



The PTAB: 5 Years Later

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The Accelerated Evolution of the PTAB

Legislation

- **Pass House of Representatives June 23, 2011**
- **Senate took it up September 8, 2011**
- **Bill signed into law September 16, 2011**

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Rule-Making

- Usually takes 16-24 months
- Internal PTO drafting and review
- DOC and OMB review
- Notice of proposed rule-making (NPRM) in the Federal Register issued February 9 and 10, 2012
- Public 60-day comment period ended April 9-10, 2012

Rule-Making

- Public comments reviewed and summarized by business units within the PTO
- High level PTO meetings to discuss changes to the rules based on public comments
- Final rules written

Rule-Making

- DOC and OMB review
- Final rules published in the Federal Register on August 14, 2012
- Effective date was September 16, 2012 – 30 days after publication of final rule

Reason for Post-Grant Proceedings

- Congress intended IPR to serve as complete substitute to litigate validity

See SAS Inst., Inc. v. ComplementSoft, LLC, 825 F.3d 1341, 1354 (Fed. Cir. 2016) (Newman, J., dissenting); *Douglas Dynamics, LLC v. Meyers Prods., LLC*, No. 14-cv-886-jdp, slip op. at 9 (W.D. Wisc. Apr. 18, 2017)

 - No true comparison
 - US: neither EPX nor IPX true substitute
 - OUS: oppositions more like PGR; German federal patent court
- Consistent with purpose, earlier PTAB ruling of unpatentability divests courts of jurisdiction

Fresenius USA, Inc. v. Baxter Int'l, Inc., 721 F.3d 1330 (Fed. Cir. 2013)

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