



DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO-P-2023-0048]

RIN 0651-AD72

Patent Trial and Appeal Board Rules of Practice for Briefing Discretionary Denial Issues, and Rules for 325(d) Considerations, Instituting Parallel and Serial Petitions, and Termination Due to Settlement Agreement

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is withdrawing the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on April 19, 2024, to revise the rules of practice for inter partes review (IPR) and post-grant review (PGR) proceedings before the Patent Trial and Appeal Board (PTAB) that the Director and, by delegation, the PTAB use in exercising discretion to institute IPRs and PGRs.

DATES: The proposed rule published in the **Federal Register** at 89 FR 28693 on April 19, 2024, is withdrawn as of [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michelle Ankenbrand, Acting Vice Chief Administrative Patent Judge, at 571-272-9797.

SUPPLEMENTARY INFORMATION: This Action withdraws a proposed rule published in the Federal Register on April 19, 2024 (89 FR 28693), to revise the rules of practice for IPR and PGR proceedings before the PTAB that the Director and, by delegation, the PTAB use in exercising discretion to institute IPRs and PGRs. The proposed rule modified and built on existing PTAB precedent and guidance concerning serial petitions, parallel petitions, and

petitions implicating the same or substantially the same art or arguments previously presented to the Office. The proposed rule also provided a separate briefing process for discretionary institution arguments and aligned the procedures before and after institution regarding settlement agreements and termination. The proposed rule's comment period was open from April 19, 2024 to June 18, 2024.

Reason for Withdrawal

During the proposed rule's 60-day comment period, the USPTO received more than 3,900 submissions from a variety of stakeholders, including both supporting and opposing comments for the proposed rule. The comments are publicly available at the Federal eRulemaking Portal at www.regulations.gov/docket/PTO-P-2023-0048. Of the comments received concerning the proposed rule, 110 comments were unique.

The USPTO is withdrawing the rulemaking at this time to evaluate future actions in light of the administration's current priorities. Despite the decision not to move forward with the proposed rule at this time, the USPTO appreciates the thoughtful perspectives that commenters raised. The USPTO welcomes continued stakeholder feedback as it evaluates future actions.

Conclusion

The proposed rule to amend the rules of practice for IPR and PGR proceedings before the PTAB that the Director and, by delegation, the PTAB use in exercising discretion to institute IPRs and PGRs, published in the **Federal Register** on April 19, 2024 (89 FR 28693), is hereby withdrawn.

John A. Squires,

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

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