

PTAB Committee Meeting:

Director Review and Discretionary Denials at the PTAB under the Squires Administration

**Amster
Rothstein &
Ebenstein** LLP

Hosted By:

Featuring guest speaker:



ZOOM WEBINAR



**October 21st
2025**

4-5 PM ET

RSVP: ADMIN@NYIPLA.ORG | 1.0 NY/NJ CLE AVAILABLE FOR ATTENDEES

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Agenda

New Director Squires Takes Office on September 22, 2025, and Starts Announcing New Policies

Withdrawal of Old Notice of Proposed Rulemaking and Issuance of New Notice of Proposed Rulemaking

USPTO Memorandum on Director Institution of AIA Trial Proceedings

New Director Review Decisions by Director Squires

New Discretionary Review Decisions by Previously Acting Director Coke and Now Assistant Director Coke

New Director Took
Office on September 22

Chronology of the Director of the USPTO

Trump takes office
Coke Morgan Stewart sworn in as Deputy Director and immediately began serving as Acting Director

January 20, 2025

John Squires sworn in as Director of the USPTO

September 22, 2025

John Squires issues NPRM, proposing to modify rules of practice for Inter Partes Review (IPR) proceedings
John Squires withdraws 2024 NPRM issued by former USPTO Director Kathi Vidal

October 16, 2025

March 26, 2025

Coke Morgan Stewart issued *Interim Process for PTAB Workload Management* memorandum

September 25, 2025

John Squires Delegated discretionary denial authority to Coke Morgan Stewart

October 17, 2025

John Squires issues memorandum on new procedures regarding the institution of IPR and PGR proceedings and an open letter on authority to adopt the new procedures

Notice of Proposed Rulemaking Updates

Issuance of New Notice of Proposed Rulemaking (NPRM)

USPTO issued a press release on October 16, 2025

- ❖ Proposed rule was created to “enhance fairness, efficiency, and predictability in IPR proceedings.” “Specifically, the proposed rule would:
 - ❖ Require an IPR petitioner to file a stipulation not to pursue invalidity challenges under 35 U.S.C. §§ 102 or 103 in other forums;
 - ❖ Provide that the USPTO will not institute an IPR when the USPTO or another forum already has adjudicated patentability or validity of the claims;
 - ❖ Provide that the USPTO will not institute an IPR when another proceeding is likely to determine patentability or validity of the claims under §§ 102 or 103 first; and
 - ❖ Permit the USPTO to institute an IPR notwithstanding a prior adjudication or expected earlier determination on patentability or validity when exceptional circumstances exist.”

New NPRM proposes to modify rules of practice for Inter Partes Review (IPR) proceedings

- ❖ “[N]ew rules of practice before the PTAB to focus inter partes review proceedings on patent claims that have not previously been challenged in litigation or where prior litigation was resolved at an early stage.”

New NPRM aligns with Director Squires’ announced focus on “born strong” patents

- ❖ “[T]he Office is concerned that even extremely strong patents become unreliable when subject to serial or parallel challenges.”
- ❖ Patentability determinations are “frequently a matter of judgment about which reasonable minds may disagree,” and “[t]he possibility of hindsight bias is also an ever-present difficulty.”

Deadline to comment on the NPRM is November 17, 2025

Withdrawal of Old Notice of Proposed Rulemaking (NPRM)

USPTO issued a press release on October 16, 2025:

- ❖ “USPTO has withdrawn the NPRM to evaluate future actions in light of the administration’s current priorities”

Withdrawn 2024 NPRM issued by former USPTO Director Kathi Vidal proposed to codify:

- ❖ Modifications to serial and parallel petitions practices
- ❖ Rules for briefing on discretionary denial requests
- ❖ Termination and settlement agreements
- ❖ Factors for consideration in discretionary denials

Now-withdrawn NPRM summarized comments received in response to:

- ❖ April 2023 Advance Notice of Proposed Rulemaking
- ❖ October 2020 Request for Comments on “Discretion to Institute Trials Before the Patent Trial and Appeal Board”

USPTO Memorandum on Director Institution of AIA Trial Proceedings

New Procedures Regarding the Institution of IPR and PGR

USPTO issued memorandum on Director institution of AIA proceedings on October 17, 2025.

“The Director, in consultation with at least three PTAB judges, will determine whether to institute trials in all IPR and PGR proceedings.” In evaluating whether to institute, the Director will first review discretionary considerations, merits, and non-discretionary considerations.

The Director will issue a summary notice granting institution only if the Director determines institution is appropriate on at least one ground for one challenged claim. A summary notice denying institution will be granted if IPR or PGR institution is not appropriate.

A decision on institution may be appropriate when confronted with novel or important factual or legal issues.

Any instituted IPR or PGR proceeding will be referred to a 3-member-panel, which will be assigned according to the PTAB Standard Operating Procedure.

