

NYIPLA PTAB COMMITTEE
August 3, 2021

**Key Milestones: Review of PTAB
Final Decisions**

Nineteen Hundred and Twenty-two

NYIPLA

The New York Intellectual Property Law Association®

PTAB Committee & Young Lawyers Committee

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Kal Deshpande, Senior Lead Judge

Patent Trial and Appeal Board

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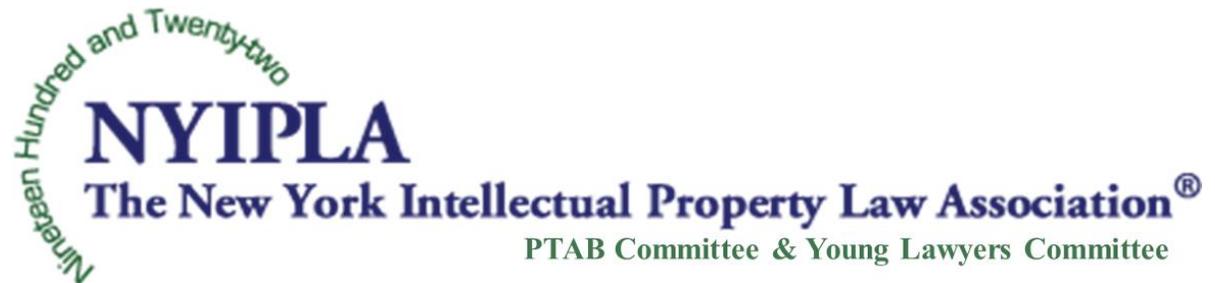


**Patent
Trial And
Appeal
Board**

Disclaimer

The following presentation reflects the personal opinions of its authors and does not necessarily represent the views of their respective clients, partners, employers or of the New York Intellectual Property Law Association, the PTAB Committee, the Young Lawyers Committee, the PTAB Committee or its members.

Additionally, the following content is presented solely for the purposes of discussion and illustration, and does not comprise, nor is to be considered, as legal advice.



Agenda

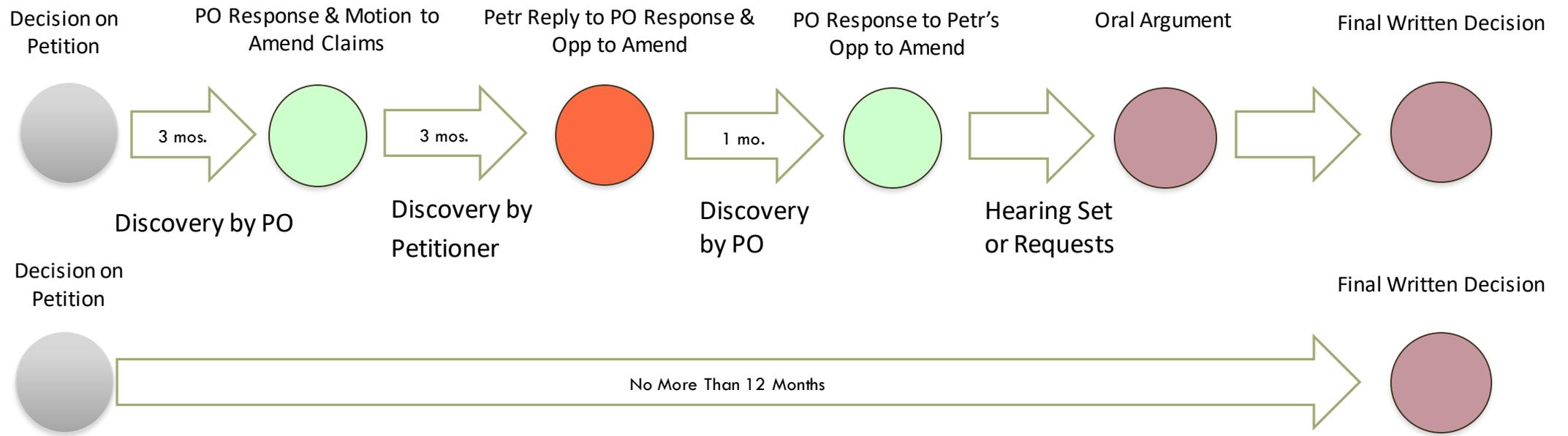
- Overview of Appeals
- Rehearing Requests
- POP Panel Review
- Review by Director
- Appeals at the Federal Circuit

