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Interim Director Discretionary Process

On March 26, 2025, the United States Patent and Trademark Office (USPTO or Office) issued a memorandum on interim processes for PTAB workload management (Process Memorandum). Under the Process Memorandum, decisions on whether to institute *inter partes* reviews (IPR) and post-grant reviews (PGR) are bifurcated between (i) discretionary considerations and (ii) merits and other non-discretionary considerations.

This webpage provides information on the discretionary considerations process and serves as a guide to parties on when and how to file discretionary briefing, and the process by which the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (Director) will render decisions on discretion. All questions about the Director's Discretionary Process can be submitted to Director_Discretionary_Decision@uspto.gov.

This webpage supersedes the April 25, 2025 FAQs for Interim Processes for PTAB Workload Management, which are now archived.

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I. Interim director discretionary process

A. Overview

B. Discretionary considerations

C. Briefing

The petitioner and the patent owner are permitted to file briefs addressing discretionary considerations. The patent owner may file a brief that explains the facts and circumstances that warrant discretionary denial of the petition. The petitioner may file a brief that opposes the patent owner's request and explains why the Office should review the challenged patent in view of discretionary considerations. Each brief should provide a thorough explanation of the outcome that the party is advocating for, supported with facts and evidence. Additional details on party briefs are provided in Sections II–IV.

The petitioner and the patent owner should not present discretionary considerations in the petition or the Patent Owner Preliminary Response (POPR), respectively. Parties must make all their arguments (citing evidence, as needed) on the merits and other non-discretionary considerations in the petition, POPR, and any authorized reply or sur-reply. A Board panel will consider only arguments and evidence cited in those papers when determining whether to grant or deny institution.

D. Stipulations

E. Decisions

F. Merits, non-discretionary considerations, and motions

G. How to file

- H. Optional process
- II. Patent owner's discretionary denial brief
- III. Petitioner's brief opposing discretionary denial
- IV. Additional briefing
- V. Director Discretionary Decisions
- VI. Conflicts of interest
- VII. Questions

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