

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

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So, what's happening at the PTAB? The effects of Phillips vs BRI constructions, written description and enablement issues, relying on YouTube as prior art, and more!

Lost under BRI? Phillips **gives you another try**. Røde Microphones, LLC v. Zaxcom, Inc., IPR2025-00230, Paper 74 (June 11, 2026) (Quinn, joined by Arbes and Belisle). Previous IPRs did not collaterally estop Patent Owner from raising certain obviousness issues despite those IPRs litigating nearly identical issues because the Board had construed the previous claims under the BRI standard rather than the Phillips standard; thus, “the asserted prior art ha[d] not [yet] been applied to claims interpreted according to the standard in this case.”

Your claims can deceive you, don't trust them. Merck Sharp & Dohme LLC v. Halozyme, Inc., PGR2025-00004, Paper 136 (June 8, 2026) (Mitchell, joined by Fredman and Hardman). With no explicit recitation of the polypeptides' function in the claims, the Board relied on Halozyme's specification to construe the claimed large genus of polypeptide sequences as requiring enzymatic activity, bootstrapping that interpretation to find the claims unpatentable under § 112(a) for lacking (1) written description because the patent failed to disclose a sequence structure sufficient for the PHOSITA to determine enzymatic activity for at least multiply modified proteins despite working examples of nearly 6,000 single-replacement mutants and (2) enablement because making and using the claims would have required undue experimentation to identify mutants with enhanced stability or activity.

Broadcasting yourself only goes so far. Shenzhen Tuozhu Tech. Co. v. Stratasys, Inc., IPR2025-00321, Paper 36 (June 9, 2026) (Kaiser, joined by Weatherly and Ren). Uploading a video to YouTube did not automatically make it prior art; rather, Petitioner needed evidence demonstrating

either that the PHOSITA would have searched for the terms used on the video's YouTube webpage or that YouTube is a "well-known, reputable compiler and publisher."

Director Squires denies Bulletproof's bid to shoot down 7 IPRs. Tesla, Inc. v. Bulletproof Prop. Mgmt., LLC, IPR2026-00204, -00205, -00219, -00222, -00227, -00228, -00229, Paper 14 (June 15, 2026) (Director Squires) Director Squires provided this Decision to explain that he declined to discretionarily deny the IPRs because: (1) there was no trial date, (2) Petitioner made a broad stipulation, (3) the examiner overlooked the relied upon reference even though it was cited, (4) Patent Owner did not have settled expectations, and (5) Petitioner manufactures the accused products in the US.

2 out of 3 APJs ain't bad. Jumio Corp. v. FaceTec, Inc., IPR2025-00106, Paper 86 (June 2, 2026) (Khan, joined by Hoang) (Baer dissenting) Two of the Three APJs on the panel found all claims patentable over Petitioner's proposed prior art combination, and further opined that Patent Owner's evidence of commercial success, industry praise, and skepticism "weigh heavily in favor of nonobviousness."

The Board and Patent Owner see eye-to-eye on hindsight arguments. Microsoft Corp. v. X1 Discovery, Inc., IPR2025-00253, Paper 47 (June 18, 2026) (Moore, joined by Saindon and Murray) The Board sided with Patent Owner finding that "there is little evidence of any reason, other than hindsight, for why one of ordinary skill would have incorporated" aspects of the secondary reference into the primary reference.

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