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

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So, what's happening at the PTAB? Design law changes impacting institution decisions, successful rehearing, Director Squires addressing parallel petitions, and more!

New Standard, New Review: Change in Design Patent Law Thwarts Discretionary Denial. Top Glory Trading Group Inc. v. Cole Haan LLC , IPR2025-01395, Paper 18 (January 12, 2026) (Director Squires) The Director denied a Patent Owner's request for discretionary denial, finding that a "significant change in law" justified a review of the challenged design patent. The Petitioner successfully argued that because the patent was examined under an obviousness standard that the Federal Circuit later abrogated in LKQ Corp. v. GM Global Tech. Operations LLC, the Board should consider the merits of the challenge under the current standard. The Director noted that it is appropriate to evaluate such challenges, even if the Patent Owner had "settled expectations" regarding the patent's validity under the previous legal framework.

It doesn't hurt to ask...for rehearing. Samsung Electronics Co., Ltd. v. Wilus Institute of Standards and Technology Inc., IPR2025-00988, Paper 14 (January 5, 2026) (McMillin, joined by Droesch and Jurgovan) On rehearing, the Board vacated its discretionary denial decision because it misapprehended Petitioner's claim construction position in district court and because Petitioner represented that it has not, and will not, pursue inconsistent claim constructions.

Multiple Petitions With Too Many Grounds? One is Enough. PacifiCorp, et al. v. Birchtech Corp., IPR2025-00687, -00688, -00717, -00718, Paper 40 (January 12, 2026) (Director Squires) The Director granted review and vacated the institutions for four IPR proceedings—two against each of two challenged patents— for further consideration of the parallel petitions. The Director emphasized that under the Trial Practice Guide, one petition should be sufficient in most cases. The Director found that the high number of grounds presented (ten and thirteen, respectively) showed there was ample room to address those issues in a single petition.

With PGRs on the rise...don't forget to prove the challenged patent is eligible for PGR. Avation Medical, Inc. v. EMKinetics, Inc. , PGR2024-00043, Paper 30 (January 7, 2026) (Flax, joined by Grossman and O'Hanlon) The Board rejected Patent Owner's standing argument, finding that Petitioner correctly certified that the challenged patent was eligible for PGR because it had at least one claim with an effective date after March 16, 2013 and therefore was an AIA patent despite priority claims to pre-AIA applications.

Articulating an obviousness rationale is not so simple. Micron Technology, Inc. v. Yangtze Memory Technologies Co., Ltd., IPR2024-00791, Paper 35 (January 5, 2026) (McGraw, joined by Kokoski and Cygan) In its final written decision upholding all claims, the Board explained it was not persuaded by Petitioner's argument that its proposed modification was a simple substitution of one known element for another because the modification removes other structures.

Analytical Gap: Not Obvious Because Prior Art Fails to Show One Universal 'Optimal' Concentration. Canadian Solar Inc. v. Maxeon Solar Pte. Ltd. , IPR2024-01038, Paper 52 (January 12, 2026) (Kokoski, joined by Kalan and Ross) In its final written decision upholding the challenged claims, the Board determined that the Petitioner failed to prove that claims directed to solar cell fabrication techniques were unpatentable as obvious. The Board found that the prior art did not establish a universal "optimal" dopant concentration for different solar cells. Because the Petitioner failed to establish why a skilled artisan would have employed the specific dopant concentration from several secondary references in the primary reference's solar cells, the Board found an "analytical gap" in the obviousness rationale.

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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