
Editors' Introduction

Love it or hate it, ignore the USPTO Patent Trial and Appeal Board (PTAB) at your peril. The introduction of the PTAB as part of the America Invents Act over ten years ago has forever changed patent litigation. In its first final written decision for an *inter partes* review back in November 2013 in IPR2012-000001, the PTAB canceled all claims as obvious based on a four prior art reference combination, critically assessed claim construction, and denied a motion to amend. Change had certainly arrived. Thousands of petitions, hundreds of appeals, numerous constitutional challenges, and several PTO directors later, the PTAB's importance and impact continues to grow and evolve.

This *Year in Review* explores the PTAB evolution with a particular focus on the interface between district court and PTAB litigation through a series of articles analyzing many of the most significant developments that occurred over the past year. As a firm that has handled over a thousand PTAB proceedings – second-most of any firm and including four *inter partes* reviews filed during the PTAB's first week of operation - we apply our vast experience and data analytics to examine decisions and PTAB developments in order to provide practical insights to guide patent litigation strategy with a focus on the PTAB.

We begin our *Year in Review* by taking a fresh look at discretionary denials, including denials based on *Fintiv* and Section 325(d). Although this issue has garnered much attention, it does not appear to have significantly impacted overall institution rates, which changed slightly from 58% in 2020 to 59% in 2021. We then consider nuanced issues relating to Section 112 issues, antedating references, motions to amend, and dealing with “bad behavior” by experts – all important considerations given that claim cancellation rates increased from 70% in 2020 to 78% in 2021 for instituted claims ruled on in final written decisions. Notably, 2020 saw significant developments involving the interface between district court and PTAB litigation, which we explore in a series of articles covering estoppels, recovery, and evidentiary issues. We continue our analysis by digging deeply into selected industry-specific issues related to biologics, chemicals, and standard essential patents (SEPs). Finally, we conclude by examining *ex parte* reexaminations, which have moved back to center stage with requests surging by more than 35% relative to 2020.

As we did in our prior *PTAB Year in Review*, we encourage you to not simply read the articles, but to critically challenge our analysis and consider the impacts on your patent litigation and portfolio development strategies. We thank our authors and our entire PTAB team for making this publication possible. We appreciate your interest in this report and welcome the opportunity to discuss PTAB matters and how they may impact your business. If you have questions or comments, please do not hesitate to contact us directly to start the conversation.



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Director

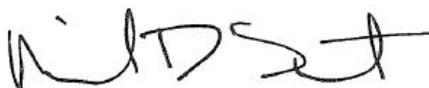
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