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Squires' Institution Flips Are Increasing Uncertainty At PTAB

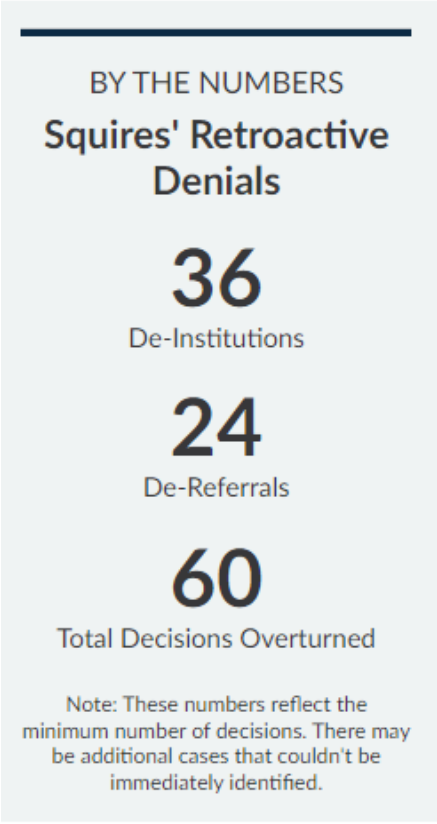
By **Dani Kass**

Law360 (May 26, 2026, 4:14 PM EDT) -- U.S. Patent and Trademark Office Director John Squires has created a record low institution rate at the Patent Trial and Appeal Board, and attorneys say it's becoming increasingly clear that even an initial approval from the director may not last.

There have been 24 inter partes reviews that Squires initially found met discretionary denial standards — and were therefore worthy of merits review — that he later concluded should have been discretionarily denied. He has al so stepped into cases previously instituted by administrative patent judges and walked back those approvals.

"Institution is no longer the end of the discretionary denial story," said Jones Day partner Josh Nightingale. "Previously, most parties to an IPR were operating under the assumption that if the IPR was actually instituted, then eventually a final written decision would be issued. The director's recent decisions really challenged, or maybe totally eliminated, that assumption."

The USPTO declined to comment.



A Year of Change

Since President Donald Trump returned to office in 2025, patent office leadership has been reining in the amount of challenges allowed to go through the inter partes and post-grant review processes. The leaders also took control of the institution process, which used to be handled by administrative patent judges.

Deputy Director Coke Stewart, who served as acting director from January to September 2025, identified a series of new factors that would lead to petitions being discretionarily denied, such as minimizing challenges to older patents, so the patent owner could have "settled expectations" that their patent wouldn't be contested. She also tightened the standards for allowing a review to proceed while there was parallel litigation that overlaps with the PTAB's work.

Once Stewart conducted her review of discretion, she let the PTAB judges decide whether to institute review on the merits.

When Squires replaced Stewart in October, he also took on the job of reviewing merits.

Squires built on Stewart's high discretion threshold, and their collective policies led the number of IPR and PGR petitions being filed to drop to a historic low.

In the first three months of 2026, the PTAB received 51 petitions total, which is fewer than the board used to receive per month. In December 2024, the Biden administration's last full month, agency data shows the PTAB received 135 petitions.

Squires' overall institution rate is 25.9%, compared to a rate that ranged from 58% to 68% each fiscal year between 2021 and 2024.

"If you look at the totality of everything going on, it's a very dynamic world," said Davis Wright Tremaine LLP partner Mauricio Uribe. "Certainly, it's been more dynamic than we had traditionally looked at for any kind of post-grant proceeding."

Going Backward

Stewart and USPTO directors before her regularly evaluated discretionary arguments, but they were usually limited to the initial, pre-merits institution decision.

That's not to say directors were totally uninvolved in the later process. Biden-era Director Kathi Vidal heavily used the director review process to weigh in on IPRs and align the board with her plan for a stronger PTAB.

But Squires has been undoing his own decisions, along with ending in-progress IPRs based on precedent he sets later on.

