

return to the research area to conduct more experimental tows. The temporary exemption from the regulated size and possession limits would allow for scup, windowpane flounder, and various bycatch species to be onboard the vessel while sampling and weighing activities are taking place prior to discard.

The project will be conducted primarily during the fall months (September-November), while both scup and windowpane flounder reside predominately inshore, with the two species occurring together in high numbers south of Long Island, NY, and Nantucket, MA. However, trips may also occur in the spring if more data or additional trips are needed.

The participating vessels would conduct research fishing concurrently, orienting the vessels side-by-side, within a half mile of each other while fishing gear is deployed. The vessels would be using typical scup trawl fishing methods and the participants would be members of the small mesh scup trawl fleet, holding scup permits. To test the experimental gear, one vessel will have its scup net modified with the large-mesh belly panel installed into the first belly of the net, the other vessel will have the same scup net without the large-mesh belly panel added. The resulting catch data will identify the differences in catch between the standard net and the experimental net. The vessels will alternate the use of the standard net and the net with the experimental gear, giving each vessel the same amount of tows using each gear type. The two vessels would be of similar size and horsepower with identical doors, legs, and ground cables.

The vessels will concurrently conduct seven days of research fishing over the course of two to three trips, with a minimum of six tows per day for each vessel, with each tow lasting an hour. This will provide a minimum of 84 tows (42 with the standard net and 42 with the experimental net) for the research project. Each vessel would weigh its respective catch of both scup and windowpane flounder and measure the length of 100 random samples of each species after each tow. If fewer than 100 individuals from a sample species are caught, all individuals will be measured. The total weight of all additional species from each tow will be obtained either by weighing or by catch estimations.

The vessels would retain legal size scup and other legally permitted species to be landed and sold. Windowpane flounder and other prohibited species will not be retained. No additional mortality of fish species or interactions with protected species would occur

during this project, beyond that of typical commercial scup trawl operations.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: August 20, 2015.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

[Docket No.: PTO-P-2015-0055]

#### Request for Comments on a Proposed Pilot Program Exploring an Alternative Approach to Institution Decisions in Post Grant Administrative Reviews

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is requesting comments on a proposed pilot program pertaining to the institution and conduct of the post grant administrative trials provided for in the Leahy-Smith America Invents Act (AIA). The AIA provides for the following post grant administrative trials: *Inter Partes* Review (IPR), Post-Grant Review (PGR), and Covered Business Method Review (CBM). The USPTO currently has a panel of three APJs decide whether to institute a trial, and then normally has the same three-APJ panel conduct the trial, if instituted. The USPTO is considering a pilot program under which the determination of whether to institute an IPR will be made by a single APJ, with two additional APJs being assigned to the IPR if a trial is instituted. Under this pilot program, any IPR trial will be conducted by a panel of three APJs, two of whom were not involved in the determination to institute the IPR.

**DATES:** *Comment Deadline Date:* To be ensured of consideration, written

comments must be received on or before October 26, 2015.

**ADDRESSES:** Comments must be sent by electronic mail message over the Internet addressed to: *PTABTrialPilot@uspto.gov*. Electronic comments submitted in plain text are preferred, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. The comments will be available for viewing via the USPTO's Internet Web site (<http://www.uspto.gov>). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

#### FOR FURTHER INFORMATION CONTACT:

Scott R. Boalick, Vice Chief Administrative Patent Judge, Patent Trial and Appeal Board, by telephone at (571) 272-9797.

#### SUPPLEMENTARY INFORMATION:

*Introduction:* The first petitions for AIA post grant administrative trials were filed on September 16, 2012. Since then, over 3,600 petitions have been filed, and over 1,500 trials have been instituted. The USPTO has thus far been able to meet the demands placed on its resources created by the unexpectedly heavy workload. The Patent Trial and Appeal Board (PTAB) has issued over 2,200 decisions on institution and over 450 final written decisions. In three-plus years, the PTAB has not missed one statutory or regulatory deadline. At the same time, the PTAB has reduced the backlog of ex parte appeals.

Notwithstanding the success-to-date, the USPTO is pro-actively looking for ways to enhance its operations for the benefit of its stakeholders and therefore is interested in exploring alternative approaches that might improve its efficiency in handling AIA post grant proceedings while being fair to both sides and continuing to provide high quality decisions. Based upon comments received from the public through public fora and formal requests, the agency is considering a pilot program to test changing how the institution phase of a post grant proceeding is handled.

Once trial is instituted, the AIA mandates that the resulting trial be conducted before a three-member panel of the PTAB. Generally, under current practice, the same panel of three administrative patent judges (APJs) decides whether to institute and, if instituted, handles the remainder of the proceeding, much like how federal district court judges handle cases through motions to dismiss, summary

judgment, and trial. But a three-judge panel of the PTAB is not required under the statute prior to institution, and the USPTO believes it is prudent to explore other potentially more efficient options, especially given that the number of petitions filed may continue to increase.