Open Letter on Authority to Adopt the New Procedures

In an Open Letter issued on October 17, 2025, the USPTO writes that the policy changes aligns with both the “letter and the spirit of 35 U.S.C. § 314(a),” which instills in the USPTO Director the power to institute IPRs and PGRs.

The letter distinguishes the fact that even though 35 U.S.C. § 3(b)(3)(B) permits delegation of the authority to institute IPRs, delegation is not required.

“Reclaiming the Director’s statutory role is intended to:

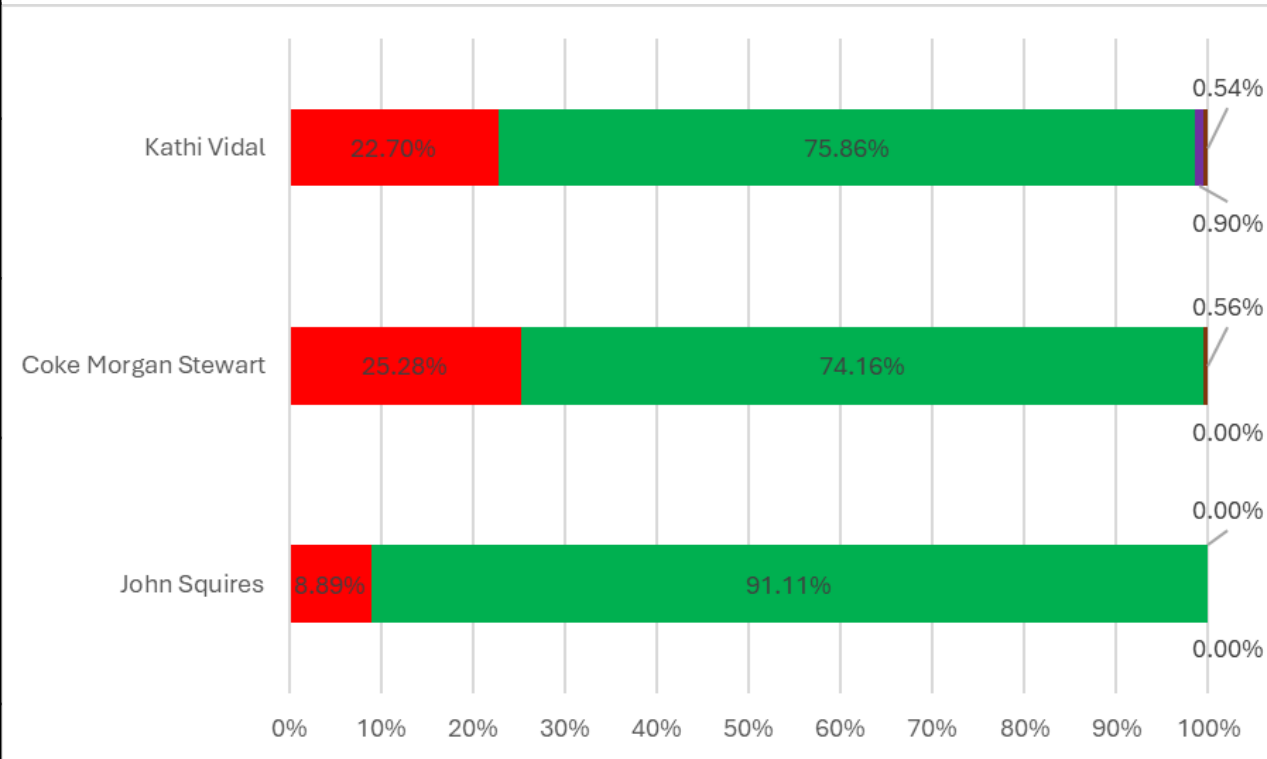
- Eliminate the appearance of self-interest by separating the power to institute from the body that conducts the trial;
- Remove a perceived referral-signal bias by centralizing the decision point;
- Enhance transparency and public trust through a single line of authority; and
- Re-align the duties and responsibilities of the Director, as a Presidentially appointed and Senate-confirmed officer, to be accountable for this threshold determination and properly effectuate the clear language of the AIA and thus Congress' intent.”