Agenda

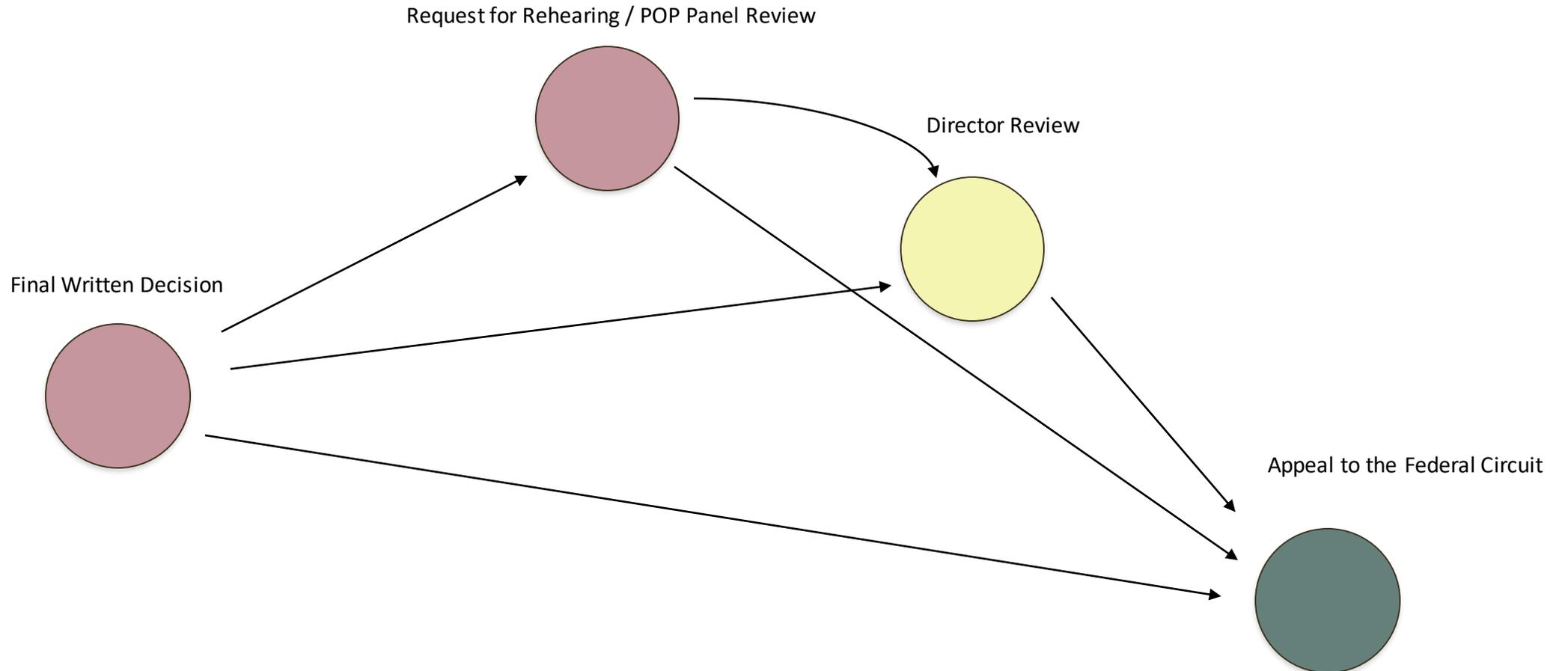
- Overview of Appeals

Last Time: Overview of PTAB Trials

We discussed the timeline of a PTAB Trial up to the final written decision but did not discuss the rehearing or appeals process.



Overview of Appeals and Rehearings



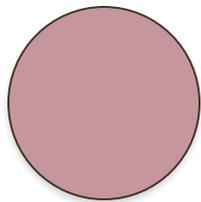
Agenda

- Overview of Appeals
- Rehearing Requests

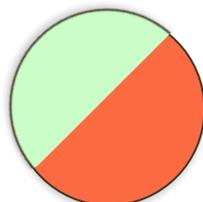
Request for Rehearing

Parties dissatisfied with a Board decision may, within 30 days of entry of the decision, seek a request for rehearing from the Board.

Final Written Decision



Request for Rehearing



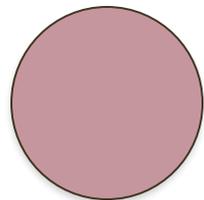
37 C.F.R. § 42.71(d)(2)

Request for Rehearing

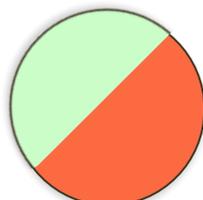
Rehearing requests:

- Are limited to 15 pages
- May only submit new evidence for good cause
 - Parties can raise this issue on a conference call or in the rehearing request itself. *Huawei Device Co., Ltd. v. Optis Cellular Technology, LLC*, 2019 WL 137151 (PTAB Jan. 8, 2019) (precedential).
- Do not generally toll the time for taking other actions.

Final Written Decision



Request for Rehearing



37 C.F.R. §§ 42.24(a)(1)(v), 42.71(d)

Request for Rehearing

Rehearing requests:

- Must specifically identify all matters the party believes the PTAB misapprehended or overlooked, and
- Must specifically identify where in the record each matter was previously addressed in a motion, opposition, or reply.