Squires' most significant precedent on this front is Revvo Technologies Inc. v. Cerebrum Sensor Technologies Inc. from Nov. 3. In that director review ruling, he vacated the board's institution grant and remanded it, saying Revvo was advocating for different claim constructions at the PTAB than those in district court litigation, and didn't sufficiently explain why.

The PTAB reviewed the petition again with Squires' precedent in mind and again instituted review. Squires again overrode the board based on Revvo taking inconsistent positions.

Since then, Squires has cited Revvo at least 22 times to deny petitions he'd originally deemed worthy of merits review.

"It's making it harder to plan," said Mayer Brown LLP partner Clayton McCraw. "It's creating greater uncertainty and less transparency. Parties expend substantial time and resources litigating in the PTAB, and it raises the question of whether those PTAB judgments are truly final."

Several of the alleged claim construction inconsistencies come from the challenger saying in district court that the patent doesn't have defined boundaries.

"If the petitioner is able to apply the prior art to the claims at the PTAB, then the director is seeing that as being inconsistent with an argument in the district court that the claims are indefinite," said Nightingale of Jones Day.

Squires has also de-instituted cases for violating a stipulation not to bring up overlapping arguments in district court, raising claims since surrendered by the patent owner, being repetitive and not properly disclosing all real parties in interest.

"One of the things that the director is looking for right now is: 'Is it a petition that actually helps the patent office and helps the patent system,' versus 'is this just a serial challenge that's being lodged at the patent owner in connection with litigation?'" McCraw said.

Nightingale said it's likely patent owners will now be raising requests for director review during different stages of the proceedings, including midtrial.

"Why wait until the final written decision?" he said.

Late-Term Intervention

Squires' first director review decision was also one of his most controversial.

On Oct. 1, he retracted institution in a case where the PTAB already issued its final written decision. The director found Interactive Communications International Inc.'s expert unreliable in its successful challenge to a Blackhawk Network Inc. lottery ticket patent.

Rather than tell the board to reconsider, he reversed the final written decision and terminated the proceeding. He later altered his ruling to vacate the decision, but in both situations, he declared the ruling was not a final written decision.

Squires attempted to make his rulings equivalent to institution decisions, signaling Blackhawk was not allowed to appeal.

Stewart had made a similar ruling when vacating a final written decision in Verizon's successful challenge to an Omega Patents LLC.

Both cases are on appeal at the Federal Circuit, challenging the director's authority.

The patent owner and the petitioner each face difficulties when a final written decision is wiped like this, according to McCraw.

"When you're looking at an IPR that goes all the way to a final written decision and then is vacated in a director review — that's going to prevent an appeal by the petitioner, but it's also going to prevent estoppel that's going to be associated with the district court that the patent owner may have desired," he said.

What To Do

While discretion has become all encompassing, it doesn't change the fundamentals of a good argument, said Davis Wright's Uribe.

"I don't think we've seen necessarily a change in terms of the merits," he said. "It's not like there's a different standard in terms of what's being applied. But now the question is like, 'OK, it's yes, and … .'"

The "gold standard" of a successful IPR or PGR petition right now is having a strong merits argument and showing the patent examiner made a mistake, Uribe said.

"If you have that, then I don't think the strategy varies" from current practice, he added.

When a petitioner's PTAB and district court proceedings have different legal teams, Nightingale said they have to coordinate more than ever.

"The left hand needs to know what the right hand is doing," he said. "There's always been a need for sophisticated petitioners to keep an eye on the big picture, but now there's this new risk — this real risk of de-institution, which we didn't really have before."

The Jones Day partner suggested petitioners have a post-institution checklist to make sure every element in the parallel proceedings lines up, be it claim construction or compliance with a stipulation.

"Patent owners going forward are going to be really on the lookout for more subtle inconsistencies," Nightingale said. "If you're a patent owner, I think the takeaway is even if an IPR has been instituted, you now have some hope of extricating yourself."

--Editing by Nicole Bleier.