Update on Director Review

Director Review Updates

According to Docket Navigator, the USPTO Director Review decisions are as follows:

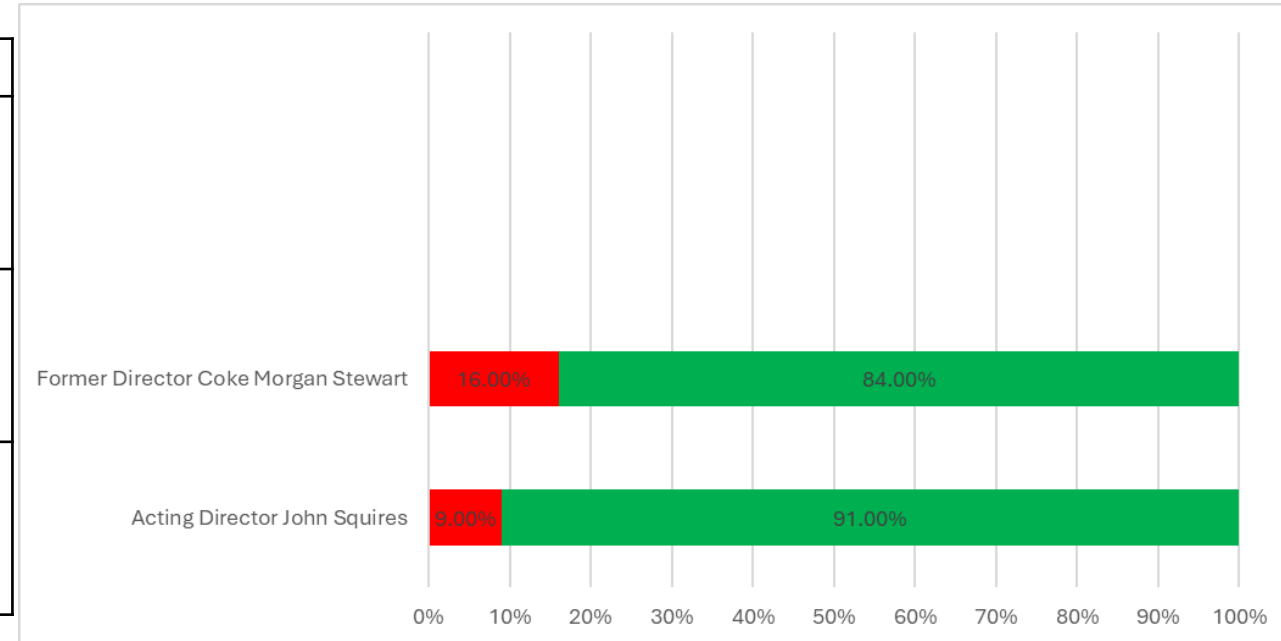
Total USPTO Director Review Decisions			
	Kathi Vidal	Coke Morgan Stewart	John Squires
Requests for Rehearing being Granted	126	45	4
Requests for Rehearing being Denied	421	132	41
Requests for Rehearing Denied In Part Granted In Part	5	0	0
Requests for Rehearing Denied as Moot	3	1	0



Director Review Updates (Since August 19th)

According to Docket Navigator, since August 19, the “Director of the USPTO” has addressed 70 Requests for Director Review.

USPTO Director Decisions Since August 19		
	Former Director Coke Morgan Stewart	Acting Director John Squires
Requests for Rehearing being Granted	4	4
Requests for Rehearing being Denied	21	41



Decisions in Proceedings Where Director Review Was Granted (Since August 19)

- ***Zhuhai CosMX Battery Co., Ltd. v. Ningde Amperex Technology Limited*, IPR2025-00405 (see Institution – 35 U.S.C. § 314(a))**
 - Decision vacating decision granting institution, and denying institution – [Paper 24](#) (Squires October 15, 2025)
- ***Dish Network LLC v. Entropic Communications, LLC*, IPR2024-00373 (see Obviousness – 35 U.S.C. § 103)**
 - Decision vacating-in-part the Final Written Decision, and remanding for further proceedings – [Paper 47](#) (Squires October 15, 2025)
- ***Visa Inc. v. Cortex MCP, Inc.*, IPR2024-00486, IPR2024-00489 & IPR2024-00490 (see Delegated Rehearing Panel (DRP))**
 - Order delegating Director Review to a Delegated Rehearing Panel – [Paper 34](#) (Squires October 9, 2025)
- ***Interactive Communications International, Inc. v. Blackhawk Network Inc.*, IPR2024-00465 (see Expert testimony)**
 - Order granting director review, reversing the final written decision, and terminating the proceeding – [Paper 39](#) (Squires October 1, 2025)
 - Revised Order granting director review, vacating the final written decision, and terminating the proceeding – [Paper 40](#) (Squires October 9, 2025)
- ***Inergy Technology, Inc. v. Force MOS Technology Co., Ltd.*, IPR2024-00094**
 - Order authorizing additional evidence and briefing – [Paper 41](#) (Stewart September 17, 2025)
- ***Cisco Systems, Inc. v. WSOU Investments LLC*, IPR2025-00188 (see Institution – 35 U.S.C. § 314(a), Parallel proceeding)**
 - Decision vacating decision granting institution, and denying institution – [Paper 14](#) (Stewart August 22, 2025)
- ***Tessell, Inc. v. Nutanix, Inc.*, IPR2025-00298 (see Institution – 35 U.S.C. § 314(a))**
 - Decision vacating decision granting institution, and denying institution – [Paper 17](#) (Stewart August 22, 2025)
- ***Skechers U.S.A., Inc. v. Nike, Inc.*, IPR2025-00141 (see Multiple proceedings – 35 U.S.C. 325(d))**
 - Decision vacating decision denying institution, and remanding to Board for further proceedings – [Paper 23](#) (Stewart August 21, 2025)

