

**UNITED STATES  
PATENT AND TRADEMARK OFFICE**



# Biotechnology, Chemical, Pharmaceutical Customer Partnership Meeting

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Michelle Ankenbrand, Lead Administrative Patent Judge, PTAB

Michael Cygan, Administrative Patent Judge, PTAB

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June 15, 2021

UNITED STATES  
PATENT AND TRADEMARK OFFICE



# Agenda

- **Precedential and informative decisions**
  - Process (POP and designation)
  - Recently designated cases
- **Appeals**
  - Appeal brief template,
  - Appeal timeline, and
  - Fast-track appeals pilot programs (regular and COVID-related)
- **AIA Trials**
  - Motions to amend
- **Legal Experience and Advancement Program (LEAP)**

Process (POP and designation)

# **Precedential and informative decisions**

# Standard operating procedure 2 (SOP2), revision 10

- Creation of a Precedential Opinion Panel (POP) to rehear matters of exceptional importance involving policy or procedure in pending trials and appeals, resulting in binding agency authority unless otherwise designated;
- Procedure for nomination, review, and designation of Board decisions, other than POP decisions, as precedential or informative; and
- Procedure for de-designating precedential and informative decisions.

# SOP 2

## Resources and guidance

Policies, procedures, rules, guides, tools and manuals related to proceedings before the Patent Trial and Appeal Board. More recent information can be found on the [latest developments](#) page.

Expand all | Collapse all

- > Appeals
- > Trials
- > Reexams and interferences
- ▼ Standard operating procedures
  - [SOP 1 \(rev. 15\): Assignment of judges to panels \(Sep. 20, 2018\)](#)
  - [SOP 2 \(rev. 10\): Precedential opinion panel to decide issues of exceptional importance involving policy or procedure \(Sep. 20, 2018\)](#)
  - [SOP 9 \(rev. 1\): Procedure for decisions remanded from the federal circuit](#)
- > Guidance Memorandum
- > Trial Practice Guide
- > Statutes, rules, and references
- > Rulemaking
- > FAQs

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## Patent Trial and Appeal Board

The Patent Trial and Appeal Board (PTAB) conducts trials, including inter partes, post-grant, and covered business method patent reviews and proceedings, hears appeals from adverse examiner decisions in patent applications and reexamination proceedings, and renders decisions in interferences.

Trials and appeals

- > New to PTAB?
- > Trial proceedings
- > Appeals proceedings
- > Preparing for hearings
- > Fees

Decisions

- > All PTAB decision data
- > AIA daily decisions
- > Precedential and informative decisions
- > Precedential Opinion Panel (POP)

Learn more

- > Resources and guidance
- > Statistics
- > Databases and IT tools
- > Frequently asked questions
- > Boardside Chat webinar series
- > PTAB suggestion box and contact info
- > Recent proposals, pilots and final rules

# SOP 2

- Creates the processes for designating PTAB decisions in appeals and trial proceedings as precedential or informative
- Sets forth 2 paths for special designation:
  - Path 1: Precedential Opinion Panel (POP) review
  - Path 2: Designation

# What is the POP?

- POP = Precedential Opinion Panel
- POP is a special panel formed to rehear cases in PTAB appeals or trial proceedings and issue decisions that create binding Board precedent



# Typical issues for the POP

- The POP hears cases that involve:
  - Constitutional questions
  - Important questions regarding statutes, rules, regulations
  - Important issues regarding precedential case law
  - Issues of broad applicability to Board
  - Resolve conflicts between Board decisions
  - Promote certainty and consistency

# Who is on the POP?

- Default composition
  1. Director of USPTO
  2. Commissioner for Patents
  3. PTAB Chief Judge
- SOP 2 set forth order of substitutes

# Who can request POP review?

- Any party to a proceeding, for example:
  - an applicant appealing an adverse decision by a patent examiner,
  - a party in a PTAB trial proceeding
- Commissioner for Patents, PTAB Chief Judge, or any other member of the Board

# How is POP review requested?

- Submit an email requesting POP review to [Precedential Opinion Panel Request@uspto.gov](mailto:Precedential%20Opinion%20Panel%20Request@uspto.gov).
- The email **MUST** be accompanied by a request for rehearing

# How is POP review requested?

- Email must also “identify with particularity the reasons for recommending Precedential Opinion Panel review”
- Submitter must include at least one of the following statements:
  1. Decision is contrary to binding precedent (SCOTUS, CAFC, PTAB)
  2. Decision is contrary to a constitutional provision, statute, or regulation
  3. Case implicates a question of exceptional importance

# How is POP review announced?

- If POP decides to grant review, a POP grant order is issued
- POP grant order includes:
  - Issue to be resolved by POP
  - Schedule for the review process, including due dates for briefing
  - Additional and responsive briefing and page limits
  - Amicus briefing and page limits
  - Oral Hearing information
- If POP denies review, a POP denial order is entered into the record of the proceeding

# Will the POP hold an oral hearing?

- Oral Hearing will be granted if requested by the parties and as determined by the POP
- Hearing Order includes:
  - Date and location for oral hearing
  - Information on demonstratives
  - Order for hearing arguments
- Hearing is open to public

# POP information

[www.uspto.gov/patents/ptab](http://www.uspto.gov/patents/ptab)

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## Patent Trial and Appeal Board

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### Learn more

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# POP information

[www.uspto.gov/patents/ptab/decisions/precedential-opinion-panel](http://www.uspto.gov/patents/ptab/decisions/precedential-opinion-panel)

The screenshot shows the top navigation bar of the USPTO website. On the left is the USPTO logo and the text "UNITED STATES PATENT AND TRADEMARK OFFICE". On the right are links for "About Us", "Jobs", "Contact Us", and "MyUSPTO", along with a search box labeled "Search uspto.gov". Below this is a secondary navigation bar with tabs for "Patents", "Trademarks", "IP Policy", and "Learning and Resources", and a "Find It Fast" button. At the bottom of the header is a breadcrumb trail: "Home > Patents > Patent Trial and Appeal Board > Decisions > Precedential Opinion Panel", and "Share" and "Print" icons.

## Decisions

Daily AIA review decisions

Precedential and informative opinions

**Precedential Opinion Panel**

Archive of representative AIA trial orders, decisions, and notices

Search final decisions

Search proceedings

## Precedential Opinion Panel

The Precedential Opinion Panel ("POP") operates, at the discretion of the Director, to decide issues of exceptional importance to the Patent Trial and Appeal Board (e.g., issues involving agency policy or procedure). By default, POP members are the Director, the Commissioner for Patents, and the Chief Judge. Learn more on the [Precedential and informative decisions](#) page.

### [POP Request: Amicus Form](#)

Submit an amicus request supporting or opposing a pending request for POP review.

### POP review granted - proceedings

#### **Hunting Titan, Inc. v. DynaEnergetics Europe GmbH**, IPR2018-00600

- Decision under POP review - [Paper 42](#) (August 20, 2019)
- POP grant order - [Paper 46](#) (November 7, 2019)
- Amicus briefing - CLOSED (December 20, 2019)
- Oral hearing - [Paper 63](#) (February 18, 2020) **NEW**
- POP decision - [Paper 67](#) (July 6, 2020) **NEW**

#### **GoPro, Inc. v. 360Heros, Inc.**, IPR2018-01754

- Decision under POP review - [Paper 15](#) (April 3, 2019)
- POP grant order - [Paper 23](#) (May 10, 2019)
- Amicus briefing - CLOSED (May 24, 2019)
- POP decision - [Paper 38](#) (August 23, 2019)

#### **Hulu, LLC, v. Sound View Innovations, LLC**, IPR2018-01039

- Decision under POP review - [Paper 12](#) (December 3, 2018)
- POP grant order - [Paper 15](#) (April 3, 2019)
- Amicus briefing - CLOSED (May 1, 2019)
- POP decision - [Paper 29](#) (December 20, 2019)

#### **Proppant Express Investments, LLC v. Oren Techs LLC**, IPR2018-00914

- Decision under POP review - [Paper 21](#) (November 18, 2018)
- POP grant order - [Paper 24](#) (December 3, 2018)
- Amicus briefing - CLOSED (December 28, 2018)
- POP decision - [Paper 38](#) (March 13, 2019)



**Precedential Opinion Panel (POP)  
request amicus form**

# POP request amicus form

- Published November 19, 2020.
- Accessible the PTAB's [Precedential Opinion Panel](#) page of the USPTO website.
- Allows the submission of an amicus request addressing a pending request for POP review.

# POP request amicus form

- Must be made within seven business days of entry of the Notification of Receipt of POP Request into the case docket or patent application file.
- Must include case identifying information:
  - name of the submitter,
  - any affiliation, and
  - any client represented.
- Option to explain why the POP request should or should not be granted.

# POP request amicus form

## Precedential Opinion Panel (POP) Amicus Form

This submission form allows individuals to submit an amicus request supporting or opposing a pending request for POP review in a particular case. Individuals must provide certain information about themselves and the case in which the POP request has been made, explain why they support or oppose the POP request (e.g., the decision is/is not contrary to Supreme Court, Federal Circuit, or Board precedent), and certify that the form is being submitted within seven business days of entry of the Notification of Receipt of POP Request into the case docket or patent application file. This information will be entered into the record of the case or patent application.

**\*Items are mandatory**

**\*Name:**

**\*Affiliation:**   
(e.g., none, law firm, university, company, association)

**\*Client represented:**   
(e.g., none or XYZ, Inc.)

**\*Case number:**   
(e.g., IPR2020-01234; 2008-001183)

**\*Case name:**   
(e.g., ABC Corp. v. 123 Corp.)

**\*Rehearing Request paper number:**   
(For IPR, PGR, or CBM case numbers; e.g., Paper 115)

**\*Type of amicus:**

**\*Brief reasons for supporting or opposing POP review:**   
(Limited to 3000 characters)

**\*Relationship to a party to the proceeding:**   
(e.g., none or subsidiary of ABC Corp.)

I certify that I am submitting this amicus form within seven business days of entry of the Notification of POP request into the case docket or patent application file.

**\*Signature:**  (e.g., /signaturename/)



# **PTAB anonymous decision nomination form**

# PTAB anonymous decision nomination form

- Published September 24, 2020.
- Accessible on the PTAB's [Precedential and informative decisions](#) page of the USPTO website.
- Allows any member of the public to nominate any PTAB decision for precedential or informative designation.

# PTAB anonymous decision nomination form

- Provide as much identifying information as possible.
- Set forth a brief description of the reasons for the requested designation.
- May also enter name and email address.



# PTAB anonymous decision nomination form

## PTAB Decision Nomination

This submission form allows individuals to anonymously nominate any routine decision of the Board for designation as precedential or informative. Please provide as much identifying information as possible for any nominated decision, and set forth a brief description of the reasons for the requested designation. Individuals nominating a decision may also enter their name and email address.

