PTAB Highlights | Takeaways from Recent Decisions in Post-Issuance Proceedings

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So, what's happening at the PTAB? Obviousness of numerical ranges, preambles as limitations, evolving factors in discretionary denial, and more!

Not every number in between is obvious. Air Products and Chemicals, Inc. v. Evonik Operations GmbH, IPR2024-00611, Paper 44 (August 18, 2025) (Kokoski, joined by Ross and Finamore) (Board held that the claimed recycle percentage—60–100% of the crude gas stream—was not obvious in view of prior art disclosing recycle percentages of 51% and 135%. The Board reasons that since different recycle percentage results in different system designs, the two data points did not make the entire range in between predictable. The Board distinguished this case from Titanium Metals Corp. of America v. Banner, 778 F.2d 775 (Fed. Cir. 1985), where two closely spaced data points were sufficient to render the intervening range obvious.)

When narrowing widens the scope. SilencerCo Weapons Research, LLC v. Huxwrx Safety Co. LLC, IPR2024-01214, Paper 22 (August 18, 2025) (O'Hanlon, joined by Barrett and Baltatzis) (In its Motion to Amend, Patent Owner replaced "high energy device" with "weapon" in proposed substitute claim 43. The Board found this change impermissibly broadened claim scope, explaining that Patent Owner had not shown that all weapons are high energy devices.)

When "micro" means more than small. Nintendo Co., Ltd. v. American GNC Corp., IPR2024-00668, Paper 52 (August 20, 2025) (Tsang, joined by Bisk and Daniels) (The Board held preamble phrase "a micro inertial measurement unit" was limiting and is constructed as MEMS devices, rejecting Petitioner's argument that it was merely a statement of intended use. Specifically, the Board explained that "micro" conveyed structural meaning in the specification, consistently connecting "micro" with MEMS devices.)

Changing circumstances change discretionary denial. Advanced Micro Devices, Inc. v. Concurrent Ventures, LLC, IPR2025-00223, Paper 12 (August 14, 2025) (Acting Director Stewart) (granting the Petitioner's request for rehearing and denying Patent Owner's request for discretionary denial where the district court had stayed all deadlines and cancelled the scheduled Markman hearing, and newly considering Patent Owner had not developed strong settled expectations).

No IPR challenges for licensees. Microsoft Corp. v. TS-Optics Corp., IPR2025-00767, (Paper 13) (August 14, 2025) (Acting Director Stewart) (denying institution as not an efficient use of Board resources where a party licensed the challenged patent, and then advocated for unpatentability of that same patent).

Let the petitioner have their say. Amazon.com, Inc. v. B.S.D. Crown, LTC., IPR2025-00057 (August 12, 2025) (Acting Director Stewart) (granting Director review, vacating decision denying institution where the Board denied the Petitioner's preliminary reply request to address misapprehension of Figure 2 used in Patent Owner's proposed construction).

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