



UNITED STATES PATENT AND TRADEMARK OFFICE

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

Submission for the Record

July 21, 2022

The Honorable Henry C. Johnson
Chair, Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Darrell Issa
Ranking Member, Subcommittee on Courts, Intellectual Property, and the Internet
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Johnson and Ranking Member Issa:

Thank you for inviting me to provide some additional information for the July 21 hearing titled "The Patent Trial and Appeal Board After 10 Years, Part II: Implications of Adjudicating in an Agency Setting." I appreciate your focus on the Patent Trial and Appeal Board (PTAB) processes, and I welcome the opportunity to share some of the work I have done on this important issue since my confirmation this April.

As you know, since its creation by Congress a decade ago, the PTAB has provided an alternative forum to the federal courts for resolving patent validity. In response to the U.S. Supreme Court's decision in *United States v. Arthrex, Inc.*, which provided a new, tailored remedy to ensure that administrative patent judges function as inferior officers, the United States Patent and Trademark Office (USPTO) implemented the interim Director review process. Since being confirmed as the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, I have prioritized providing clear guidance to the PTAB regarding the Director review process and other PTAB processes so that administrative patent judges and the public can benefit from consistency, clarity, and transparency.

Please find attached the following interim guidance and processes¹ that I have made available both for the administrative patent judges and for the public:

- (1) Interim process for PTAB decision circulation and internal PTAB review -- <https://www.uspto.gov/interim-process-ptab-decision-circulation-and-internal-ptab-review>
- (2) Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation -- https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621.pdf
- (3) Interim process for Director review -- <https://www.uspto.gov/patents/patent-trial-and-appeal-board/interim-process-director-review>

I look forward to continuing to work with you and the members of the subcommittee on these issues, and I look forward to the opportunity to review the Government Accountability Office's full report on past practices regarding the PTAB once it is completed.

Sincerely,



Katherine K. Vidal
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

¹ These interim internal review processes and guidance will go through official notice-and-comment rulemaking or be formalized as appropriate in the coming months.