



Appeals Review Panel

On July 24, 2023, the United States Patent and Trademark Office (USPTO or Office) established the Appeals Review Panel (ARP), which may be convened by the Director *sua sponte* to review decisions of the Patent Trial and Appeal Board (PTAB or Board) in *ex parte* appeals, re-examination appeals, and reissue appeals.

The Appeals Review Panel, coupled with the [revised interim Director Review process \(/patents/ptab/decisions/revised-interim-director-review-process\)](#) (including the option to delegate review of a Board decision to a [Delegated Rehearing Panel \(/patents/ptab/decisions/delegated-rehearing-panel\)](#)), replace the Precedential Opinion Panel process.

› 1. ARP Review

The Director may, at her or his sole discretion, convene the ARP *sua sponte* to review a decision in an *ex parte* appeal, reexamination appeal, or reissue appeal, and the appeal will be repaneled to the ARP.

Requests for ARP review will not be accepted or considered.

› 2. Composition of the ARP

Appeals at the Board “shall be heard by at least 3 members of the [Board], who shall be designated by the Director.” 35 U.S.C. § 6(c). “Only the [Board] may grant rehearings.” *Id.* Accordingly, the ARP shall consist of three members.

The Board includes the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges. 35 U.S.C. § 6(a).

The ARP is selected by the Director impartially and, by default, consists of the Director, the Commissioner for Patents, and the Chief Judge of the Patent Trial and Appeal Board.

› 3. Conflicts of Interest

If the Director or a member of the ARP has a conflict of interest, they shall recuse themselves from the ARP review of that decision.

In determining whether any ARP member has a conflict of interest, the USPTO follows the guidance set forth in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. Part 2635 and will consult with the Department of Commerce Ethics Law and Programs Office, as necessary, to resolve any questions pertaining to conflicts of interest. Conflicts may include, for example, involvement in the examination or prosecution of the underlying patent or a related patent at issue.

Additionally, the Office has set forth procedures that the Office will follow in the event of an actual or potential conflict of interest by the Director or Deputy Director of the USPTO. See "[Director Recusal Procedures \(/sites/default/files/documents/Director-Memorandum-on-Recusal-Procedures.pdf\)](/sites/default/files/documents/Director-Memorandum-on-Recusal-Procedures.pdf)" at Office of the Under Secretary and Director.

As a matter of policy, the ARP will additionally follow the guidance on conflicts of interest set forth in the PTAB's [Standard Operating Procedure 1 \(/sites/default/files/documents/SOP%201%20R15%20FINAL.pdf\)](/sites/default/files/documents/SOP%201%20R15%20FINAL.pdf) and will recuse themselves from any discussion or analysis involving cases or related cases on which they are paneled.

› 4. Timing of ARP Decisions

The ARP aims to issue decisions as soon as possible and typically within three months of the grant of ARP review.

› 5. Effect of ARP Decisions

ARP review decisions are, by default, routine decisions as set forth in [Standard Operating Procedure 2, Revision 11 \(/sites/default/files/documents/20230724_ptab_sop2_rev11 .pdf\)](/sites/default/files/documents/20230724_ptab_sop2_rev11.pdf) (SOP 2). Routine ARP decisions may be nominated after issuance for precedential or informative designation, and such nominations will follow the procedure set forth in [SOP 2 \(/sites/default/files/documents/20230724_ptab_sop2_rev11 .pdf\)](/sites/default/files/documents/20230724_ptab_sop2_rev11.pdf). If an ARP decision is designated as precedential or informative, it will be added to the PTAB's [precedential and informative web page \(/patents/ptab/precedential-informative-decisions\)](/patents/ptab/precedential-informative-decisions) and an email notification will be issued to inform the public of its precedential or informative designation. Stakeholders and the public may submit nominations for precedential or informative designation using the [PTAB Decision Nomination web form \(/patents/ptab/ptab-decision-nomination\)](/patents/ptab/ptab-decision-nomination), which may be submitted anonymously, or by sending an email to [PTAB Decision Nomination@uspto.gov \(mailto:PTAB_Decision_Nomination@uspto.gov\)](mailto:PTAB_Decision_Nomination@uspto.gov).

This process places no limitation on the authority of the Director to designate or de-designate an issued decision or portion thereof as precedential or informative at any time, at the Director's sole discretion.

› 6. Review of ARP Decisions

An appellant may not request rehearing of ARP decisions.

ARP decisions are appealable to the United States Court of Appeals for the Federal Circuit using the same procedures for appealing other Board appeal decisions.

An order by the Director delegating a decision to the ARP is treated like a timely request for rehearing for the purposes of 37 C.F.R. § 90.3(b) and, therefore, resets the time for appeal or civil action (where available) to no later than sixty-three (63) days after final resolution of the ARP process.

› 7. Status and Questions

To view status of proceedings under ARP review, visit the [Appeals Review Panel Status \(/patents/ptab/decisions/appeals-review-panel-status\)](/patents/ptab/decisions/appeals-review-panel-status) page.

General questions about ARP review can be submitted to [ARP@uspto.gov \(mailto:ARP@uspto.gov\)](mailto:ARP@uspto.gov).

Submit feedback about this page to **Patent Trial and Appeal Board**.

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