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Office Patent Trial Practice Guide, July 2019 Update

A Notice by the [Patent and Trademark Office](#) on 07/16/2019

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United States Patent and Trademark Office, Commerce.

ACTION:

Notice.

SUMMARY:

The United States Patent and Trademark Office (“Office”) issued a further update to the Office Patent Trial Practice Guide (“TPG”) in July 2019 to provide updated guidance to the public on standard practices before the Patent Trial and Appeal Board (“Board”) in the post-grant trial procedures implemented following the Leahy-Smith America Invents Act (“AIA”). The Office published the TPG to provide practitioners with guidance on typical procedures and times for taking action in AIA trials, as well as to ensure consistency of procedure among panels of the Board.

FOR FURTHER INFORMATION CONTACT:

Michael Tierney and William Fink, Vice Chief Administrative Patent Judges, by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

The Office issued a further update to the TPG in July 2019, to update the guidance set forth in the TPG by incorporating the Board’s current practices and precedential decisions, and to provide further explanation of certain aspects of the Board’s practices to the public. The Office previously issued an update to the TPG in August 2018. The TPG is divided into sections, each directed to a particular stage of a typical AIA trial proceeding or a specific issue commonly encountered during such proceedings. Thus, the TPG contains informative material and outlines the current procedures that panels of the Board typically follow in appropriate cases in the normal course of an AIA trial proceeding. In order to expedite these updates and provide guidance to the public as quickly as possible, the Office has chosen to issue updates to the TPG on a section-by-section, rolling basis, rather than a single, omnibus update addressing all aspects of the current TPG. The Office anticipates releasing further revisions of the TPG on a periodic basis, to take into account feedback received from stakeholders, changes in controlling precedent or applicable regulations, or the further refinement of the Board’s practices over time.

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The July 2019 update revises Sections I.A.2. (Prohibition on *Ex Parte* Communications), I.E.4. (Protective Orders), I.F.2. (Additional Discovery), I.F.5. (Live Testimony), II.B.6. (Claim Construction), II.C. (Patent Owner Preliminary Response), II.D.2. (Considerations in Instituting a Review), II.D.3. (Content of Decision on Whether to Institute), II.G. (Motions to Amend), II.H. (Opposition to a Motion to Amend), II.I. (Reply to Patent Owner Response and Reply to Petitioner Opposition to a Motion to Amend), II.J. (Other Motions), II.O. (Final Decision), II.P. (Rehearing Requests), and Appendix B (Protective Order Guidelines).

The July 2019 update of the TPG, containing only the revised sections, may be viewed or downloaded from the USPTO website at <https://www.uspto.gov/TrialPracticeGuide3> (<https://www.uspto.gov/TrialPracticeGuide3>). The TPG update from August 2018 is available at <https://go.usa.gov/xU7GP> (<https://go.usa.gov/xU7GP>) and the full version of the August 2012 TPG continues to be available for reference on the USPTO website at <https://go.usa.gov/xU7GK> (<https://go.usa.gov/xU7GK>).

Dated: July 10, 2019.

Andrei Iancu,

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

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