Final Written Decision

Request for Rehearing

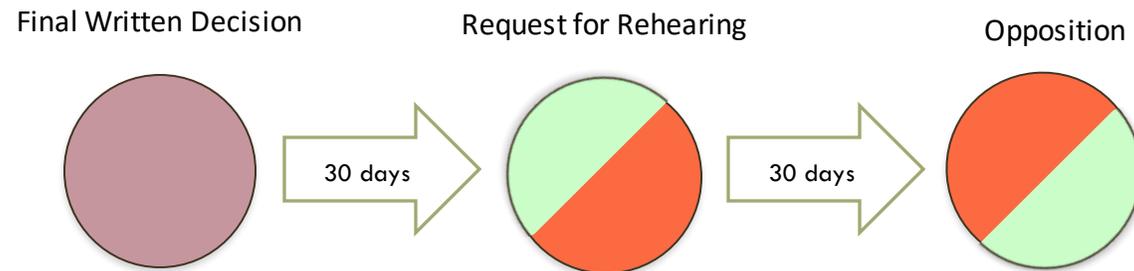


37 C.F.R. § 42.71(d)(2)

Opposition to Request for Rehearing

Oppositions must be approved by the Board, and like the Rehearing Request:

- Must be made within 30 days from service of the motion for rehearing (default timing)
- Are limited to 15 pages in length

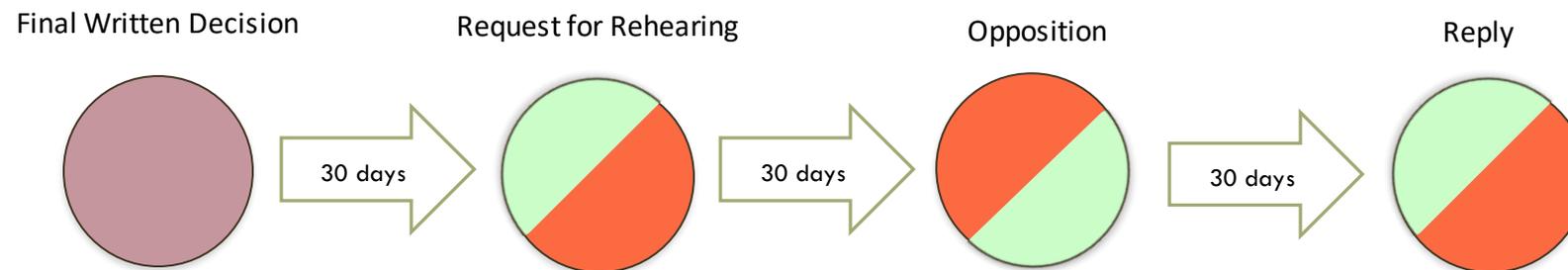


37 C.F.R. §§ 42.24(b)(3), 42.25(a)(1)

Reply to Opposition

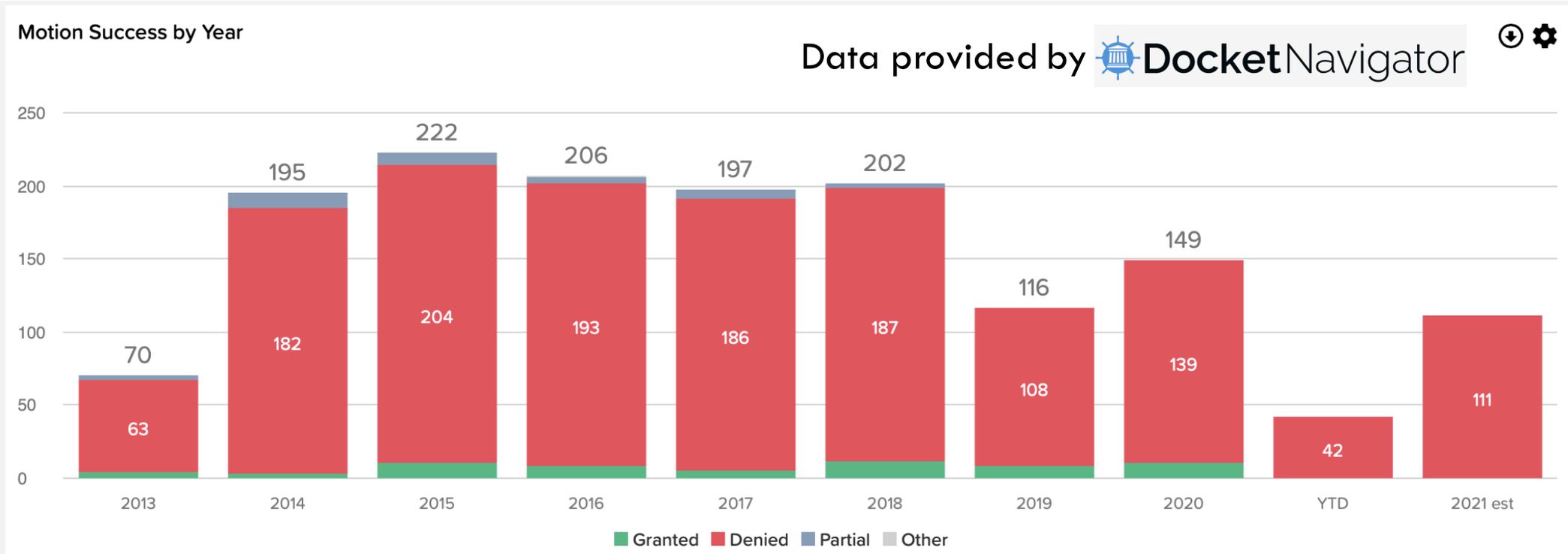
Reply must be authorized by the Board, and:

