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Analysis

PTAB Judges Alarmed By Squires' Moves To Limit Their Power

By [Theresa Schliep](#) · [Listen to article](#)

Law360 (October 27, 2025, 7:51 PM EDT) -- With [U.S. Patent and Trademark Office](#) leadership limiting the [Patent Trial and Appeal Board's](#) oversight of patent validity disputes, current judges for the tribunal say they are distressed by the recent moves to curb their authority and are looking for work elsewhere amid the instability.

Four administrative patent judges, speaking on the condition of anonymity with *Law360*, described an atmosphere of uncertainty at the PTAB, which since 2012 has been a popular venue for accused infringers and other companies to contest the validity of patents.

But under the leadership of Director John Squires and Deputy Director Coke Morgan Stewart, the USPTO has undertaken a number of measures to reduce the role of the PTAB in such patent fights, [culminating in a memorandum](#) issued Oct. 17 that says Squires will take point on decisions to institute inter partes review and post-grant review proceedings going forward.

As a part of that process, Squires will consult with some PTAB judges to make institution decisions, and the board's judges will still consider patent challenges post-institution. But the director's move takes away significant authority from the PTAB and [suggests that the rate](#) at which petitions are denied could increase substantially.

Squires' memorandum elicited a range of reactions from the intellectual property community, from celebration to dismay. For the judges who spoke with *Law360*, they say they fear that USPTO leadership is undermining the mission of the PTAB's founding law, the America Invents Act, and are doubting that they have a future at the agency.

"I personally never thought I was going to retire, and now I'm wondering how many months I have left," one judge told *Law360*.

A spokesperson for the USPTO declined to comment for this story.

There's been a steady trickle of departures from the PTAB since the beginning of the year, when President Donald Trump returned to office, and the USPTO's new leadership enacted a range of new policies, many of them seen as friendly to patent owners.

For instance, in March, Coke Morgan Stewart, then working as acting director, [launched a](#) bifurcated discretionary denial process in which she first evaluated whether AIA petitions should be denied for discretionary reasons before they went to the PTAB for further merit-based review, a process that has led to hundreds of brief decisions, around 60% of which were denials.

The agency also has embarked on a return-to-office for some employees, including certain APJs, who are now also required to do in-person hearings at USPTO offices. In addition, the agency has participated in some federal government-wide efforts to cull the workforce, such as an early retirement program and a buy-out program for departing workers.

Against this backdrop, there are roughly 180 APJs, a decrease from approximately 230 who were there on the last day of the Biden administration, according to current APJs and a review of APJ numbers by Law360.

One judge told Law360 that "those who are coming up on retirement are putting in their retirement papers, and those who are not are looking elsewhere."

"I think it'd be imprudent for anybody in this situation not to look at other options," the APJ said.

Another judge told Law360 that there might not be much demand for former PTAB judges if law firms begin deemphasizing their IPR practices in light of the policy changes.

"Your value as an APJ has evaporated," the judge said.

Squires' memorandum was celebrated by some members of the intellectual property community, who characterize the PTAB as a patent graveyard where businesses get multiple bites at the apple to kill intellectual property. There were around 1,300 IPR petitions last year, a slight increase from the previous year, but a decrease from the high of roughly 1,700 filed in 2017.

Squires' announcement provoked the ire of other observers, who view the PTAB as an efficient venue for contesting patent validity and who fear that weakening the tribunal's power means that patent assertion entities will leverage more bad patents in litigation. Unified Patents, which frequently files patent challenges at the board, earlier this month found that the number of PTAB petitions that were denied for discretionary reasons reached a record level in the third quarter of 2025 and that the rate at which reviews have been instituted has fallen sharply, particularly for patents owned by nonpracticing entities.

Squires' memo also came out the day after the USPTO proposed rules that would prevent IPR petitions from being accepted in many scenarios by imposing certain limits on institution, such as by blocking the PTAB from reviewing patents that have already had their validity adjudicated.

For some of the APJs currently at the board, they're worried that leadership is flouting the law in implementing these policies.

"The vast majority of the judges are very concerned about the fact that the director is doing things illegally, doing things that are not allowed under the" Administrative Procedure Act, one judge said.

The APJs also took issue with Squires' stated rationale for him asserting control over institution decisions. He said the director's delegation to the PTAB of institution decisions, which fall under the director's purview under the AIA, has led to the "perception of self-incentivization," in which "performance metrics and workload structures have created the appearance that institution decisions affect docket size, credit, and resource allocation — inviting concern that the board may be 'filling its own docket.'"

But two judges told Law360 that they don't need to institute cases to meet performance goals since they're busy enough.

"The idea that anybody does this, much less that it's a widespread problem, is fantasy," one judge said.

That opinion also is shared by some former APJs, such as Scott E. Kamholz, an attorney with ToolPat PLLC. He said the PTAB's performance appraisal model doesn't encourage granting institution any more than it encourages denying institution, since they're both given the same weight.

"I haven't really seen data or evidence that persuades me that the board is exhibiting any kind of bias,"

Kamholz said. "I certainly didn't see it when working there."

Still, Kamholz expressed mixed feelings about the fate of the PTAB. While he took issue with the reasons that Squires cited in taking back control of institution decisions, Kamholz noted that the AIA gives the director authority over institution decisions and highlighted Squires' intention to rely on APJs to help him make those calls.

"I think judges will continue to bear the primary burden for making institution decisions," Kamholz said.

But the current APJs expressed concerns about the future they have at the PTAB and defended their work. One said the "PTAB's only fault in implementing the AIA since 2012 is that it worked too well through the efforts of exceptionally well-qualified judges who put fairness and the rule of law above all else."

"It took a decade to build and barely six months to dismantle," the judge added.

—Additional reporting by Dani Kass and Ryan Davis. Editing by Emily Kokoll.

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- [4Levi Strauss Sues Rival 7 For All Mankind Over Pocket Tab TM](#)
- [5Apple Gets PTAB Wins On Haptic Patents Before Texas Trial](#)
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