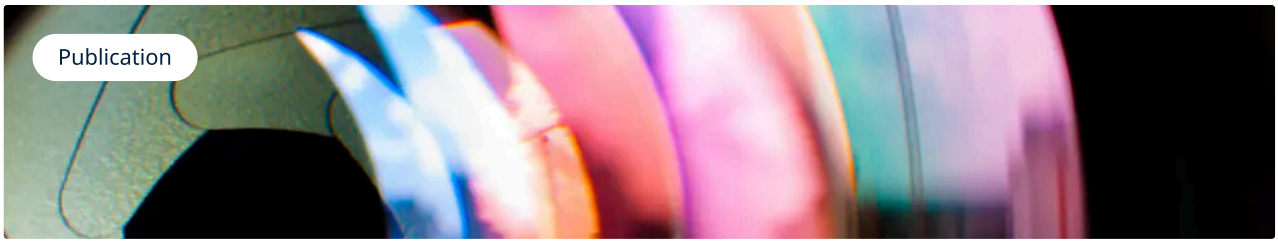

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