MEMORANDUM

To: Members of the Patent Trial and Appeal Board

From: Coke Morgan Stewart
Acting Under Secretary of Commerce for Intellectual Property and
Acting Director of the United States Patent and Trademark Office

Subject: PTAB consideration of prior findings of fact and conclusions of law

Date: September 16, 2025

This Memorandum applies when patent claims being challenged before the Board in an America Invents Act (AIA) trial proceeding, or substantially similar patent claims, have already been adjudicated, post-issuance, before the Office, in district court, or at the U.S. International Trade Commission (ITC). In such instances, if the Board reaches an initial or final decision on a finding of fact or conclusion of law that is different than the prior finding or conclusion of the Office, district court, or the ITC, the Board shall explain in the institution or final written decision why a different outcome is warranted. A more detailed explanation is required from the Board when the same or substantially the same evidence and/or arguments that were previously presented to the Office, the district court, or the ITC are being relied upon in the subsequent AIA trial proceeding.

To help make its assessment, the Board shall consider relevant materials submitted by the parties from the other proceeding (e.g., an opinion, a judgment, trial testimony, or other evidence) and may authorize additional briefing.