



A Blast to the Past: Recent Changes in Patent Litigation Forecast a Return to the 2000s

JARED LOOPER

Recent changes in patent law have changed the patent litigation landscape. This article explores those changes, including changes in the United States Patent and Trademark Office’s regulations and practices and recent appellate decisions. Those changes are likely to push more patent litigation to federal district court, making patent litigation look similar to how it was in the early 2000s.

Status Quo

Before 2025, United States patent litigation largely played out in two forums—litigation in federal district courts and specialized proceedings called inter partes review (“IPR”) in the United States Patent and Trademark Office (“PTO”). Both forums had essentially equal importance in a patent case’s outcome. District courts provided remedies for infringement, like damages and injunctive relief, and IPR offered an opportunity to cancel patent claims after issuance. But recent changes to two aspects of IPR—the process for initiating IPR, and the estoppel effects of completed IPR proceedings in pending district-court litigation—have limited the role IPRs play in patent litigation. Those changes suggest that the United States patent-litigation system is returning to the state of play during the early 2000s: where federal district courts are the most important forum, and other forums for patent litigation play second fiddle.

Patent Law Basics

Patents as Intellectual Property

Intellectual property law offers inventors a broad menu of options to protect their ideas. One way to protect an invention is with a patent.

Patents can be granted to “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter.”¹ To receive a patent, an inventor files a patent application before the PTO. The application includes, among other things, claims that “define the invention” that an inventor seeks to patent.²

The PTO examines the application to determine whether the inventor is entitled to a patent. That examination includes assessing whether the invention claimed in the application meets several substantive conditions for patentability. Two conditions involve the claimed invention’s relationship to the prior art—the patent-law word for publicly available information. One condition, novelty, requires that the invention was not identically disclosed in the prior art.³ Another, obviousness, requires that the differences between the claimed invention and the prior art are not obvious to a person skilled in the relevant field.⁴ The PTO also examines whether the patent claims subject matter eligible for a patent, and whether the specification adequately describes the invention (the written-description requirement) and teaches the public how to make and use the invention (the enablement requirement).⁵ If the claims in the patent application meet those substantive requirements for patentability and other statutory requirements, the PTO Director “shall issue a patent” containing those claims in the application.⁶

Patents offer an invention powerful protection. In exchange for disclosing an invention to the public and teaching the public how to make and use the invention, a patent grants the inventor twenty years of exclusive rights in the invention.⁷ Those exclusive rights include the rights to make, use, offer to sell, and sell the invention in the United States.⁸ That exclusivity can be incredibly valuable. The PTO has said that patents help generate more than \$8 trillion a year in economic activity.⁹

Patent Litigation in District Court

If someone violates, or infringes, a patentee's exclusive rights to her invention, the patentee can seek relief in multiple forums. Most lawsuits for patent infringement proceed in federal district court. Federal district court provides the full panoply of remedies available to a patentee, including damages and injunctive relief.¹⁰

An accused infringer has multiple defenses to a patent suit. One common defense is that the patent never should have issued—invalidity, in the lingo of patent law. In district court, the commonly tried invalidity grounds include ineligibility, lack of novelty (also called anticipation), obviousness, lack of written-description support, and lack of enablement.¹¹ Invalidity can be difficult to prove in district court, as an accused infringer has to prove it by clear and convincing evidence.¹² If the accused infringer proves a patent claim invalid, however, that operates as a complete defense to liability. Thus, in almost every patent case, an accused infringer raises one or more invalidity defenses.

Patent Proceedings in the PTO

For almost 200 years, invalidity issues were tried only in district court. Since 1980, however, Congress has allowed specialized invalidity proceedings in the PTO. The first of these, *ex parte* reexamination, allows a person to request that the PTO reexamine an issued patent. If the PTO Director grants the reexamination request, the PTO reexamines the patent for compliance with the novelty and nonobviousness requirements over limited types of prior art.¹³ While anyone may *request* *ex parte* reexamination, only the PTO and the patentee may participate in the reexamination itself. If the PTO determines upon reexamination that the patent should not have issued, the Director publishes a certificate cancelling that claim.¹⁴