To date and currently, the agency has intended to meet the resource demands on the PTAB due to both AIA post grant proceedings and ex parte appeals by hiring additional judges. Even with continued hiring, however, increases in filings and the growing number of cases may strain the PTAB's continuing ability to make timely decisions and meet statutory deadlines. Therefore, the agency wishes to explore and gain data on a potentially more efficient alternative to the current three-judge institution model. Having a single judge decide whether to institute trial in a post grant proceeding, instead of a panel of three judges, would allow more judges to be available to attend to other matters, such as reducing the ex parte appeal backlog and handling more post grant proceedings.

**Background:** As discussed previously, the AIA provides for IPR, PGR, and CBM trials, under which a petitioner may seek cancellation of one or more claims of a patent. The AIA provides that the Director decides whether to institute an IPR, PGR, or CBM trial. See 35 U.S.C. 314 and 324. An IPR is not instituted unless there is a determination that the petition demonstrates that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. See 35 U.S.C. 314(a). A PGR or CBM is not instituted unless there is a determination that the petition, if un rebutted, demonstrates that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. See 35 U.S.C. 324(a). Alternatively, a PGR or CBM may be instituted where the petition raises a novel or unsettled legal question that is important to other patents or patent applications. See 35 U.S.C. 324(b). Once instituted, and after a trial is conducted, the PTAB issues a final written decision with respect to the patentability of any patent claim challenged by the petitioner and any new claim added during the review. See 35 U.S.C. 318 and 328. The final determination in an IPR, PGR, or CBM must, with limited exceptions, be issued not later than one year after the date on which the institution of the IPR, PGR, or CBM is noticed. See 35 U.S.C. 316(a)(11) and 326(a)(11); 37 CFR 42.100(c), 200(c), and 300(c).

The authority to determine whether to institute and conduct a trial has been

delegated to a Board member or employee acting with the authority of the Board. See 37 CFR 42.4; see also *Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions*, 77 FR 48612, 48647 (Aug. 14, 2012). As a result, neither the AIA nor the USPTO's rules require that an institution decision be made by a panel of multiple individuals within the USPTO. The AIA does, however, require that the final written decision in an IPR, PGR, or CBM be rendered by a panel of at least three APJs. See 35 U.S.C. 6(c). The PTAB has developed the practice of deciding whether to institute an IPR, PGR, or CBM trial via three-APJ panels, and then conducting the trial, if instituted, usually by the same three-APJ panel.

**Proposed Pilot Program:** The USPTO is seeking input on whether to conduct a pilot program under which a single APJ would decide whether to institute an IPR trial, with two additional APJs being assigned to conduct the IPR trial, if instituted. Under this pilot program, any IPR trial will be conducted by a panel of three APJs, two of whom were not involved in the determination to institute the IPR.

**Conduct of Proposed Pilot Program:** The USPTO is considering selecting certain petitions for inclusion in the proposed pilot program from among all IPR petitions filed during a specific period. The selection would continue for at least three and up to six months. The pilot program would be limited to IPRs. The USPTO would consider the results of this pilot program to determine whether and to what degree to implement this approach more generally in the future, for example, potentially only in response to an unusually high volume of petitions.

Due to the *inter partes* nature of IPR trials and the need to avoid selection bias during the evaluation of the results, it is not practical to allow petitioners or patentees to request participation in, or exclusion from, the pilot program.

Finally, it is possible that an IPR initially selected for the single-APJ pilot program will ultimately be determined unsuitable for inclusion in the pilot. In such a situation, the IPR would be removed from the proposed single-APJ pilot program.

**Assignment of Trial Panel under the Single-Judge Pilot Program:** If the single-APJ decision results in institution of trial, the PTAB would, after institution, assign two additional APJs to the panel for rendering interlocutory decisions, as needed, and for issuing a final written decision on the merits. The PTAB may assign three new APJs to the panel, for

example, in the rare circumstance that the APJ who granted the institution is not available to sit on the panel post institution or where, due to workloads, it would be more efficient to assign a new three-judge panel to the proceeding. When possible, the trial panel assignment would maintain the role of the single APJ as the judge generally managing the proceeding during trial. This would ensure that the judge most familiar with the IPR has the responsibility of coordinating interlocutory activity with the parties during trial.

**Scheduling Order:** Typically, when trial is instituted, a scheduling order is entered concurrently with the decision on institution. To allow for coordination of deadlines and the trial panel's availability for oral argument and other due dates, the scheduling order in trials instituted pursuant to a decision under this pilot program will not be entered concurrently with the decision on institution. The PTAB expects that, after the trial panel is notified of the assignment, the panel will issue promptly a scheduling order for the IPR.

**Question for Public Comment:** The USPTO is inviting written comments from any member of the public on the pilot program under consideration. Specifically, the USPTO is seeking comment on any issue relevant to the design and implementation of a pilot program under which an IPR trial is conducted by a panel of three APJs in which two of the APJs were not involved in the determination to institute the IPR. In particular, the USPTO is seeking public input on the following questions.