**\*items are mandatory**

\*Type of nomination:

\*Case number:   
(e.g., IPR2020-01234; 2008-001183)

\*Case name:

\*Paper number:   
(Enabled for case number begin with IPR, PGR, or CBM)

\*Brief reasons for nomination:   
(Limited to 750 characters)

Name (optional):

E-mail Address (optional):



Recently designated cases

# **Precedential and informative decisions**

# Recently designated decisions

## Real Party-in-Interest (designated Dec. 4, 2020)

- *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, Paper 128 (Oct. 2, 2020) (precedential)
- *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 (Oct. 6, 2020) (precedential)

## Joinder (designated Dec. 4, 2020)

- *Apple Inc. v. Uniloc 2017 LLC*, IPR2020-00854, Paper 9 (Oct. 28, 2020) (precedential)

## Exercising Discretion under 314 (*Fintiv*) (designated Dec. 17, 2020)

- *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 (Dec. 1, 2020) (precedential as to § II.A)
- *Snap, Inc. v. SRK Tech. LLC*, IPR2020-00820, Paper 15 (Oct. 21, 2020) (precedential as to § II.A)

# ***RPX Corp. v. Applications in Internet Time, LLC***

## **IPR2015-01750**

- Determined petitioner bears the burden to establish no RPI or privy was served with a complaint alleging infringement more than one year prior to the filing of the petition.
- Whether a non-party is a RPI or privy is a fact-dependent question demanding a flexible approach to determine who, from a practical and equitable standpoint, will benefit from the redress that the *inter partes* review might provide.

# ***SharkNinja Operating LLC v. iRobot Corp.***

## **IPR2020-00734**

- Determined to not address whether a party is an unnamed RPI when it would not create a time bar or estoppel under 35 U.S.C. § 315.
- Such a lengthy exercise is unnecessary for the purposes of rendering a decision on institution of trial when there is no time bar implication.
- Identification of all “correct” RPIs under 35 U.S.C. 312(a)(2) is not jurisdictional.

See *Lumentum Holdings, Inc. v. Capella Photonics, Inc.*, PR2015-00739, Paper 38 at 6 (PTAB Mar. 4, 2016) (precedential).



# ***Apple Inc. v. Uniloc 2017 LLC***

## **IPR2020-00854**

- The petition in IPR2020-00854 is undeniably the second petition Apple has filed challenging the '088 patent.
- Applied the *General Plastic* factors to a follow-on petition that is accompanied with a motion for joinder.
- Determined, after a holistic review of the *General Plastic* factors that the facts weigh in favor of exercising discretion to deny institution.

See *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016- 01357, Paper 19 (PTAB Sept. 6, 2017) (precedential as to § II.B.4.i)).



# ***Sotera Wireless, Inc. v. Masimo Corp.***

## **IPR2020-01019**

- Petitioner broadly stipulates to not pursue “any ground raised or that could have been reasonably raised.”
- Petitioner’s broad stipulation addresses concerns of duplicative efforts and potentially conflicting decisions, ensuring that an *inter partes* review is a “true alternative” to the district court proceeding.
- Determined that petitioner’s broad stipulation weighed strongly against the exercise of discretion to deny institution of *inter partes* review.

# ***Snap, Inc. v. SRK Tech. LLC***

## **IPR2020-00820**

- The district court's stay of the litigation pending denial of institution or a final written decision allays concerns about inefficiency and duplication of efforts.
- Determined that the granting of a stay pending *inter partes* review weighs strongly against exercising discretion to deny *inter partes* review.



Appeal brief template

Appeal timeline, and

Fast-track appeals pilot programs (regular and COVID-related)

# Appeals

Appeal brief template: new appeal brief tool and how to access

# Appeals

# Appeal brief tool

- There are two parts to the appeal brief tool:
  1. Word document template
  2. PDF instructions for completing the template

# Location of appeal brief tool: PTAB page on USPTO website

[www.uspto.gov/patents/ptab](http://www.uspto.gov/patents/ptab)

The screenshot shows the USPTO Patent Trial and Appeal Board (PTAB) website. The header includes the USPTO logo, the text 'UNITED STATES PATENT AND TRADEMARK OFFICE', and navigation links for 'About Us', 'Jobs', 'Contact Us', and 'MyUSPTO'. A search bar is located in the top right. Below the header is a navigation menu with 'Patents', 'Trademarks', 'IP Policy', and 'Learning and Resources'. The main content area is titled 'Patent Trial and Appeal Board' and includes a brief description of the PTAB's role. Below this, there are three main sections: 'Trials and appeals', 'Decisions', and 'Learn more'. The 'Trials and appeals' section contains a list of links, with 'New to PTAB?' circled in red and a red arrow pointing to it. The 'Decisions' section lists links for 'All PTAB decision data', 'ALA daily decisions', 'Precedential and informative decisions', and 'Precedential Opinion Panel (POP)'. The 'Learn more' section lists links for 'Resources and guidance', 'Statistics', 'Databases and IT tools', 'Frequently asked questions', 'Boardside Chat webinar series', 'PTAB suggestion box and contact info', and 'Recent proposals, pilots and final rules'. At the bottom, there is a footer with navigation arrows and links for 'PTAB E2E system', 'Search decisions', 'Hearing information', 'Latest developments', and 'Recent proposals, pilots & final rules'.



# Location of appeal brief tool: New to PTAB page on USPTO website

[www.uspto.gov/patents/ptab/ptab-inventors](http://www.uspto.gov/patents/ptab/ptab-inventors)

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- Resources and guidance
- Statistics
- PTAB data tools and IT systems
- PTAB events
- New to PTAB**
- About PTAB
- PTAB help

## New to PTAB

### What is PTAB?

The Patent Trial and Appeal Board (PTAB) is a tribunal within the United States Patent and Trademark Office (USPTO) that reviews rejections made by examiners in proceedings called ex parte appeals and decides patentability questions for issued patents raised by third parties in proceedings called AIA trials.

The America Invents Act (AIA) created the PTAB or the Board. It was known previously as the Board of Patent Appeals and Interferences or BPAL.

The Board includes statutory members and administrative patent judges. The statutory members of the Board are the USPTO Director, Deputy Director, Commissioner for Patents, and Commissioner for Trademarks.

Administrative patent judges are appointed by the Secretary of Commerce and are legally and technically trained. Judges have extensive patent legal experience prior to their appointment on the Board, for example, in private practice, in government practice (e.g., at the Department of Justice or the International Trade Commission), and as in-house counsel in companies. Many also have served as USPTO examiners or judicial law clerks.

The Board also includes patent attorneys, law clerks, and paralegals along with support staff to administer proceedings and hearings.

[Learn more](#) about the Board, its composition, history, and areas of jurisdiction.

### What are ex parte appeals?

If a patent examiner twice rejects or issues a final rejection in a patent application, the applicant can seek review of the rejection by the Board. The Board calls such an applicant by the title appellant.

An appellant and the Board may submit written papers called briefs to help the Board understand the invention and arguments for patentability. For help in preparing an appeal brief, the Board offers an appeal brief template and instructions to guide appellants; these documents featured on the [Preparing an Ex Parte Appeal Brief Webpage](#).

In addition, an appellant also may request to make an oral presentation to the Board in a hearing called an oral hearing.

The Board will review the briefs, attend the oral hearing, and then render a decision. The Board will either affirm or reverse, in part or whole, the examiner's rejection. If the appellant is not successful in securing reversal of the examiner's rejection from the Board, the appellant may seek reconsideration by the Board or federal court review or both.

The [appeal process](#) involves nine steps and is explained in these videos below:

[Inventor Info Chat \(Appealing a Final Rejection to the Patent Trial and Appeal Board: What you need to know, August 15, 2019\)](#)

[Boardside chat: \(Appeals Made Easy, November 7, 2019\)](#)

Learn more about ex parte appeals on the [PTAB's Appeal](#) webpage. Also, feel free to use our [resources for independent inventors](#) and those new to appeals.



# Location of appeal brief tool: Preparing an ex parte appeal brief page

[www.uspto.gov/patents/patent-trial-and-appeal-board/resources/preparing-ex-parte-appeal-brief](http://www.uspto.gov/patents/patent-trial-and-appeal-board/resources/preparing-ex-parte-appeal-brief)

The screenshot shows the USPTO website interface. At the top, there is a navigation bar with the USPTO logo and the text 'UNITED STATES PATENT AND TRADEMARK OFFICE'. To the right of the logo is a search bar with the text 'Search uspto.gov' and a magnifying glass icon. Below the navigation bar is a menu with links for 'Patents', 'Trademarks', 'IP Policy', and 'Learning and Resources'. A 'Find It Fast' button is also present. Below the menu is a breadcrumb trail: 'Home > Patents > Patent Trial and Appeal Board > Resources > Preparing an ex parte appeal brief'. There are also 'Share' and 'Print' icons.

The main content area is titled 'Preparing an ex parte appeal brief'. It contains several paragraphs of text explaining the process of filing an appeal. A red arrow points to a red oval that highlights a list of resources for help creating an appeal brief:

- A [Word document](#) template that serves as the starting point for your brief; and
- A [PDF](#) that provides general guidance on the various sections in the template.

Below the list, there is a paragraph that says: 'Use these two documents and, if needed, the [relevant cited rules](#) and the [Manual of Patent Examining Procedure](#), you should be able to prepare your appeal brief.'

Under the heading 'Other resources:', there are three links: [To file your appeal brief, go to EFS-Web](#), [New to PTAB](#), and [Contact information for the Board](#).



# Appeal brief tool: Word template and PDF instructions

## Word template

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: [Inventor Name(s)]	Group Art Unit: [####]
Application No. [##/###/####]	Examiner: [Name]
Filed: [Application Filing Date]	Confirmation No. [####]
Title: [APPLICATION TITLE]	

MAIL STOP APPEAL BRIEF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPEAL BRIEF

Appellant submits this Appeal Brief in response to the final Office action mailed [Date], and further to the Notice of Appeal filed [Date]. Appellant requests consideration of this appeal by the Patent Trial and Appeal Board.

I. REAL PARTY IN INTEREST  
Add

II. RELATED APPEALS AND INTERFERENCES  
Add

III. SUMMARY OF CLAIMED SUBJECT MATTER  
Add

IV. ARGUMENTS  
Add

a. *Rejection 1 – The Rejection of Claims . . . Based on . . .*

i. *Independent Claim 1*

## PDF Instruction Document

I. REAL PARTY IN INTEREST

This section requires a statement from you that identifies the real party in interest at the time the appeal brief is filed. A real party in interest may include you as the inventor and any other individuals or entities that have ownership rights to the patent application. For example, an assignee of the patent application may be a real party in interest. A statement is not required if the named inventor(s) are the real party in interest. If you do not provide a statement, the Board will consider the inventor(s) to be the real party in interest. Typically, a *pro se* inventor is the real party in interest. See MPEP §§ 301, 324, 1205.02(i) (<https://mpep.uspto.gov/RDMS/MPEP/current#/current/d0e123366.html>).

Example:

The real party of interest is The Great White Café LLC (Baja, California 21511) by virtue of an assignment by the inventor duly recorded in the Assignment Branch of the Patent and Trademark Office.

