

United States Patent and Trademark Office



The Patent Trial and Appeal Board

Guide to the administration
of oral hearings before the
Patent Trial and Appeal Board

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UNITED STATES
PATENT AND TRADEMARK OFFICE



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OVERVIEW

Purpose:

The Patent Trial and Appeal Board (PTAB) has prepared these materials to aid parties and counsel in preparing for and participating in oral argument before the PTAB.

Note: This manual does not supersede or interpret law or regulation governing the legal aspects of the PTAB proceedings. This manual addresses those policies and administrative procedures governing oral hearings before the PTAB and provides practitioners with additional information and instructions to navigate the procedural requirements. This manual is a supplement to the PTAB Trial Practice Guide and is meant to be read in conjunction with that document. This manual does not have the force of law. The PTAB may modify certain guidelines as needed to meet agency or stakeholder needs.

What is the hearings team and how do they support hearings?

The PTAB hearings team falls under the Case Management Branch of the PTAB and is located in Alexandria, Virginia, with contracted support in each regional office location. The hearings team administratively supports all proceedings before the PTAB by sending out hearing notices, scheduling hearings, coordinating court reporting, and providing hearing room support. They coordinate the use of audio-visual equipment and ensure it is in working order to facilitate the use of PowerPoint presentations. The hearings team also coordinates telephonic and video hearings.

Comments/concerns:

The hearings team encourages you to provide any feedback, positive and negative, to ChiefClerkPTAB@uspto.gov. Please limit your responses to concerns that directly support administrative processes. For example, comments should not include any requests regarding your interest in a specific proceeding. We solicit comments on what administrative support we are providing well, what we can do better, and what procedures we could discontinue or implement.

REQUESTING ORAL HEARING BEFORE THE PTAB

The PTAB is responsible for conducting trials, including inter partes, post-grant, and covered business method patent reviews and derivation proceedings; hearing appeals from adverse examiner decisions in patent applications and reexamination proceedings; and rendering decisions in interferences. In accordance with 35 U.S.C. § 6(c), panels of administrative patent judges (APJs) are responsible for adjudicating these cases. Each case shall be heard by at least three members of the PTAB, who shall be designated by the chief judge under authority delegated by the director.

Ex parte and reexamination appeals

When the PTAB receives an appeal, the intake database system assigns an appeal number that is directly associated with the application number. The appeal number can be used internally to track the appeal from start to finish. Generally, ex parte proceedings are decided on a first-in/first-out basis.

In accordance with 37 CFR § 41.47(b) (ex parte and reexamination appeals) and 37 CFR § 41.73(b) (inter partes appeals), a Request for Oral Hearing must be filed as a separate paper (not within the Notice of Appeal or any other paper). The **required fee**, as set forth in 37 CFR § 41.20(b)(3), must be paid within the appropriate time period as set forth in 37 CFR § 41.47(a) (ex parte appeals) or 37 CFR § 41.73(a) (inter partes reexamination appeals). The time for requesting an oral hearing cannot be extended.

If appellant receives an Order for a Non-Compliant Request for Oral Hearing, the appellant will need to file a petition under 37 CFR § 41.3 and the requisite fee under 37 CFR § 41.20(a) requesting that the hearing request be accepted. Such petition is due within 14 days from the Order. See 37 CFR § 41.3(e). The chief administrative patent judge or his/her designee will decide the petition. If the petition is denied, a refund of the fee for filing a request for oral hearing will not be granted.

If the request and fee are not filed as set forth above, the case will be assigned for consideration and the decision will be based on the briefs without an oral hearing. Appeals decided on the briefs are given the same consideration by the PTAB as appeals decided after an oral hearing. See 37 CFR § 41.47(a), § 1.73(c).

AIA trials

For AIA trials, a party may request oral argument on an issue raised in a paper, at a time set by the PTAB. The request must be filed as a separate paper and must specify the issues to be argued. See 37 CFR § 42.70(a). The judge(s) handling the matter will notify the parties of the hearing date and time by order issued by the PTAB.

PANELING HEARINGS

“Paneling” is the process of assigning the case to a panel of judges for adjudication. The PTAB’s Standard Operating Procedure (“SOP”) 1 describes the process by which judges are assigned to panels in all jurisdictions of the PTAB. See PTAB SOP 1. AIA trial hearings, reexaminations, and ex parte appeals paneling functions are completed by staff assigned to the Case Management Branch, located in Alexandria, Virginia, under guidance of the PTAB’s management.

A “panel” is a designated group of members of the PTAB assigned to adjudicate a proceeding. Judges typically are paneled in groups of three, but that may vary in certain cases. See PTAB SOP 1, p. 15. Judges have a wide variety of experience, and care is taken to select panels that have suitable experience to handle the technology at issue in a matter. In addition to technical discipline, paneling decisions also take into account factors including the type of proceeding, existence of related cases, equitable distribution of workloads, and the availability and location of the judge.

Heard ex parte appeal proceedings are generally paneled to the selected judges in groups of six. This grouping of cases constitutes a hearing session. When selecting ex parte appeal cases for paneling, consideration is also given to the location of counsel in an effort to schedule cases in the regional offices. This optimizes use of the hearing rooms in those locations and also provides some travel relief to counsel.

For reexamination proceedings, a panel can be assigned to one case or several cases in one session.

Hearings in AIA trials are scheduled as set forth in an Order issued by the adjudicating panel. The Scheduling Order will generally indicate if a panel is available to hold a final hearing in locations other than Alexandria, Virginia, and will provide guidance to the parties on expressing a location preference. A panel may determine to hear several related cases in one session.

SCHEDULING HEARINGS

The deputy clerk, located in Alexandria, Virginia, schedules all hearings held before the PTAB. Hearings are held at the PTAB Monday through Friday between the hours of 9 a.m. and 5 p.m. with morning and afternoon sessions in all USPTO offices. The expansion of the USPTO regional offices now allows the scheduling of oral hearings across the United States. These regional facilities directly support the PTAB’s mission.

Ex parte hearings at the PTAB begin at 9 a.m. and 1 p.m., and reexamination hearings begin at 10 a.m. and 2 p.m. AIA trials are given designated begin and end times in the Order issued by the adjudicating panel. Typically, they are scheduled to begin between the hours of 9 and 10 a.m. and 1 and 2 p.m. All times refer to the locations and time zones in which they are scheduled.

There are three hearing rooms used by the PTAB in Alexandria, Virginia: Hearing rooms A, B, and D. A morning and an afternoon hearing session is generally scheduled in each hearing room. Each regional office has one hearing room. Hearing sessions in the regional offices may be scheduled in the morning or afternoon. The deputy clerk makes every effort to schedule hearings in all regional office locations. However, as not all regional offices have APJs that represent every technology field, the unavailability of a panel member to physically appear within a regional location may prohibit scheduling a particular hearing in that specific location.