- Must be filed within one month of service of the opposition
- Is limited to five pages



37 C.F.R. §§ 42.25(a)(2), 42.24(c)(2)

Docket Navigator— Rehearing Success Rate



For more PTAB data, see a copy of the presentation at the event: <https://www.nyipla.org/assnfe/ev.asp?ID=1397>. The Summer 2021 NYIPLA Report will also feature a de-brief on some of these statistics!

Be sure to follow NYIPLA on Linked-In to stay up-to-date on the latest webinars and publications!

Agenda

- Overview of Appeals
- Rehearing Requests
- **POP Panel Review**

POP Panels

The PTAB is not changing its Precedential Opinion Panel (POP) process at this time. However, the Office will be reviewing the POP process in view of the Director review process and welcomes public suggestions regarding potential changes.

POP Panels

UNDER SOP2:

Any party to a proceeding may recommend Precedential Opinion Panel review of a particular Board decision in that proceeding by sending an email to:

[Precedential Opinion Panel Request@uspto.gov](mailto:PrecedentialOpinionPanelRequest@uspto.gov)

which identifies with particularity the reasons for recommending Precedential Opinion panel review.

Such a request is to be filed at the same time as a request for reconsideration, and must be accompanied by such a request.

There is no right to further review of a recommendation for Precedential Opinion Panel Review that is not granted.

POP Panel Certifications

Based on my professional judgment, I believe the Board panel decision is contrary to the following decision(s) of the Supreme Court of the United States, the United States Court of Appeals for the Federal Circuit, or the precedent(s) of the Board: (cite specific decisions).

Based on my professional judgment, I believe the Board panel decision is contrary to the following constitutional provision, statute, or regulation: (cite specific provision, statute, or regulation).

Based on my professional judgment, I believe this case requires an answer to one or more precedent-setting questions of exceptional importance (set forth each question in a separate sentence).

/s/ [signature] ATTORNEY OF RECORD FOR [list party/parties].

Agenda

- Overview of Appeals
- Rehearing Requests
- POP Panel Review
- **Review by Director**

Arthrex and the interim procedure for Director review

Scott C. Weidenfeller, Vice Chief Administrative Patent Judge

Kalyan Deshpande, Senior Lead Judge

August 3, 2021

UNITED STATES
PATENT AND TRADEMARK OFFICE



Supreme Court decision

United States v. Arthrex

United States v. Arthrex

- On June 21, 2021, the Supreme Court issued its decision in *United States v. Arthrex*.
- The Court addressed the Constitution's Appointments Clause as it relates to administrative patent judges ("APJs").
- The Court considered whether APJs are "principal officers" who must be appointed by the President with the Senate's advice and consent, or, as the USPTO and the U.S. government argued, whether they are "inferior officers" who can be appointed by the Secretary of Commerce.

United States v. Arthrex

- The Court held that “the unreviewable authority wielded by APJs during *inter partes* review is incompatible with their appointment by the Secretary to an inferior office.”
- The Court’s remedy provides that the Director “may review final PTAB decisions and, upon review, may issue decisions himself on behalf of the Board.”
- Although the decision comprises four separate opinions on the constitutionality issue, seven Justices agree that the Court’s tailored remedy addresses the identified problem.

United States v. Arthrex

- **The lead opinion by Chief Justice Roberts**
 - Vacates the Federal Circuit's decision holding that APJs were unconstitutionally appointed by the Secretary, and states that "Arthrex is not entitled to a hearing before a new panel of APJs."
 - Vacates the Federal Circuit's remedy of severing Title 5 removal protections for PTAB judges.
 - Holds that APJs can function as inferior officers so long as the Director "may review final PTAB decisions and, upon review, may issue decisions himself on behalf of the Board."
 - States "that 35 U.S.C. § 6(c) is unenforceable as applied to the Director insofar as it prevents the Director from reviewing the decisions of the PTAB on his own." Instead, the Director may unilaterally "engage in such review and reach his own decision."

Implementation of interim procedure

Director review

Director review

- The Office has implemented an interim procedure for Director review, consistent with the *Arthrex* decision.
- In this interim procedure, such a review may be initiated *sua sponte* by the Director or requested by a party to a PTAB proceeding.

Director review

- If initiated sua sponte by the Director, the parties to the proceeding will be given notice and may be given an opportunity for briefing.
- The Director's review may address any issue, including issues of fact and issues of law, and will be *de novo*.