II. RELATED APPEALS AND INTERFERENCES

Please list all of your prior or pending cases before the Board or before a court. These cases are based on applications or patents that you



# Filing an appeal brief via EFS-Web: Preparing an ex parte appeal brief page

[www.uspto.gov/patents/patent-trial-and-appeal-board/resources/preparing-ex-parte-appeal-brief](http://www.uspto.gov/patents/patent-trial-and-appeal-board/resources/preparing-ex-parte-appeal-brief)

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## Preparing an ex parte appeal brief

Are you an independent inventor looking to appeal a patent examiner's rejection of your claims without the assistance of an attorney, which is called acting "pro se" in your appeal? If so, you're in the right place.

If any of the claims in a patent application has been twice rejected or finally rejected by a patent examiner, you may seek review as an appellant before the Patent and Trial Appeal Board (PTAB).

An appellant and the examiner may submit written papers known as "briefs" to explain their respective positions. The process begins when an appellant files a "notice of appeal" followed by an appellant's "appeal brief." The examiner usually responds with an "answer" to address the appellant's argument made in the "appeal brief." The appellant may, but doesn't have to, then file a "reply brief" to address the "answer."

Once fully briefed, your appeal will be considered by a panel of three administrative patent judges at the Board. The panel will review the briefs and render a decision, either maintaining ("affirming") or not maintaining ("reversing") all or part of the examiner's rejection.

For help creating your appeal brief, see the documents below:

- A [Word document](#) template that serves as the starting point for your brief; and
- A [PDF](#) that provides general guidance on the various sections in the template

With these two documents and, if needed, the [relevant cited rules](#) and the [Manual of Patent Examining Procedure](#), you should be well on your way to drafting your appeal brief.

**Other resources**

- [To file your appeal brief, go to EFS-Web New to PTAB](#)
- [Learn more information for the Board](#)





# Filing an appeal brief via EFS-Web

The screenshot shows the USPTO website interface. At the top, the USPTO logo and navigation links (About Us, Jobs, Contact Us, MyUSPTO) are visible. Below the navigation bar, there are tabs for Patents, Trademarks, IP Policy, and Learning and Resources. The main content area is titled 'About EFS-Web'. A red arrow points to a link labeled 'EFS-Web for Registered eFilers', which is circled in red. Other links on the page include 'EFS-Web for Unregistered eFilers', 'EFS-Web Contingency', and 'Sponsorship Tool'. A 'Sign-in with uspto.gov account' button is also present.

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571-272-4100 (local)

E-mail: [ebc@uspto.gov](mailto:ebc@uspto.gov)

Fax: 571-273-0177

Patent Center Beta, a new tool for electronic filing and management of patent application, is available for all users and features a Training mode to practice filing in DOCX format. Please visit the [Patent Center Information](#) page for more information.

## About EFS-Web

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### Important Information

- [EFS-Web Resources](#)  
Instructions to become a Registered eFiler ([Getting Started - New Users](#)), system requirements, EFS-Web Fillable Forms, and other useful information and links
- [EFS-Web Announcements](#)  
Recent and archived announcements.

### Sponsorship Tool

The [Sponsorship Tool](#) can be used by **registered practitioners** to sponsor their support staff to work on their behalf. In order to sponsor support staff, a practitioner must first migrate to a USPTO.gov account and the support staff must each have a USPTO.gov account.

For step-by-step instructions, see [Sponsorship Tool Guide](#).

[Sponsor Support Staff](#)

### EFS-Web for Unregistered eFilers

Basic initial filing of new patent applications

### EFS-Web Contingency

Basic initial filing of new patent applications when the primary portal to EFS-Web has an



Appeal brief template: parts of an appeal brief

# Appeals

# Parts of an appeal brief

- Six parts:
  - Summary of claimed subject matter
  - Real party in interest
  - Related appeals, interferences, and trials
  - Argument
  - Conclusion (optional)
  - Claims appendix

# Summary of claimed subject matter

- Provides a concise explanation of the subject matter defined in each of the rejected independent claims
- Not required for pro se applicants, but may help the Board understand the arguments
- If included, should identify, for each claim element, supporting disclosure and figures

# Real party in interest

- Statement from you that identifies the real party in interest at the time the appeal brief is filed
- A real party in interest may include you as the inventor and any other individuals or entities that have ownership rights to the patent application
- An assignee of the patent application may be a real party in interest
- You must update the real party in interest if it changes during the proceeding (See 37 C.F.R. § 41.8)

Example: The real party in interest is The Great White Café LLC (Baja, California 21511).

# Related appeals, interferences, and trials

- List any prior or pending cases before the Board or a court that are related to the current appeal
- A related case is based on a patent or application that you own and would affect the current appeal or be affected by the current appeal
  - A related case might be a continuation application

Example 1: Appeal No. 2019-1234, prior decision dated July 1, 2020

Example 2: There are no related appeals, interferences, or trials to appellant's knowledge

# Argument

- Why the examiner's decision to reject the pending claims of your application is improper and should be reversed

# Conclusion and claims appendix

- Conclusion should briefly explain what relief you want from the Board (e.g., reverse the examiner's rejection)
- Appendix must include all claims on appeal
  - Should not indicate prior amendments or reference non-admitted amendments
  - Should start on a new page



The one-year ex parte appeal:

how to get from final action to PTAB decision in one year (or less)

# Appeals

# The one-year appeal

Document	Typical (months)	Diligent Appellant (months)	Diligent + PTAB Fast-Track
Final Rejection	4	1	1
Notice of Appeal	3	1.5	1.5
Appeal Brief	~2.5	~2.5	~2.5
Examiner's Answer*	2	1	1
Reply Brief	~12	~12	<6
Decision			

<b>Final-to-Decision (months):</b>	<b>~23</b>	<b>~18</b>	<b>&lt;12</b>
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- Where an Appellant would like to conclude an appeal quickly, the time frames for the briefing stage show how such appeals may proceed. It may not be appropriate for all appeals.



Fast-Track Appeals Pilot Program and

Fast-Track Pilot Program for Appeals Related to COVID-19

# Appeals

# Fast-Track Appeals Pilot Program

- *Get your ex parte appeal decided in 6 months or less*
- Pilot program before the PTAB
  - Initially one year (expires July 2021); to be extended
- An appellant can request an ex parte appeal to be expedited out of turn by filing:
  - A petition
  - A fee (\$420)
- Pendency goal: PTAB decision within six months

# Does my appeal qualify?

- Application type
  - Original utility, design, or plant nonprovisional application
- Status of appeal
  - Pending ex parte appeal (Notice of Appeal filed and Docketing Notice issued)
  - Not limited to “new” appeals (a petition may be submitted for any currently pending appeal)

# Are there any restrictions?

- The number of granted petitions is limited to 125 per quarter (500 total)
- Hearings permitted, with some caveats
- Not available for applications already treated as special during appeal under MPEP 708.01
  - See MPEP 708.01 (e.g., appeals treated special due to age or health of inventor)

# New: Fast-Track Pilot Program for Appeals Related to COVID-19

- Published April 15, 2021 (86 FR 19877)
- Similar to Fast-Track Appeals Pilot, but
  - No fee
    - Still file a petition, but fee waived
  - Technology limit
    - “must claim a product or process subject to an applicable FDA approval for COVID–19 use”
  - No time limit; 500 total granted petitions for the pilot program

# Petition requirements

- **Petition under 37 C.F.R. § 41.3**
  - Online forms recommended, but not required
  - Identify the application number and appeal number
  - Certify that the ex parte appeal qualifies
  - Covid-19 Fast Track—Certify that the application claims a product or process subject to an applicable FDA approval for COVID-19 use
- **Petition fee under 37 C.F.R. § 41.20(a)**
  - \$420 (non-refundable) for regular Fast Track Appeals Pilot Program
  - **No fee** for Covid-19 Fast Track Pilot Program



# Hearings

- Appellant with a fast-tracked ex parte appeal may request oral argument before a PTAB panel
  - PTAB will make best efforts to accommodate time/location preferences
  - But, hearing may be scheduled in any available hearing room in any office location or by telephone
- Appellant cannot reschedule hearings and remain in the pilot program
  - May opt out of the pilot program and reschedule hearing
  - May request video/telephone if office location is inconvenient
  - May waive hearing and continue on fast-track
- Currently, all hearings for ex parte appeals are telephonic
  - [www.uspto.gov/coronavirus](http://www.uspto.gov/coronavirus)



# How fast is fast track?

- Much faster than usual
  - Target of 6 months
  - Faster than the approximate 13–14 month average time to decide appeals overall (<https://www.uspto.gov/patents/ptab/statistics>)
- Current average time to decide petition: **1.4 days**
- Current average time to decision on appeal: **2.2 months**

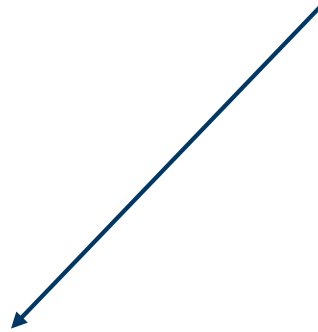
# Check PTAB website for petition limit and timeliness updates

Petitions received in this quarter : 28

Average time to decide petition: 1.4 days

Available slots in this quarter: 98

Average time to decision on appeal: 2.2 months



## Fast-track appeals pilot program

Petitions received in this quarter : 28

Available slots in this quarter: 98

Average time to decide petition: 1.4 days

Average time to decision on appeal: 2.2 months

Need an expedited decision on your appeal? Use the Fast-Track Appeals Pilot Program.

### What is the Fast-Track Appeals Pilot Program?

Under the Fast-Track Appeals Pilot Program, appellants can have their ex parte appeals advanced out of turn. Appellants simply file a petition to request fast-track review of their ex parte appeal and pay a \$420 petition fee. The Patent Trial and Appeal Board (PTAB or Board) has set a target of issuing a decision within six months from the date the petition is granted and the ex parte appeal is entered into the pilot program.

The Fast-Track Appeals Pilot Program is effective on July 2, 2020. This means an appellant may file a petition for inclusion of an ex parte appeal in the pilot program starting on July 2, 2020.

Read the [Federal Register Notice here](#).

### Eligibility requirements

To qualify for fast-track status, the following four conditions must be met:

- **Application type:** The application must be an original utility, design, or plant nonprovisional application.
- **Status of appeal:** The appeal for fast-track status must be an ex parte appeal for which a notice of appeal has been filed and a PTAB docketing notice has been issued by the USPTO (i.e., the appeal is pending before the PTAB).
- **Petition:** The appellant must file a petition under 37 CFR 41.3 via the [USPTO's electronic filing system](#) identifying the application and appeal by application number and appeal number, respectively, for which fast-track review is sought.
  - Form: Petition—Fast-Track Appeals Pilot Program ([Form PTO/SB/451](#))
- **Fee:** The appellant must pay a \$420 fee under 37 CFR 41.20(a) with the petition.
  - [USPTO Fee Schedule](#)

### Time to decision

The Board has set a target of issuing a decision within six months from the date that a petition for fast-track review is granted. Since the program's inception in July 2020 through December 30, 2020, PTAB has decided 69 fast-track appeals with an average decision time of about 2 months from the date the petition for fast-track review was granted, and about 6 months from the date PTAB received the appeal. Thus, the overall decision time is at least 50% faster than the average appeal time for cases not under fast-track review, which currently stands at about 13 months at the end of calendar year 2020.

