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Squires To Issue Brief 'Up Or Down' Calls

On Patent Reviews

By [Ryan Davis](#) · [Listen to article](#)

Law360 (October 29, 2025, 8:52 PM EDT) -- When [U.S. Patent and Trademark Office Director John Squires](#) begins issuing decisions on whether to institute America Invents Act reviews of patents, he will not provide any details of his reasoning in most cases, USPTO officials said Wednesday.

At a USPTO Hour webinar, the office provided information on how the director will handle institution decisions after Squires [announced](#) this month that he will be making the calls on both the merits of petitions and discretionary issues. He said having the head of the office make those decisions will help ensure that the patent system is "fair, predictable and respected."

[Patent Trial and Appeal Board](#) judges have long determined whether to institute patent reviews and filed decisions spanning dozens of pages, but now they will only issue final decisions in AIA cases where Squires institutes review.

The director will provide a "summary notice" in each case stating that review of the patent is either appropriate or not appropriate, officials said Wednesday, and most such notices will say little more than yes or no.

Fielding questions from participants, PTAB Vice Chief Judge Michael Kim was asked if the director's decisions will contain any reasoning or analysis. He replied, "The short answer is no."

"They are going to be summary notices, which is kind of the proverbial 'thumbs-up' or 'thumbs-down' on specific cases," he said, adding that such orders are "going to be the primary vehicle for the vast majority of the cases."

The director, who did not participate in the webinar, can choose to issue longer decisions if he finds that the case involves novel or important factual or legal issues that require greater explanation, Judge Kim said, though he indicated that such holdings will likely be infrequent.

When Squires denies a petition, he will not explain if he did so based on the merits of the challenge, discretionary considerations or some other reason, said acting Chief PTAB Judge Kalyan K. Deshpande.

The orders "won't provide that type of guidance," he said. "We're not going to separate denials based on whether it was a discretionary denial versus merits-based denial."

Earlier this year, USPTO Deputy Director Coke Morgan Stewart began deciding whether AIA review petitions should be denied based on discretionary factors. She denied many on the grounds that a trial on the patent was set to take place in court before the board's decision would be due, or that the age of the patent had given the owner "settled expectations" that it would not be challenged.

While Stewart issued decisions that ran a few pages explaining her reasoning, Squires, who will issue one decision encompassing both discretionary issues and the merits, will not do that, the officials said.

The director will, however, continue Stewart's practice of issuing decisions in batches at the same time, usually once a week, Judge Deshpande said. He told participants to expect the first few batches of decisions to include a large number of denials, and for that to change in the coming weeks.

Many of the petitions Squires is currently considering are being evaluated on discretionary issues, which take less time to address, and those that are not denied will require an evaluation of the merits that will take longer, Judge Deshpande said.

"The first several notices will have more denials until the process gets into more of a steady state," Judge Deshpande said. "Once it gets into a steady state, say probably like the end of November, there will be notices that include both institutions and denials."

In cases that present novel or important issues requiring a more robust analysis, the director may either issue a detailed ruling himself, or refer the matter to one or more PTAB judges to make the decision, Judge Kim said. Such cases might involve "policy or some other area that the director would like to go and opine on," he said

A longer decision might also be deemed necessary if a case has complex fact-specific issues related to claim construction or whether the petition named all the interested parties, which may require "a fulsome analysis to decide," Judge Kim added.

Judge Deshpande said one issue that could warrant detailed analysis is "the quality of the search done at the time of examination."

He noted that patent challengers may provide a detailed explanation of how they found the earlier patents or publications they believe render the patent at issue invalid, including search terms, databases and techniques they used that might be different from what the patent examiner used when the patent was issued.

"This could be important in determining exactly how there was a potential office error during the examination process," Judge Deshpande said.

Evidence of such errors has been cited by Stewart in recent cases as a reason that review of a patent might be warranted.

Judge Deshpande said that Squires will consult with at least three PTAB judges when making his decisions, on both discretionary factors and the merits, as Stewart did. If the petition is not denied and is assigned to a panel to conduct the review, the judges who consulted with Squires will not be placed on the panel, he added.

Having judges work with the director "helps ensure that we have the right technical expertise" to evaluate the petition, Judge Deshpande said. He noted that if the director or the consulting judges have a conflict of interest, "they absolutely recuse themselves from participating in any dialogue regarding a proceeding."

If parties disagree with a decision by Squires, they can seek director review within 30 days and essentially ask him to reconsider, but "I would just remind parties to be mindful that the standard for rehearing is [that a key issue was] misapprehended or overlooked," Judge Deshpande said.

When announcing that he would be taking over institution decisions, Squires said having the PTAB make those determinations has raised concerns about "the public's rightful expectation of impartiality," and that he believed that the board's decisions have been "skewed" toward a "very high invalidation rate."

The more than 200 judges on the PTAB issued around 1,100 institution decisions in each of the last three years, according to USPTO statistics, and instituted review of around 67% of petitions. During her time making decisions on discretionary issues, Stewart denied around 60% of petitions, according to law firm blogs tracking the data.

Judge Deshpande declined to estimate how much time Squires will devote to making institution decisions either in total or on a per-case basis, saying, "There's not an expected amount, there's not a maximum amount."

"He will spend as much time as it takes to work on a case and make sure that it's been thoroughly vetted and adequately resolved," he said.

--Editing by Alanna Weissman.

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