# IP Alert | First Decisions Released Under New Director Institution Process

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Last Friday—October 31, 2025—USPTO Director John Squires issued his first summary notice of decisions on institution, a one-page document that used roughly two dozen words and a listing of docket numbers to deny institution on thirteen pending inter partes review (IPR) proceedings. This represents a dramatic departure from the traditional PTAB practice of providing fleshed-out institution decisions, and a stark shift even from the truncated institution decisions provided by then-acting Director Coke Morgan Stewart.

Although the Director can choose to issue a longer decision, for instance when an IPR proceeding involves novel and important factual or legal issues, Squires' first batch of reviews apparently did not satisfy this new standard. It is expected that most of the Director's forthcoming notices will provide no details or reasoning underpinning institution decisions; nor will the notices indicate whether grant or denial of institution is based on the merits or discretionary denial considerations. This expectation was confirmed during a USTPO Hour webinar held on October 29th, when PTAB Vice Chief Judge Michael Kim explained that the Director's summary notices will be akin to "the proverbial 'thumbs-up' or 'thumbs-down' on specific cases," and that the "vast majority" of decisions will be in the form of summary notices. During the webinar, Chief PTAB Judge Kalyan K. Deshpande also weighed in on this topic, noting that most decisions released through the end of November would be denials, but that more summary notices granting institution would begin to issue once the "process gets into more of a steady state."

It is yet to be seen whether the USPTO will reveal more information about this recent policy shift as more summary decisions are issued by the Director. However, it has become exceedingly clear that the Director's new policy of issuing summary decisions is expected to have several major impacts on PTAB practice and patent litigation moving forward, including potentially reducing IPR institution

rates, decreasing transparency and predictability of AIA review, increasing Patent Owner bargaining power, and limiting reviewability of Director decisions.

**Reduced Institution Rates**: On October 17th, Director Squires circulated a memorandum to administrative judges at the PTAB informing the Board that he would be reclaiming authority over whether to institute IPR proceedings. On that same day, Squires penned an open letter explaining his reasoning for this policy shift, which included concerns about the high institution and invalidation rates at the PTAB. Since the inception of the interim Director discretionary process for inter partes review, there has been a steady decrease in the overall institution rate for IPRs. Now, with the added layer of scrutiny by the Director and with a stated goal of reducing perceptions that the PTAB is incentivized to institute post-grant trials, it is expected that the number of IPRs that proceed to a full trial will decrease even further.

**Decreased Transparency and Predictability**: In the Oct. 17th memorandum, Director Squires also signaled an intent to improve efficiency and consistency in institution determinations. However, significant concerns have been raised that replacing three-judge PTAB panels with summary notices—without providing detailed reasoning—would reduce transparency as compared to past practice where PTAB panels issued lengthy decisions on the merits, identified issues of potential concern, and invited parties to address those issues in later briefing. This lack of substantive analysis and issue forecasting from the PTAB would make post-grant practice less predictable by leaving patent owners and petitioners uncertain of governing standards and the specific basis for denying (or granting) institution. An important aspect of exercising discretion and adhering to the statutory requirements for institution of post-grant proceedings is providing well-reasoned opinions that demonstrate to all parties that the discretion is being exercised appropriately by the Director.

**Increased Patent Owner Power**: With potentially fewer administrative challenges via post-grant review, U.S. patents will be seen as more resilient and more likely to proceed to trial during district court litigation. Removing the likelihood of a potential IPR challenge could effectively strengthen a patent owner's position in licensing negotiations and patent enforcement actions. Additionally, in a more positive development for patent owners, the absence of a detailed institution decision means the PTAB panel assigned to an IPR proceeding would not be constrained by a preliminary claim construction or invalidity framework set forth during the institution stage.

**Limited Reviewability**: The USPTO has signaled that parties can still request rehearing or Director Review of institution decisions issued via summary notice, and that the standard of review remains the same. Specifically, institution decisions can be challenged only on the grounds of: (a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law. However, because summary institution decisions are being

issued by the Director without substantive analysis, it remains unclear how parties can successfully argue these grounds when the decisions provide no factual findings or legal conclusions. While the true impact and response of the Director issuing summary notices remains to be seen, there are already strong concerns from stakeholders that it may effectively nullify any reviewability of institution decisions.

As with previous policy changes at the PTAB, the implications for petitioners and patent owners are complex and expected to evolve. For patent challengers, the path to contesting the validity of a patent before the PTAB and the likelihood of having an adverse institution decision reconsidered is narrowing. The USPTO's new policies and procedures will ultimately force clients to adapt and seek out new strategies and/or venues for challenging patent validity. For patent owners, these changes are likely a welcomed reprieve from an AIA review process that was intended to serve as a true alternative to litigation but, for many patent owners, has felt like an additional obstacle.

As we embark on this new frontier of Director-level institution decisions and evaluate an expected flurry of summary institution decisions to portend the future of IPRs, what remains unchanged is the need for careful strategy and expert guidance to navigate dynamic and fast-paced changes in PTAB practice. Interested parties should expect and prepare for further policy changes at the USPTO.

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