In 1999, Congress added a procedure called *inter partes* reexamination.¹⁵ *Inter partes* reexamination was much like *ex parte* reexamination, except that it allowed a third-party requester (*i.e.*, a challenger other than the patentee) a limited opportunity to participate in the proceeding.¹⁶

In 2011, Congress replaced *inter partes* reexamination with IPR. Any person other than the patent owner can file a petition for IPR.¹⁷ That petition can request cancellation of one or more claims on the grounds that the claim was not novel or was obvious based on a prior art patent or printed publication.¹⁸

IPR proceeds in two stages: institution and trial. If the Director determines that “there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged,” the Director may institute IPR on the challenged claims.¹⁹

If the Director institutes an IPR, the case proceeds to trial before a panel of three administrative patent judges at the PTO's Patent Trial and Appeal Board (“PTAB”). IPR is an adversarial proceeding that resembles district court litigation in many respects. Unlike in reexamination, the patent challenger is a full participant in the proceedings. Both the challenger and the patent owner submit briefings, evidence, and oral arguments before a three-judge PTAB panel.²⁰ At the end of the process, the panel issues a final written decision determining whether the challenged claims are unpatentable.²¹ The panel must issue a final written decision within a year of institution, with a six-month extension available for good cause.²² The PTAB's decision is subject to review by the Director, as well as the U.S. Court of Appeals for the Federal Circuit on appeal.²³ If the final written decision determines the challenged claims are unpatentable, and that determination is affirmed on appeal, the Director issues a certificate

cancelling any claim determined to be unpatentable.²⁴

While similar to district court litigation in some ways, IPR also differs in important respects. Notably, IPR petitioners must prove invalidity only by preponderance of the evidence—a significantly lower burden than the clear-and-convincing standard that applies in district court.²⁵ As a result, IPR has proven attractive to accused infringers. During fiscal year 2024, 1,250 petitions were filed. Of those, the Director instituted 74 percent. And in instituted IPRs where the PTAB issued a final written decision, it held 78 percent of challenged claims unpatentable.²⁶

Once a final written decision holds a claim unpatentable, that determination tends to stick. In 2024, the Federal Circuit, which hears appeals from IPR and PTO proceedings, fully affirmed the PTO's decision in 84 percent of cases, and partially affirmed in another 8 percent.²⁷

Recent Legal Developments Chart Seismic Shift in Patent Litigation

Recent legal developments have changed the patent-litigation landscape. Those legal developments relate to two parts of IPR: how the Director decides whether to institute IPR, and the estoppel effects of a completed IPR on district-court proceedings. The changes to IPR institution have led to a steep drop-off in the number of instituted IPRs. And recent decisions from the Federal Circuit limit the estoppel effects of an IPR on district court proceedings.

2025 Changes to IPR Institution Practice Reduce the Number of IPRs

In 2025, the PTO and the Director made several changes that have led to a decline in the number of instituted IPRs. To appreciate the impact of these changes, some additional background is helpful.

Previous IPR Institution Practices

The Director's decision on whether to institute IPR is discretionary.²⁸ In 2020, two precedential decisions from the PTAB—to which the Director delegated his institution authority—set forth various discretionary factors it would consider in deciding whether to institute an IPR of a patent that was also being litigated in parallel district-court litigation. One decision, called *Fintiv*, set out several factors the PTAB would consider. One factor was the proximity of the district court trial to the deadline for the final written decision in an IPR.²⁹ *Fintiv* calculated that proximity using the scheduled trial date in district court. The second decision, called *Sotera*, allowed petitioners to stipulate that they would not pursue in district court any invalidity issues that they raised or reasonably could have raised in the IPR, thus limiting overlap between the two proceedings. If a petitioner filed such a stipulation, called a *Sotera* stipulation, that would “weigh[] strongly in favor of not exercising discretion to deny institution” based on the parallel district-court litigation.³⁰

In 2022, a new Director issued an Interim Memorandum modifying *Fintiv*.³¹ Three changes were most prominent. First, the PTAB would not discretionarily deny a petition based on potential overlap with parallel district-court litigation if the petitioner filed a *Sotera* stipulation in the parallel district court litigation. Second, when considering the proximity of a district court trial date to the final written decision date, the PTAB should use the district court's median time-to-trial statistics, not the scheduled trial date (which did not always stick). Third, absent abuse by a challenger or other relevant

circumstances, the PTAB would not discretionarily deny institution based on *Fintiv* where a petition presented compelling evidence of unpatentability.³²

