

New PTAB Institution Process Likely To Increase Discretionary Denials

Media Mentions

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The bifurcation of discretionary and merits-based denials may lead to a lower rate of institutions at the Patent Trial and Appeal Board (PTAB) and expands the influence of the US Patent and Trademark Office's director. The new process, announced Wednesday, was sparked by federal workforce changes which could make it hard to quickly process patent challenges. The US Patent and Trademark Office's acting director, Coke Morgan Stewart, will get a first look at whether to institute patent challenges

Bracewell's **Kit Crumbley**, a former PTAB lead judge, told *MLex* that the change could lead to a decrease in the total number of institutions. "The only real way this reduces the board's workload is if it leads to an increase in discretionary denials, because then there will be fewer instituted trials that the board has to decide," he said. "If you're reading between the lines, I think that there is at least a flavor of that in the [memo]."

Crumbley added that the change could note a shifting priority towards ex-parte appeals at the PTAB, with AIA challenges taking a back seat. "That's a priority, not letting that [ex-parte] pendency go up," he said, characterizing Stewart's recent comments. "And if you're going to do that and also have a reduced head count, then there's only one other place to make changes to reduce workload, and that is on the AIA side."

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