In ex parte appeals, every attempt is made to set an oral hearing date that coincides with the average pendency of on-brief cases. However, some considerations that exist in heard cases (such as paneling and resources) may result in the pendency of heard cases being longer than the average on-brief ex parte pendency. AIA trials are scheduled based on statutory requirements that mandate a specific timeline.

Hearing rooms are reserved by the panels up to a year in advance. Therefore, ex parte appeals are scheduled based on hearing room availability. Once a hearing schedule is completed for the month, it is circulated to the judges for approval. Monthly hearing schedules are completed and uploaded to the webpage in advance.

The current schedule for hearings is located on the [PTAB webpage](#).

NOTIFICATION OF A HEARING

Ex parte and reexamination appeals

Once the calendar is finalized, the PTAB will send a Notice of Hearing to all involved in ex parte and reexamination appeals. The Notice of Hearing will indicate on the first page the date, time, hearing room, and location of the hearing.

Upon receiving the Notice of Hearing, the appellant will be required to respond, **either confirming or waiving attendance** at the hearing on the specified date and time. In **inter partes reexaminations**, **copies of all communications** to the USPTO must be **served on opposing counsel**. See 37 CFR § 1.903. This requirement applies to hearing-related correspondences such as, but not limited to:

- a confirmation or waiver of hearing attendance,
- a request for video or telephonic participation,
- a request for an easel or projector,
- a request for a hearing postponement,
- a request for pro hac vice admission, and
- a request for additional argument time.

The PTAB issues Notices of Hearing for heard appeals that have docketing notice dates that are approximately the same as the docketing notice dates of the PTAB's oldest "on brief" appeals in the same technology. That way, an appellant's decision to request an oral hearing neither accelerates nor delays a decision being rendered for that appeal.

Appellants have three ways to present a hearing before the PTAB. A hearing may be an oral argument in person, a telephonic conference, or a video appearance. The following clarifies each type of hearing:

- **In-person hearing** - An appellant appears before a panel of three (or more) judges at a designated PTAB hearing location. However, please be aware that up to two of the judges on a panel may participate remotely.
- **Telephonic hearing** - An appellant participates in the oral hearing via a telephonic connection. Currently, as a precautionary measure to protect the confidentiality of information, telephonic hearings are reserved for APJs and counsel. Upon receipt of a telephonic hearing request, the PTAB will issue an order specifying the phone number and time of the telephonic hearing. All expenses for the call will be borne by the appellant that requests the call.

- **Video hearing** - An appellant participates in the oral hearing via an audio-visual connection. An appellant that requests a video hearing will incur any associated costs with the arrangements of the video hearing. Upon receipt of the video hearing request, the PTAB will issue an order instructing the appellant to contact the PTAB to schedule a test of their equipment and connection. If the test is unsuccessful, the appellant will receive dial-in instructions to have a telephonic hearing instead of a video hearing, at that time. The PTAB also allows appellants the opportunity to request a video hearing from any available regional office location. However, due to the availability of resources, it may not be possible to grant the request in all instances.
- **Remote viewing** - The USPTO's regional office locations in (1) Detroit, Michigan; (2) Dallas, Texas; (3) Denver, Colorado; and (4) San Jose, California are generally available for any member of the public to view a hearing, subject to room availability and advance coordination with the PTAB. For example, appellant's in-house counsel located in Palo Alto, California may wish to view the hearing from the USPTO's regional office in San Jose, California as opposed to traveling to a hearing scheduled to occur at the USPTO's headquarters in Alexandria, Virginia for time efficiency and economic considerations. To request remote viewing, appellant must inform the PTAB as to the USPTO's regional office location and the number planning to view the hearing from the remote location. The PTAB will notify appellant if the request for remote viewing is granted. However, due to the availability of resources, it may not be possible to grant the request in all instances.
- **Waived hearing** - When an appellant has decided an oral hearing is no longer necessary, they can waive attendance. This waiver allows the panel to promptly act on the appeal without having to wait for the oral hearing date.

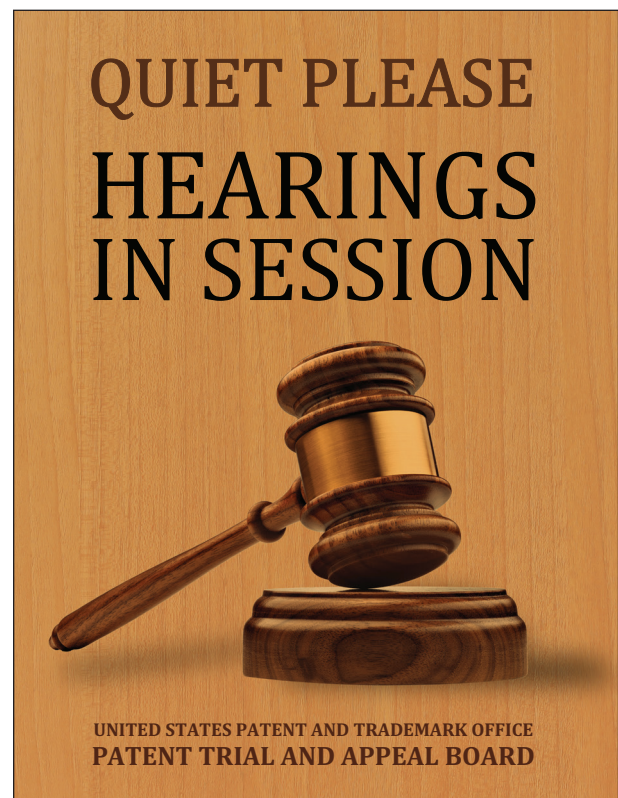
All of the above options are described on the Notice of Hearing. The appellant must choose an option in response to the Notice of Hearing.

For all options, the PTAB will provide a court reporter at the designated PTAB hearing location and will enter the transcript into the record.

AIA trials

In an AIA trial, the parties will be notified of the date and location of the oral argument in a Scheduling Order. The panel may also hold a conference with the parties after the Scheduling Order has been issued should it be necessary to consider a change to the previously scheduled date or location of the oral argument. Any changes to the oral argument date and location after the issuance of the initial Scheduling Order will be reflected in a separate order from the panel.