Mid-August, September, and
October 2025 Decisions in
Proceedings Where Director
Review Was Granted

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

ZHUHAI COSMX BATTERY CO., LTD.,
Petitioner,

v.

NINGDE AMPEREX TECHNOLOGY LIMITED,
Patent Owner.

IPR2025-00405
Patent 11,769,910 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating the Decision Granting Institution, and
Denying Institution of *Inter Partes* Review

**Zhuhai CosMX Battery Co., Ltd. v. Ningde Amperex Technology Limited,
IPR2025-00405**

(see Institution – 35 U.S.C. § 314(a))

Decision vacating decision granting institution, and denying institution – [Paper
24](#) (Squires October 15, 2025)

Although the **Board did not abuse its discretion in instituting review, as a matter of policy, it is not an efficient use of Office resources to institute and maintain a trial when a petition presents a multitude of unfocused grounds leaving the work to be done by the Office.** Here, the Petition asserts at least fifteen grounds of unpatentability, five of which each challenge claims 1–6, 12, and 16–26. See, e.g., Paper 3 (Corrected Petition, “Pet.”), 12–13. For some of these grounds, the Petition presents arguments for claims 1–6 but does not include separate arguments for claims 12 and 16–26. Instead, the Petition includes tables setting forth the limitation for each of claims 12, 16–19, and 21–26 (e.g., [12.pre] for claim 12’s preamble) and referring to arguments made in other sections of the Petition to explain the challenge. For example, in challenging claim 12 as obvious over Zeng, 1 the table includes each limitation and then cites to Petition sections VIII.B.1– VIII.B.8. See Pet. 30; see also id. at 68–69 (Petitioner’s table for a second obviousness ground challenging claims 12 and 16–26). Further, as the Board found, at least one of Petitioner’s summary tables does not include independent claim 20, and thus Petitioner failed to meet the reasonable likelihood standard as to that claim and its dependent claims 21–26. Decision 39, 61–62. This finding highlights the concern with Petitioner’s unfocused approach in this case. Because the Board must institute on all grounds or none, *SAS Institute Inc. v. Iancu*, 584 U.S. 357, 364–65 (2018), and because the Board must address all grounds in its final written decision,² **maintaining a trial in this case would require the Board and Patent Owner to expend resources addressing multiple claims and grounds that do not meet the reasonable likelihood standard, as well as grounds that have not been sufficiently developed.** That is not an efficient or respectful use of Office or party resources and thus institution is denied.

In consideration of the foregoing, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Board’s Decision granting institution of inter partes review is vacated; and
FURTHER ORDERED that the Petition is denied, and no trial is instituted.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

DISH NETWORK LLC,
Petitioner,

v.

ENTROPIC COMMUNICATIONS, LLC,
Patent Owner.

IPR2024-00373¹
Patent 7,594,249 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating-in-Part the Final Written Decision, and
Remanding to the Board for Further Proceedings

¹ DIRECTV, LLC, who filed a petition in IPR2024-01060, has been joined
as a Petitioner to this case.

Dish Network LLC v. Entropic Communications, LLC, IPR2024-00373
(see Obviousness – 35 U.S.C. § 103)

Decision vacating-in-part the Final Written Decision, and remanding for further
proceedings – **Paper 47** (Squires October 15, 2025)

In its Decision, the Board stated that Patent Owner “does not present any arguments specific to claims 2, 9, and 17.” Decision 60, 77. **That statement is erroneous.** Patent Owner presented multiple arguments disputing Petitioner’s unpatentability contentions for claim 17. PO Resp. 46–49. For example, Patent Owner argued that Amit, which Petitioner relied on as teaching TDD, instead discloses time division multiplexing and is entirely silent on the use of the claimed beacon messages, which are used for synchronizing TDD communications. Id. at 46–47. Patent Owner also argued that DSL-Book’s pilot tones do not suggest the claimed beacon messages, rendering Ground 4 deficient. Id. at 48; see also Paper 34, 20–21. **The Board did not explicitly address those arguments, and it appears that Patent Owner has raised a persuasive argument** that Amit does not disclose the claimed TDD protocol for communications.

