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Analysis

Where PTAB Institution Reviews Stand As Squires Takes Lead

By [Dani Kass](#) · [Listen to article](#)

Law360 (October 29, 2025, 7:29 PM EDT) -- [U.S. Patent and Trademark Office Director John Squires](#) will be maintaining the agency leader's new role of gatekeeper at the [Patent Trial and Appeal Board](#). Here's what to know about his plans and the pushback on them.

In prior administrations, only PTAB judges would consider whether to grant or deny petitions for inter partes and post-grant reviews based on both merits and discretionary factors. But having top leadership more involved has been the hallmark of the second Trump administration.

Deputy Director Coke Morgan Stewart, during her nine months as [acting director](#), caused significant controversy — and a wave of legal challenges — by taking over the discretionary analysis and expanding what factors can be used. And now Squires says he plans to analyze both the merits and discretionary issues, ushering in a new era of PTAB practice as attorneys wait to see how he'll handle that responsibility.

"We're in a lull before we see actually what Director Squires is going to do and how he's going to handle the discretionary denial and institution decisions," said [Bunsow De Mory LLP](#) partner James Wilson.

Timeline of USPTO Institution Policy Changes in 2025

-  Jan. 20
Stewart [sworn in as deputy director](#); starts as acting director
-  March 11
Squires [nominated for director](#)
-  March 26
Stewart [announces bifurcated review process](#)
-  May 16
Stewart [issues first discretionary review decisions](#)
- 



June 13

SAP [files mandamus petition](#)



June 23

[Motorola](#) [files mandamus petition](#)



Aug. 19

[Google](#), Samsung [file mandamus petition](#)



Aug. 29

HighLevel [files mandamus petition](#)



Sept. 18

Senate [confirms Squires](#); [SanDisk](#), [Western Digital](#) [file mandamus petition](#)



Sept. 25

Squires [designates Stewart to continue discretion reviews](#)



Oct. 10

Cambridge [files mandamus petition](#)



Oct. 16

USPTO [issues notice of rulemaking](#)



Oct. 17

Squires [announces he will take over institution decisions](#)



Oct. 22

Instacart [files mandamus petition](#)

Background

In March, Stewart introduced a [bifurcated process](#) where she would review all IPR and PGR petitions to see whether they should be denied for various discretionary criteria or referred to the board.

Over the next several months, Stewart's overall policy would trickle out through hundreds of institution decisions, most notably introducing the concept of settled expectations. That concept largely holds that patents six years or older shouldn't have to face challenges.

The rules aren't so clear-cut, though, allowing some challenges on older patents — particularly if the examiner may have made a material error or the challenger had no reason to know the patent exists — and others on much younger patents.

Patent owners are entitled to some level of security with their patent, and any issues with patents should be handled early in their lifespan, Stewart has repeatedly said.

The other big factor has been how to interpret the board's Fintiv precedent, which looks at whether the advanced timing of related litigation makes a PTAB challenge a poor use of agency resources.

Biden-era USPTO Director Kathi Vidal had implemented guidance that made Fintiv denials rare by laying out how to avoid them. That mainly centered on so-called Sotera stipulations, where the challenger promised not to raise the same arguments in district court, or arguments that reasonably could have been raised, if the PTAB agrees to review the patent.

Stewart withdrew that guidance in February, finding in various decisions that a Sotera stipulation doesn't go far enough. The stipulations give up the right to assert arguments and art that could be raised in IPRs, but not arguments and art that couldn't be raised, such as those over patent eligibility and physical devices.

Squires' Changes

Squires was sworn in Sept. 23, and for his first few weeks, he [allowed](#) Stewart to continue working on discretionary reviews. That's now changed.

The director made two big moves Oct. 16 and 17, first [proposing rules](#) that would limit when to institute IPRs and then saying he would be [personally reviewing](#) all petitions for both discretion and merits decisions on institution.

The proposed rules would require the much broader stipulation espoused by Stewart and bar repeat challenges, among other limitations. The change is seen by some attorneys as a return to the balance intended by the AIA after years of petitioners having the upper hand, while it's viewed by others as gutting IPRs.

Feedback for the rules is due Nov. 17.

As to Squires' reviews, the director said he'd be consulting with at least three administrative patent judges.

The institution decisions that follow will be short "summary notices," rather than the lengthy briefs historically issued by the judges. The USPTO [clarified](#) Wednesday that it will be "thumbs up or down decisions."

Stewart's hundreds of decisions provide "substantial guidance" about how he's going to handle cases, Squires said in an open letter.

The PTAB's judges will still be reviewing the merits of cases once the director has decided whether to institute petitions.

Pending Litigation

There are seven mandamus petitions at the Federal Circuit challenging elements of the USPTO's policies.

The USPTO is fighting back against those petitions, largely by arguing that the parties shouldn't have relied on guidance from a prior administration that it always had the discretion to revoke, and that the mandamus petitions are the parties essentially appealing institution decisions, which isn't legally allowed.

Tracking Stewart's Decisions

You can read Law360's coverage of Stewart's discretionary decisions here.

- [May and June](#)
- [July 1-11](#)
- [July 12-18](#)
- [July 19-25](#)
- [July 26-Aug. 1](#)
- [Aug. 2-8](#)
- [Aug. 9-15](#)
- [Aug. 16-22](#)
- [Aug. 23-29](#)
- [Aug. 30-Sept. 5](#)
- [Sept. 6-12](#)
- [Sept. 13-19](#)
- [Sept. 20-26](#)
- [Sept. 29-Oct. 3](#)
- [Oct. 4-10](#)
- [Oct. 11-17](#)

The [U.S. Supreme Court](#) held in 2016's [Cuozzo Speed Technologies LLC v. Lee](#)  that institution decisions are almost never appealable, barring some constitutional violations or acting outside of what the America Invents Act allows. The petitioners are relying on the Federal Circuit seeing the PTAB's actions as "shenanigans," as the justices put it.