- **Oral argument** - If an oral argument is requested, the parties will be notified of the finalized hearing date, time, and location by a Trial Hearing Order issued by the PTAB. The panel will ensure scheduling of oral arguments including subsequent changes are communicated to the hearing operations staff. Once a Trial Hearing Order has been issued, parties should address any requests for audio-visual equipment, via email, directly to Trials@uspto.gov within the designated period. Questions regarding specific audio-visual equipment should be directed to the PTAB at 571-272-9797.
- **Remote viewing** - The USPTO's regional office locations in (1) Detroit, Michigan; (2) Dallas, Texas; (3) Denver, Colorado; and (4) San Jose, California are generally available for any member of the public to view a hearing, subject to room availability and advance coordination with the PTAB. For example, a party's in-house counsel located in Palo Alto, California may wish to view the hearing from the USPTO's regional office in San Jose, California as opposed to traveling to a hearing scheduled to occur at the USPTO's headquarters in Alexandria, Virginia for time efficiency and economic considerations. To request remote viewing, the party must submit a request to the PTAB via email to Trials@uspto.gov as to the USPTO's regional office location and the number planning to view the hearing from the remote location. The PTAB will notify the party if the request for remote viewing is granted. However, due to the availability of resources, it may not be possible to grant the request in all instances.



PUBLIC ADMISSION

Our hearing locations include [Alexandria, Virginia](#); [Detroit, Michigan](#); [Denver, Colorado](#); [San Jose, California](#); and [Dallas, Texas](#). Our regional locations and Telework Enhancement Act Pilot Program afford the PTAB the opportunity to provide work locations for APJs in specific regions with diverse legal and technical experience.

The PTAB hears public and non-public hearings. Public hearings are open to the general public for observation. Non-public hearings are closed to the general public; only parties associated with the case are allowed to observe. All hearing rooms vary in size and the smaller rooms in Alexandria, Virginia, and the regional offices may fill to capacity; however, the regional offices have designated overflow rooms for such instances. If a hearing room fills to capacity in Alexandria, Virginia, and there is an available hearing room, it can be used as an overflow room. In all overflow rooms the public will have the ability to see and hear the oral hearing in its entirety. The PTAB does not take reservations from the general public for hearings. All entry is on a first-come, first-served basis.

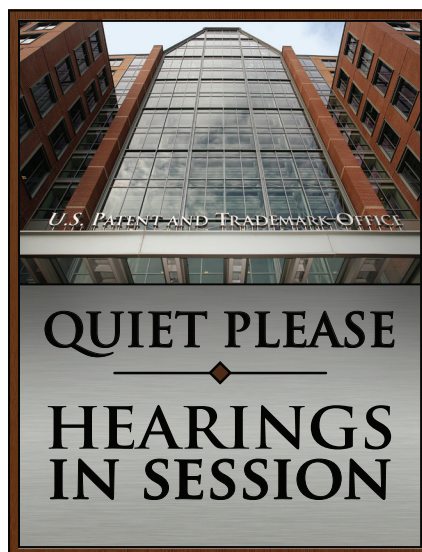
Visitors to public hearing rooms must undergo security screening. All visitors require a valid form of [government-issued identification](#) to gain access. Patent practitioners and agents should counsel their clients about the PTAB visitation procedures (e.g., the need to bring photo identification and appropriate courtroom etiquette and attire). Security procedures vary in each regional location. Therefore, **please arrive at least 30 minutes before** the scheduled hearing to arrive on time. For groups of 10 or more observers, please contact the deputy clerk for information needed to aid security.

In Alexandria, Virginia, after passing through security, all parties, as well as public attendees, are to proceed to the attorney waiting area on the 9th floor of the Madison East Building and sign in at the usher desk. The usher will assist the parties with sign in procedures and provide any requested information. All parties and public attendees will remain seated in the hearings waiting area until instructed to enter the hearing room.

Ex parte appeals and reexaminations are scheduled in hearing sessions containing up to six proceedings being heard. After you sign in and are seated, the judges will inform the usher when they are ready for the first case. The usher will escort the attorney and any attendees into the hearing room. The attorney will be directed to the podium to present oral argument. Attendees will be directed to have a seat in the gallery of the hearing room. Each case in the hearing room will be called and heard separately by the judges.

For AIA trials, all parties and public attendees will be permitted in the hearing room approximately 15 minutes prior to the start of the session. Parties are given this time to set up and ensure computers are functional for presentation purposes. Late entry into the hearing room will not be permitted.

The PTAB conducts a large number of proceedings in Alexandria, Virginia, and in all regional offices throughout the year. Many of these proceedings may be of interest to various audiences not directly involved with the proceeding. The PTAB supports the observation of these proceedings by internal and external stakeholders (both in-person and remotely from regional office locations). It is important, however, to ensure the hearings team in Alexandria, Virginia, is aware of all proceedings in which it is expected that there will be more than five observers associated with the parties in the hearing room as well as any observers located remotely from within the USPTO. The hearings team may be contacted by any of the response methods set forth in the Notice of Hearing (appeals) or by emailing Trials@uspto.gov (AIA trials).



HEARING ROOM DECORUM

The PTAB requires all attendees to maintain a professional appearance appropriate for appearing before a tribunal. Counsel appearing before a panel are required to wear formal business attire. Observers at a hearing are required to wear either formal business attire or business casual attire.

Business casual attire does not include jeans, t-shirts, tank tops, athletic shoes, sneakers, flip flops, or thong type sandals. Questions regarding dress code should be addressed to the hearings team prior to the date of the hearing.

Professional conduct and respect for general guidelines allow hearings to flow efficiently and promptly. The panel reserves the right to remove anyone who does not follow these guidelines.

When the announcement is made before the start of the hearing, please adhere to the following guidelines:

1. No personal recording devices are allowed in the hearing room.
2. Please turn off cell phones and electronic devices, except those used for demonstratives at the counsel table. Use of electronic devices in the gallery is prohibited.
3. No food or drink, except water, is permitted in the hearing rooms.
4. Unless the judge permits, there will be no entries/exits from the hearing rooms. This minimizes interruptions and distractions.
5. During the hearing, excessive talking or loud outbursts are prohibited. No one is to be heard except the judge or counsel presenting an argument to the panel.
6. Improper hearing room behavior may result in removal or other sanctions.

APPELLANTS APPEARING BEFORE THE BOARD

Use of demonstratives

All hearing rooms have presentation capabilities via a projector, easels, and a document projector (ELMO). **This equipment is available for use during oral arguments upon advance request.** In ex parte appeals and reexaminations, the appellant can send the request by facsimile transmission to the attention of the PTAB's hearing clerk at either (1) the USPTO's central fax number, 571-273-8300, or (2) the PTAB's hearing fax number, 571-273-9797. All requests for AIA trials should be sent to Trials@uspto.gov. Additionally, the hearing rooms do not have internet access capabilities. Therefore, parties must store all information on their personal computer device.

