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

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So, what's happening at the PTAB? Addressing district court claim constructions in IPRs, Director summary notices, copying claims can indicate non-obviousness, and more!

**Don't play games … with your claim construction in different proceedings.** Revvo Tech., Inc. v. Cerebruym Sensor Tech., Inc., IPR2025-00632, Paper 20 (November 3, 2025) (Precedential) (Director Squires) Director Squires sua sponte reviewed and vacated a decision granting institution because the Petitioner failed to adequately explain why the IPR included different and inconsistent claim construction positions in relation to a parallel litigation, such that the petition amounts to gamesmanship.

**You better explain yourself…when you're taking alternative positions on claim construction.** Samsung Electronics Co., Ltd. v. Wilus Institute of Standards and Technology Inc., IPR2025-00988, Paper 12 (November 7, 2025) (McMillin, joined by Droesch and Jurgovan) After the Petition was referred to the Board to issue a decision on institution, the Board applied Revvo and denied institution because Petitioner asserted that no constructions were necessary in the IPR, but identified terms to construe in the related litigation, without explaining why alternative positions are warranted.

**Statutorily prohibited from raising an argument in IPR? Not sufficient reasoning for differing claim construction positions.** Tesla, Inc. v. Intellectual Ventures II LLC, IPR2025-00340, Paper 18 (November 5, 2025) (Informative) (Director Squires) Director Squires reviewed and vacated a decision granting institution where petitioner adopted a plain and ordinary meaning of a claim term, but argued indefiniteness of the same claim term in parallel litigation and that the differing claim positions are due to being statutorily prohibited from raising indefiniteness challenges in an IPR,

which the Director opined is not an adequate explanation for the different and inconsistent positions.

**The reappearance of the man of few words.** Aerin Medical Inc. v. Neurent Medical Ltd., IPR2025-01124,-01125, -01126, -01127, -01142, -01145, -01146, -01147, -01148, -01149, -01150, -01151, -01152, -01157, -01160, -01161, -01163, -01194, -01195, -01277, -01278 (November 6, 2025) (Director Squires) Director Squires issued, for the second time ever and the second time within the past month, a single summary notice denying institution of 21 different IPRs without providing any reasoning or whether the denials were based on the merits or discretionary.

**Copying claims can show the "copying" secondary consideration, but you still need to prove it.** Recor Medical, Inc. v. Medtronic Ireland Manufacturing Unlimited Co., IPR2022-00431, Paper 50 (November 3, 2025) (Jeschke, joined by Saindon and Finamore) The Board disagreed that objective evidence of copying for secondary considerations cannot include copying of patent claims by the Petitioner, but noted there must be actual evidence of Petitioner's copying efforts such as being aware of the challenged patent and knowingly copying the claims when drafting claims for Petitioner's patent.

**PGR provides additional lines of attack that give petitioners a better chance at institution than IPRs.** Merck Sharp & Dohme LLC v. Halozyme, Inc., PGR2025-00042, Paper 27 (November 13, 2025) (Mitchell, joined by Fredman and Valek) The Board granted institution because it was more likely than not that the claims failed to comply with the written description and enablement requirements—grounds not available in IPR.

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As a leader in post-issuance proceedings, Banner Witcoff is committed to staying on top of the latest PTAB developments. Our PTAB Highlights series is designed to keep you up-to-date and informed of rulings affecting this constantly evolving area of the law.

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