2025 Changes to Institution Practice

After the new Administration took office in early 2025, the PTO's new Acting Director enacted several changes to IPR institution practice. First, the Acting Director rescinded the 2022 Memorandum and directed the PTAB to apply *Fintiv*'s rule of calculating proximity to the final written decision date using the scheduled trial date.³³ The Acting Director also issued Interim Guidance that updated the relevant factors for discretionary denial. In addition to the existing *Fintiv* factors, parties could raise other considerations, including the "[s]ettled expectations of the parties, such as the length of time the claims have been in force."³⁴

The Interim Guidance did not define what length of time would warrant finding settled expectations. Subsequent PTAB decisions fleshed out that standard. In *iRhythm Technologies, Inc. v. Welch Allyn, Inc.*, the PTAB concluded that a petitioner's knowledge of the challenged patent twelve years earlier created settled expectations that alone supported denying institution, even though no other discretionary factors weighed in favor of denial.³⁵ And in *Dabico Airport Solutions Inc. v. AXA Power APS*, the PTAB concluded that settled expectations attach once the challenged patent has been in force for six years.³⁶ Many patents are not litigated in the first six years after their issuance. The rise of settled expectations as a factor independently supporting discretionary denial thus led the PTAB to deny institution in many more IPRs than it had previously.

On October 17, 2025, the newly confirmed Director made more changes to institution practice. The Director would now participate in all aspects of the IPR institution.³⁷ This change further cratered the IPR institution rate. From October 17 to December 1, 2025, the Director instituted *no* IPRs. As of January 28, 2026, the Director has instituted review in only 17.45 percent of IPRs³⁸—a dramatic departure from the historical average of 67 percent.³⁹

Legal Challenges to 2025 Changes in Institution Practice

Those changes in institution practice brought their own legal challenges. So far, though, the Federal Circuit has not been receptive to them.

One group of challenges relates to the rescission of the 2022 Memorandum. The Federal Circuit first addressed those challenges in *In re Motorola Solutions, Inc.*⁴⁰ There, Motorola brought a mandamus petition on several grounds. It argued that: 1) the 2022 Memorandum was improperly rescinded without notice-and-comment rulemaking; 2) the application of the rescission to Motorola's already-pending IPR petition was arbitrary and capricious; and 3) the rescission denied Motorola due process. The Federal Circuit rejected each of those challenges.⁴¹ The Federal Circuit has since denied several other mandamus petitions challenging the rescission, largely tracking the reasoning in *Motorola*.⁴²

Other mandamus petitions challenge settled expectations as a discretionary denial factor. The Federal Circuit has so far rejected those challenges, too.⁴³

Several challenges to these changes in institution practice are pending. If the current pattern holds, those challenges are unlikely to return IPR institution practice to the pre-2025 status quo. Barring any new developments, the Director will institute many fewer IPRs.

The recent changes to institution practice mean that the Director is instituting fewer IPRs in cases involving parallel district-court litigation. As a result, the unpatentability theories that would be raised in an IPR now will often be raised in district court.

New Developments in the Estoppel Effects of IPRs

The changes in IPR institution practice at the front-end are not the only legal developments reducing the role IPRs play in patent litigation. New developments in the estoppel effects of IPRs have also limited the impact IPRs have on district-court proceedings. Developments in issue-preclusion law generally favor patent owners, while developments in IPR statutory estoppel generally favor accused infringers. Both have the effect of limiting the impact of IPR final written decisions on district-court litigation.