It is important for parties to be aware that APJs who appear remotely will not be able to view demonstratives displayed on an easel or projector. Therefore, parties should verbally direct the APJs to the source document as it appears in the record.

Helpful tips when presenting oral argument before the PTAB

You and your client have decided that your case pending before the PTAB would benefit from an oral hearing in front of a panel of APJs who have been assigned to decide the case. To prepare for the oral hearing, here is a set of suggestions, from A to G, to help maximize the effectiveness of your presentation.

Answer the question being asked. While the prepared presentation undoubtedly focuses on the points that you find most important, those may not be the areas of greatest interest to the panel. Rather than brush off inquiries, embrace questions as an opportunity to explain why the issue favors your position, or is not harmful to your position. Not answering questions is one of the quickest ways to lose credibility with the panel. If you think the question is not relevant, first answer the question asked and then provide an explanation why it is not relevant.

Begin the conversation with the critical issues, not extensive background information. The judges are familiar with the record. If a specific background point is very relevant, discuss it, but do not give a detailed history of the technology behind the invention—unless the judges ask for it, of course. Remember to limit your discussion and arguments to the information in the record. Except where authorized, the panel will not entertain arguments and evidence that are presented for the first time during oral hearing. Exceptions include the taking of live testimony.

Consider how demonstrative exhibits will be useful to your presentation. Because new arguments are not permitted during the hearing, exhibits should be limited to evidence and arguments of record. In some cases, however, where the record reflects a clear misunderstanding or impasse, demonstratives supported by the record may help resolve the matter. Demonstratives that may be particularly helpful may include pages from the record, such as figures, with appropriate highlighting. And when referring to the demonstratives during the oral hearing, refer to the specific slide number, rather than saying “next slide,” as that makes it easier for the judges, especially those judges participating in the video remotely, to follow the argument. On the other hand, do not be overly reliant on your demonstratives lest the panel pays more attention to your exhibits than to what you are saying.

Do not avoid the difficult issues. The judges will be most interested in the weakest parts of your case, because those are the points on which the outcome of the case may turn. Be prepared to explain why the apparent weakness does not change the legal conclusion for which you are arguing.

Ensure that you are familiar with the entire record, not just those portions essential to your argument. There may be something in the specification, in a declaration, or in one of the cited references that supports or refutes your arguments, but is identified by a party only in passing. It may, however, be very important to a judge. Also, your argument may raise other issues that require evaluation of additional parts of the record. If those types of questions arise, the judges on the panel will be interested in your informed and confident view of those issues.

Focus on your substantive arguments, based on the evidence of record, and where and how you have relied on that evidence, rather than arguments about the process that led you to the PTAB. For example, for appeals from adverse examiner decisions, the judges are aware that patent prosecution is not always easy or straightforward. But the remedy for perceived prosecution errors, such as improper restrictions, premature final rejections, or refusal by the examiner to follow proper procedure, is by way of petition to the director, and not by appeal to the PTAB. The panel generally decides only appealable issues based on the facts as developed in the record. Nearly all patentability issues are resolved based on the particular facts of your case—very few require or even invite an extension of or a new gloss on the law—so focus on the facts in the record and explain why they support a determination of reversible error in the appealed rejection.

Going forward, keep these tips in mind as you prepare to present your argument to the PTAB. Following these tips will not only allow for a more productive hearing for the judges deciding your appeal, but also may lead to a more favorable result for you and your client.

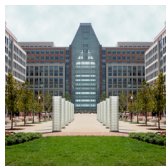
Note: When requested by a party, and where the panel believes live testimony will be helpful in making a determination, the PTAB will permit live testimony at the oral hearing. The PTAB will consider such requests on a case-by-case basis, but does not expect to permit live testimony in every case where there is conflicting testimony. In general, a request for live testimony is more likely to be granted where the PTAB determines that the demeanor of a witness is critical to evaluating that witness’s credibility. A party requesting live testimony should be prepared to explain why and how this consideration applies. Additionally, when presenting a live testimony before the PTAB, parties should prepare to provide a business card for the witness to the court reporter.

HEARING FACILITIES

Each hearing room contains a bench for the judges, two counsel tables that each seat two, and a podium to present arguments. A witness stand will also be provided if live testimony is to be presented. As listed below, each hearing room has a maximum occupancy set by the fire code. Maximum capacity limits include the three PTAB judges, the court reporter, witness, if any, and an IT liaison. All initial inquiries should contact Alexandria's hearings team. Requests for accommodations for individuals with disabilities may also be directed to the points of contact listed below at each USPTO office.

Alexandria, Virginia

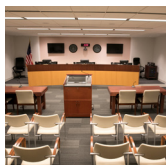
The PTAB headquarters has three hearing rooms:



Hearing Room A: maximum capacity is 63 occupants.

Hearing Room B: maximum capacity is 15 occupants.

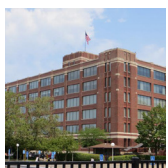
Hearing Room D: maximum capacity is 18 occupants.



Headquarters does not have designated overflow facilities.

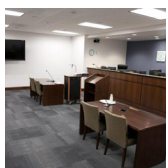
Point of contact for hearing room questions: 571-272-9797

Detroit, Michigan



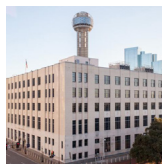
The maximum occupancy of the Detroit hearing room is 14 occupants.

Overflow facilities: Designated overflow room is the training room (RPL022061).



Point of contact for hearing room questions:
Administrative assistant/usher
313-446-6576

Dallas, Texas

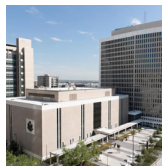


The maximum occupancy of the Dallas hearing room is 13 occupants.

Overflow facilities: Designated overflow room is Room #157.

Point of contact for hearing room questions:
Administrative assistant/usher 469-295-9073

Denver, Colorado

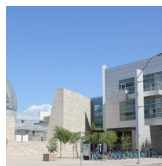


The maximum occupancy of the Denver hearing room is 26 occupants.

Overflow facilities: Designated overflow room is Room 14.111.

Point of contact for hearing room questions:
Receptionist/usher 303-297-4262

San Jose, California



The maximum occupancy of the San Jose hearing room is 10 occupants.

Overflow facilities: Designated overflow room is Room #320.

