

# The Evolution of PTAB Practice Strategies in Light of Recent Developments

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## Discussion Topics

- Board “Administrative” Responses to Recent Developments
- Petition Strategies
- Prior Art – Can You Prove It Was Published?
- Patent Owner Preliminary Response
- Claim Construction
- Evidence and Discovery
- Wrap-Up: “A New Day at the PTAB”

## Board “Administrative” Responses to Recent Developments

- How has the Board responded to challenges presented by recent developments, concerning the following?
  - Policy making, consistency among panels, and dissenting opinion
  - Education of stakeholders
- What additional administrative challenges lie ahead?

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## Petition Strategies

- **Multiple grounds**
  - Post-*SAS Institute*, what should petitioners do differently? What strategies are likely to be negatively received by the Board?
- **Multiple proceedings**
  - Have discretionary denials increased or decreased?
  - Under what circumstances are multiple petitions likely to be discretionarily denied?
  - When should I do a joint filing, seek joinder, or go it alone?
  - Should a petition pre-emptively address facts related to the discretionary denial factors?

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## Petition Strategies

- **Real party in interest**
  - How are panels and parties adapting to the Court's recent views concerning the RPI question?
- **Petition Drafting**
  - What are common pitfalls to avoid in crafting the petition?

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## Prior Art: Can You Prove It Was Published?

- **For certain types of documents, establishing “printed publication” status can be tricky.**
  - What are the most common pitfalls faced by petitioners? Is the Board becoming more, or less, lenient at the Institution stage?
  - What are the most frequent deficiencies associated with documents obtained using Internet Archive's Wayback Machine?
  - What should patent owners do to maximize the chances a reference will be disqualified as prior art?

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