Director review - procedure

- A party may request Director review of a final written decision in an *inter partes* review or a post-grant review by concurrently:
 - 1) filing a request for rehearing by the Director of a PTAB decision, and
 - 2) submitting a notification of that request by email to Director_PTABDecision_Review@uspto.gov, and copying counsel for the parties.

Director review - requirements

- A request for rehearing by the Director must satisfy the timing requirements of 37 C.F.R. 42.71(d).
 - Must be filed within 30 days of the entry of a final written decision or a decision on rehearing by a PTAB panel.
- A timely request for rehearing by the Director will be considered a request for rehearing under 37 C.F.R. 90.3(b) and will reset the time for appeal or civil action as set forth in that rule.

Director review - requirements

- As a general matter, the Director will not consider untimely requests for rehearing of decisions.
- However, the Director may choose to extend the rehearing deadline for good cause if a party requests such an extension before the due date for a request for rehearing.
- Parties whose deadline for requesting rehearing had expired at the time *Arthrex* issued may request a waiver of the deadline, so long as they request the waiver before the due date for filing a notice of appeal under 37 C.F.R. 90.3.

Director review

- The Precedential Opinion Panel (POP) process will remain in effect and unchanged at this time.
 - However, the Office will be reviewing the POP process in view of the Director review process and welcomes public suggestions regarding potential changes.
- Only a party to a case may submit a request for Director review. Third party requests for Director review are not permitted.
- During implementation of the interim procedure, the USPTO will not charge a fee.

Director review – future plans

- The current process is envisioned as an interim procedure that may change based on input from the public and experience with conducting Director reviews.
- Suggestions about the Director review process may be submitted to Director_Review_Suggestions@uspto.gov.

Director review – further information

- More details on the interim Director review procedure are provided on the [USPTO *Arthrex* information webpage](https://www-cms.uspto.gov/patents/patent-trial-and-appeal-board/procedures/uspto-implementation-interim-director-review).
 - <https://www-cms.uspto.gov/patents/patent-trial-and-appeal-board/procedures/uspto-implementation-interim-director-review>
- Additional questions regarding the implications of [*Arthrex*](#) generally, or on a specific proceeding, may be submitted to trials@uspto.gov.

Director review – email contact info

- **Director_PTABDecision_Review@uspto.gov**
 - Where a party submits a notification of a Request for Rehearing by the Director (copying counsel for all parties)
 - Must be done concurrently with entering a Request for Rehearing by the Director into PTAB E2E
- **Director_Review_Suggestions@uspto.gov**
 - Where the public may provide feedback and suggestions about the interim Director review process
- **trials@uspto.gov**
 - Where parties may submit case-specific questions (e.g., request a call with the Board) regarding implications of Arthrex
 - Where the public may submit general Arthrex-related questions

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Standing to Appeal

Under the statute, as the Supreme Court recently explained, a party dissatisfied with the Board's review may seek judicial review at the Federal Circuit. Any party to the IPR may be a party at the Federal Circuit. (35 U.S.C. § 319 and *Oil States Energy Services, LLC v. Green Energy Grp., LLC, et al.*, 138 S. Ct. 1365, 1372 (2018).)

Nevertheless, the Federal Circuit has decided that while Article III standing is not required to bring a post-grant challenge before the PTAB, it is required to appeal a PTAB decision to the Federal Circuit.

Notice of Appeal

Under 35 U.S.C. § 141(c), a party may only appeal a PTAB final written decision in an IPR, PGR, or CBM proceeding to the Federal Circuit (see *also* 35 U.S.C. §§ 319 (IPRs) and 329 (PGRs, including CBMs)).

Section 141(c) states that a party dissatisfied with a PTAB final written decision may appeal “only to” the Federal Circuit.

Notice of Appeal (Timing)

A party must file any notice of appeal with the Director of the USPTO **within 63 days** after the date of the final written decision (or a decision on a motion for rehearing of a final written decision) (35 U.S.C. § 142 and 37 C.F.R. §§ 90.3(a)(1), (b)(1) (resetting for timely rehearing request)).

Extension of Time for Notice of Appeal

The Director of the USPTO or the Director's designee may grant an extension of time to file a notice of appeal on a showing of either:

- Good cause, if made before time has expired.
- Excusable neglect for the failure to act, if made after time has expired.

(37 C.F.R. §§ 90.3(c)(1)(i), (ii) and see also 37 C.F.R. § 104.2 (for rules governing filing of request)).

Notice of Cross-Appeal

A party may file a notice of cross-appeal within 14 days of the notice of appeal or within the time to appeal, whichever is later (Federal Rules of Appellate Procedure (FRAP) 4(a)(3) and 37 C.F.R. § 90.3(a)(1)).

Record on Appeal

The USPTO Director must send “a certified list and a copy of the decision or order appealed” to the Federal Circuit within 40 days after receiving the notice of appeal (Fed. Cir. Rule 17(b)(1)).

The USPTO Director may send a second certified list based on the cross-appeal.