In view of the foregoing, Director Review is granted, the Decision is vacated in part, and this case is remanded to the Board with instructions to consider Patent Owner’s arguments as to claim 17 under Petitioner’s Grounds 3 and 4. 3

Absent good cause, the Board shall issue its decision within 30 days of this Order.

Accordingly, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Final Written Decision (Paper 44) is vacated-in-part; and

FURTHER ORDERED that the case is remanded to the Board for further proceedings consistent with this Order.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

VISA INC.,
Petitioner,

v.

CORTEX MCP, INC.,
Patent Owner.

IPR2024-00486 (Patent 9,251,531 B2)¹
IPR2024-00489 (Patent 10,749,859 B2)
IPR2024-00490 (Patent 11,329,973 B2)

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

¹ IPR2024-00487 has been consolidated with IPR2024-00486. This order applies to each of the above-listed proceedings.

***Visa Inc. v. Cortex MCP, Inc.*, IPR2024-00486, IPR2024-00489 & IPR2024-00490 (see Delegated Rehearing Panel (DRP))**

Order delegating Director Review to a Delegated Rehearing Panel – [Paper 34](#) (Squires October 9, 2025)

Having considered the request and the response, the Decision **warrants review by a Delegated Rehearing Panel (“DRP”)**. Accordingly, Director Review of the Decision is delegated to a DRP to **review the Decision and determine whether the Board misapprehended or overlooked any issues**, including: (1) whether the Board failed to meaningfully evaluate the parties’ claim construction positions as to the disputed limitation; (2) whether the Board advanced its own theory of unpatentability as to Osborne; and (3) whether Petitioner established that Osborne discloses or teaches the disputed limitation based on the arguments and evidence the parties presented during trial.

Absent good cause, the DRP shall issue a decision within 30 days of this Order. Accordingly, it is:

ORDERED that the request for Director Review is delegated to a DRP.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.,
Petitioner,

v.

BLACKHAWK NETWORK INC.,
Patent Owner.

IPR2024-00465
Patent 11,488,451 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

ORDER

Granting Director Review, Reversing the Final Written Decision, and
Terminating the Proceeding

Interactive Communications International, Inc. v. Blackhawk Network Inc., IPR2024-00465 **(see *Expert testimony*)**

Order granting director review, reversing the final written decision, and
terminating the proceeding – [Paper 39](#) (Squires October 1, 2025)

The Petition also raises other grounds that rely on Mr. Hutton’s testimony that the Board’s Decision did not reach. See Decision 51. Having determined that **Mr. Hutton is not credible as to multiple material aspects of his testimony**, it would be **inappropriate in this instance to rely on this testimony for the other grounds**. See, e.g., *N.L.R.B. v. Pittsburgh S.S. Co.*, 337 U.S. 656, 659 (1949) (“[I]n the determination of litigated facts, the testimony of one who has been found unreliable as to one issue may properly be accorded little weight as to the next.”). For this reason, the **proceeding is terminated**. See *Sling TV, L.L.C. v. Realtime Adaptive Streaming LLC*, 840 F. App’x 598 (Fed. Cir. 2021); *BioDelivery Scis. Int’l, Inc. v. Aquestive Therapeutics, Inc.*, 935 F.3d 1362 (Fed. Cir. 2019).

This decision does not constitute a final written decision under 35 U.S.C. § 318(a).

In consideration of the foregoing, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Board’s Final Written Decision is reversed; and

FURTHER ORDERED that the proceeding is terminated

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

INTERACTIVE COMMUNICATIONS INTERNATIONAL, INC.,
Petitioner,

v.

BLACKHAWK NETWORK INC.,
Patent Owner.

IPR2024-00465
Patent 11,488,451 B2

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

REVISED ORDER¹

Granting Director Review, Vacating the Final Written Decision, and
Terminating the Proceeding

¹ This Order supersedes the Order dated October 1, 2025 (Paper 39).

Interactive Communications International, Inc. v. Blackhawk Network Inc., IPR2024-00465 (see *Expert testimony*)

Revised Order granting director review, vacating the final written decision, and
terminating the proceeding – [Paper 40](#) (Squires October 9, 2025)

The Petition also raises other grounds that rely on Mr. Hutton’s testimony that the Board’s Decision did not reach. See Decision 51. Having determined that **Mr. Hutton is not credible as to multiple material aspects of his testimony**, it would be **inappropriate in this instance to rely on this testimony for the other grounds**. See, e.g., *N.L.R.B. v. Pittsburgh S.S. Co.*, 337 U.S. 656, 659 (1949) (“[I]n the determination of litigated facts, the testimony of one who has been found unreliable as to one issue may properly be accorded little weight as to the next.”). For this reason, the **proceeding is terminated**. See *Sling TV, L.L.C. v. Realtime Adaptive Streaming LLC*, 840 F. App’x 598 (Fed. Cir. 2021); *BioDelivery Scis. Int’l, Inc. v. Aquestive Therapeutics, Inc.*, 935 F.3d 1362 (Fed. Cir. 2019).

