

New Procedures Expected To Result in More PTAB Denials

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Under new procedures where the director of the US Patent and Trademark Office (USPTO) will decide whether petitions challenging patents should be denied for discretionary reasons, such denials will likely increase, although the policy leaves many unanswered questions, attorneys say.

Acting USPTO Director Coke Morgan Stewart on Wednesday created a bifurcated process where she and Patent Trial and Appeal Board judges will decide if America Invents Act patent challenges should be denied due to discretionary issues, and the board will review a petition's merits only if it is not denied. Stewart's memo on the significant change in procedure is intended to address the board's "workload needs" and establishes several new factors that could warrant discretionary denials.

Many considerations detailed in the memo "have never been part of the board's analysis before," **Kit Crumbley** told *Law360*. "So it's really hard to get from a bullet point in a list to some sort of understanding of how that actually works in practice."

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