Appearances

Counsel retained prior to docketing must file an entry of appearance within fourteen (14) days after the court docketing the case, and one counsel must be designated as the “principal counsel.” Counsel retained after initial docketing must file an entry of appearance within fourteen (14) days after being retained or admitted to the court’s bar, whichever is later. All counsel must file an entry of appearance, except for government officials, who, by reason of their status as supervisors or heads of offices, may be listed on filings in their ex officio capacity.

Fed. Cir. R. 47.3(b)

Joint Appendix

By the time the parties file the Joint Appendix, each party must:

- File a certificate of compliance confirming that they have reviewed the record to determine if any portion of it previously sealed under a protective order can be unsealed.
- Seek the other side's agreement to that effect.

(Fed. Cir. Rule 25.1(c).)

Appellant's Brief (Blue Brief)

60 days after service of the certified list (Fed. Cir. Rule 31(a)(1)(B)).

This brief has a 14,000-word maximum (Fed. Cir. Rule 32(a)).

Appellee's Brief (Red Brief)

–if there is no cross-appeal, 40 days after service of the appellant's brief (Fed. Cir. Rule 31(a)(2)).

This brief has a 14,000-word maximum (Fed. Cir. Rule 32(b)); or

–in a cross-appeal, 40 days after service of the appellant's brief (Fed. Cir. Rule 31(a)(2)).

The appellee's principal and response brief has a 16,500-word maximum (Fed. Cir. Rule 28.1(b)(2)(A)).

Appellant's Reply Brief (Yellow Brief)

–if there is no cross-appeal, 21 days after service of the appellee's brief and at least seven days before oral argument (FRAP 31(a)(1)).

This brief has a 7,000-word maximum (Fed. Cir. Rule 32(a)); and

–in a cross-appeal, 40 days after service of cross-appellant's brief (Fed. Cir. Rule 31(a)(3)(A)).

The appellant's response and reply brief has a 14,000-word maximum (Fed. Cir. Rule 28.1(b)(1)(A)).

Cross-Appellant's Reply Brief Due (Gray Brief)

21 days after service of the appellant's reply brief (Fed. Cir. Rule 31(a)(3)(B)).

This brief has a 7,000-word maximum (Fed. Cir. Rule 28.1(b)(3)(A)).

Joint Appendix Due (White Filing)

Seven days after the last reply is served and filed.

If there is no cross-appeal and the appellant does not file a reply brief, the appendix is due within the time for filing the reply brief.

In a cross-appeal, if the cross-appellant does not file a reply brief, the appendix is due within seven days after the time for filing the cross-appellant's reply brief has expired. (Fed. Cir. Rule 30(a).)

U.S. PTO intervention

The USPTO has the right to intervene in the appeal of an IPR, PGR, or CBM proceeding (35 U.S.C. § 143 and see *Oil States*, 138 S. Ct. at 1372 (“The Director can intervene to defend the Board’s decision, even if no party does.”)). In particular, the USPTO may exercise this right when a successful petitioner has settled with a patent-owner appellant such that no dispute remains between the parties in the proceeding (see, for example, *In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268 (Fed. Cir. 2015), *aff’d* 136 S. Ct. 2131 (2016)).

Amicus Briefs (Green Briefs)

Amicus briefs on the merits are due seven calendar days after the principal brief of the party supported.

If the amicus brief is in support of no party, then it is due seven calendar days after the appellant's principal brief.

These amicus briefs may be up to 7,000 words long (about 14 pages). (FRAP 29(a)(5), (6).)

Amicus Briefs (Green Briefs)

Amicus briefs must contain various disclosures, including:

- A FRAP 26.1 disclosure statement (if amicus is a corporation) (FRAP 29(a)(4)(A)).
- A certificate of interest under Fed. Cir. Rule 47.4 (Fed. Cir. Rule 29(a)).
- A general statement of interest of the amicus and affirmative statements clarifying whether any parties other than the amicus helped to draft or fund the preparation and filing of the brief (FRAP 29(a)(4)(D), (E)).

Oral Argument

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT COURT SESSIONS CALENDAR OCTOBER 2021 - SEPTEMBER 2022																															
Court Session							Federal Holiday																								
October 2021							November 2021							December 2021							January 2022*										
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*Notes: January court week is not the first full week of the month due to the end-of-year holidays and potential travel associated therewith. July and September court weeks are not the first full weeks of the month due to where the holidays fall.

The Federal Circuit generally sits for oral argument the first week of each month. Court session dates are published at the Federal Circuit website. The court sometimes sets special hearings on non-court session dates, but this is unusual.

Notice of Conflicts

Once the case has been fully briefed, the clerk typically issues a Notice of Docket Activity (NDA).

Within seven days of the NDA, counsel must identify any scheduling conflicts for at least the next three court weeks (Fed. Cir. Rule 34(d)(2)).

The court only considers conflicts by arguing counsel, who:

- Must attach to its response to the Notice to Advise of Scheduling Conflicts an explanation showing good cause for each submitted conflict.
- Is limited to ten total days of unavailability during the six consecutive court weeks identified in the Notice to Advise of Scheduling Conflicts.