This decision does not constitute a final written decision under 35 U.S.C. § 318(a).

In consideration of the foregoing, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Board’s Final Written Decision is vacated; and

FURTHER ORDERED that the proceeding is terminated.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

INERGY TECHNOLOGY, INC.,
Petitioner,

v.

FORCE MOS TECHNOLOGY CO., LTD.,
Patent Owner.

IPR2024-00094
Patent 7,812,409 B2

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

ORDER
Authorizing Additional Evidence and Briefing

Inergy Technology, Inc. v. Force MOS Technology Co., Ltd., IPR2024-00094

Order authorizing additional evidence and briefing – [Paper 41](#) (Stewart
September 17, 2025)

In view of the foregoing, the parties are ordered to **jointly submit, as a single exhibit with a table of contents or index, relevant excerpts from the record of the district court proceeding**, including trial transcripts, the jury verdict, and the district court's findings of fact and conclusions of law. Each party also is authorized to file a **ten-page brief explaining the similarities and differences between the arguments and evidence presented** in the district court and the arguments and evidence presented in this proceeding. The exhibit of relevant excerpts and additional briefing shall be filed within thirty days of the date of this Order.

Accordingly, it is:

ORDERED that the parties shall jointly submit an exhibit of relevant excerpts from the related district court proceeding that includes a table of contents or index;

FURTHER ORDERED that Patent Owner and Petitioner are each authorized to file a ten-page brief as set forth above; and

FURTHER ORDERED that the exhibit of relevant excerpts and the parties' briefs shall be filed within thirty days of the date of this Order. **excerpts from the record of the district court proceeding**

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

CISCO SYSTEMS, INC.,
Petitioner,

v.

WSOU INVESTMENTS LLC d/b/a BRAZOS LICENSING AND
DEVELOPMENT,
Patent Owner.

IPR2025-00188
Patent 8,982,691 B2

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating the Decision Granting Institution, and
Denying Institution of *Inter Partes* Review

***Cisco Systems, Inc. v. WSOU Investments LLC*, IPR2025-00188 (see Institution – 35 U.S.C. § 314(a), Parallel proceeding)**

Decision vacating decision granting institution, and denying institution –
Paper 14 (Stewart August 22, 2025)

Here, the district court has **not granted a stay** and the likely trial date in the parallel proceeding is approximately **three months before the statutory date for the Board's final written decision**. See *id.* at 11–13. As such, it is unlikely that a final written decision in this proceeding will issue before the district court trial occurs. Considering this, along with the remaining Fintiv factors as a whole, the **efficiency and integrity of the system are best served by denying review**.

In consideration of the foregoing, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Decision granting institution of inter partes review (Paper 10) is vacated; and F

URTHER ORDERED that the petition is denied, and no trial is instituted.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

TESSELL, INC.,
Petitioner,

v.

NUTANIX, INC.,
Patent Owner.

IPR2025-00298
Patent 11,860,818 B2

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating the Decision Granting Institution, and
Denying Institution of *Inter Partes* Review

***Tessell, Inc. v. Nutanix, Inc.*, IPR2025-00298** **(see Institution – 35 U.S.C. § 314(a))**

Decision vacating decision granting institution, and denying institution –
Paper 17 (Stewart August 22, 2025)

Here, Balasubrahmanyam Kuchibhotla, Kamaldeep Khanuja, Sujit Menon, and Maneesh Rawat were Nutanix employees when they invented and assigned their rights to the subject matter of what eventually became the challenged patent. DR Request 2; Ex. 2002, 18–20. Subsequently, inventors Kuchibhotla and Khanuja left Nutanix and founded Tessell. DR Request 3; Paper 14, 1, 3. Tessell later hired inventors Menon and Rawat. DR Request 3. Tessell, which includes nearly all the inventors of the challenged patent, *id.* at 3, now argues that the claims of that patent are unpatentable. It is not an efficient use of Office resources to institute an IPR on a patent where the inventors of that patent now advocate for its unpatentability.

Further, although Petitioner argues that the challenged patent’s claims are broader than the claims of the parent patent and eliminate “a core aspect of the alleged invention – a hyperconverged structure,” Paper 14, 4, Petitioner **does not provide a sufficient analysis demonstrating that the scope of the challenged claims is broader than the originally-filed specification**. See generally *id.* Indeed, Petitioner acknowledges that the challenged patent’s dependent claims recite a hyperconverged structure. Paper 14, 3–4.

In consideration of the foregoing, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Decision granting institution of inter partes review (Paper 11) is vacated; and

FURTHER ORDERED that the petition is denied, and no trial is instituted.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

SKECHERS U.S.A., INC.,
Petitioner,

v.

