What 'Precedential' Decisions Reveal About USPTO's Direction

By **Deborah Sterling and Jacqueline Bonilla** (February 17, 2026)

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Inter partes reviews and post-grant reviews, available under the America Invents Act, underwent significant procedural changes in 2025 under new U.S. Patent and Trademark Office leadership.

Many changes affect the institution stage, where since October, Director John Squires has personally decided whether a trial may proceed — mostly through summary notices, without explaining his analysis.

These changes have reshaped patent litigation and business strategies, particularly because institution rates have dropped sharply and unprecedentedly. These changes also have occurred so rapidly that many stakeholders, including petitioners and patent owners, have struggled to discern the new governing rules of the road.

In recent months, however, the director has **designated** several Patent Trial and Appeal Board decisions precedential and informative, providing clearer guidance.

Precedential decisions are binding authority at the PTAB, and at the USPTO at large, as applicable. While not necessarily binding per se, informative decisions provide information and guidance about PTAB norms, for example, on recurring issues in cases, issues of first impression, and PTAB rules and practices.

Summaries of those decisions, and the issues they address follow.

Real Parties-in-Interest

After SharkNinja Operating LLC v. iRobot Corp. was designated precedential in 2020, the PTAB generally declined to analyze real parties-in-interest, or RPIs, at institution, absent an allegation that an unnamed RPI triggered a time bar or otherwise estopped a petition.

That approach changed when the Squires dedesignated SharkNinja in September, and designated Corning Optical Communications RF LLC v. PPC Broadband Inc., a 2015

decision, precedential in October. That change effectively returned AIA practice to the pre-SharkNinja framework, when RPI disputes could trigger substantial briefing and discovery, even where no bar or estoppel existed at filing.

Corning holds that petitions failing to identify all RPIs do not satisfy Title 35 of the U.S. Code, Section 312(a)(2), and therefore "are incomplete and cannot be considered."

According to Corning, under PTAB rules, such petitions will not be accorded a filing date until corrected.

The petitioner in Corning failed to show that waiver of the rules was in the interests of justice, which proved fatal because the one-year time bar under Section 315(b) expired before correction could occur. Consequently, the PTAB vacated the institution decisions and terminated the proceedings.

Similarly, Yangtze Memory Technologies Co. Ltd. v. Micron Technology Inc., designated informative in January, also **vacated** institution based on an RPI dispute. The decision reiterates that petitioners bear the burden of showing that they have identified all RPIs, when the issue is contested.

Together, Corning and Yangtze underscore the USPTO's renewed emphasis on identifying all relevant players and highlight the heightened risk for petitioners who fail to do so, particularly when a statutory bar date is near.

Inconsistent Claim Constructions

In the precedential Revvo Technologies Inc. v. Cerebrum Sensor Technologies Inc. decision, Squires **denied** institution where the petitioner advanced one claim construction in district court but adopted a different one at the board — notably, the patent owner's construction from the district court case — without explanation.

Although PTAB rules do not categorically prohibit inconsistent claim constructions, Revvo clarifies that petitioners must adequately explain why different positions are warranted.

Notably, in a recent sua sponte director review decision thereafter in Revvo, Squires further indicated that an adequate explanation may exist "when the district court already has rejected petitioner's narrower construction," which was still speculative here.

Sun Pharmaceuticals Industries Inc. v. Nivagen Pharmaceuticals Inc., an informative decision, **reached** a similar result, discretionarily denying institution where the petitioner offered a different, broader claim construction in the IPR than it had in district court, again without sufficient explanation.

On the issue of differing claim constructions, two informative decisions from last year also include: Tesla Inc. v. Intellectual Ventures II LLC, indicating that arguing indefiniteness is insufficient to explain differing claim constructions; and CrowdStrike Inc. v. GoSecure Inc., vacating and remanding two petitions arguing different claim constructions.

Another decision in Cambridge Mobile Telematics Inc. v. Sfara Inc. in 2024 found that the petitioner had not adequately explained its reasoning for differing claim constructions at the PTAB and in district court.

Favoring PGRs

Squires' policy favoring PGRs over IPRs was reinforced in two decisions designated precedential last month. In Multi-Color Corp. v. Brook & Whittle Ltd., the decision from last year **declined** to discretionarily deny institution, emphasizing that petitions for PGR are favored.

Another precedential decision from last year, LifeVac LLC v. DCSTAR Inc. declined to discretionarily deny an IPR on the basis that a prior PGR petition was denied on the merits, stating that PGR petitions "are favored because they must be filed no later than nine months from the grant of the patent (35 U.S.C. § 321(c)), are close in time to examination, and occur before expectations in the patent rights are strongly settled."

Copycat Petitions

Two decisions address so-called copycat petitions — petitions substantively identical to an earlier, instituted petition — filed with a motion for joinder.

In Realtek Semiconductor Corp. v. ParkerVision Inc., a precedential decision last year, the petitioner filed its copycat petition and a motion to join an instituted proceeding almost three months after an applicable one-year bar date under Section 315(b). The decision explains that petitions and motions for joinder filed by time-barred parties should proceed only in exceptional circumstances, which the petitioner did not present here.

