THINK FORWARD

The USPTO Director Revises PTAB Standard Operating Procedures

By Harold Johnson

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To advance predictability and transparency across the U.S. Patent and Trademark Office, Director Andrei Iancu revised the Patent Trial and Appeal Board's Standard Operating Procedures (SOPs) for the assignment of its judicial panels and the designation of its decisions. The revisions are based on the USPTO's six years of experience with PTAB proceedings, and the feedback that it received from stakeholders, practitioners, courts, and legislators.

The SOP revisions change the procedures for informing parties about panel assignments and replacements, including the designation of panels with more than three judges when approved by the Director. The experience and technological backgrounds of judges will be considered in their assignment to a panel. A Precedential Opinion Panel (POP) has been created, which will typically include the Director, the Commissioner for Patents, and the Chief Judge of the PTAB. Under certain circumstances, POP members may delegate their authority. The POP may be convened to rehear matters in pending trials and appeals on issues of exceptional importance. The revisions explain the standards, procedures, and timing for requesting POP review in a pending case on rehearing.

Further, the POP may assist the Director in designating PTAB decisions as precedential or informative. This is expected to replace the prior practice of appointing expanded panels with a process that is more predictable and transparent. Consequentially, concerns about expanded panels that may influence decisions should be alleviated. It is also anticipated that the SOP revisions will result in more decisions being designated as precedential. Parties will be provided with notice when POP review takes place, as well as the identification of the POP members who will decide their case.

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If you have any questions or wish to discuss how this decision impacts your business, please contact one of our Brinks Attorneys.