



## **Rule Row: New Guidelines Released for Patent Appeals**

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When the Board of Patent Appeals and Interferences released new guidelines for appeals briefs last week, Chief Administrative Patent Judge Michael Fleming said the new rules would “streamline the appeals process.” But some patent litigators say the guidelines will instead add to the burden of applicants and could have a chilling effect.

The new rules require all appeals briefs to include a number of defined new sections and limit all briefs to 30 pages. Previously, briefs could be more free-wheeling.

“These requirements break up the argument and will make every brief much weaker and will result in fewer successful appeals. It’s just not a good argument style,” says Ropes & Gray partner Jeff Ingerman.

The new rules have been in the works since late 2006, and the board sought input before finalizing them.

Joe Potenza, a partner at Banner & Witcoff, says he believes there may be “an undercurrent here to put more pressure on applicants and clear out the board’s backlog.”

Despite the criticism, Fleming says the new rules were developed to improve the process and better educate patent examiners.