### Granted petition limits

The USPTO has limited the number of granted petitions to 125 per quarter for the duration of the Fast-Track Appeals Pilot Program, which is expected to run for one year.

The table shows the status of the number of granted petitions per quarter and total for the pilot duration, as well as open slots available during each time period. A "quarter" under this pilot program is defined as a three-month period measured from the start date of the pilot program. For example, if the pilot program has a start date of June 1, then a "quarter" spans the three months from June 1 to August 31.

	As of date	Petitions received in quarter	Petitions granted in quarter	Available petition slots in quarter	Petitions held in abeyance	Total granted petitions
Q4 (starting 4/1/2021)	5/17/2021	28	27	98	0	172



	As of date	Petitions received in quarter	Petitions granted in quarter	Available petition slots in quarter	Petitions held in abeyance	Total granted petitions
Q4 (starting 4/1/2021)	5/17/2021	28	27	98	0	172

# Check PTAB website for petition limit and timeliness updates

## COVID fast-track appeals pilot program

Petitions received: 0

Available spots: 500


### Need an expedited decision on your ex parte appeals related to COVID-19?

The USPTO has implemented the [COVID-19 Prioritized Examination Pilot Program](#) to prioritize the examination of certain patent applications claiming a product or process subject to an applicable FDA approval for COVID-19 use.

As a companion to the COVID-19 prioritized examination, the USPTO has implemented the Fast-Track Pilot Program for Appeals Related to COVID-19, under which an appellant may have certain COVID-19-related ex parte appeals before the Patent Trial and Appeal Board (PTAB or Board) accorded fast-track status. Appellants simply file a petition to request fast-track review of their COVID-19-related ex parte appeal—i.e., an appeal of an application that claims a product or process that is subject to an applicable FDA approval for COVID-19 use. No petition fee is required.

The PTAB has set a target of issuing a decision within six months from the date the petition is granted and the COVID-19-related ex parte appeal is entered into the pilot program.

The Fast-Track Pilot Program for Appeals Related to COVID-19 is effective on April 15, 2021. This means an appellant may file a petition for inclusion of a COVID-19 related ex parte appeal in the pilot program starting on April 15, 2021.

Read the [Federal Register Notice here](#) 

# Summary

## Fast-Track Appeals Pilot Program

- Pilot program to expedite ex parte appeals before the PTAB
- Fee
- Limit of 500 granted petitions/year (quarterly limit of 125)
- One year (to be extended)
- No technology limit
- Learn more:  
[www.uspto.gov/patents/ptab/fast-track-appeals-pilot-program](http://www.uspto.gov/patents/ptab/fast-track-appeals-pilot-program)

## Fast-Track Pilot Program for Appeals Related to COVID-19

- Pilot program to expedite ex parte appeals related to COVID-19 before the PTAB
- No fee
- Limit of 500 granted petitions (no quarterly limits)
- No time limit
- “Must claim a product or process subject to an applicable FDA approval for COVID–19 use”
- Learn more:  
[www.uspto.gov/patents/patent-trial-and-appeal-board/covid-fast-track-appeals-pilot-program](http://www.uspto.gov/patents/patent-trial-and-appeal-board/covid-fast-track-appeals-pilot-program)



MTA Pilot Program

**AIA trials**

# Request for comment on proposed changes to motion to amend (MTA) practice in AIA trials

- October 29, 2018, the Office published a motion to amend (MTA) request for comments (RFC):
  - Proposed a new MTA process and pilot program.
  - Sought input regarding burden of persuasion when determining patentability of substitute claims, after Aqua Products.
  - Included 17 questions of interest, but also solicited feedback regarding MTA practice generally.
- Office received 49 comments from stakeholders (as of December 21, 2018).
- Office carefully considered all comments and revised pilot program in response.

# MTA pilot program notice

- In response to comments, the office issued a notice regarding a new pilot program concerning MTA practice and procedures in AIA trials.
- Published in Federal Register at 84 Fed. Reg. 9497 (March 15, 2019).
- Notice also provides responses to comments.
  - Topics include timelines, retroactivity of applying pilot, Board preliminary decision, opportunity to file a revised MTA, contingent MTAs, and opting-out of pilot.
  - Comments also included requests for clarification regarding existing reissue and reexamination procedures at the USPTO.
  - Stakeholder comments to October MTA RFC are available at [go.usa.gov/xEXS2](https://www.uspto.gov/xEXS2).

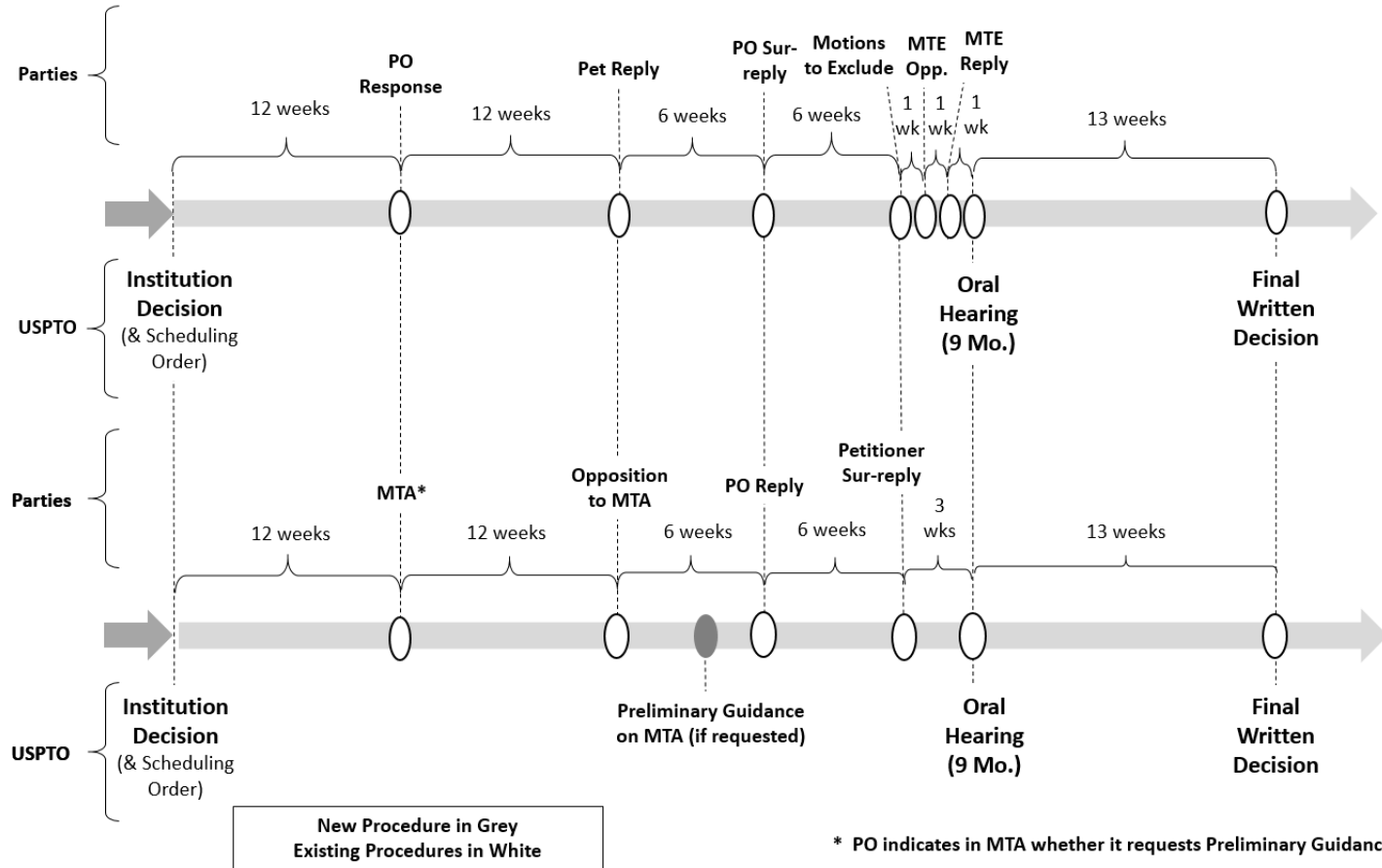


# Highlights of MTA pilot program

- Provides patent owner (PO) with two options not previously available:
  - Option 1: PO may choose to receive preliminary guidance (PG) from Board on its motion to amend (MTA).
  - Option 2: PO may choose to file a revised MTA after receiving petitioner's opposition to initial MTA and/or after receiving Board's PG (if requested).
- Option 1 is not a predicate for option 2
- Applies to all AIA trials instituted on or after publication date of the notice (i.e., March 15, 2019)



# Schedule entered at institution (Appendix 1A)



# All cases

- Scheduling order entered at institution sets due dates similar to prior practice
  - Schedule is changed only if/after PO files revised MTA
  - Parties can stipulate to move dates, but must leave time for PG
  - Small changes:
    - 12 weeks for MTA and Opposition (Opp.) to MTA
      - Similar to prior schedule
      - Same due dates as PO response and petitioner reply (petition)
    - Six weeks for reply and sur-reply regarding MTA
      - Rather than 1 month under prior practice
      - Same due dates as PO sur-reply and motion to exclude (MTE)

# All cases with an MTA

- In initial MTA, PO may request PG
  - If PO does not request PG, no PG
  - If PO requests it, Board will provide PG within four weeks of due date for Opp. to MTA
  - No rehearing request from PG

# All cases with an MTA where Patent Owner requests PG

- Content of PG
  - Preliminary, non-binding initial assessment of MTA based on record so far
    - Typically short paper (although may be oral guidance in a conference call, at Board's discretion)
    - Focuses on limitations added in MTA
    - Does not address patentability of original claims
    - Does not provide dispositive conclusions

# PO choices

- Based on Opp. to MTA and/or PG, PO may file:
  - Reply to opposition to MTA and PG (if requested); or
  - Revised MTA; or
  - Nothing

# PO files reply

- Appendix 1A of pilot notice
- PO files reply to MTA opposition and/or PG
  - No change to scheduling order
  - Petitioner may file sur-reply six weeks after PO reply (on same day as MTE)
    - No new evidence other than deposition transcripts of cross-examination of any reply witness
    - Limited to response to PG (if provided) and PO reply
  - Oral hearing at ~nine months (similar to prior practice)

