

Patent Rule Skips Contentious Changes, Proposes Refined Test

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The US Patent and Trademark Office recently proposed rules seeking to codify factors its administrative tribunal considers when deciding whether to review the validity of patents.

“The office has greatly scaled back their ambition” from the advance notice, Bracewell’s **Kit Crumbley** told *Bloomberg Law*.

The proposal details two tests and creates a separate Patent Trial and Appeal Board discretionary denial briefing process. If adopted, the draft rule would also define certain petitions, including successive and overlapping challenges targeting the same patent.

The draft regulation is also noteworthy for the standards absent from the latest iteration.

Not codifying the so-called Fintiv rule – precedential opinions allowing the PTAB to reject patent challenges when there’s parallel district court litigation – was likely done to avoid further controversy and give the PTO a better chance of advancing the proposal to a final rule, said Crumbley.

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