

Final IPR Decisions Now Subject to Director Review

Intellectual Property Alert

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Disappointed with the final decision in your *inter partes* review (IPR) or post-grant review (PGR)? Under a new interim procedure, you may now seek review by the director of the U.S. Patent and Trademark Office. The Office is also expected to develop a more permanent process allowing participants to seek director review of final IPR or PGR decisions.

Under the interim procedure, “a party may request [d]irector review or, in the alternative, rehearing by the original [Board] panel [of administrative patent judges].” If a party requests panel rehearing, the party can later request review by the director. Generally, requests for director review must be filed within 30 days of a final decision. Particularly while the interim procedure is very new, the deadline may be extended on an exceptional basis for good cause. In response to a request, the director may grant review, deny review, or remand the proceeding to the panel with instructions.

The interim procedure is the Office’s response to the recent Supreme Court decision in *United States v. Arthrex, Inc.*, in which the Court held that the Office’s process, particularly the entry of final IPR decisions by administrative patent judges, violated the Constitution. A majority of the Court found that the possibility of review by the director, a principal officer of the executive branch, would remedy the constitutional violation.

The director is just one person who has a full-time job running the Office. Given the director’s limited time for reviewing final decisions, the likelihood that the director will grant review of any one final decision is low. On the other hand, if the director does grant review of a final decision, the prospect of a reversal might be higher because the director is not at all bound by the original decision.