# PO files revised MTA

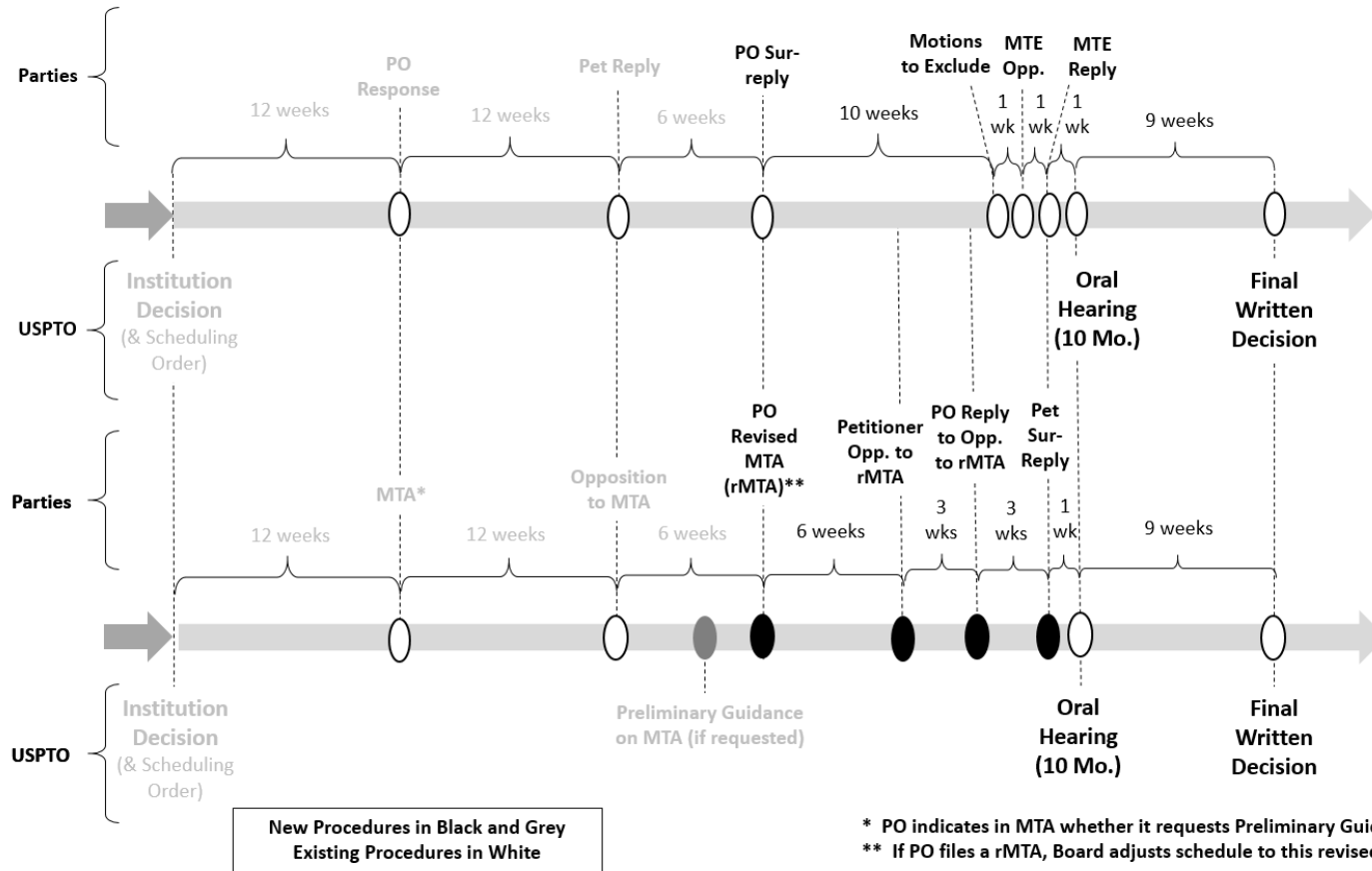
- Appendix 1B of pilot notice
- PO files revised MTA
  - Includes one or more new proposed substitute claims in place of previously presented substitute claims
  - May provide new arguments and/or evidence as to why revised MTA meets statutory and regulatory requirements
  - May keep some proposed substitute claims from original MTA and reply to PG and/or Opp. on those claims
  - Must provide amendments, arguments, and/or evidence that are responsive to issues raised in PG or Opp.



# PO files revised MTA

- Board issues revised scheduling order shortly after PO files revised MTA
  - Sets dates for briefing on revised MTA
  - Revises dates for MTE and associated briefing
  - Revises oral hearing date to ~10 months
    - If needed, PO may ask to file MTE regarding reply or sur-reply evidence at or after oral hearing
- Final written decision addresses only substitute claims at issue in revised MTA (if necessary)

# Revised schedule if revised MTA (Appendix 1B)



# If PO files no paper after opposition and/or PG

- If no PG, no further briefing on MTA
- If PG:
  - Petitioner may file reply to PG (three weeks after due date for PO reply)
    - May only respond to PG
  - PO may file sur-reply in response (three weeks thereafter)
    - May only respond to reply
  - No new evidence with either paper

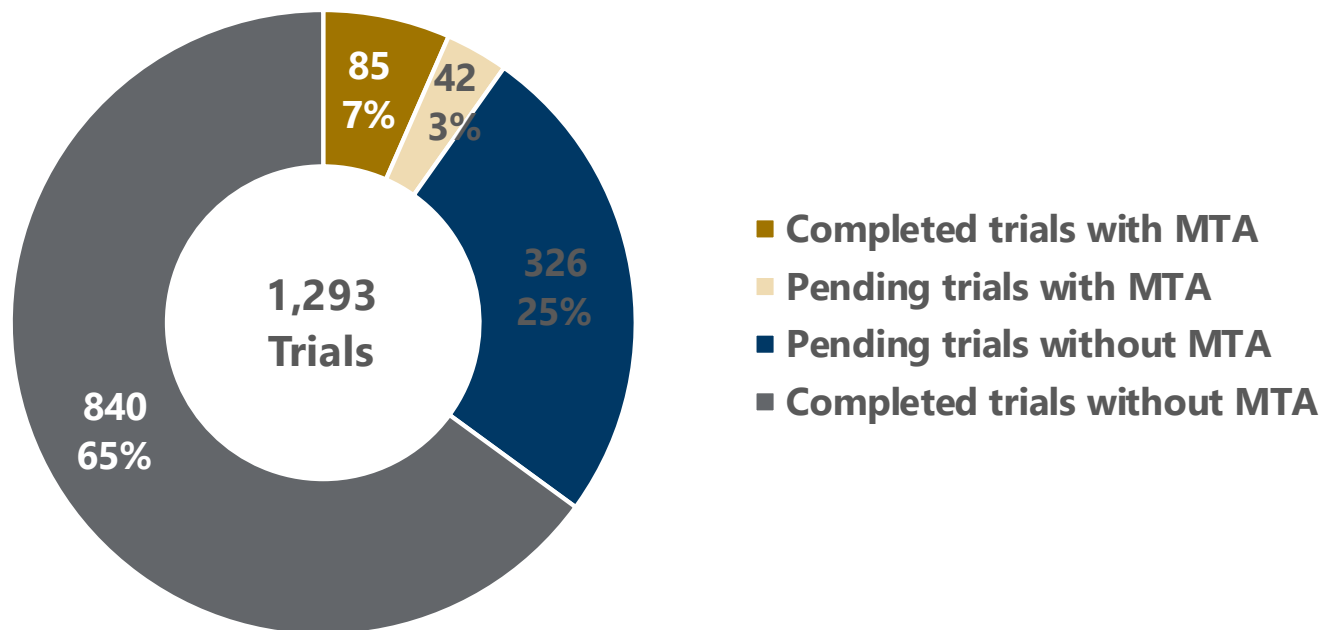
MTA Pilot Program data  
(through March 31, 2021)

# **AIA trials**

# MTA filings

(Pilot: Mar. 15, 2019 to Mar. 31, 2021)

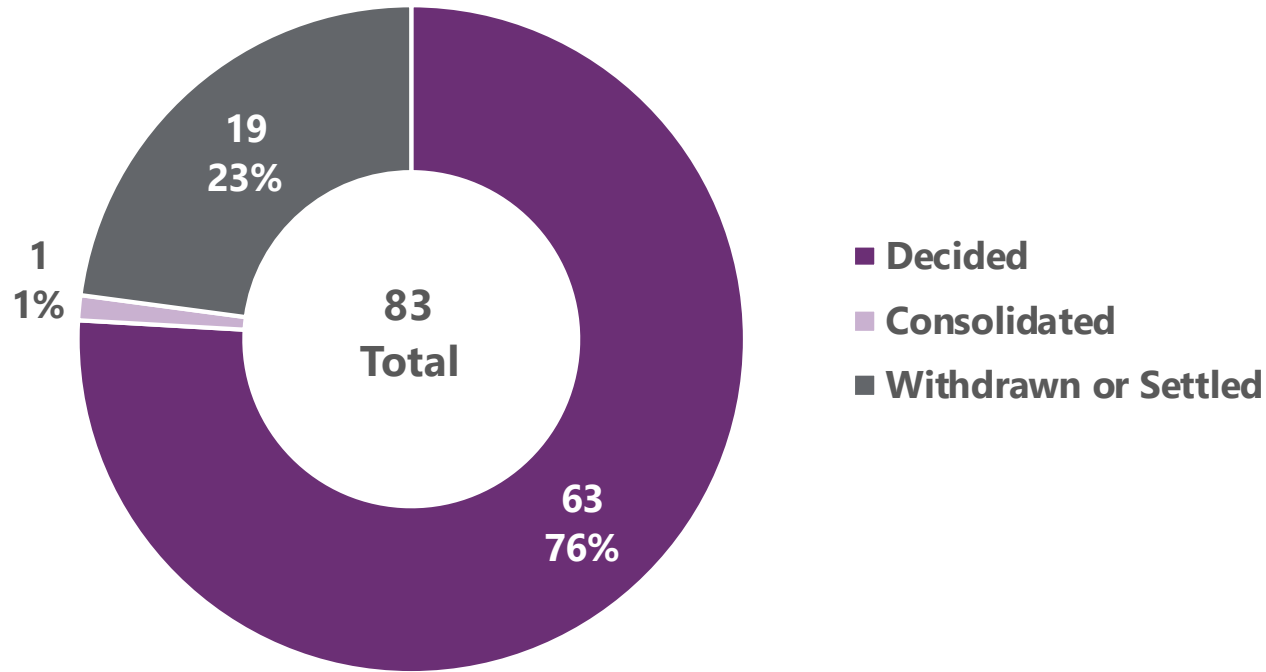
In how many trials are MTAs filed?



Trials reflect institutions between March 15, 2019 and December 31, 2020. The outcomes of decisions on institution responsive to requests for rehearing are incorporated.

