United States Patent and Trademark Office

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office

17 October 2025

An Open Letter From America's Innovation Agency

Bringing the USPTO Back to the Future: Return of Institution Authority under 35 U.S.C. §§ 314 and 324 to the Director

Dear Colleagues, Inventors, and Americans,

Under the America Invents Act (AIA), Congress entrusted the United States Patent and Trademark Office with several mandates to ensure the timely and fair adjudication of patent validity challenges through post-grant review (PGR) or inter partes review (IPR) mechanisms and priority contests via derivation proceedings. As to IPRs specifically, under **35 U.S.C. § 314(a)**, Congress made plain that:

> *The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition … shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.*

This statutory language expressly vests the *authority to institute IPRs and PGRs* in the USPTO Director. While 35 U.S.C. § 3(b)(3)(B) *permits* delegation of that authority, such delegation is non-exclusive. Statutorily, the Director retains full and concurrent authority over whether an IPR or PGR shall proceed.

Since the AIA's enactment, initial operational choices led to the delegation of institution decisions to the Patent Trial and Appeal Board, where panels then adjudicated the merits once instituted. Although this delegation was initially practical, experience has raised *structural, perceptual, and procedural concerns* inconsistent with the AIA's design, clear language, and intent affecting, among other things, the public's rightful expectation of impartiality. Given the statutory charge, my aim as Director is to address these concerns.

Under oath in my confirmation hearing before the Senate Judiciary Committee and thereafter in my submitted Questions for the Record responses, I expressed discomfort that data seemed to be "skewed" in favor of certain provisions (namely IPRs over PGRs and a very high invalidation rate). To me, this raised questions about both the administration of IPR proceedings and their institution in particular. I vowed to administer the AIA as the statute provides and as Congress intended.

ShopSee
Exhibit 2017
TikTok v. ShopSee
IPR2025-01485
Ex. 2017-001

Today, in keeping with my vow and having now taken the Oath of Office as USPTO Director, I have ordered changes pursuant to my memo to the Board (attached). Below, I describe the reasons for my action today.

Over the past several years, the delegated-institution model has given rise to the following difficulties:

1. **Perception of Self-Incentivization**
   – While the Board has done an admirable job, performance metrics and workload structures have created the *appearance* that institution decisions affect docket size, credit, and resource allocation—inviting concern that the Board may be "filling its own docket."
   – This may be unfounded, but nevertheless such a perception undermines public confidence in the integrity of our Office's adjudicatory functions with respect to IPRs.

2. **Bifurcated Procedures for Discretionary Considerations**
   – The evolution of the bifurcated processes, which were smart and necessary, was never intended to be permanent. Under those processes, a preliminary review precedes Board referral. However, this appears to have inadvertently produced extraordinarily high institution rates (at one point exceeding 95 percent) for referred cases.

3. **Statutory Adherence and Administrative Clarity**
   – Congress expressly charges the *Director*—not the Board as delegees —to make institution determinations. Returning this function to the Director re-aligns our Office's procedures with the clear language and intent of the statute and returns accountability for such decisions to the Director just as the framework of the AIA provides.

In sum, reclaiming the Director's statutory role is intended to:

- **Eliminate the appearance of self-interest** by separating the power to institute from the body that conducts the trial;

- **Remove a perceived referral-signal bias** by centralizing the decision point;

- **Enhance transparency and public trust** through a single line of authority; and

- **Re-align the duties and responsibilities** of the Director, as a Presidentially appointed and Senate-confirmed officer, to be accountable for this threshold determination and properly effectuate the clear language of the AIA and thus Congress's intent.

This action aligns the USPTO's administration of IPRs with both the **letter and the spirit of 35 U.S.C. § 314** and strengthens the integrity of the Office's adjudicatory processes.

In closing, the mission of America's Innovation Agency is to lead the world in intellectual property protection. We can do so and serve the public interest only by maintaining a patent system that is fair, predictable, and respected. Returning institution authority to the Director bolsters our mission because it restores the statutory framework mandated by Congress in the America Invents Act.

Yours in Innovation,

John A. Squires
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

MEMORANDUM

To: All PTAB Judges

From: John A. Squires
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

Subject: Director Institution of AIA Trial Proceedings

Date: October 17, 2025

To improve efficiency, consistency, and adherence to the statutory requirements for institution of trial, effective October 20, 2025, the Director will determine whether to institute trial for *inter partes* review ("IPR") and post-grant review ("PGR") proceedings.[1] This process will maintain PTAB's capacity to conduct IPR and PGR trials and promote consistent application of considerations for institution of trial proceedings before the PTAB. This approach to institution flows from the processes outlined in the March 26, 2025 memorandum entitled "Interim Processes for PTAB Workload Management" ("Interim Processes"),[2] under which the Director determines whether or not to deny a petition based on discretionary considerations.

Similar to the discretionary considerations process, the Director, in consultation with at least three PTAB judges, will determine whether to institute trials in all IPR and PGR proceedings. Upon review of discretionary considerations, the merits, and non-discretionary

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[1] Congress provided that the Director determines whether to institute trials under the America Invents Act. *See* 35 U.S.C. § 314(a) ("The Director may not authorize an inter partes review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."); *id.* § 314(b) ("The Director shall determine whether to institute an inter partes review under this chapter pursuant to a petition . . . ."); *id.* § 314(c) ("The Director shall notify the petitioner and patent owner, in writing, of the Director's determination under subsection (a), and shall make such notice available to the public as soon as is practicable."); *see also id.* § 324(a), (c), (d) (similar).

[2] Available at https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf.

considerations, if the Director determines that institution is appropriate on at least one ground for one challenged claim, the Director will issue a summary notice to the parties granting institution. *See* 35 U.S.C. §§ 314(c), 324(d). Similarly, if the Director determines that institution is not appropriate, whether based on discretionary considerations, the merits, or other non-discretionary considerations, the Director will issue a summary notice denying institution. In proceedings involving novel or important factual or legal issues, the Director may issue a decision on institution addressing those issues. Additionally, where the Director determines detailed treatment of issues raised in a petition is appropriate (e.g., complex claim construction issues, priority analysis, or real party in interest determination), the Director may refer the decision on institution to one or more members of the PTAB. The Office has issued more than 580 decisions under the Interim Processes, providing substantial guidance on how the Director will handle discretionary considerations. Any instituted IPR or PGR proceeding will be referred to a three-member panel of the PTAB to conduct the trial and that panel will be assigned according to PTAB Standard Operating Procedure (SOP) 1 (Rev. 16).[3]

This Memorandum supersedes the Interim Processes to the extent that (1) routine decisions on institution will be limited to summary notices, and (2) merit-based decisions on whether to institute petitions will not be referred to a three-member panel of the PTAB. The process for briefing discretionary considerations, as outlined in the Interim Processes and the Discretionary Decisions webpage,[4] and the process for briefing the merits and non-statutory considerations will remain the same. Further, all petitions referred to the PTAB for consideration of the merits and non-discretionary considerations under the Interim Processes prior to October 20, 2025 will remain with a three-member panel.

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[3] Available at https://www.uspto.gov/sites/default/files/documents/sop1_r16_final.pdf.
[4] Available at https://www.uspto.gov/patents/ptab/interim-director-discretionary-process.