Point of contact for hearing room questions:
Administrative assistant/usher 418-918-9900

INCLEMENT WEATHER

Operating status for the Washington, D.C., metro region is announced by the Office of Personnel Management (OPM). You can obtain these announcements online, via e-mail alerts, or via the OPM Mobile Alert App. To view the operating status of the federal government in the Washington, D.C., metro region, please follow the below links:

View OPM operating status online

<http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/current-status/>

Sign up for OPM email alerts

http://apps.opm.gov/listserv_apps/list-sub.cfm?targetlist=operatingstatus

OPM Mobile Alert App

<http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/mobile-app/>

Operating status for each regional office is recommended by the Federal Executive Board and decided by the appropriate regional office director. Inclement weather announcements for regional offices can be obtained by calling the status line for each location. To obtain the operating status of the federal government in the regional offices, call:

Denver: 303-297-4646

Dallas: 469-295-9494

San Jose: 408-918-7676

Detroit: 313-446-4949

The location in which the hearing is scheduled is the location in which applicable procedures are to be followed for all remote participants. Guidance from the Alexandria headquarters will be given to the regional office hearing staff on how to proceed with supporting hearings during inclement weather.

Open

If the federal government is operating in an OPEN status, all hearings will proceed at the times scheduled and all hearing staff, APJs, and parties, present and remote, are expected to appear at the times scheduled.

Open—with option for unscheduled leave or unscheduled telework

If the federal government is in an OPEN status with the option for unscheduled leave or unscheduled telework, all hearings will proceed at the times scheduled.

Open—xx hour(s) delayed arrival—with option for unscheduled leave or unscheduled telework

If the federal government opens with a **one-hour delay**, with unscheduled leave and unscheduled telework, all hearings will proceed at the times scheduled.

If the federal government opens with a **two-hour delay**, with unscheduled leave and unscheduled telework, all hearings scheduled that day, including afternoon hearings, will commence an hour after their originally scheduled times. For example, if a hearing is scheduled to begin at 9 a.m. and the federal government opens on a two-hour delay, then the hearing will begin at 10 a.m.

If the federal government opens with a **three-hour delay**, with unscheduled leave and unscheduled telework, all hearings scheduled that day will proceed two hours after their originally scheduled time. For example, if a hearing is scheduled to begin at 9 a.m. and the federal government opens on a three-hour delay, then the hearing will begin at 11 a.m. However, due to such a delay, it may not be possible to hold all hearings scheduled for that day. Hearings in the afternoon will be rescheduled, as appropriate, by the deputy clerk and the hearing staff.

Early departure

If the federal government authorizes an early departure, hearings that are scheduled for the day will proceed as scheduled. Hearings will be canceled and rescheduled if the judges sitting on the panel deem it necessary due to the severity of the weather.

Hearing staff in the affected office will be authorized to depart early in accordance with agency guidance.

Early departure—employees must depart no later than xx:xx at which time Federal Offices are closed

If the federal government institutes this type of early departure, all hearings scheduled to take place during or after the time of closure of federal offices will be canceled and rescheduled. The hearings will be rescheduled at the earliest available date based on the schedules of all parties involved.

Immediate departure—federal offices are closed

If the federal government institutes an early closure, all hearings scheduled after the closure will be canceled and rescheduled for a later date.

Closed—emergency and telework-ready employees must follow their agency's policies

If the operating status of the federal government is CLOSED, all hearings will be rescheduled. The hearings will be rescheduled at the earliest available date based on the schedules of all parties involved.

If the Alexandria headquarters is closed and there is a hearing in a regional office with a remote judge and a video hearing, the remote judge will connect via audio only, by calling the appropriate usher desk to be connected, so the attorney can conduct the hearing via video.

Shelter-in-place due to weather

If the federal government implements a shelter-in-place directive due to the weather, hearings will proceed as scheduled for as long as it is practical. If power is lost to the hearing rooms, the hearings will stop and continue once power is restored or be rescheduled to continue at a later date depending on the outcome of the shelter-in-place.

All staff should follow the shelter-in-place procedures given by the USPTO.

FREQUENTLY ASKED QUESTIONS

The following FAQs pertain to oral hearings for the PTAB proceedings. These FAQs are provided solely for convenience. None of the statements contained in the FAQs establish, modify, or waive any legal rights, responsibilities, or deadlines.

How do I cancel my request for an ex parte oral hearing?

If an appellant decides after submitting a request that (s)he no longer desires an oral hearing, the appellant should submit a waiver of the oral hearing request. The appeal will then be taken off of the PTAB's oral hearing docket and scheduled to be decided "on-brief." The appellant can request that the PTAB's hearing clerk waive the appeal's oral hearing in the following manner:

If the hearing has not yet been scheduled (i.e., the appellant has not yet received a Notice of Hearing), the appellant can file a Request to Waive Oral Hearing;

If the appellant has already received a Notice of Hearing, the appellant can indicate that attendance is being waived by completing the notice's response section and submitting the response in any of the manners indicated on the notice;

If waiver is desired after the appellant has already responded to the Notice of Hearing by confirming attendance, the appellant can later submit a revised or corrected response to the Notice of Hearing. In such cases, the appellant should also call the PTAB's hearing clerk at 571-272-9797, informing the hearing clerk of the appellant's intent to waive the hearing. This allows the hearing clerk to more timely remove the appeal from the oral hearing schedule, and it allows the judges to decide the appeal without having to wait for the assigned hearing date.

Can I request a video or telephonic hearing after I have already confirmed my in-person attendance?

The PTAB encourages appellants to finalize their decisions regarding their desired mode of participation in the scheduled hearing (in person, video, or telephonic) prior to confirming attendance on the Notice of Hearing form. However, if an appellant does wish to change the requested mode of participation after the appellant has already confirmed attendance, the appellant must submit a revised written request for live, video, or telephonic hearing. For example, the appellant can revise the requested mode of participation by (1) submitting a revised confirmation of attendance with the newly desired mode of attendance checked and with some indication in the Remarks section that the requested mode has changed, or (2) drafting a request made to the attention of the PTAB's hearing clerk. The request should be submitted in the same manner as set forth on the Notice of Hearing for initially confirming attendance. Requests to revise the mode of participation must be submitted within one week prior to the hearing date for the oral hearings staff to accommodate the request. Failure to submit such requests with adequate notice may result in the request being denied.

Can inventors or members of the public listen to oral hearings electronically?

No. The PTAB currently does not create or provide any electronic recording of oral hearings.

Furthermore, the PTAB generally does not offer telephonic or audiovisual connections to inventors or the public. While the attorney of record may participate in oral hearings via a video or telephonic connection, non-participants merely wishing to observe the oral hearing must do so in person. However, the PTAB generally makes a transcript of the hearing available to the public.

Can I present an oral argument from one of the PTAB's regional office locations?

The PTAB is developing a process that will allow appellants to request a video hearing from a regional office location. Until this process is fully developed, counsel may indicate a preference to participate remotely from a regional office location in the response to the Notice of Hearing. Resources permitting, the PTAB will make every attempt to facilitate the request.

