

Why Inter Partes Reviews May Be On The Rebound

By **Jacqueline Bonilla and Jason Eisenberg** (October 26, 2026)

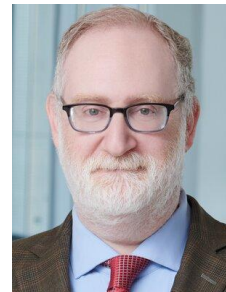
Recent data, especially over the last two months, hint that inter partes reviews may be experiencing at least a partial rebound. Referral rates for consideration of the merits at the institution stage, as well as institution rates themselves, have both increased.[1]

Several reasons could explain this increase in referrals, i.e., fewer discretionary denials, and institution rates.

First, over the last year and a half, potential challengers have learned what to do, beyond presenting strong merits, to increase the chance of institution. This includes, for instance, shortening duration from district court complaint to IPR petition, eliminating inconsistent claim construction positions between forums, taking great care to name all real parties, as defined by [U.S. Patent and Trademark Office](#) Director John Squires, and discussing material errors made during original prosecution.



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Second, as things have started to settle, with less change coming at such a fast pace, parties now have more certainty about what to expect and under what circumstances, such that they can better develop strategic plans for success. For example, patent challengers today often choose to file ex parte reexamination requests if they understand they cannot meet the director's policy requirements for institution of an IPR.

How Policy Changes Reshaped AIA Practice

Starting in March 2025, the USPTO underwent a number of significant changes. Some of the most striking took place when USPTO Interim Director Coke Morgan Stewart and then Squires implemented numerous new policies and procedures that limit when patents can be challenged in proceedings under America Invent Act, especially in IPRs.[2]

The policy changes included, as just a few examples, Squires handling all aspects of decisions on institution (discretionary denial considerations and merits), a heightened deference to patent owners' settled expectations based on the age of a patent, stricter limitations for how a petitioner may present claim construction positions between forums, and the definition and impact of real parties in interest.

Many of these changes took place through case-specific decisions issued by the interim director and then Squires in real time, but also when the director designated decisions precedential or informative and/or issued memoranda.

Such vehicles enabled changes to occur at an unprecedented pace and scope, without notice-and-comment rulemaking procedures under the Administrative Procedure Act or seeking comment from the public before implementation. These changes, especially in the aggregate, resulted in a large drop in institution rates, followed by an equally sharp drop in IPR petition filings.

Why Institution and AIA Petition Filing Rates Fell Sharply

Specifically, institution rates for AIA reviews dropped year-to-year from 68% in 2024 to less than 35% in 2026 overall as of the end of August. Many parties avoided filing IPR petitions after that drastic drop in institution rates, resulting in the number of filings falling year-to-year by nearly 70%, from about 1300 petitions in 2024 to about 400 projected for 2026.

The filing of petitions for post-grant reviews has been less affected, as the filing of those petitions did go up slightly from 41 in 2024 to 74 in 2025, and 35 so far in 2026, as of the end of September. That said, PGR petitions historically have been in that general filing range — around 30 to 80 per year — since well before 2024. Thus, it is not clear the new policies have had much impact on PGR filings.

The number, speed and impact of the new changes in less than a year, particularly in relation to IPRs, took many stakeholders by surprise. Some commenters have observed, above and beyond lower institution rates, that the resulting uncertainty for stakeholders surrounding AIA practice as the changes kept coming — especially relating to discretionary denial considerations — likely also contributed to the lower petition filings.

Rising Ex Parte Reexamination Filing Rates

Meanwhile, requests for EPRs at the Central Reexamination Unit dramatically increased — by more than double (if not triple, as projected for 2026) since 2024 — at the same time AIA petition filings went down.

Since October 2025, challengers have filed more EPR requests than AIA petitions, something that has not happened since AIA reviews began in 2012. Notably, in stark

contrast to AIA reviews, grant rates in EPR have remained quite high at over 90%, albeit somewhat lower than they were before 2025.

This is true even with new policies and practices implemented at the Central Reexamination Unit, such as a new preorder paper procedure regarding substantial new question of patentability determinations as of April, and an apparent new emphasis on Title 35 of the U.S. Code, Section 325(d), when the EPR is filed after a denied IPR.

Even under the new procedures, EPR requesters continue to have no authorized ability to participate after an EPR request is filed or granted. Thus, for example, a requester generally may not provide comments on how an examiner uses the request and prior art, question or depose an expert who provides testimony in a declaration or examiner interview, or appeal a decision that confirms original claims or finds new claims patentable.