Another precedential case from last year, Elong International USA Inc. v. Feit Electric Co., resulted in a discretionary denial of a copycat petition.

Here, there was a concurrent litigation with a scheduled trial date earlier than a final written decision would issue, regardless of joinder. Notably, the decision did not rest there and instead made clear that the USPTO should first consider a copycat petition absent joiner, e.g., where an IPR trial would start later, as if joinder did not occur.

The rationale was that if the PTAB joined the copycat petition to the instituted proceeding and the original parties settled, the PTAB would then need to maintain a proceeding it otherwise would not have instituted in the first event.

Multiple Petitions

The PTAB's trial practice guide recognizes that multiple petitions may sometimes be necessary, such as where many claims are asserted or priority is disputed. Two decisions designated precedential and informative in January clarify when multiple petitions are — and are not — justified.

PacifiCorp v. Birchtech Corp., decided on director review last year and designated as precedential, vacated and remanded institution decisions involving two petitions challenging the same claims based on alternative priority dates.

The decision held that because petitioners had ample room to present their arguments in a single petition, this was not a rare circumstance justifying multiple filings. This decision holds that absent exceptional circumstances, where priority is disputed, the PTAB should resolve the issue or institute, at most, the first-ranked petition.

By contrast, Savant Technologies LLC d/b/a GE Lighting v. Feit Electric Co., an informative decision last year, declined to discretionarily deny a second petition where the patent owner asserted new claims in district court after a first petition was filed.

Although the petitioner knew of the prior art earlier, the decision found that the patent owner's later assertion of additional claims in court necessitated the second petition, and discretionary denial under the USPTO's precedential decision in General Plastic Industrial Co. Ltd. v. Canon Kabushiki Kaisha in 2017 was unwarranted.

Settled Expectations

On March 26, 2025, the USPTO issued a memorandum introducing settled expectations as a new discretionary consideration factor, without establishing a bright-line rule. A series of informative decisions now provides some practical guidance.

Taken together, the decisions from last year suggest that patents in force for six or more years will often enjoy settled expectations. Patents in force for fewer than six years may also qualify, for example, where the petitioner was aware of the patent but delayed seeking review, or a patent owner presents evidence of commercialization, licensing, or assertion. Changes in the law may also undermine settled expectations.

Dabico Airport Solutions Inc. v. AXA Power ApS saw discretionary denial for a patent in force nearly eight years, suggesting that actual notice is not required to establish settled expectations.

Alliance Laundry Systems LLC v. PayRange LLC saw discretionary denial despite a four-year-old patent, based on licensing activity and prior petition denials raising road-mapping concerns.

Amgen Inc. v. Bristol-Myers Squibb Co. saw discretionary denial for patents in force six and seven years, but referral for a three-year-old patent where settled expectations were not found.

Home Depot USA Inc. v. H2 Intellect LLC saw referral where the patent had not been commercialized or asserted in petitioner's field.

Apple Inc. v. Ferid Allani saw referral where the patent owner delayed assertion for over a decade and until after the patent had expired.

Top Glory Trading Group Inc. and DP Dream Pairs Inc. v. Cole Haan LLC saw referral despite any settled expectations, due to an intervening change in design patent obviousness law that occurred after the patent issued.

A Likely Material Error

Another informative decision, Padagis US LLC v. Neurelis Inc., **decided** last year, declined discretionary denial where the petitioner demonstrated a likely material error during prosecution. The examiner had granted priority to a provisional application despite an

earlier PTAB decision — affirmed by the U.S. Court of Appeals for the Federal Circuit — finding similar claims not entitled to that priority.

The petitioner's detailed comparison showed substantial overlap in claimed subject matter, leading the PTAB to conclude that the examiner's determination contradicted prior PTAB findings and warranted review.

Complexity of Multiple Patents and Subject Matter at Issue

Finally, the Tesla v. Intellectual Ventures II last year decision, also informative, concluded that the sheer number and breadth of patents asserted in a parallel district court litigation weighed against discretionary denial of petitions challenging the patents at issue.

The decision emphasized that, where litigation involves numerous patents spanning diverse subject matter, the board is better positioned than a district court to review the patents in a consolidated and efficient manner.

Overall Outlook

These precedential and informative decisions reflect a deliberate recalibration of AIA practice under the USPTO's current leadership. While institution may seem harder to obtain, the emerging guidance clarifies the discretionary considerations that now carry the most weight — from accurately identifying RPI and providing consistent claim construction positions absent a good explanation, to the role of settled expectations, litigation complexity and examination error.

As this body of guidance continues to develop, petitioners and patent owners alike will want to account for these evolving standards early in strategic decision-making, both in structuring district court approaches and in assessing whether, when, and how to pursue review at the USPTO.

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Disclosure: Jacqueline Bonilla was an administrative patent judge in Corning v. PPC Broadband, mentioned in this article. Sterne Kessler represented BMS in Amgen v. BMS, mentioned in this article.