Would it be helpful to the panel if I provide a copy of written materials for the hearing?

There is no prohibition against providing a copy of written materials, such as briefs of record, case law, and/or demonstratives, to the panel for the hearing. When determining if you want to provide such materials, consider that panels have access to the complete electronic case file in all proceedings and electronic copies of demonstratives filed in trials. Typically no other information may be presented at oral argument as the parties generally may rely only on evidence previously entered into the record, considered by the primary examiner, and/or relied upon in the brief(s). See 37 CFR § 41.47(e). Finally, consider that in all manner of proceedings it is ultimately up to the panel whether or not to accept any written materials.

I want to use demonstratives (e.g., a flip chart or a PowerPoint presentation) during arguments; does the PTAB have equipment that can be set up so that I can make the presentation?

Yes, the PTAB has an easel, as well as a projector and screen, which may be requested for oral arguments arising in ex parte appeals, AIA trials, and reexamination proceedings. For PowerPoint and other computer-based presentations, the party must provide their own laptops. The hearing rooms do not have internet access capabilities—all information must be stored on the party's laptop (e.g., a hard drive, flash drive, or CD). The party must request the equipment for demonstratives in writing at least five days in advance of the scheduled hearing. No new evidence is permitted. In ex parte appeals and reexaminations, the appellant can send the request by facsimile transmission to the attention of the PTAB's hearing clerk at either (1) the USPTO's central fax number, 571-273-8300, or (2) the PTAB's hearing fax number, 571-273-9797. All requests for AIA trials should be sent to Trials@uspto.gov. Unless notified to the contrary, the party should presume that the panel does NOT want hard copies of the demonstratives or any other material.

Can I request that my hearing be rescheduled or postponed?

Should a party find it absolutely necessary to request the hearing be rescheduled, the following procedure should be followed:

Ex parte and reexamination appeals

An appellant seeking to have a hearing rescheduled must respond to the Notice of Hearing by (1) confirming attendance for the originally scheduled hearing and (2) submitting a rescheduling request. Rescheduling requests that accompany a hearing attendance waiver response may be overlooked and treated as a simple waiver of attendance. The rescheduling request may be submitted either simultaneously with the Notice of Hearing attendance confirmation response or subsequent thereto.

The rescheduling request should be directed to the PTAB's hearing clerk and may be submitted by any of the response methods set forth in the Notice of Hearing. For example, the appellant can fax the request to the attention of the PTAB's hearing clerk at either (1) the USPTO's central fax number, 571-273-8300, or (2) the PTAB's hearing fax number, 571-273-9797.

Due to the unique circumstances that give rise to rescheduling requests, no preprinted forms exist for making such requests. When drafting a rescheduling request, the appellant should set forth all of the reasons for the request with sufficient specificity for the PTAB to reach a decision on whether to grant the request. To assist the hearing clerk in deciding whether and when to reschedule an oral hearing, a rescheduling request may optionally include a calendaring request that (1) proposes preferred alternative hearing dates or date ranges, or (2) notes additional dates for which the appellant would be unable to attend an oral hearing.

The hearing clerk will consider the request and recommendations of the assigned panel. An order will then be issued granting or denying the request. Second requests for hearing postponement or rescheduling are usually treated as a waiver of the oral hearing.

If the rescheduling request is granted, the PTAB will issue a new Notice of Hearing setting forth the rescheduled hearing's new date, time, and scheduling information. In such cases, the appellant is required to respond to the new Notice of Hearing. The prior submission of the rescheduling request, or inclusion of a calendaring request, does NOT constitute a confirmation of attendance at the rescheduled hearing.

AIA trials

With regard to hearings in AIA trials, the party seeking to have the hearing rescheduled must contact the PTAB to schedule a conference call with the panel members handling the matter and opposing counsel to discuss the request.

If a party in an AIA trial decides, after submitting a request for oral hearing, that it no longer desires an oral hearing, the party should contact the PTAB to arrange a telephone conference with the panel members handling the matter and opposing counsel, to discuss the party's request to cancel the oral hearing. The parties should attempt to resolve disputes amongst themselves before contacting the PTAB.

Who can present arguments at the oral hearing?

One or more registered patent practitioners (for AIA trials, “petitioner and patent owner/respondent”) of record may present arguments at the oral hearing. For example, two registered patent practitioners of record may split the allotted argument time between themselves as they see fit.

Can state licensed attorneys who are not registered to practice before the USPTO present oral argument?

The PTAB may authorize a person other than a registered patent practitioner to appear as counsel in a specific proceeding. See 37 CFR § 41.5(a) (addressing reexaminations and ex parte appeals). See also 37 CFR § 42.10(c) (addressing trial practice and procedure for AIA trial proceedings). In order for non-registered counsel to accompany the registered practitioner and present arguments, the registered patent practitioner may petition for pro hac vice admission of the non-registered counsel in the manner by which other motions are ordinarily filed for the particular type of proceeding. The PTAB’s decision to grant any pro hac vice request is discretionary. Even if pro hac vice admission is granted, a registered patent practitioner of record generally must still be present at the oral hearing.

For AIA trials, the motion for pro hac vice admission would have to be granted in advance and the person designated as back-up counsel of record (by filling updated mandatory notice information under 37 CFR § 42.8). See, e.g., the guidelines set forth in IPR2013-00639, Order Authorizing Motion for Pro Hac Vice Admission, Paper 7, Oct. 15, 2013, http://www.uspto.gov/ip/boards/bpai/ipr201300639_authorize_pro_hac_new_rules.pdf.

For reexaminations and ex parte appeals, requests for pro hac vice admission should be faxed to the attention of the PTAB’s hearing clerk at either (1) the USPTO’s central fax number, 571-273-8300, or (2) the PTAB’s hearing fax number, 571-273-9797. The requests should set forth good cause for why pro hac vice admission should be granted. In response to the request, an order will be issued granting or denying the request.

How much time is designated to present oral argument?

The time for presenting oral argument is normally set in the Scheduling Order but may be modified on a case-by-case basis. A request for oral hearing should include the amount of time a party considers sufficient to present its argument to the PTAB. The PTAB expects to ordinarily provide for an hour of argument per side for a single proceeding, but a party may request more or less time depending on the circumstances of the case. The PTAB encourages the parties to confer before filing a request for oral hearing and, if possible, jointly agree regarding the appropriate argument time needed for each side.

Can inventors accompany the registered patent practitioner of record during the appeal hearing?

