

Interplay of District Court Litigation and the PTAB



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Interplay of District Court Litigation and the PTAB

- Litigation Commenced: To File or Not to File?
- IPR Filed: Now What?
- Post-PTAB Decision: Next Steps?

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Litigation Commenced: To File or Not to File?

- Evaluate Fintiv Factors
- Estoppel: Non-Petitioned References & Product Prior Art
- Claim Construction: Claim Terms & Inconsistent Positions

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To File or Not to File: Why it matters

- Evaluate the likelihood that PTAB will deny institution
 - District Court Practices
 - District Court Schedules
 - Available Prior Art
 - Asserted Claims v. All Patent Claims
 - Stipulations
 - Other Lawsuits/PTAB proceedings – Same Patents
- Why it matters?

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To File or Not to File: Why it matters

PGR/IPR Fees through Filing of Petition

| | Life Sciences | Electrical | Mechanical |
|-----------------------------|---------------|------------|------------|
| Mean (Average) | 211,000 | 136,000 | 134,000 |
| 10 th Percentile | 65,000 | 58,000 | 56,000 |
| Median (Midpoint) | 225,000 | 120,000 | 120,000 |
| 90 th Percentile | 425,000 | 213,000 | 220,000 |

Source: AIPLA 2021 Report of the Economic Survey at I-182, I-186, I-190

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