[SAP America Inc.](#) and [Motorola Solutions Inc.](#) [filed](#) the first [petitions](#), arguing the agency violated due process and the Administrative Procedure Act by withdrawing the Fintiv guidance and applying it to parties with already pending petitions that were relying on Sotera stipulations.

For SAP in particular, the USPTO [responded](#) that the company had the ability to make its case after the guidance was withdrawn but before Stewart made a final call, but chose not to do so.

The next mandamus [petition](#) came from Google LLC and [Samsung Electronics Co.](#), raising the same arguments and disputing Stewart's mandate for broader stipulations.

The subsequent mandamus [petition](#), from [HighLevel Inc.](#), claims Stewart retroactively applied another of her decisions in violation of due process and the APA. Stewart's [Hulu LLC](#) decision holds that if a district court finds patents invalid based on eligibility grounds, the PTAB won't institute a review, which is what she used to deny HighLevel's petition.

The USPTO said this too is an attempt to appeal an unfavorable institution decision.

Sandisk Technologies Inc. and Western Digital Technologies Inc.'s [petition](#) challenges the reliance on settled expectations, again alleging APA and due process violations. As did a subsequent [petition](#) from Cambridge Industries USA Inc.

The most recent [petition](#) came from [Maplebear Inc.](#), better known as Instacart, on Oct. 22. It argues Stewart made a "dramatic change to PTAB practice" when [rejecting](#) petitions on patents that had been previously challenged, based on concerns about parties using the failed petitions to build a successful one, known as "road mapping."

Support

In the mandamus fights, the USPTO has received backing from retired Federal Circuit Judges Randall Rader and Kathleen O'Malley, retired U.S. Court of Federal Claims Chief Judge Susan G. Braden, retired [U.S. International Trade Commission Vice Chair Ronald A. Cass](#) and several academics, including Adam Mossoff of George Mason University's Antonin Scalia Law School and Kristen Jakobsen Osenga of the University of Richmond School of Law.

The petitioners have drawn support from US*Made, the [National Retail Federation](#), the High Tech Inventors Alliance, [ACT|The App Association](#), the [Alliance for Automotive Innovation](#), the [Computer & Communications Industry Association](#), Unified Patents, the [Software & Information Industry Association](#), the Public Interest Patent Law Institute and other academics, including [Stanford Law School](#)'s Mark Lemley, Berkeley Law School's Colleen Chien and University of Utah College of Law's Jorge Contreras.

PIPLI is represented by Vidal, now a partner at [Winston & Strawn LLP](#), and many of the industry groups are represented by former acting USPTO Director Joe Matal.

--Additional reporting by Ryan Davis. Editing by Kelly Duncan.

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Case Information

Case Title

[In re: SAP America, Inc.](#)

Case Number

[25-132](#)

Court

Appellate - Federal Circuit

Nature of Suit

-

Date Filed

June 16, 2025

Case Title

[In re: Motorola Solutions, Inc.](#)

Case Number

[25-134](#)

Court

Appellate - Federal Circuit

Nature of Suit

-

Date Filed

June 23, 2025

Case Title

[In re: Google LLC](#)

Case Number

[25-144](#)

Court

Appellate - Federal Circuit

Nature of Suit

-

Date Filed

August 18, 2025

Case Title

[In re: HighLevel, Inc.](#)

Case Number

[25-148](#)

Court

Appellate - Federal Circuit

Nature of Suit

-

Date Filed

August 29, 2025

Case Title

[In re: SanDisk Technologies, Inc.](#)

Case Number

[25-152](#)

Court

Appellate - Federal Circuit

Nature of Suit

-

Date Filed

September 18, 2025

Case Title

[In re: Cambridge Industries USA Inc.](#)

Case Number

[26-101](#)

Court

Appellate - Federal Circuit

Nature of Suit

-

Date Filed

October 10, 2025

Case Title

[In re: Maplebear Inc.](#)

Case Number

[26-105](#)

Court

Appellate - Federal Circuit

Nature of Suit

-

Date Filed

October 22, 2025

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- [Winston & Strawn](#)

Companies

- [ACT](#)
- [Alliance for Automotive Innovation](#)
- [Computer & Communications Industry Association](#)
- [Google LLC](#)
- [HighLevel Inc.](#)
- [Hulu LLC](#)
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- [Motorola Mobility LLC](#)
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- [U.S. Patent and Trademark Office](#)
- [U.S. Supreme Court](#)



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Law360's annual list of regional powerhouses reflects not only the work of exemplary firms, but also emerging legal trends in each state, from matters involving Colorado's growing life sciences industry, to an uptick in bankruptcies in Delaware, to the continued flurry of intellectual property litigation in California.

Top 10 trending in Intellectual Property

- [1 Va. Justices Urged To Restore Record \\$2B Trade Secrets Win](#)
- [25 Federal Circuit Clashes To Watch In November](#)
- [3 Chamber Urges Fed. Circ. To Resolve Texas Patent Venue Split](#)

- [4Adapting To USPTO's Reduction Of Examiner Interview Time](#)
- [5Apple Spared From Some Masimo Patent Claims Before Trial](#)
- [6Adidas Says Email Gaffe Should Revive Thom Browne TM Suit](#)
- [7Akin Beats Malpractice Claim Over Alleged IP Theft Plot](#)
- [8Calif. Atty Seeks \\$25K As Fee Sanction For AI Error](#)
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