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USPTO rescinds memorandum addressing discretionary denial procedures

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Patent Trial and Appeal Board



USPTO rescinds memorandum addressing discretionary denial procedures

Today, the USPTO rescinded the June 21, 2022, memorandum entitled "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation" (Memorandum).

Parties to post-grant proceedings should refer to Patent Trial and Appeal Board (PTAB) precedent for guidance, including [Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 11 \(PTAB Mar. 20, 2020\) \(precedential\)](#) and [Sotera Wireless, Inc. v. Masimo Corp., IPR2020-01019, Paper 12 \(PTAB Dec. 1, 2020\) \(precedential as to S II.A\)](#).

To the extent any other PTAB or Director Review decisions rely on the Memorandum, the portions of those decisions relying on the Memorandum shall not be binding or persuasive on the PTAB.



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