NIKE, INC.,
Patent Owner.

IPR2025-00141
Patent 8,266,749 B2

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating the Decision Denying Institution, and
Remanding to the Board for Further Proceedings

***Skechers U.S.A., Inc. v. Nike, Inc.*, IPR2025-00141 (see Multiple proceedings – 35 U.S.C. 325(d))**

Decision vacating decision denying institution, and remanding to Board for
further proceedings – **Paper 23** (Stewart August 21, 2025)

The **Board erred in finding that Petitioner failed to sufficiently argue examiner error** under Ecto World and **abused its discretion** in failing to reach Petitioner's arguments that Nishida teaches the limitations of the challenged claims. Decision 20–21, n.10. First, both the Petition and Petitioner's additional briefing addressing § 325(d) point to the Board's findings in the prior IPRs regarding Nishida's teachings. See Pet. 20–21; Paper 16, 4. Second, Petitioner's § 325(d) briefing specifically argues that the examiner "erred by misapprehending or overlooking Nishida's teachings," given the Board's findings in the prior IPRs. Paper 16, 4. Thus, **Petitioner sufficiently argued under Ecto World how the examiner erred in overlooking the prior art.** See Ecto World, IPR2024-01280, Paper 13 at 5–6.

Next, Petitioner's briefing **persuasively argues that the Board's findings in the prior IPRs establish an apparent material error by the Office.** Pet. 20–21 (citing Ex. 1017, 24–27); Paper 16, 4. In IPR2016-00922, the Board determined in a final written decision that "Nishida teaches 'simultaneously knitting a textile element with a surrounding textile structure,' . . . as recited in independent claims 1 and 13." Ex. 1017, 25–26. In IPR2024-00460, the Board at institution found that "there is a reasonable case to be made that [Nishida's PCT application] disclosure conveys that the material (1) and the patterns (2) are created simultaneously." Ex. 1069, 23. In IPR2024-00460, the Board also recognized that in the earlier IPR (IPR2016-00922), the Board "determined that Nishida[] did, indeed, disclose the relevant 'simultaneously knitting' limitation." Id. at 24.3 Accordingly, based on the record here, which includes the Board's prior findings that Nishida discloses the "simultaneous knitting" limitation, **Petitioner demonstrates an apparent error in the examiner's findings regarding Nishida that is material to the patentability of the challenged claims.**

Petitioner's additional **arguments as to Günther4 and Orei5 are unpersuasive.** See DR Request 5–9, 12–15. In view of the foregoing, Director Review is granted, and this case is remanded to the Board with instructions to consider Petitioner's Nishida grounds and to determine whether the Petition should be instituted.

Absent good cause, the Board shall issue its decision within 30 days of this Order.

Accordingly, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Decision denying institution of inter partes review (Paper 20) is vacated; and

FURTHER ORDERED that the case is remanded to the Board for further proceedings consistent with this Order.

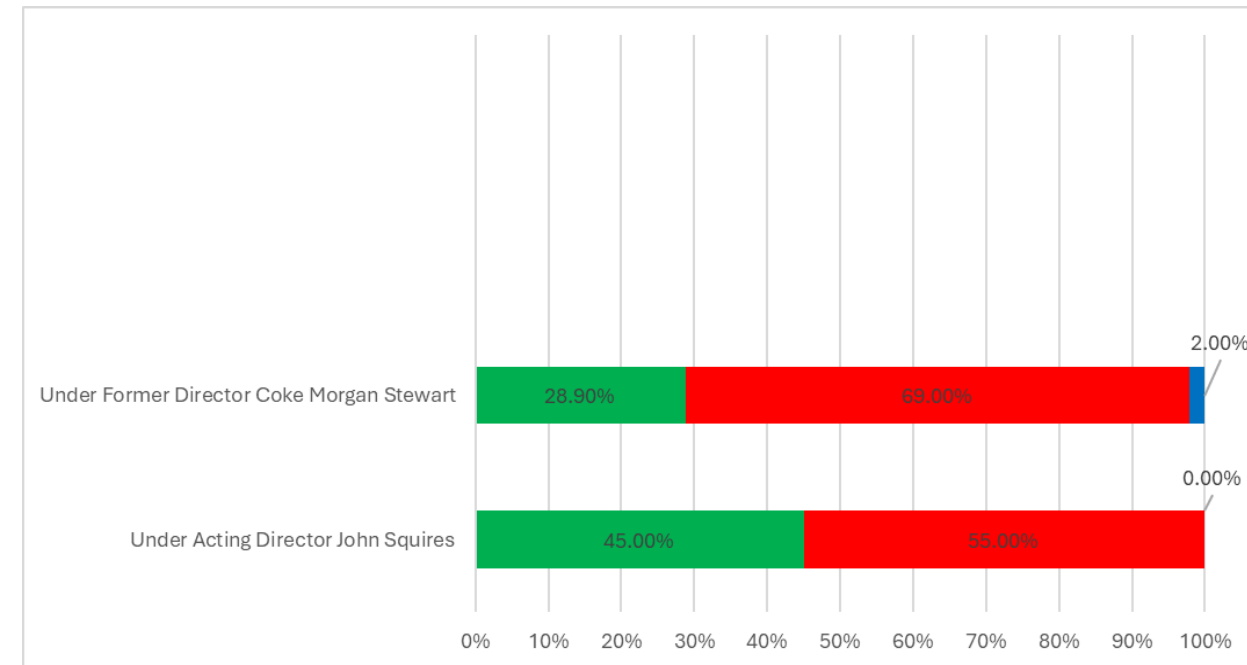
Mid-August, September, and October 2025 Update on Discretionary Denials