New Limits on the Issue-Preclusive Effect of IPR Final Written Decisions

The first major development limits the issue-preclusive effect of IPRs. When a patent claim is cancelled in IPR, the Federal Circuit holds that any pending infringement suits based on that claim are extinguished.⁴⁴ What happens, though, to litigation about the invalidity of similar claims? In district court litigation, the Federal Circuit has concluded that a court's determination that a claim is invalid can have issue-preclusive effects on other patent claims. If one claim is similar enough to an invalidated claim such that any differences between the claims do not make a difference for invalidity purposes, then both claims are invalid as a matter of issue preclusion.⁴⁵

When the claims are litigated in two courts, this makes sense. The burden of proof for showing invalidity is the same in both forums—clear and convincing evidence. But can that same issue-preclusion reasoning apply to claims cancelled in IPRs? The Federal Circuit addressed this question in *Kroy IP Holdings, LLC v. Groupon, Inc.*⁴⁶ In *Kroy*, the patentee sued the accused infringer for patent infringement. The accused infringer sought IPR of the asserted patent claims, and those claims were cancelled. The patentee amended the complaint to assert infringement of additional patent claims. The accused infringer argued that the newly asserted claims and the claims cancelled in IPR did not have any differences that changed the invalidity question. Thus, the accused infringer tried to invalidate the newly asserted claims as a matter of issue preclusion, based on the cancelled claims in the IPR.

Kroy rejected that argument and concluded that IPRs do not have issue preclusive effect in district-court litigation. It based that conclusion on the principle that issue preclusion may not apply when issues are litigated in two forums with different burdens of proof. While an accused infringer must show invalidity by clear and convincing evidence in district court, a petitioner in IPR must only show unpatentability by a preponderance of the evidence. Showing a fact by a preponderance of the evidence does not establish it by clear and convincing evidence. Thus, the Federal Circuit concluded that unpatentability determinations in an IPR could not have issue preclusive effect on similar patent claims in district court.⁴⁷ That put IPRs and courts on different footings. The upshot is that an accused infringer has to either cancel similar claims in a separate IPR or show the claims are unpatentable in district court.⁴⁸

New Limits on Statutory Estoppel for IPRs

The second major estoppel development involves statutory estoppel

following an IPR. The IPR statute's estoppel provision provides that, if the Board issues a final written decision in an IPR, the petitioner may not argue in district court "that the claim is invalid on any ground that the petitioner raised or reasonably could have raised during that [IPR]."⁴⁹

As a reminder, the kinds of unpatentability challenges that can be raised in an IPR are limited: A patent can be challenged in an IPR "only on a ground that could be raised under section 102 [anticipation] or 103 [obviousness] and only on the basis of prior art consisting of patents or printed publications."⁵⁰ A petitioner thus may argue in an IPR that a challenged patent is invalid because it was anticipated, or rendered obvious, by an earlier patent or printed publication.

In *Ingenico Inc. v. IOENGINE, LLC*, the Federal Circuit addressed a dispute about the scope of the IPR estoppel provision.⁵¹ There, after receiving a final written decision in an IPR, the accused infringer sought to argue that the same patent claim was invalid in district court because the invention was in public use before the patent's priority date. The patentee argued that the *evidence* supporting the public-use theory was "entirely cumulative and substantively identical to" evidence that would have supported a printed-publication invalidity theory that *could* have been raised in the IPR.⁵² According to the patentee, the IPR statute's estoppel provision barred the public-use invalidity defense because it rested on a "ground" that "reasonably could have been raised" in the IPR.

The Federal Circuit rejected the patentee's argument. It concluded that "grounds" for purposes of the IPR estoppel provision are "the theories of invalidity available to challenge a claim," "not the prior art asserted during an IPR." Thus, IPR statutory estoppel did "not preclude a petitioner from asserting the same prior art raised in an IPR in district court," so long as it offered that evidence in support of a theory of invalidity that could not have been raised in an IPR. As no one disputed that a public-use theory could not be raised in an IPR, the Federal Circuit concluded that the IPR estoppel provision did not bar that public-use theory in district court, even if it was based on evidence that could have been raised to support a different theory in the IPR.⁵³

Kroy's and Ingenico's Impact on District Court Proceedings

Kroy and *Ingenico* both limit the impact that IPRs have on district court proceedings. After *Kroy*, patentees can sue for infringement of patent claims that are not different for invalidity purposes from claims cancelled in IPR without worrying that issue preclusion will invalidate the asserted claims. And after *Ingenico*, accused infringers can support invalidity theories that cannot be raised in IPR with evidence that could support a permissible theory in IPR. Both cases provide patentees and accused infringers the ability to raise more infringement and invalidity arguments than some previously thought.