Oral Argument

Usually around the 20th to 22nd of each month, the Federal Circuit publishes the scheduled oral arguments for the corresponding court week two months later. The parties typically receive an ECF notice of the oral argument schedule, listing the first argument scheduled in the subject line. Counsel should not ignore this notice because, at first glance, it may appear not to relate to counsel's case.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SCHEDULED CASES August 2021 (Revised June 21, 2021)

Panel A: Monday, August 2, 2021, 10:00 A.M., Courtroom 201

20-1683	PTO	Apple Inc. v. Qualcomm Inc.	[argued]
20-1763	PTO	Apple Inc. v. Qualcomm Incorporated	[argued]
20-1827	PTO	Apple Inc. v. Qualcomm Incorporated	[argued]
20-2106	DCT	Adapt Pharma Operations v. Teva Pharmaceuticals USA, Inc.	[argued]
21-1081	CAVC	Torrez v. McDonough	[on the briefs]
21-1393	MSPB	Blount v. MSPB	[on the briefs]

Panel B: Tuesday, August 3, 2021, 10:00 A.M., Courtroom 201

20-2134	DCT	Cephalon, Inc. v. Slayback Pharma Limited	[argued]
21-1014	MSPB	Cruz-Martin v. DHS	[argued]
21-1113	DCT	Cybergenetics Corp. v. Institute of Envtl. Science	[argued]
21-1446	DCT	SmileDirectClub, LLC v. Candid Care Co.	[argued]
20-1370	DCT	Gravelle v. Kaba Ilco Corporation	[on the briefs]
21-1808	CFC	Allen v. US	[on the briefs]

Panel C: Wednesday, August 4, 2021, 10:00 A.M., Courtroom 201

20-1912	CFC	Fairholme Funds, Inc. v. US	[argued]
20-1934	CFC	Owl Creek Asia I, L.P. v. US	[argued]
20-2020	CFC	Arrowood Indemnity Company v. US	[argued]
20-2037	CFC	Cacciapalle v. US	[argued]
20-2190	CFC	Washington Federal v. US	[argued]

Oral Argument

When oral argument is scheduled, each party is asked to submit a form identifying:

- Counsel who will make the oral argument.
- The time requested to be reserved for each party.

If counsel or a party needs the courtroom to be accessible to the disabled for oral argument, counsel should notify the clerk when filing the entry of appearance.

Oral Argument

Unless held in camera, oral arguments are **open to the public**.

Recordings of each oral argument are available on the court's website, free of charge.

Counsel should listen to oral argument raising similar issues before making their own oral argument.

Since oral argument is public, the Federal Circuit discourages parties from unnecessarily designating material in the briefs and appendix as confidential because this may hinder the court's preparation and issuance of opinions. Where necessary, however, counsel must be prepared to justify at oral argument any claim of confidentiality (Fed. Cir. Rule Practice Note 34).

Oral Argument

In the typical oral argument, the appellant argues first and reserves a portion of its time for rebuttal. The respondent, assuming there is no cross-appeal, then makes its argument, without the option of reserving time for rebuttal. The appellant is then allowed to use its remaining time in rebuttal.

When the USPTO elects to participate or the Federal Circuit requests the USPTO's participation, it typically receives its own allotment of 15 minutes for oral argument. In contrast, *amicus curiae* generally are not allowed to participate in oral argument, although in some rare cases, the Federal Circuit has invited such arguments.

Decisions on Appeal

The Federal Circuit typically issues a decision **within 90 days of oral argument**.

However, the court may issue a summary disposition under Fed. Cir. Rule 36 as quickly as the day after oral argument or within two weeks after oral argument (see Fed. Cir. Rule 36).

Typical Grounds for Appeal

The Federal Circuit has, however, held several categories of PTAB rulings in final written decisions to be appealable, including the PTAB's:

- Claim construction.
- Failure to consider evidence presented in the proceeding.
- Failure to explain the rationale behind its determination.
- Obviousness determinations.
- Consideration of a new ground raised by the petitioner in its reply.
- Application of the one-year bar to an IPR petition under 35 U.S.C. 315(b)
- Decision regarding the application of Section 315(e)(1) estoppel, where the alleged estoppel-triggering event occurs after institution

Not Grounds for Appeal

The Federal Circuit has also held certain categories of PTAB rulings not to be appealable, including the PTAB's:

- Decision not to institute on certain grounds asserted in the petition.
- Decision on institution regarding assignor estoppel.