Registered patent practitioners of record sometimes wish to have inventors accompany them at the oral hearing for an ex parte appeal when the inventors can better answer technical questions posed by the judges. Occasionally, registered practitioners will bring an inventor to the appeal hearing and, at the outset of the hearing, request the panel’s permission for the inventor to participate. While permission is commonly granted in such situations, such decisions are within the panel’s discretion. As such, when a registered patent practitioner wishes to be accompanied by an inventor, it would be prudent for the practitioner to seek the panel’s permission prior to the hearing date. A registered practitioner of record may fax such a request to the attention of the PTAB’s hearing clerk at either (1) the USPTO’s central fax number, 571-273-8300, or (2) the PTAB’s hearing fax number, 571-273-9797. Upon receipt, the hearing clerk will forward the request to the panel for its consideration and recommendation. An order will then be issued granting or denying the request.

Can an appellant request that an unaccompanied registered patent practitioner not of record present at the oral argument?

Sometimes appellants wish to have a registered patent attorney who is not listed on the power of attorney present the oral argument. Such a registered patent practitioner who is not of record can present oral arguments without the power of attorney having to be updated or changed. To do so, the registered patent practitioner who is of record may grant authority to the registered practitioner who is not of record by submitting a written authorization in the file. Such a paper may be a Form/PTO/SB/84 "Authorization to Act in a Representative Capacity." This form is available from the USPTO website at <http://www.uspto.gov/web/forms/sb0084.pdf>.

Can an inventor who is unrepresented by a registered patent practitioner represent themselves and present oral arguments?

Inventors who are unrepresented by a registered patent practitioner have the right to represent themselves and present oral arguments before the PTAB.

Inventors may also present arguments at oral hearings, even if otherwise represented by a registered patent practitioner, so long as the inventors have not assigned to another any rights in the invention. In such situations, the PTAB requests that a courtesy written notification be faxed to the attention of the PTAB's hearing clerk at either (1) the USPTO's central fax number, 571-273-8300, or (2) the PTAB's hearing fax number, 571-273-9797. The hearing clerk will notify the assigned panel.

If an inventor wishes to present arguments at the oral hearing, but the inventor is represented by a registered patent practitioner and the inventor has assigned to another any rights in the invention, the registered patent practitioner will have to file a request for pro hac vice admission of the inventor in accordance with the next section. Such a pro hac vice request should include authorization from all assignees.

Do I have to notify the PTAB if the registered practitioner of record who will be presenting arguments is different from the one who signed the Notice of Hearing's attendance confirmation?

Counsel should make every attempt to provide the PTAB with the names of all persons presenting arguments. However, counsel is not required to provide the PTAB notice when one registered practitioner of record intends to substitute for another. However, the PTAB requests the name of all persons presenting arguments at oral hearings so that the judges assigned to the panel can determine prior to the hearing whether any conflicts exist that may require their recusal from the appeal. Therefore, it is prudent for counsel to provide such notification. Counsel can notify the PTAB of such a substitution either by (1) submitting a revised or corrected confirmation of attendance in accordance with the instructions set forth on the Notice of Hearing; or (2) faxing a notification to the attention of the PTAB's hearing clerk at either (1) the USPTO's central fax number, 571-273-8300, or (2) the PTAB's hearing fax number, 571-273-9797.

I am involved in an inter partes reexamination in which the patent owner and third party requestor have both timely requested oral hearings in relation to our respective appeal and cross-appeal. Does each side get 30 minutes argument time total or 30 minutes for each of the appeal and cross-appeal (60 minutes total)?

In such situations, each party gets 30 minutes total to argue the issues associated with both the appeal and the cross-appeal. The panel will decide the order in which the parties present their respective arguments and rebuttals.

How do I request additional argument time for an ex parte appeal hearing?

The appellant should fax requests for additional argument time for an ex parte appeal to the attention of the PTAB's hearing clerk at either (1) the USPTO's central fax number, 571- 273-8300, or (2) the PTAB's hearing fax number, 571-273-9797. The request should set forth the reasons why the appellant believes additional time is necessary. The fact that the appeal involves many issues generally is an insufficient reason to warrant the grant of additional argument time. Rather, the request should further set forth (1) why the issues to be argued are of such a nature that they cannot be adequately addressed in the Appeal Brief, and (2) why the issues to be addressed at the oral hearing warrant additional time be granted prior to the oral hearing.

The hearing clerk will forward the request to the assigned panel for its consideration and recommendations. An order will then be issued granting or denying the request. In the event that the request for additional argument time is denied, the panel may nonetheless maintain the request under consideration, and upon a renewed request by the appellant at the hearing's outset, grant additional time in the course of the hearing if the panel finds that doing so would help clarify the issues being discussed.

Can an oral hearing fee be refunded?

The PTAB personnel do not address questions regarding fees. All questions pertaining to fees and refunds should be directed to the Appeals Center or the Central Reexamination Unit.

I received an Order Denying Oral Hearing in an ex parte proceeding. How do I request reconsideration and/or petition this order?

The appellant will need to file a petition under **37 CFR § 41.3** and the requisite fee under **37 CFR § 41.20(a)** requesting that the hearing request be accepted. Such petition is due within 14 days from the Order Denying Oral Hearing or other time period set by the PTAB in writing. See **37 CFR § 41.3(e)**. The chief administrative patent judge or his/her designee will decide the petition.

Will a written transcript of an oral hearing be available?

Generally, oral hearings for all ex parte appeals, reexaminations, and AIA trial proceedings are recorded by contract court reporters. The oral hearings staff typically receives draft copies of the written transcript about seven to ten days after the hearing. Upon receipt, the draft transcript is forwarded to one or more judges of the assigned panel for the review of matters such as the spelling of technical terms and the names of the relied upon references. The reviewed transcript is then forwarded to the PTAB's administrative staff for formatting, entry into the record, and mailing to the appellant or the parties. Mailing and posting to PAIR (or PTABE2E for AIA trial proceedings) usually occurs within four weeks after the hearing. Only an APJ on the panel can request to expedite transcripts. The PTAB does NOT provide the parties or the public the name of the court reporter agency that is being used for the oral hearing.

While not mandatory, the creation and review of transcripts may be expedited if appellants provide to the court reporters, at the outset of the hearing, a written list of any difficult-to-spell technical terms that are likely to be discussed.

Further questions regarding oral hearings should be directed to the PTAB's hearing clerk, who can be reached at 571-272-9797.

HEARINGS GUIDE DEFINITIONS OF KEY TERMS:

Administrative patent judge (APJ): An APJ serves as a member of the PTAB of the USPTO. The PTAB has authority to, among other things: hear and adjudicate appeals from decisions of primary examiners as to patentability in patent applications and reissue and re-examination of patents; conduct post-grant review proceedings, inter partes review proceedings, derivation proceedings, and transitional program for covered business method patent proceedings; and declare and conduct proceedings in legacy interferences.

