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Home > Patents > PTAB > Interim Director Discretionary Process

On October 3, 2025, the following sections were updated:



- [V.A.](#)
- [VI.](#)

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.

[Expand all](#) | [Collapse all](#)

▼ I. Interim director discretionary process
▶ A. Overview
▶ B. Discretionary considerations
▶ C. Briefing
▶ D. Stipulations

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› E. Decisions

▼ F. Merits, non-discretionary considerations, and motions

The “merits” considerations refer to whether there is a reasonable likelihood that a petitioner would prevail with respect to at least one of the claims challenged in an IPR petition, whether a patent is eligible for PGR, or whether it is more likely than not that at least one of the claims challenged in a PGR petition is unpatentable or the PGR petition raises a novel or unsettled legal question that is important to other patents or patent applications.

In addition to the considerations involving whether a petition presents a sufficient number of grounds/challenges of claims that meet the reasonable likelihood standard, (see *Chevron Oronite Co. LLC v. Infineum USA L.P.*, IPR2018-00923, Paper 9 (PTAB Nov. 7, 2018) (informative) and *Deeper, UAB v. Vexilar, Inc.*, IPR2018-01310, Paper 7 (PTAB Jan. 24, 2019) (informative)), non-discretionary considerations include those relevant to, for example, [35 U.S.C. §§ 311, 312, 315\(a\), \(b\), and \(e\), 322](#), and [325\(a\) and \(e\)](#). Such considerations also may include, for example: (1) claim construction issues (see, e.g., *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024) (informative)); or (2) whether a petition meets the requirements of [37 C.F.R. § 42.104\(b\)](#) (see, e.g., *Adaptics Ltd. v. Perfect Co.*, IPR2018-01596, Paper 20 (PTAB Mar. 6, 2019) (informative)).

The Board will decide procedural motions that do not relate to discretionary considerations regardless of when those motions are filed.

› G. How to file

› H. Optional process

▼ II. Patent owner’s discretionary denial brief

› A. Availability

› B. Timing

▼ C. Content

In its brief, the patent owner should argue with particularity the circumstances that warrant discretionary denial. The patent owner may argue circumstances that warrant denial based on existing PTAB precedent, the Consolidated Trial Practice Guide, relevant considerations enumerated in the Process Memorandum, and any other consideration or circumstance that the patent owner believes bears on the Director’s discretion.

▼ i. Arguments directed to the strength of the merits

Notwithstanding the prohibition on incorporation by reference in [37 C.F.R. § 42.6\(a\)\(3\)](#), when filing a brief for discretionary denial, a patent owner may direct attention to an anticipated POPR and evidence for a discussion of the merits. Similarly, in arguing about the strengths or weaknesses of the merits, a patent owner may refer to arguments made in the petition and cite to record evidence. A patent owner should not repeat its merits arguments verbatim but should briefly explain why the merits are relevant. A patent owner should not treat a discretionary denial brief as an additional opportunity for merits briefing.

› ii. Evidence

› iii. Page limit

› III. Petitioner's brief opposing discretionary denial

› IV. Additional briefing

› V. Director Discretionary Decisions

› VI. Conflicts of interest

› VII. Questions



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