

The New Race to Judgment: How the USPTO's Proposed IPR Rule Makes Litigation Speed a Decisive Weapon

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On October 17, 2025, the USPTO proposed new rules that would dramatically alter IPR strategy. The most impactful change to the status quo is a proposal to bar the PTAB from instituting an IPR if a parallel district court case is likely to reach a validity decision first. This "race to judgment" provision elevates procedural timing from a simple scheduling matter to a dispositive strategic factor.

The implications of these proposed changes extend far beyond simple procedural adjustments. Litigants will need to reassess their strategies at the very outset of a case, considering not only the merits but also the anticipated speed of the chosen forum. The interplay between district court schedules and PTAB timelines will become a central battleground, and legal counsel will need to monitor docket speeds and judicial tendencies more closely than ever before.

The Core Proposal: Weaponizing the Court Schedule

The proposed rule aims to codify and strengthen the controversial *Fintiv* framework, which gives the PTAB discretion to deny institution based on a parallel court proceeding. Under this proposal, the PTAB would be directed to deny institution if a parallel proceeding (in district court or at the ITC) is likely to "resolve the validity" of the patent before the PTAB's one-year deadline for a Final Written Decision. (§ 42.108(f)).

This rule change effectively creates a high-stakes race. The winner is whoever can secure a faster *final* decision on validity. This fundamentally rewires the playbook for both patent owners and accused infringers.

Other Proposed Rule Changes:

1. **Required Stipulation (§ 42.108(d)):** Petitioners must stipulate that they will not pursue invalidity challenges under §§ 102 or 103 in other venues if an IPR is instituted.
2. **Claims Previously Found Valid (§ 42.108(e)):** An IPR will not be instituted if the challenged claims (or their independent claims) have already been found valid or patentable in district court trials or summary judgment, ITC determinations, prior PTAB decisions, ex parte reexaminations; and Federal Circuit reversals of invalidity findings.
3. **Extraordinary Circumstances (§ 42.108(g)):** Institution may occur only if the Director determines extraordinary circumstances exist, such as bad faith in prior challenges or significant changes in law.

New Playbook for Patent Owners:

- **Weaponize "Fast" Jurisdictions:** Securing a trial date quickly that precedes the PTAB's deadline could be crucial to avoiding PTAB review. Filing in known "rocket dockets" (e.g., W.D. Tex., E.D. Va.) becomes an even more powerful offensive strategy.
- **Aggressively Oppose Stays:** Vigorous opposition to any defense motion to stay the district court case pending an IPR may help avoid administrative review by arguing that the court's own speedy timeline renders the IPR

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duplicative *by design*.

- Win the Scheduling Conference: The most important fight may no longer be at a claim construction hearing, but at the initial scheduling conference. Securing an early, firm trial date could now be your best anti-IPR shield.

New Playbook for Accused Infringers (Petitioners):

- Run to “Slow” Jurisdictions: If you anticipate an infringement suit, filing a Declaratory Judgment action in a jurisdiction with a historically slower time-to-trial (e.g., D. Del., N.D. Cal.) could be a critical defensive move to “win the race” for your IPR.
- Fight for Venue Transfers: A motion to transfer out of a “rocket docket” is no longer just about convenience; it may be a dispositive fight for the right to file an IPR.
- Delay Becomes a Core Tactic: Every argument for a more “reasonable” discovery schedule or a later trial date takes on new urgency, building a record showing the court case cannot conclude before the PTAB.
- File IPRs *Immediately*: The 12-month clock for the PTAB doesn’t start until *institution*. But the *earlier* you file the petition, the stronger your argument that the PTAB can finish its review before a nascent, undeveloped court case.

Strategic Takeaway

This proposed rule signals that procedural litigation strategy is now inseparable from patent validity strategy. The “process” arguments—venue, scheduling, motions to transfer, and stays—are now central, high-stakes battles that will determine whether the most powerful tool for challenging a patent (the IPR) is even on the table.

Stakeholders have a 30-day window to submit comments via www.regulations.gov under Docket No. PTO-P-2025-0025.

Our team is monitoring these developments. We ready to help you navigate this new potential landscape, whether that means designing a national enforcement strategy that leverages fast dockets or architecting a defense that preserves your critical PTAB options. If you have questions about this subject, please call your Miller Canfield attorney or one of the authors of this alert.