Trying More Issues in District Court Is More Expensive and More Complex

The changes in IPR institution practice and the developments in estoppel law push more patent-litigation issues to district court. That will make patent litigation more complicated. Patent litigation in district court raises all manner of issues. The substantive patent-law issues include various invalidity issues—ineligibility, anticipation, obviousness, lack of enablement, and lack of written-description support—as well as infringement, damages, injunctive relief, willfulness, enhanced damages, and attorney's fees. Federal district court

also brings several non-patent procedural issues, including standing, personal jurisdiction, venue, joinder, the admissibility of expert evidence, and the myriad complications that attend jury trials.

Increasing district courts' prominence also makes patent litigation more expensive. One scholar has noted that the median cost of an IPR through appeal was \$350,000 in 2015. The typical cost of district-court litigation ranged from \$2,000,000 in lower-stakes cases to \$5,000,000 or more in the highest-stakes cases.⁵⁴ Some of that expense comes from district-court litigation taking longer. By statute, IPRs result in a final written decision within 18 months of institution.⁵⁵ In the most common patent jurisdictions, it usually takes significantly longer to get to a jury trial—typically 24 months or more.⁵⁶ And getting to trial does not immediately result in final judgment. Patent cases often feature extensive post-trial proceedings arising from requests for injunctive relief, the trial of equitable defenses to patent infringement, and motions seeking judgment as a matter of law or a new trial.

The added complexity from district court doesn't just come from the multiplicity of issues or the lengthier proceedings. The Federal Circuit is also more likely to remand in appeals from district courts. In 2024, the Federal Circuit affirmed 84 percent of appeals from the PTO in full, while it affirmed only 65 percent of appeals from district courts in full.⁵⁷ Remand may require a new trial, new post-trial briefings, and a new appeal, which adds to the complexity and cost.

It is unclear, however, whether substantive outcomes materially differ between IPRs and district courts. In a December 2025 letter to the PTO, a group of law professors calculated that IPR petitioners win in whole or in part (*i.e.*, get at least one claim cancelled) in 45 percent of cases, while the invalidity rate in district court is 42.4 percent.⁵⁸ Thus, at least for unpatentability and invalidity, there does not appear to be a significant difference in outcomes. The difference instead appears to be in the procedures used to resolve each case, including the issues raised and how long proceedings take, and the ultimate deciders of many core issues in a patent case—a panel of three PTAB judges or a lay jury.

As *Kroy* and *Ingenico* demonstrate, however, there may be some silver lining to litigating patent disputes in a single forum. The reduced costs in IPRs manifest when a patent claim challenged in IPR is cancelled. If there are further proceedings in district court after an IPR final written decision, the estoppel issues may increase, rather than decrease, the complexity of the district-court litigation. Thus, while district-court litigation is generally more expensive and complex, trying all issues in one forum may provide benefits that balance against that increased complexity.

Whatever the substantive upshot of these changes to patent litigation is, though, one thing is clear—the change in United States patent litigation from a multi-forum to a largely single-forum endeavor will have significant effects on how patent litigation proceeds in the near future. ☉



Jared Looper is an associate at MoloLamken LLP. He focuses on intellectual property and complex commercial litigation at the trial and appellate levels.

Endnotes

¹35 U.S.C. § 101.

²*Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc).

³35 U.S.C. § 102.

⁴*Id.* § 103.

⁵*Id.* §§ 101, 112(a).

⁶*Id.* § 131.

⁷*Id.* § 154(a)(2).

⁸*Id.* § 271(a).

⁹Kathi Vidal, *Quality U.S. patents drive our economy and solve world problems*, United States Patent and Trademark Office, uspto.gov/blog/quality-us-patents-drive-our-economy-and-solve-world-problems (Dec. 9, 2024).

¹⁰35 U.S.C. §§ 283, 284. In limited circumstances, a patentee can also sue an infringer before the International Trade Commission (“ITC”). The ITC offers one limited but potent remedy—excluding all infringing articles from importation into the United States. 19 U.S.C. § 1337(d). But most infringement litigation proceeds in district court.

¹¹35 U.S.C. § 282(b)(2), (3).