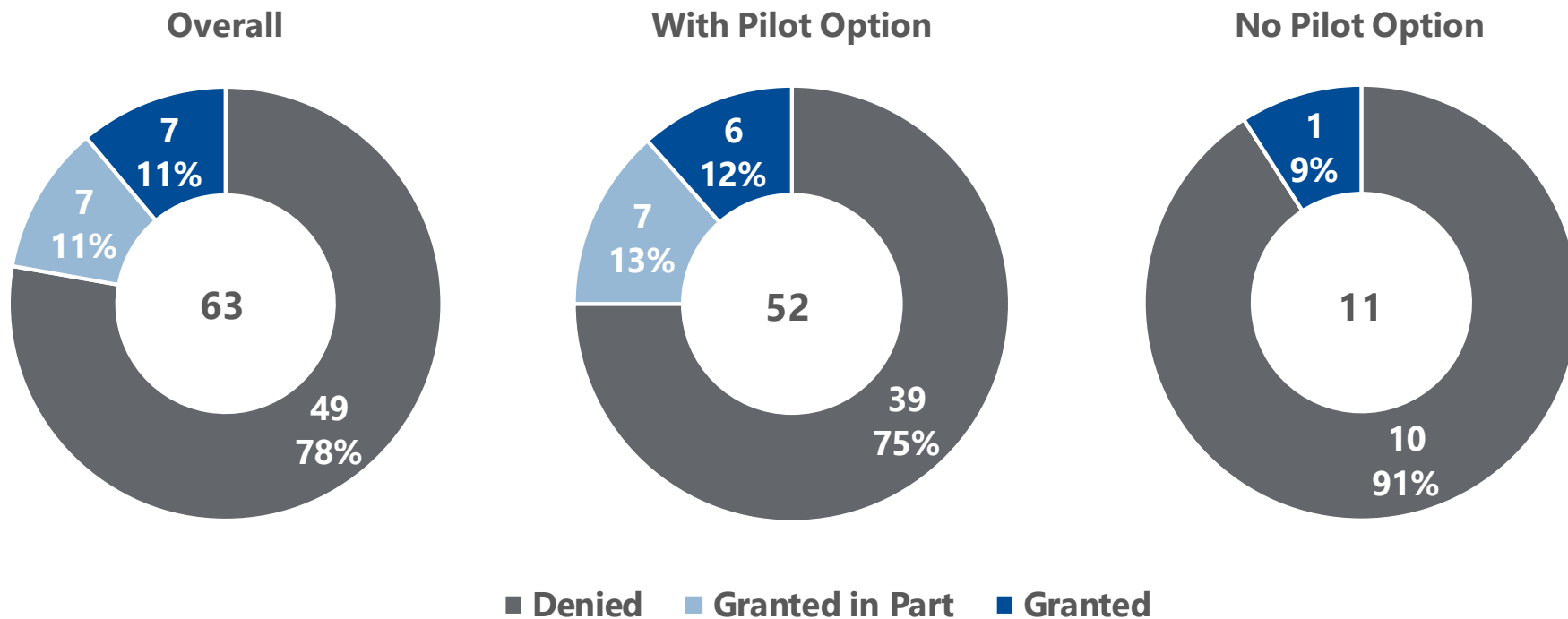
# MTA subsequent developments

(Pilot: Mar. 15, 2019 to Mar. 31, 2021)



# MTA dispositions, by option

(Pilot: Mar. 15, 2019 to Mar. 31, 2021)

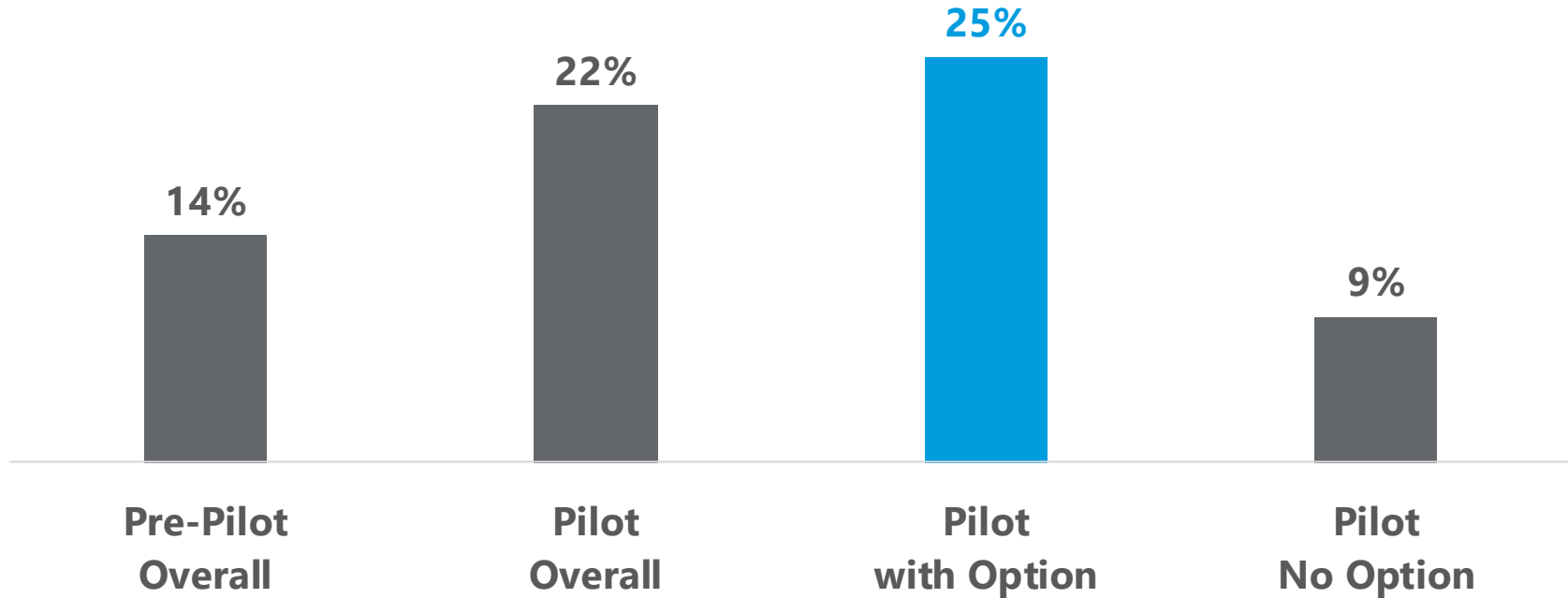


Pilot options include requests for preliminary guidance and MTA revisions. Dispositions reflect MTAs substituting claims.



# MTA grant rates

(Pre-Pilot: Oct. 1, 2012 to Mar. 31, 2020 & Pilot: Mar. 15, 2019 to Mar. 31, 2021)



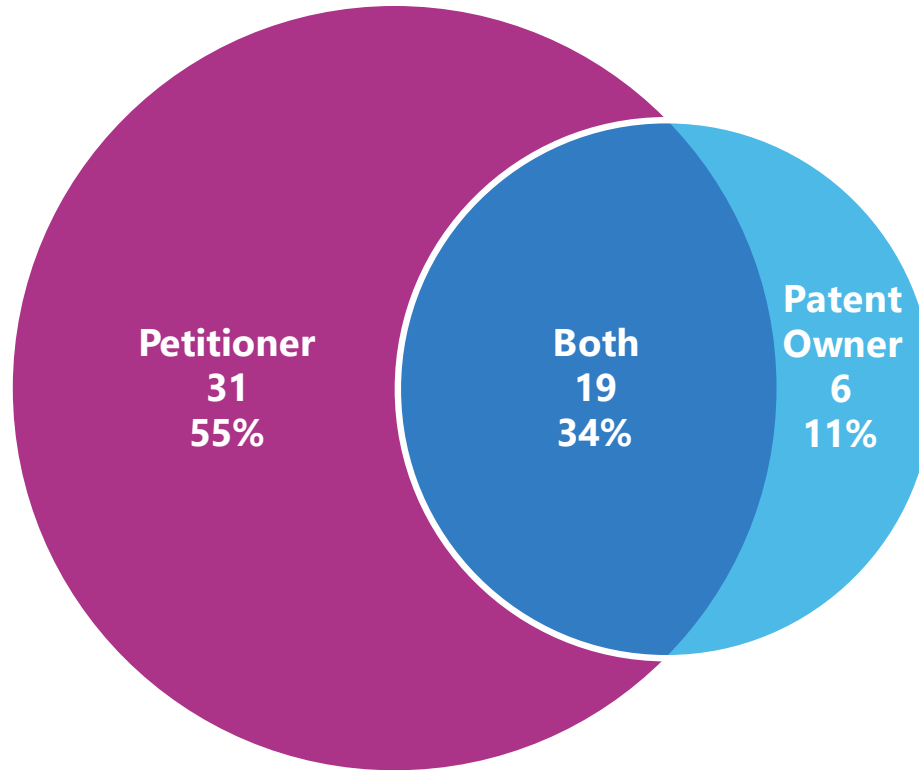
Pilot options include requests for preliminary guidance and MTA revisions.  
Grant rate calculated as the percent of MTA dispositions granted or granted in part.





# Denial of claim substitution, by party's burden

(Pilot: Mar. 15, 2019 to Mar. 31, 2021)

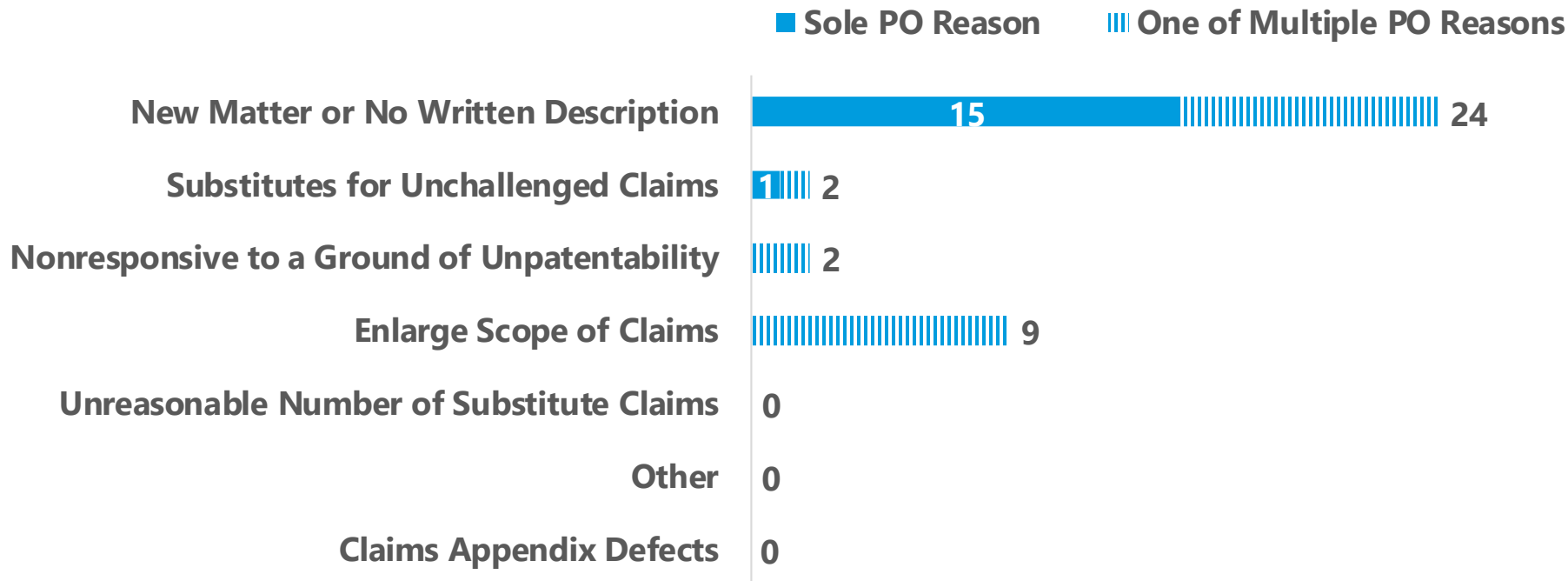


This diagram reflects instances where Petitioner met its burden to show unpatentability or patent owner failed to meet its burden on the statutory and regulatory requirements.



