UNITED STATES
PATENT AND TRADEMARK OFFICE



Patent Trial and Appeal Board (PTAB) Boardside Chat: The future of PTAB hearings

Christopher Kaiser, Lead Administrative Patent Judge, PTAB Erica Swift, Chief Clerk of the Board, PTAB Grace Obermann, Administrative Patent Judge, PTAB Scott Daniels, Administrative Patent Judge, PTAB Garth Baer, Administrative Patent Judge, PTAB June 30, 2022



Christopher Kaiser, Lead Administrative Patent Judge, Patent Trial and Appeal Board Erica Swift, Chief Clerk of the Board, Patent Trial and Appeal Board

PTAB Hearings in the "New Normal"

Question/comment submission

- To send in questions or comments during the webinar, please email:
 - PTABBoardsideChat@uspto.gov



Agenda

- PTAB hearings
 - Hearings during the pandemic
 - Benefits of virtual hearings
 - Important dates for hearings
 - Hearing options for parties
 - Hearing access information for the public
 - Accessing USPTO facilities
- Panel discussion: Tips for successful hearings in remote and in-person environments



Status of hearings

Hearings before the pandemic

- On March 13, 2020, the USPTO closed its offices to the public and PTAB suspended in-person hearings and transitioned to all virtual hearings.
- In the year prior to mandatory virtual hearings, 29.8% of appeals and less than 1% of AIA trials were conducted virtually.



Hearings during the pandemic

- Over the past two years, PTAB has held over 2,300 virtual hearings
 - ~1,300 appeals
 - − ~1,000 trials
- PTAB provided the public with remote access to over 600 hearings. Nearly 98% of requests were approved.

Benefits of virtual hearings

- Saves time and money
- Positive environmental impact
- Easy sharing of demonstratives
- APJs appear virtually, regardless of location
- Easier access for interested parties who are not giving oral argument



Important dates for hearings

 The USPTO officially reopened to the public on May 25, 2022.

 The option for in-person hearings will be available for hearings scheduled on or after July 11, 2022.



Options for hearings

Hearing options for parties

- Virtual hearings will continue for appeals and AIA trials.
 - No in-person hearings unless requested by both parties.
- In-person hearings are available if both parties request.
 - Arguing counsel may appear in person from any location with an APJ present.
 - Most in-person hearings will still likely have one or more judges attending the hearing virtually.
 - Non-arguing personnel are encouraged to attend remotely.
 - Parties who are no longer able to appear in-person should contact <u>PTABHearings@uspto.gov</u>.

Selecting a hearing option

- How to express a preference for virtual or in-person
 - Parties can request virtual or in-person hearing at initial conference, in a separate filing with the Board, or in their request for oral argument.
 - If parties don't express a preference for virtual or in-person, the Board will email parties to determine preferences.



Email to parties from PTAB

- If parties haven't made their preferences known, parties should expect an email from <u>Trials@USPTO.gov</u> about 6-8 weeks before the scheduled hearing date.
- Email will ask parties to inform the Board (1) whether the parties would prefer either a virtual hearing or an in-person hearing and (2) for in-person hearings, which of the locations (as offered by the Scheduling Order) the parties would prefer.

Hearing access information for the public

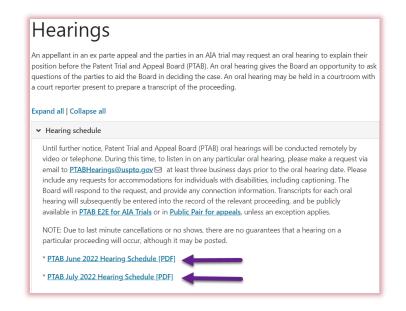
- Remote access will continue for PTAB hearings, either by video or audio. This is the primary means for public access.
- Subject to availability of space, in-person public access may also be granted.
 - Includes the designated hearing location as well as alternate sites
- Public access not available for hearings with confidential information.
- For virtual or in-person access to a hearing, submit a request to <u>PTABHearings@uspto.gov</u> at least 3 days before the hearing.



Hearing schedules

 Hearing schedules are posted on the PTAB page of the USPTO website at

https://www.uspto.gov/patents/ptab/hearings





Accessing to USPTO for hearings

Accessing USPTO facilities

- Information on access to USPTO facilities can be found at https://www.uspto.gov/coronavirus
 - Community transmission levels
 - Safety protocols
 - Self-certification
- Applies to any person accessing USPTO facilities.



Community transmission levels

- CDC COVID-19 Community Levels are applied to each USPTO location.
- Information is updated every Friday and applies for one week.
- Levels can be low, medium, or high.





Safety protocols

- USPTO safety protocols correspond to the CDC Community Level for that location.
- In communities with low or medium transmission levels, masks are optional.
- In communities with high transmission levels, wearing a mask in our buildings is mandatory.



https://www.uspto.gov/coronavirus/covid-19-community-levels-and-safety-protocols-uspto-office-locations



Self-certification

- Visitors should review self-certification health questionnaire prior to entering and may not enter USPTO facilities if they answer "yes" to any of the questions.
- If this makes attending a scheduled in-person hearing impossible, contact <u>PTABHearings@uspto.gov</u>.

USPTO notices regarding COVID-19

Updates from the United States Patent and Trademark Office during the COVID-19 coronavirus outbreak.

USPTO moves to Phase 3 of reopening plan

May 25, 2022

On May 25, 2022, the United States Patent and Trademark Office (USPTO) fully reopened all trademark of the public. Visitors should review this health questionnaire prior to entering and may not enter facilities if they answer "yes" to any of the questions.

We continue to monitor local conditions for all locations as determined by the <u>Center for Disease Control's (CDC) COVID-19 community levels</u> . Levels can be <u>low, medium, or high</u>. In communities with low or medium transmission levels, wearing a mask in our buildings is optional. In communities with high transmission levels, wearing a mask in our buildings is mandatory. Please check the CDC's levels and <u>our office location pages</u> for details, including which services are now being provided in-person as well as virtually.



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LEAP



- <u>Legal Experience and Advancement Program</u> (LEAP)
- Designed to:
 - Aid in development of the next generation of patent practitioners
 - Encourage a diverse group of advocates to develop their skills before the PTAB
- To qualify, a patent agent or attorney must have:
 - Three or fewer substantive oral arguments in any federal tribunal, including PTAB



Grace Obermann, Administrative Patent Judge, PTAB Scott Daniels, Administrative Patent Judge, PTAB Garth Baer, Administrative Patent Judge, PTAB

Panel Discussion: Tips for Successful Hearings

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Next Boardside Chat



- Thursday, July 7, 2022, at 12–1 pm ET
- Topic: interim procedure for discretionary denials and data study
- Register for and learn about upcoming Boardside Chats, and access past Boardside Chats at: https://www.uspto.gov/patents/ptab/ptab-boardside-chats