¹²*Microsoft Corp. v. i4i Ltd. P’Ship*, 564 U.S. 91, 102 (2011).

¹³35 U.S.C. § 303(a).

¹⁴*Id.* § 307(a).

¹⁵See America Inventors Protection Act, §§ 4601-08, 113 Stat. 1501A-567 to 1501-A-572.

¹⁶35 U.S.C. § 314(a), (b) (2006).

¹⁷*Id.* § 311(a).

¹⁸*Id.* § 311(b).

¹⁹*Id.* § 314(a).

²⁰*Id.* §§ 6(c), 315(c), 318(a).

²¹This article uses the terms “unpatentable” and “invalid” interchangeably, to mean that a patent claim fails the substantive conditions of patentability. In general, “unpatentable” is the word used for PTO proceedings, while “invalid” is used in district court proceedings.

²²35 U.S.C. § 316(a)(11).

²³*Id.* § 318(b); *United States v. Arthrex*, 594 U.S. 1, 26 (2021).

²⁴35 U.S.C. § 318(b).

²⁵*Id.* § 315(e).

²⁶*PTAB Trial Statistics FY24 End of Year Outcome Roundup*, United States Patent and Trademark Office, https://www.uspto.gov/sites/default/files/documents/ptab_aia_fy2024__roundup.pdf (last accessed Jan. 12, 2026).

²⁷Jason Rantanen, *Federal Circuit Decisions – 2024 Stats and Datapack*, PatentlyO, <https://patentlyo.com/patent/2025/06/federal-circuit-decisions-datapack.html> (June 2, 2025).

²⁸*Cuozzo Speed Techs., LLC v. Lee*, 579 U.S. 261, 273 (2016) (Director has “no mandate to institute review” of challenged patent claim).

²⁹*Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, Paper No. 11 (P.T.A.B. Mar. 20, 2020).

³⁰*Sotera Wireless, Inc. v. Masimo Corp.*, No. IPR2020-00109, Paper 12 (P.T.A.B. Dec. 1, 2020).

³¹*Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation*, United States Patent and Trademark Office, https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf (June 21, 2022).

³²*Id.*

³³*USPTO rescinds memorandum addressing discretionary denial procedures*, United States Patent and Trademark Office, <https://www.uspto.gov/about-us/news-updates/uspto-rescinds-memorandum-addressing-discretionary-denial-procedures> (Feb. 28, 2025).

³⁴*Interim Process for PTAB Workload Management*, United States Patent and Trademark Office, <https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf> (Mar. 26, 2025).

³⁵No. IPR2025-00363, 2025 WL 1605274, at *1 (P.T.A.B. June 6, 2025).

³⁶No. IPR2025-00408, 2025 WL 1710857, at *1 (P.T.A.B. June 18, 2025).

³⁷*Director Institution of AIA Trial Proceedings*, United States Patent and Trademark Office, https://www.uspto.gov/sites/default/files/documents/Director_Institution_of_AIA_Trial_Proceedings.pdf (Oct. 17, 2025).

³⁸Theresa Schliep, *New Squires Order Allows 4 Patent Reviews, Denies 45 Others*, Law360, <https://www.law360.com/ip/articles/2435219/new-squires-order-allows-4-patent-reviews-denies-25-others> (Jan. 28, 2026).

³⁹Jun Cheng, *Director Squires Revamps the Workings of the U.S. Patent Office*, Crowell, <https://www.crowell.com/en/insights/client-alerts/director-squires-revamps-the-workings-of-the-us-patent-office> (Dec. 11, 2025).

⁴⁰159 F.4th 30 (Fed. Cir. 2025).

⁴¹*Id.* at 36-38.

⁴²*In re SAP Am., Inc.*, Nos. 2025-132, 2025-133, 2025 WL 3096788 (Fed. Cir. Nov. 6, 2025); *In re Google LLC*, No. 2025-144, 2025 WL 3096849 (Fed. Cir. Nov. 6, 2025); *In re HighLevel, Inc.*, No. 2025-148, 2025 WL 3527144 (Fed. Cir. Dec. 9, 2025); *In re Sandisk Techs., Inc.*, No. 2025-152, 2025 WL 3526507 (Fed. Cir. Dec. 9, 2025).