SOP 9

Procedures on Remand to PTAB

Remand Scenario	Additional Briefing	Additional Evidence	Oral Argument
Erroneous Claim Construction	Yes, unless the claim interpretation to be applied on remand was proposed by one of the parties and the effect thereof has been fully briefed	No, unless the evidence is insufficient to afford due process	No
Failure to Consider the Evidence	Yes, unless the evidence was fully briefed on the record	No	No
Inadequate Explanation by the Board	No, unless the briefing on the issues is inadequate for the Board to have made a decision in the first instance	No	No
Erroneous Application of Law	Yes, unless the law was fully briefed on the record but not reflected in Board decision	No	No
Lack of Due Process/ Denial of APA rights	Yes	Yes, for parties whose rights have been violated, unless additional briefing on evidence of record is sufficient to afford due process	Yes, if necessary to afford due process
Improper Consideration of the Arguments	Yes, unless argument is fully briefed in the record	No	No

Questions?

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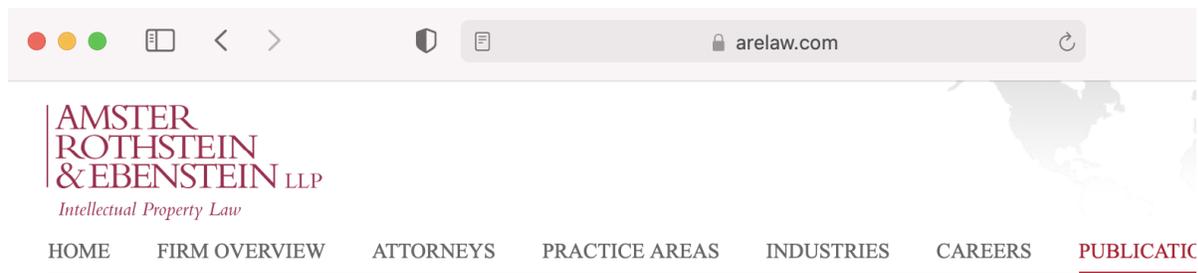
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Resources



Practical Law Practice Note By Charles R. Macedo On Appealing Patent Trial And Appeal Board Final Written Decisions

Practical Law, February 2, 2018, Revised July 6, 2021

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This Practical Law Practice Note by Charley Macedo discusses procedural and strategic considerations involved in appealing final written decisions of the Patent Trial and Appeal Board (PTAB) in *inter partes* review (IPR), post-grant review (PGR), and covered business method (CBM) patentability challenges under the Leahy-Smith America Invents Act (AIA).

The article also explores grounds, timelines and practical considerations for requesting rehearing of a final written decision before the PTAB and appeal to the U.S. Court of Appeals for the Federal Circuit.

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Appealing Patent Trial and Appeal Board Final Written Decisions

by Charles R. Macedo, Amster, Rothstein & Ebenstein LLP, with Practical Law Intellectual Property & Technology

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This Practice Note discusses procedural and strategic considerations involved in appealing final written decisions of the Patent Trial and Appeal Board (PTAB) in *inter partes* review (IPR), post-grant review (PGR), and covered business method (CBM) patentability challenges under the Leahy-Smith America Invents Act (AIA). It discusses grounds, timelines, and practical considerations for requesting rehearing of a final written decision before the PTAB and appeal to the US Court of Appeals for the Federal Circuit.

In 2020 the USPTO issued several notices concerning the extension of certain patent-related timing deadlines and fee waivers under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). For more information, see [Article, COVID-19: Intellectual Property & Technology Practice Changes: USPTO](#).

Since the Leahy-Smith America Invents Act (AIA) became effective in pertinent part in 2012, post-issuance patentability challenges including *inter partes* review (IPR), post-grant review (PGR), and the transitional program for covered business method review (CBM) at the US Patent and Trademark Office (USPTO) before the Patent Trial and Appeal Board (PTAB) have become an integral part of patent litigation and patent disputes.

As these proceedings continue to progress to final written decisions on patentability of the challenged and instituted patent claims, practitioners and stakeholders face multiple options for challenging and appealing a ruling. This Note discusses:

- Options to challenge a final written decision by the PTAB in an IPR, PGR, or CBM proceeding, including:
 - requesting rehearing before the PTAB; and
 - appealing to the US Court of Appeals for the Federal Circuit.
- Grounds for Federal Circuit appeals challenging the PTAB's:
 - institution decision; and
 - final written decision.
- Procedure on remand.

For a discussion of typical timelines, milestones, and procedures in IPR, PGR, and CBM proceedings, see [Practice Note, Understanding PTAB Trials: Key Milestones in IPR, PGR, and CBM Proceedings](#).

For a collection of additional resources concerning PTAB proceedings, see [PTAB Proceedings Toolkit](#).

For a collection of representative PTAB decisions, see [USPTO America Invents Act Trial Tracker \(PTAB\)](#).

Options to Challenge a PTAB Final Written Decision

After a PTAB final written decision, a party may either (or both):

- Request a rehearing at the PTAB (see [Rehearing Requests](#)).
- Appeal to the Federal Circuit (see [Federal Circuit Appeals](#)).

A party may only appeal PTAB decisions to the Federal Circuit. Under the AIA and unlike other USPTO proceedings, there is no option to file a civil action against the USPTO in district court (35 U.S.C. §§ 141 and 319). Similarly, a party may not collaterally attack a PTAB