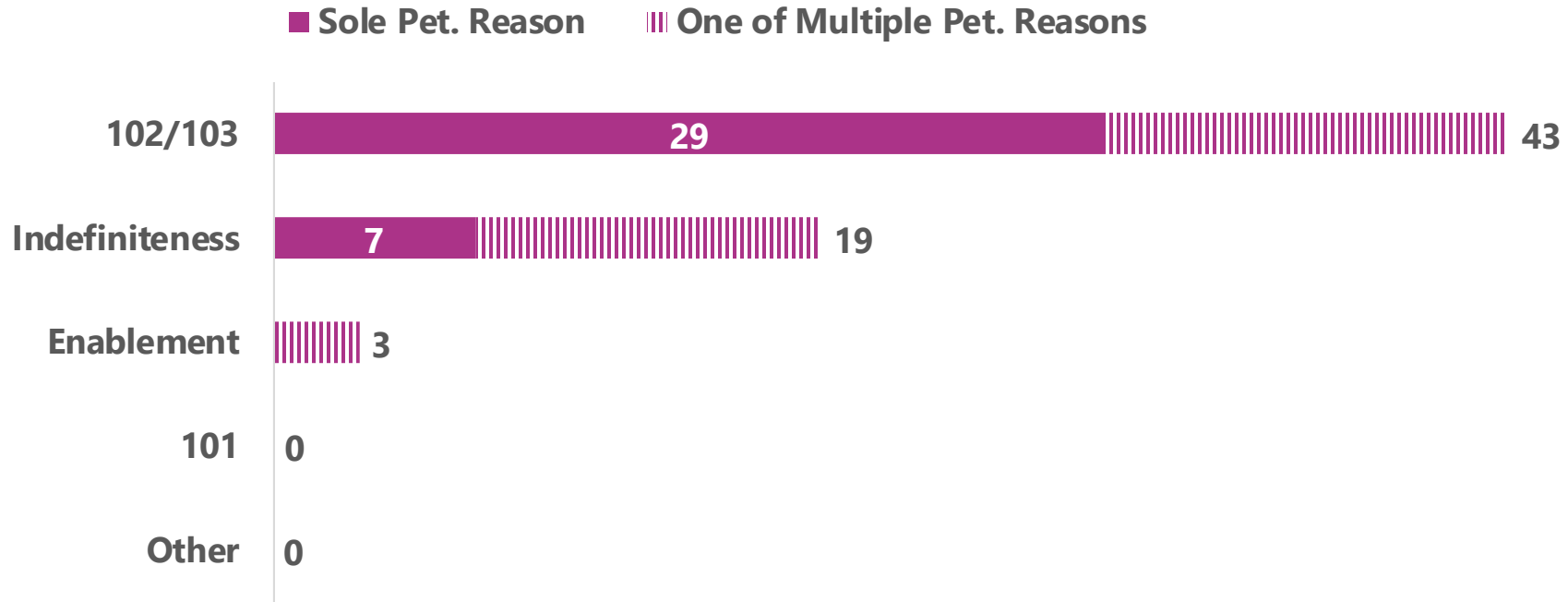
# Denial of claim substitution: patent owner burden

(Pilot: Mar. 15, 2019 to Mar. 31, 2021)



# Denial of claim substitution: petitioner burden

(Pilot: Mar. 15, 2019 to Mar. 31, 2021)

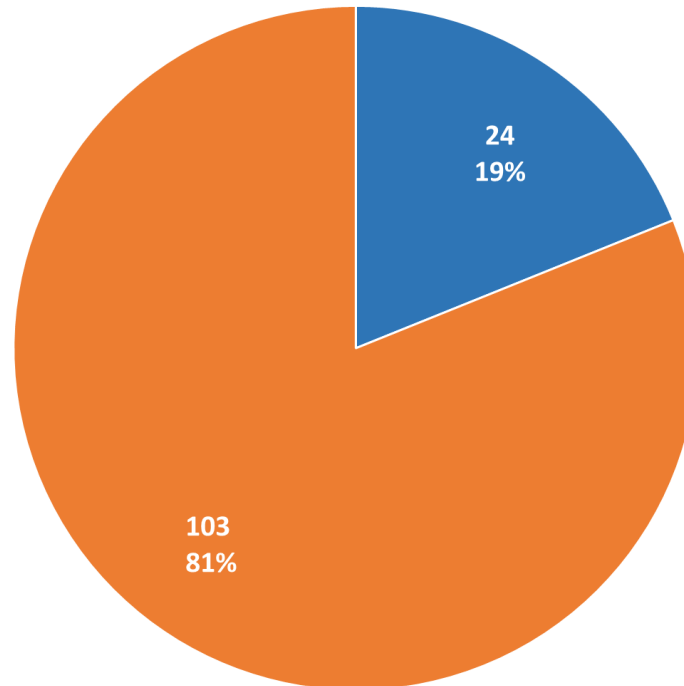


# MTA pilot options data

(Mar. 15, 2019 to March 31, 2021)

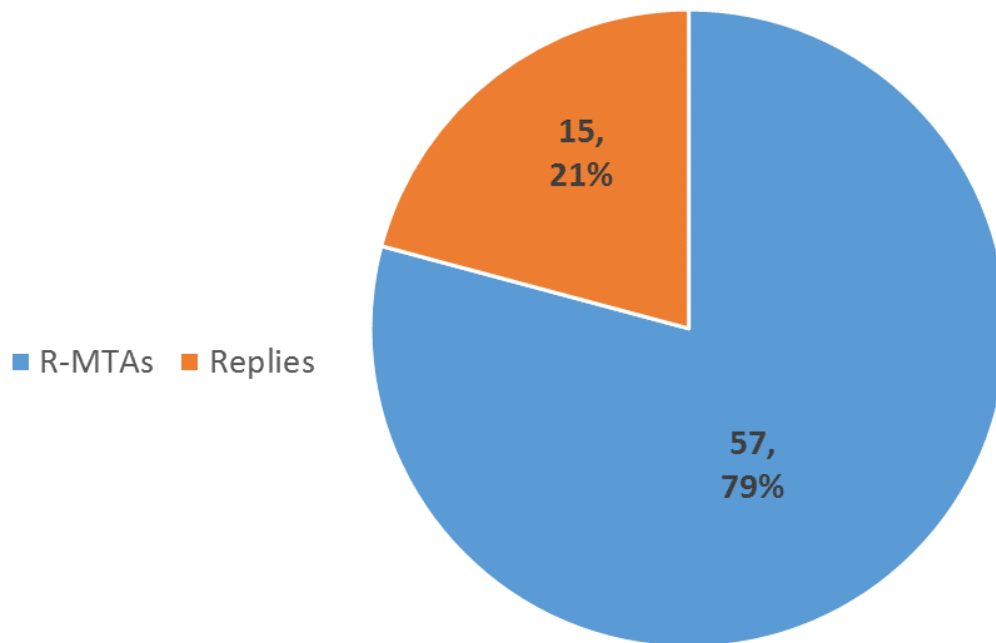
## Number of MTAs Filed under Pilot Program

■ MTAs without PG Request ■ MTAs with PG Request



# Patent owner filings after preliminary guidance (Mar. 15, 2019 to Jan. 31, 2021)

## MTA Pilot Option #2



MTA precedent, Final rule on burdens, and reexam/reissue notice

## **AIA trials**

# Applicable rules and precedential decisions

- 35 U.S.C. § 316(d) (setting forth PO requirements for MTAs in IPRs), § 326(d) (same for MTAs in PGRs)
  - e.g., a motion to amend cannot propose substitute claims for unchallenged claims
- 37 C.F.R. § 42.121 (setting forth our rules for MTAs in IPRs, including new rule on burdens in part (d)), § 42.221 (same for MTAs in PGRs)
- *Hunting Titan, Inc. v. DynaEnergetics GmbH & Co. KG*, IPR2018-00600, Page 67 (PTAB July 6, 2020) (Precedential)
  - burden generally on Petitioner for unpatentability, but Board can raise issues in special circumstances
- *Lectrosomics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, Paper 15 (PTAB Feb. 25, 2019) (Precedential)
  - guidance and information regarding statutory and regulatory requirements for a motion to amend in light of Federal Circuit case law
- *Amazon.com, Inc. v. Uniloc Luxembourg S.A.*, IPR2017-00948, Paper 34 (PTAB Jan. 18, 2019) (Precedential)
  - 316(d)/326(d) does not prevent the Board from considering unpatentability under sections other than § 102 and § 103 with respect to proposed substitute claims.



# *Hunting Titan*

- The POP concluded:
  - The Board may, in certain rare circumstances, raise a ground of unpatentability that a petitioner did not advance, or insufficiently developed, against substitute claims proposed in opposing a motion to amend.
    - Examples of such rare circumstances include:
      - Where the petitioner has ceased to participate in the proceeding; or
      - Where certain evidence not raised, but is readily identifiable and so persuasive that the Board should take it up in the interest of supporting the integrity of the patent system.
  - Due process requires notice and opportunity to respond
    - Could ask for supplemental briefing
    - Could ask parties to be prepared to discuss the issue during the oral hearing



# Final rule allocating MTA burdens

- New subsection(d) to 37 C.F.R. § 42.121 and § 42.221, allocating burdens of persuasion in relation to a motion to amend (MTA)
  - Applies to MTAs filed on or after January 20, 2021
  - Assigns to patent owner the burden of showing that a MTA complies with certain statutory and regulatory requirements for such a motion
  - Assigns to petitioner the burden of showing the unpatentability of substitute claims

# Final rule – Board discretion

- Irrespective of the burdens and the adversarial nature of the proceeding, the Board may, in the interests of justice, exercise its discretion to grant or deny a MTA, but only for reasons supported by readily identifiable and persuasive evidence of record in the proceeding
- In doing so, the Board may make of record only readily identifiable and persuasive evidence in a related proceeding before the USPTO or evidence that a district court can judicially notice
- Where the Board exercises its discretion, the parties will have an opportunity to respond

# Notice regarding options for reissue or reexamination during pending AIA proceeding

- Published in Federal Register at 84 Fed. Reg. 16654 (April 22, 2019)
- Notice provides:
  - A summary of current practice regarding existing office procedures that apply to reissue and reexamination, including after a petitioner files an AIA petition challenging claims of same patent, after Board institutes a trial, and after Board issues a final written decision (FWD)
  - Summary information about factors the office currently considers when determining:
    - Whether to stay or suspend a reissue proceeding, or stay a reexamination proceeding, that involves a patent at issue in an AIA proceeding; and
    - When and whether to lift such a stay or suspension



# Legal Experience and Advancement Program (LEAP)

# Legal Experience and Advancement Program (LEAP)

- Launched on May 15, 2020
- Goal: to foster the advancement of the next generation of patent practitioners through skills development and oral advocacy opportunities at the PTAB
- Targeting patent agents and attorneys newer to the practice of law or to the PTAB



