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kw=Watchdog:%20Most%20PTAB%20Judges%20Fear%20Independence%20Threatened%20by%20Political%20Appointees

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NEWS

in **Watchdog: Most PTAB Judges Fear Independence Threatened by Political Appointees**

🖨️ “It is important to implement transparent practices and policies so it is clear to what extent the director is involved in the content of the decision,” said Rothwell, Figg, Ernst & Manbeck associate Kristen Logan.

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Brad Kutner

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A recent report from the Government Accountability Office showed an overwhelming majority of Patent Trial and Appeal Board (PTAB) judges feel their independence is being threatened by political appointees.

The report comes after calls from congress to review the administrative court’s transparency in the wake of the U.S. Supreme Court’s decision in *United States v. Arthrex*. That ruling found the PTO director has final say over PTAB decisions because the director is the agency’s only presidentially appointed principal officer.

The report, released just ahead of the holiday weekend, found 75% of PTAB judges believe “oversight practiced by U.S. Patent and Trademark Office (USPTO) directors and PTAB management has affected their independence.”

Complaints from judges, according to the report, include an increased number of policy and guidance documents that judges must follow, as well as more managerial oversight with “unclear communication” from those managers. This oversight had led to a “culture of uncertainty” and an increased sense of pressure on the judges to modify or change parts of their decisions.

A total of 208 judges were surveyed and nearly 50 of them, or 24%, reported management had “a large effect” on their rulings.

The report points to changes made in July by USPTO Director Katherine Vidal in which she clarified management “would not be involved in decision-making prior to issuance” in future rulings. Instead, Vidal said the agency would use a 10-day circulation judge pool process involving eight non-management PTAB judges before reviewing decisions. GAO praised the change as a way to address judges’ concerns.

“It is important for a robust and reliable patent system that the PTAB maintain a consistent and clear approach to substantive areas of patent law and PTAB specific procedures,” the agency said at the time the changes were announced.

Rothwell, Figg, Ernst & Manbeck associate Kristen Logan wrote about these changes in a JDSupra post, describing them as an effort to promote feedback, eliminate inconsistencies and increase transparency from the agency.

“Under this new model the director does not participate in the review process prior to issuance of the decision, whereas previously it was required that drafts be reviewed by board management,” she wrote.

In an email, Logan said the newly released report showed that the board’s transparency issues are “deeply ingrained” at the USPTO and the agency will have to go beyond those July changes, or rely on legislative action, to address transparency concerns.

And while the *Arthrex* decision may appear to demand more director authority into the PTAB process, Logan said Vidal’s July changes, and any future efforts, would be more beneficial if they instead clarified a political appointee’s role in the process.

“It is important to implement transparent practices and policies so it is clear to what extent the director is involved in the content of the decision,” she said.

Republican U.S. Rep. Darrell Issa in California and Democratic U.S. Rep. Hank Johnson in Georgia called for an investigation into political appointees’ role in the PTAB process following *Arthrex*. In a statement released Tuesday, Johnson thanked the GAO for the new report and called for more reform.

Johnson said in a statement, “The 118th Congress should make strict review of PTAB practices a priority—including the changes made by Director Vidal in response to this report—and strive for a political consensus to ensure that these proceedings are judicial in nature.”

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