Recent Referral and Institution Data, and a Possible Rebound

It is important to remember, however, that IPRs and PGRs — where both petitioners and patent owners may actively participate — remain viable and important options, especially as the frequency and speed of new changes to AIA practice appear to be settling.

In recent months, AIA institution rates have seen an uptick, with rates closer to 60% since June. This is up from earlier months, when institution rates were under 40%.

In fact, in the last 13 weeks, Squires has referred about 78% of AIA petitions (60) for consideration on the merits, e.g., reasonable likelihood of prevailing, and discretionarily denied about 22% (17). And institution rates generally have been around 70% in cases after being referred for a merits analysis, e.g., to establish whether a petitioner has shown a likelihood of prevailing on at least one claim.

As noted above, several factors may help explain the recent increases in referrals and institution rates. With more time under the current director's administration, potential challengers have gained a clearer understanding of the USPTO's policies and priorities. And as the pace of policy changes has slowed in recent months, parties have greater certainty about what to expect.

Beyond that, the recent trend also coincides with increased scrutiny. For example, amici in four pending [U.S. Supreme Court](#) cases address, among other issues, the USPTO's settled expectations policy; the [U.S. Court of Appeals for the Federal Circuit](#) decisions on

reviewability of institution decisions under Title 35 of the U.S. Code, Section 314(d); and the USPTO's ability to bypass the Administrative Procedure Act when making new rules.[3]

There has been some debate over whether it really was the intent of Squires to drastically reduce the availability of AIA reviews to the level that has occurred, and if the director has been trying to effectively ensure that validity challenges of issued patents can only occur in expensive district court litigation or in EPR, contrary to the intent of the AIA, which replaced inter partes reexaminations with inter partes reviews by design.

The available data does not necessarily establish whether that scrutiny has influenced referral decisions, but it forms part of the broader institutional context.

Strategic Implications for Stakeholders

Regardless of the reason why, while it has not yet come to pass — e.g., petitioners filed 41 AIA petitions in September — it is possible, if not likely, that filing rates of AIA petitions will increase as institution rates and transparency increase. Institution rates, transparency of processes, including simply having a better understanding of what is expected, or lack thereof, are likely to affect petition filings, exactly as was seen over the last 18 months.

With this in mind, parties on all sides should closely monitor developments in postgrant practice at the USPTO. Staying current will enable stakeholders to carefully assess forum selection, filing timing, parallel litigation strategy, and the relative value of IPR, PGR, EPR and district court invalidity defenses as referral rates, institution standards and procedural guidance continue to evolve.

For petitioners, understanding current practices and policies allows them to strategize sooner and more effectively, which can increase the likelihood of a referral at the institution stage rather than a discretionary denial.

In addition, considering what claim construction and invalidity positions a defendant may need to take in district court versus an IPR may dictate the necessity to pursue an EPR. This is because the office has long held inconsistent claim construction between a district court and an EPR is expected because of the different claim construction standards of broadest reasonable interpretation versus plain meaning.

For example, the defendant may need to take inconsistent positions because they have no or weak infringement positions and winning on invalidity is required to defeat a lawsuit,

e.g., based on Title 35 of the U.S. Code, Section 101 or Section 112, under patent owner's proposed claim construction.

For patent owners, strategically choosing patents for litigation can substantially increase chances for denial of an IPR and potentially force an EPR instead, which favors them. Thus, owners should select patents that are likely to trigger settled expectations under current policy, will survive a motion to dismiss based on patentable subject matter, have no substantial Section 112 issues and have thorough prosecution histories — thereby decreasing the chance of examiner error and increasing the likelihood of Section 325(d) applying later.

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[1] Throughout this article, the AIA data was captured from [Docket Navigator](#), and the EPR data was provided by Unified Patents.

[2] Coke Morgan Stewart served as Acting Director from January 20, 2025, until September 18, 2025, when John A. Squires was confirmed by the [U.S. Senate](#). Director Squires officially joined the USPTO and assumed office on September 22, 2025. Coke Stewart departed the USPTO on July 31, 2026.

[3] [Google LLC](#) v. VirtaMove, Corp., 25-1230 (filed Apr. 27, 2026) (settled expectations) (cert. denied Oct. 19, 2026); [Intel Corp.](#) v. Squires, 26-73 (docketed July 16, 2026) (APA/notice-and-comment); Kahoot! AS v. Interstellar Inc., 26-198 (filed July 24, 2026) (settled expectations); [Tesla](#), Inc. v. Granite Vehicle Ventures LLC, 26-136 (docketed July 29, 2026) (Fintiv trial-date denial).