⁴³*In re Google LLC*, No. 2026-111, 2026 WL 204945 (Fed. Cir. Jan. 27, 2026); *In re Cambridge Indus. USA Inc.*, No. 2026-101, 2025 WL 3526129 (Fed. Cir. Dec. 9, 2025); *In re Sandisk Techs.*, 2025 WL 3526507.

⁴⁴*XY, LLC v. Trans Ova Genetics*, 890 F.3d 1282, 1294-95 (Fed. Cir. 2018); *cf. Fresenius USA, Inc. v. Baxter Int’l, Inc.*, 721 F.3d 1330, 1338 (Fed. Cir. 2013).

⁴⁵*Ohio Willow Wood Co. v. Alps South, LLC*, 735 F.3d 1333, 1342-43 (Fed. Cir. 2013).

⁴⁶127 F.4th 1376 (Fed. Cir. 2025).

⁴⁷*Id.* at 1381.

⁴⁸*Kroy IP Holdings, LLC v. Groupon, Inc.*, 146 F.4th 1360, 1365 (Fed. Cir. 2025) (Dyk., J., dissenting from denial of rehearing en banc).

⁴⁹35 U.S.C. § 315(e)(2).

⁵⁰*Id.* § 311(b).

⁵¹136 F.4th 1354 (Fed. Cir. 2025)

⁵²*Id.* at 1364.

⁵³*Id.* at 1364-66.

⁵⁴Anne S. Layne-Farrar, *The Cost of Doubling Up: An Economic Assessment of Duplication in PTAB Proceedings and Patent Infringement Litigation*, American Bar Association: Landslide Vol. 10 No. 5, https://media.craai.com/sites/default/files/publications/The_Cost_of_Doubling_Up_An_Economic_Assessment_of_Duplication_in_PTAB_proceedings_Landslide_May_2018_Layne_

continued on page 37

anticompetitive-noncompete-agreements.

¹³Cal. Bus. & Prof. Code § 16600.1; Minn. Stat. § 181.988.

¹⁴Wyo. Stat. § 1-23-108.

¹⁵See S4641, 2025-206 Reg. Sess. (N.Y. 2025); H.B. 4040, 103rd Sess. (Mich. 2025); S.B. 0995, 114th Gen. Assembly (Tenn. 2025).

¹⁶See Ark. Code § 4-75-101 (physicians); C.R.S. § 8-2-113 (certain health care providers); 820 ILCS 90/10 (low-income, construction, mental health providers, and employees subject to certain collective

bargaining agreements); Ind. Code § 25-22.5-5.5 (physicians); Md. Code, Lab. & Empl. § 3-716 (low-income employees and certain health care providers); M.C.A. § 28-2-724 (certain health care providers); Or. Rev. Stat. Ann. § Ch. 295, § 7 (certain health care providers); Va. Code § 40.1-28.7:8 (low-wage employees).

¹⁷See Fla. Stat. § 542.45; Kan. Stat. § 50-163; La. R.S. 23:921; 35 Pa. Stat. § 10324; Tex. Bus. & Com. Code § 15.50(b).

Looper continued from page 33

Farrar.pdf (May-June 2018).

⁵⁵35 U.S.C. § 316(a)(11).

⁵⁶Angela Morris, *How top US patent courts compare on median time-to-trial statistics*, DocketNavigator, <https://brochure.docketnavigator.com/how-top-us-patent-courts-compare-on-median-time-to-trial-statistics/> (June 27, 2022).

⁵⁷PTAB *Trial Statistics*, note xxiii, *supra*.

⁵⁸*Letter of 22 Law Professors and Public Citizen in Opposition to 'USPTO's proposed rule changes for inter partes review*, Docket No. PTO-P-2025-0025, law.stanford.edu/wp-content/uploads/2025/12/IPR-rulemaking-comment-12225.pdf (Dec. 22, 2025).



WRITE A BOOK REVIEW TO BE FEATURED IN THE FEDERAL LAWYER

The *Federal Lawyer* encourages book review submissions. Writer's guidelines are available online at www.fedbar.org/TFLwritersguidelines.

Email social@fedbar.org with book suggestions or questions regarding your submission today.