## Questions

1. Should the USPTO conduct the single-APJ institution pilot program as proposed herein to explore changes to the current panel assignment practice in determining whether to institute review in a post grant proceeding?
2. What are the advantages or disadvantages of the proposed single-APJ institution pilot program?
3. How should the USPTO handle a request for rehearing of a decision on whether to institute trial made by a single APJ?
4. What information should the USPTO include in reporting the outcome of the proposed single-APJ institution pilot program?
5. Are there any other suggestions for conservation and more efficient use of the judicial resources at the PTAB?

Dated: August 20, 2015.

**Michelle K. Lee,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2015-21052 Filed 8-24-15; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Independent Review Panel on Military Medical Construction Standards; Notice of Federal Advisory Committee Meeting

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the Independent Review Panel on Military Medical Construction Standards (“the Panel”).

**DATES:**

*Friday, September 11, 2015*

8:00 a.m.–9:00 a.m. EDT  
(Administrative Working Meeting)

9:00 a.m.–11:30 a.m. EDT (Open Session)

11:30 a.m.–1:30 p.m. EDT

(Administrative Working Meeting)

**ADDRESSES:** Falls Church Marriott Fairview Park, 3111 Fairview Park Drive, Falls Church, Virginia, 22042.

**FOR FURTHER INFORMATION CONTACT:** The Executive Director and Designated Federal Officer is Ms. Christine Bader, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *Christine.e.bader.civ@mail.mil*, (703) 681-6653, Fax: (703) 681-9539. For meeting information, please contact Ms. Kendal Brown, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042, *Kendal.l.brown2.ctr@mail.mil*, (703) 681-6670, Fax: (703) 681-9539.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102-3.150.

#### Purpose of the Meeting

At this meeting, the Panel will publically deliberate its findings and recommendations of its final report addressing the Ike Skelton National Defense Authorization Act (NDAA) for Fiscal Year 2011 (Pub. L. 111-383), Section 2852(b) requirement to provide

the Secretary of Defense independent advice and recommendations regarding a construction standard for military medical centers to provide a single standard of care, as set forth in this notice:

a. Reviewing the unified military medical construction standards to determine the standards consistency with industry practices and benchmarks for world class medical construction;

b. Reviewing ongoing construction programs within the DoD to ensure medical construction standards are uniformly applied across applicable military centers;

c. Assessing the DoD approach to planning and programming facility improvements with specific emphasis on facility selection criteria and proportional assessment system; and facility programming responsibilities between the Assistant Secretary of Defense for Health Affairs and the Secretaries of the Military Departments;

d. Assessing whether the Comprehensive Master Plan for the National Capital Region Medical (“the Master Plan”), dated April 2010, is adequate to fulfill statutory requirements, as required by section 2714 of the Military Construction Authorization Act for Fiscal Year 2010 (division B of Pub. L. 111-84; 123 Stat. 2656), to ensure that the facilities and organizational structure described in the Master Plan result in world class military medical centers in the National Capital Region; and

e. Making recommendations regarding any adjustments of the Master Plan that are needed to ensure the provision of world class military medical centers and delivery system in the National Capital Region.

#### Agenda

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165 and subject to availability of space, the Panel meeting is open to the public from 9:00 a.m. to 11:30 a.m. on September 11, 2015, as the Panel will meet in an open forum to deliberate the findings and recommendations that will be contained in the Panel’s final report to the Secretary of Defense.

#### Availability of Materials for the Meeting

A copy of the agenda or any updates to the agenda for the September 11, 2015, meeting, as well as any other materials presented, may be obtained at the meeting.

#### Public’s Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102-3.140 through 102-3.165 and subject to availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Kendal Brown at the number listed in the section **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Tuesday, September 1, 2015, to register.

#### Special Accommodations

Individuals requiring special accommodations to access the public meeting should contact Ms. Kendal Brown at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

#### Written Statements

Any member of the public wishing to provide comments to the Panel may do so in accordance with 41 CFR 102-3.105(j) and 102-3.140 and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice.

Individuals desiring to provide comments to the Panel may do so by submitting a written statement to the Executive Director (see **FOR FURTHER INFORMATION CONTACT**). Written statements should address the following details: the issue, discussion, and a recommended course of action. Supporting documentation may also be included, as needed, to establish the appropriate historical context and to provide any necessary background information.

The Executive Director will review all timely submissions with the Panel Chairperson and ensure they are provided to members of the Panel before the meeting that is subject to this notice. After reviewing the written comments, the Panel Chairperson and the Executive Director may choose to invite the submitter to orally present their issue during the open portion of this meeting. The Executive Director, in consultation with the Panel Chairperson, may allot time for members of the public to present their issues for review and discussion by the Panel.

Dated: August 20, 2015.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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**BILLING CODE 5001-06-P**