American Invents Act (AIA): The Leahy-Smith America Invents Act (AIA), Pub. L. No. 112-29, 125 Stat. 284 (2011) was signed by President Obama on September 16, 2011. Its many provisions were implemented in stages. The “first inventor to file” legal standard, as of March 16, 2013, replaced the “first to invent” legal standard.

Appellant: Party who appeals two non-final or one final rejection by the examiner.

Applicant: Inventor or joint inventors who are applying for a patent on their own invention, or the person mentioned in 37 CFR § 1.42, 1.43, or 1.47 who is applying for a patent in place of the inventor. For U.S. applications filed before September 16, 2012, the applicant was the actual inventor, except when the inventor was deceased, mentally or otherwise incapacitated, refused to execute an oath/declaration, or could not be found after diligent effort. For U.S. applications filed on or after September 16, 2012, as a result of the America Invents Act (AIA), the applicant can be (1) the inventor, (2) the deceased/incapacitated inventor’s legal representative (heir, executor, etc.), (3) the assignee, (4) the person or entity to whom the inventor is obligated to assign the patent, or (5) a person or entity showing sufficient proprietary interest in the invention. The assignee, obligated assignee, or proprietary party may file the application even when the inventor is living, is not legally incapacitated, is available, and is willing to sign an oath/declaration.

Application: The documents by which the applicant requests the granting of a patent. An application may be provisional (an unexamined application that gives the applicant 12 months to file a non-provisional application and get benefit from the provisional filing date) or non-provisional (an application that is examined and, if allowed by the examiner, can issue as a patent).

Chief judge: The chief judge supervises the judges and is responsible for oversight and management of the PTAB operations.

Chief clerk of the PTAB: The chief over the Case Management Branch in the PTAB. The Case Management Branch includes Hearings and Paralegal Operations.

Covered business method (CBM): Beginning September 16, 2012, the transitional program for covered business method patents (TPCBM) is a trial conducted by the PTAB. A CBM trial “shall employ the standards and procedures of a post-grant review” and, if the petition is not dismissed, will conclude with a final written decision pursuant to 35 U.S.C. § 328(a).

Derivation proceedings: As of March 16, 2013, derivation proceedings replaced interference proceedings for patent applications having an effective filing date on or after March 16, 2013. (Interference proceedings are still possible for applications that are subject to pre-AIA 35 U.S.C. § 102(g).) A derivation proceeding requires that an applicant for patent file a petition to institute the proceeding. The petition must set forth with particularity the basis for finding that an inventor named in an earlier application derived the claimed invention from the petitioner. The end-product, if the petition is not dismissed, and after a trial conducted by the PTAB, is a derivation certificate.

Deputy clerk: The deputy clerk is responsible for oral hearing operations.

Examiner: A USPTO employee who reviews patent applications to determine the patentability and scope of inventions.

Ex parte reexaminations: See Reexaminations.

Interference: Proceeding to review the patentability of one or more claims in a patent with a priority date before March 16, 2013, only on a ground that could be raised under sections 102 or 103, and only on the basis of prior art consisting of patents or printed publications. 35 U.S.C. § 311(b).

Inter partes reexaminations: See Reexaminations.

Inter partes review: Beginning September 16, 2012, a trial conducted by the PTAB and based on a third-party petition. It involves reviewing the patentability of one or more claims, including a review “on the basis of prior art consisting of patents and printed publications.” If the petition is not dismissed, the proceeding will conclude with a final written decision pursuant to 35 U.S.C. § 318(a). The inter partes review procedure replaced the inter partes reexamination procedure as of September 16, 2012—that is, an inter partes reexamination proceeding cannot be filed on or after September 16, 2012. (The patent grant date is not relevant with respect to which procedure is available.)

Panel: Three or more members of the PTAB selected to adjudicate a proceeding together.

Party: Any entity participating in a PTAB proceeding other than officers or employees of the USPTO.

Patent: (1) A grant by a country’s government (or, in some cases, by an intergovernmental entity acting for several countries) of the right to prevent others for a limited time from making, using, or selling in that country the invention or discovery defined in the claims. It creates a legal situation in which the invention can be exploited only with the authorization of the owner of the patent. There are three types of patents granted under Title 35 of the U.S. Code: utility patents, design patents, and plant patents.

(2) A printed document (also known as “Letters Patent”) establishing the rights of the inventor and fully describing the invention in a specification.

Petitioner: As used in this hearings guide, petitioner is the party filing a petition requesting that a trial be instituted. 37 CFR § 42.1.

Post-grant review: Petitioner requests to cancel as unpatentable one or more claims of a patent on any ground that could be raised under 35 U.S.C. § 282(b)(2) or (3) (relating to invalidity of the patent or any claim) during the nine-month period following grant. 35 U.S.C. § 321(b) and 35 U.S.C. § 321(c). If the petition is not dismissed, the proceeding will conclude with a final written decision pursuant to 35 U.S.C. § 328(a).

The Patent Trial and Appeal Board: The PTAB conducts trials, including inter partes, post-grant, and covered business method patent reviews, and derivation proceedings, hears appeals from adverse examiner decisions in patent applications and reexamination proceedings, and renders decisions in interferences.

Reexaminations: A process by which, either on his or her own initiative or in response to the filing of a request by any person at any time, the USPTO director can order the reexamination of a patent grant to decide a substantial new question of patentability affecting any claim of that patent. There are two kinds of reexamination proceedings, ex parte (from one party) and inter partes (involving multiple parties). It is possible for one or more reexamination proceedings to be merged, including the merger of ex parte and inter partes proceedings. Reexamination proceedings are conducted by the USPTO’s Central Reexamination Unit. As of September 16, 2012, under the America Invents Act, instead of filing an inter partes reexamination proceeding under 35 U.S.C. § 316, the third party files a request for inter partes review, to be conducted by the PTAB. Under the America Invents Act, the Central Reexamination Unit continues to conduct ex parte proceedings under 35 U.S.C. § 307, and in addition conducts ex parte proceedings under 35 U.S.C. § 257, the latter being possible consequences of supplemental examination proceedings. Reexamination certificates of three types—ex parte issued under 35 U.S.C. § 307, ex parte ordered under 35 U.S.C. § 257 (and issued under 35 U.S.C. § 307), and inter partes issued under 35 U.S.C. § 316—can issue on any weekday and are reported in the daily electronic Official Gazette for Certificates and also in the next week’s electronic Official Gazette for Patents. Appeals of reexamination proceedings are heard by the PTAB.