# Objectives

- LEAP fosters the development of newer practitioners by:
  - Incentivizing oral advocacy opportunities, *and*
  - Offering practical, hands-on training
- **As a result, LEAP:**
  - Develops a deep “bench” of talent and experience
  - Improves the quality of cases heard by the Board and the courts, which supports client interests
  - Increases diversity within the patent bar

# Eligibility

- To qualify for LEAP, a patent agent or attorney must have:
  1. Three (3) or fewer substantive oral arguments in any federal tribunal, including PTAB, *and*
  2. Seven (7) or fewer years of experience as a licensed attorney or registered patent agent



# Eligibility

- To qualify for LEAP, a patent agent or attorney must have:
  1. Three (3) or fewer substantive oral arguments in any federal tribunal, including PTAB, *and*
  2. Seven (7) or fewer years of experience as a licensed attorney or registered patent agent
- “Substantive” = arguments directed to the merits of the case
  - Not ancillary issues, e.g., scheduling or discovery disputes



# Eligibility

- To qualify for LEAP, a patent agent or attorney must have:
  1. Three (3) or fewer substantive oral arguments in any federal tribunal, including PTAB, *and*
  2. Seven (7) or fewer years of experience as a licensed attorney or registered patent agent
- 7-year period begins with first licensure or registration
  - Not tolled for practice in a different field or jurisdiction, or for years away from practice altogether

# How to apply

- Apply for a specific proceeding, after a hearing date is established
- Email [PTABHearings@uspto.gov](mailto:PTABHearings@uspto.gov) at least five (5) business days before the hearing
  - Submit a Request and Verification Form.
  - See <https://www.uspto.gov/patents/ptab/leap>, “LEAP participation requests,” for a sample combined form

# Oral argument

- A party with a LEAP practitioner arguing at oral hearing typically receives 15 minutes of additional argument time
- Additional time is for the party
  - The LEAP practitioner must have a meaningful and substantive role, but need not argue for a specific amount of time

"By giving the **extra time**, it takes that out of the equation and makes it more **accommodating**, which can mitigate clients' concerns about splitting time."

**Cory Bell**, Partner  
*Finnegan, Henderson, Farabow, Garrett & Dunner, LLP*



# Oral argument

- More experienced counsel may provide some assistance to the LEAP practitioner, if necessary, and may make limited clarifications on the record

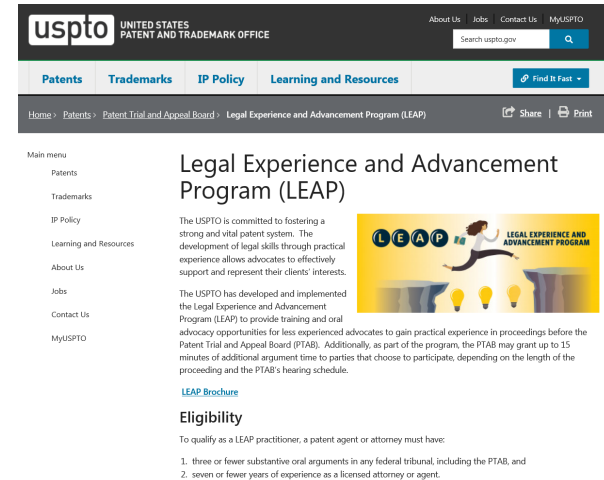


“PTAB’s program strikes a great balance. It incentivizes and encourages parties to allow more junior or less experienced attorneys to argue, while ensuring that if other counsel have value to add or would like to **supplement the record**, they may do so. There is little risk and much upside.”

**Kathi Vidal**, Silicon Valley Managing Partner  
*Winston & Strawn LLP*

# Training

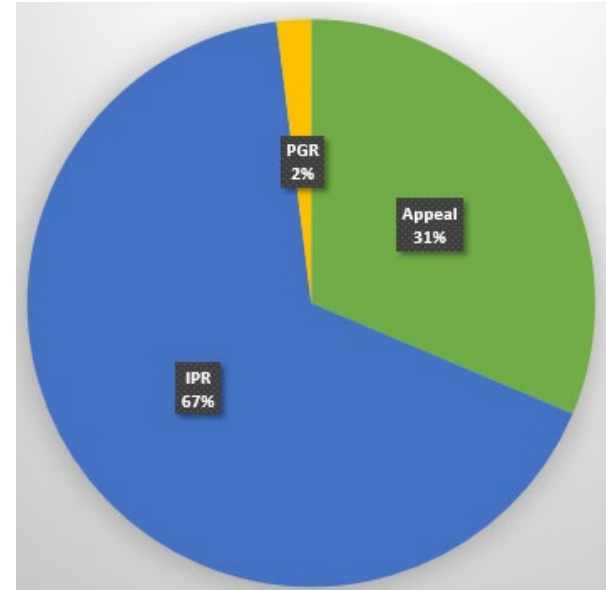
- PTAB offers free LEAP training opportunities:
  - Oral advocacy skills
  - Preparing for an oral argument
  - AIA trials mock argument
  - Appeals mock argument
  - The “perfect” argument
- Available at “LEAP Preparation,”  
[www.uspto.gov/patents/ptab/leap](http://www.uspto.gov/patents/ptab/leap)



The screenshot shows the USPTO website page for the Legal Experience and Advancement Program (LEAP). The page header includes the USPTO logo, the text "UNITED STATES PATENT AND TRADEMARK OFFICE", and navigation links for "About Us", "Jobs", "Contact Us", and "MyUSPTO". A search bar is located in the top right corner. Below the header is a navigation menu with links for "Patents", "Trademarks", "IP Policy", and "Learning and Resources". The main content area features a title "Legal Experience and Advancement Program (LEAP)" and a sub-header "Legal Experience and Advancement Program (LEAP)". The text describes the program's purpose: "The USPTO is committed to fostering a strong and vital patent system. The development of legal skills through practical experience allows advocates to effectively support and represent their clients' interests." It also states: "The USPTO has developed and implemented the Legal Experience and Advancement Program (LEAP) to provide training and oral advocacy opportunities for less experienced advocates to gain practical experience in proceedings before the Patent Trial and Appeal Board (PTAB). Additionally, as part of the program, the PTAB may grant up to 15 minutes of additional argument time to parties that choose to participate, depending on the length of the proceeding and the PTAB's hearing schedule." A graphic with the acronym "LEAP" and the text "LEGAL EXPERIENCE AND ADVANCEMENT PROGRAM" is displayed. Below the graphic is a section titled "Eligibility" with the text: "To qualify as a LEAP practitioner, a patent agent or attorney must have:" followed by a list of requirements: "1. three or fewer substantive oral arguments in any federal tribunal, including the PTAB, and 2. seven or fewer years of experience as a licensed attorney or agent."

# Participation

- 51 LEAP requests
  - 18 AIA petitioners
  - 17 AIA patent owners
  - 16 *ex parte* appellants
- 37 firms and companies represented



# Recent events

- 6 training webinars since inception
- Conducted by judges and external counsel
- 3 mock argument sessions
  - 2 AIA trials and 1 *ex parte* appeal
  - 120 participants
  - 120 judge volunteers



# Thoughts from the patent community

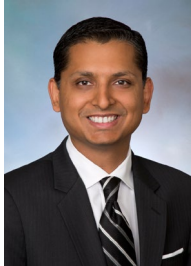
This program will go a long way toward moving the needle and **empowering and training our next generation** of lawyers. Any time we rise the tide for junior lawyers, we necessarily rise the tide for all and thus **promote diversity**.

**Kathi Vidal**, Silicon Valley Managing Partner, *Winston & Strawn LLP*



"The PTAB has done a great job with the LEAP program. I really hope all practitioners who are eligible will **take advantage of this program**. In fact, not only law firms, but clients are very supportive of an initiative like this one that helps a **practitioner grow and develop professionally!**"

**Naveen Modi**, Partner & Global Vice Chair of IP, *Paul Hastings LLP*



"This program provides a runway of sorts to give people, incrementally, a shot at having those **opportunities** while **balancing** the risk to clients that something would go awry."

**Michael D. Specht**, Director, *Sterne, Kessler, Goldstein & Fox*



"The PTAB's LEAP provides **meaningful and substantive opportunities** for junior practitioners to hone their oral advocacy skills."

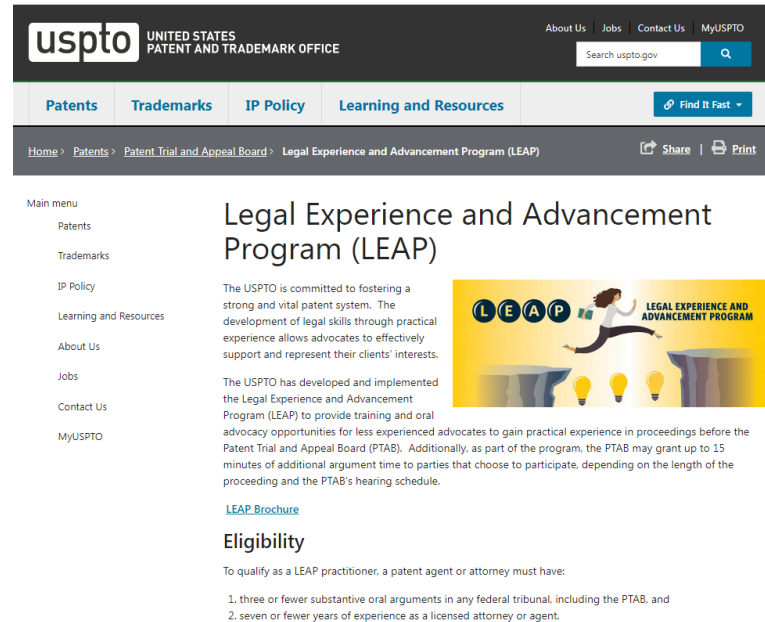
**Akkad Moussa**, Associate, *Kilpatrick Townsend & Stockton LLP*





# LEAP webpage

- <https://www.uspto.gov/leap>



The screenshot shows the USPTO website's header with the logo and navigation links. The main content area features a sidebar menu, a title for the 'Legal Experience and Advancement Program (LEAP)', a descriptive paragraph, an illustration of a person jumping over a gap with lightbulbs, and a list of eligibility requirements.

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## Legal Experience and Advancement Program (LEAP)

The USPTO is committed to fostering a strong and vital patent system. The development of legal skills through practical experience allows advocates to effectively support and represent their clients' interests.

The USPTO has developed and implemented the Legal Experience and Advancement Program (LEAP) to provide training and oral advocacy opportunities for less experienced advocates to gain practical experience in proceedings before the Patent Trial and Appeal Board (PTAB). Additionally, as part of the program, the PTAB may grant up to 15 minutes of additional argument time to parties that choose to participate, depending on the length of the proceeding and the PTAB's hearing schedule.

[LEAP Brochure](#)

### Eligibility

To qualify as a LEAP practitioner, a patent agent or attorney must have:

1. three or fewer substantive oral arguments in any federal tribunal, including the PTAB, and
2. seven or fewer years of experience as a licensed attorney or agent.



**Questions/comments**