NEW DECISIONS ON DISCRETIONARY DENIALS

IPR Discretionary Denials (Since August 19)

According to Docket Navigator, since August 19, the USPTO Director has issued, with respect to IPRs, decisions on **253** Requests for Discretionary Review:

USPTO IPR Discretionary Denials Since August 19, 2025		
	Under Former Director Coke Morgan Stewart	Under Acting Director John Squires
Cases Allowed to Proceed to the Panel for Determination	41	50
Cases Terminated Based on Discretionary Review	98	61
Vacated	3	0

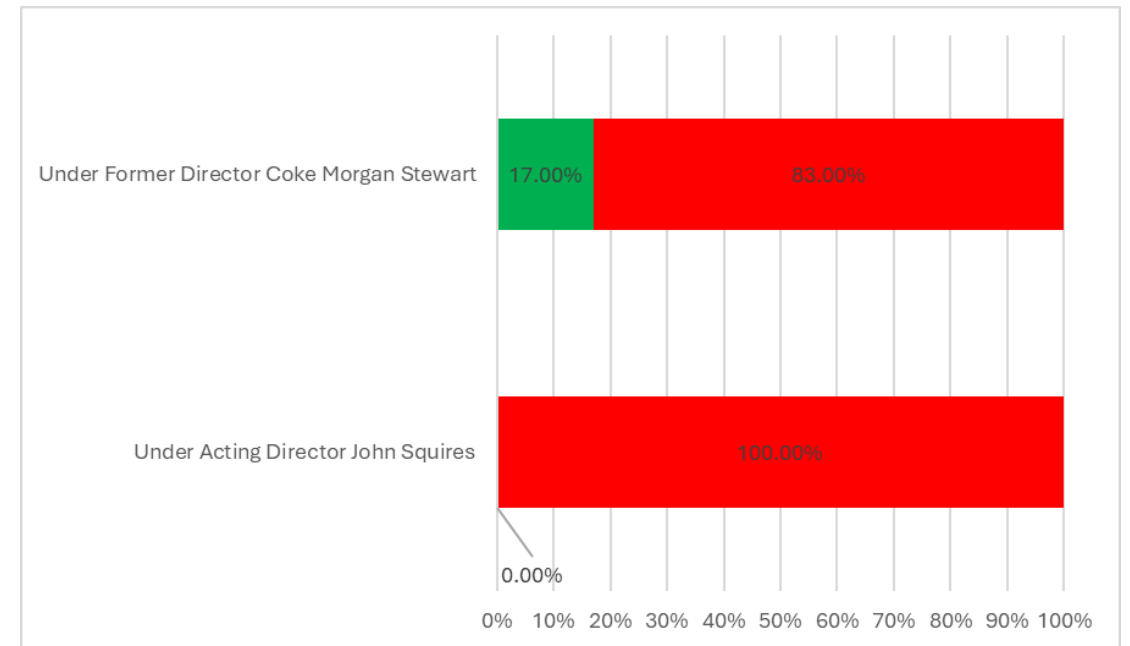


PGR Discretionary Denials (Since August 19)

According to Docket Navigator, since August 19, the USPTO Director has issued, with respect to PGRs, decisions on **7** Requests for Discretionary Review:

USPTO PGR Discretionary Denials Since August 19, 2025

	Under Former Director Coke Morgan Stewart	Under Acting Director John Squires
Cases Allowed to Proceed to the Panel for Determination	1	0
Cases Terminated Based on Discretionary Review	5	1



Next Month (November PTAB Committee)

On Tuesday, November 18, 2025, the next PTAB Committee Meeting for the NYIPLA will continue to provide a monthly update on the evolution of the PTAB.

Please make sure to join us every month on the third Tuesday of each month, at 4:00 p.m. ET for our virtual PTAB Committee meetings.

Also, please join the NYIPLA at the One-Day CLE on November 5, 2025.