



MYTH: PTAB is used by small businesses to defend against patent trolls.

FACT: PTAB is used almost exclusively by large multinational corporations to attack patents of much smaller competitors. Apple, Google, Samsung, Microsoft, Intel, Comcast, and Cisco are top filers. Smaller companies occasionally attempt to use the PTAB, but it usually adds a lot of expense without resolving the dispute.

MYTH: PTAB is used to review only bad patents.

FACT: PTAB is virtually automatic if you try to enforce your patent. Anyone can say an invention is obvious in hindsight, and the PTAB entertains such arguments.

MYTH: PTAB is cheaper than regular court.

FACT: PTAB adds an average of \$450,000 for each challenge filed. Most disputes involved multiple patents, so the additional cost usually exceeds \$1M. If the inventor survives PTAB, they will have to fend off similar challenges in the regular court.

MYTH: PTAB is faster than regular court.

FACT: PTAB typically adds about 3 years to the litigation process. Judges in the regular court will usually stay proceedings while the PTAB completes its review, and only after will they hold a trial on infringement.

MYTH: PTAB is an alternative to regular court.

FACT: PTAB invalidates 84% of patents they review. In a regular court with a real judge and a jury the number is about 29%. That comparison is even worse considering that regular courts allow 5 types of challenges (§101 eligibility, §102 novelty, §103 obviousness, §112 definition, and inequitable conduct) while the PTAB only allows 2 types of challenges (§102 novelty and §103 obviousness).



MYTH: PTAB invalidates patents based on prior art overlooked in examination.

FACT: PTAB invalidates patents on the same or similar prior art as considered in examination. They do this by misinterpreting the meaning of the claims and by declaring various and, at times, unrelated combinations of prior art to be considered as obvious. It is very rare that the PTAB invalidates a patent because someone else invented it first. Rather, invalidations are almost exclusive due to technicalities, changed and altered definitions, and subjective hindsight.

MYTH: PTAB Administrative Patent Judges Are Technical Experts

FACT: 60% of PTAB APJs have ZERO years of technical experience and 76% have less than 2 years. Typically, they have an undergraduate degree in science or engineering, in some cases a graduate degree, then proceeded directly to law school. Their written opinions and oral arguments demonstrate that they often lack a basic understanding of the technology under review.

MYTH: Director Iancu made changes to make the PTAB fair and balanced.

FACT: Despite commendable rhetoric and attempts at reforming the PTAB, nothing changed for inventors and small businesses under Iancu. 68% of patents are instituted for review and 84% are invalidated in Final Written Decisions, numbers that have been constant for the past 5 years.

MYTH: Director Iancu stopped the abusive tactic of filing serial follow-on petitions.

FACT: Serial petitions have been, and are still, filed and effective. In FY2020, 91 patents were subjected to serial follow-on petitions and 65 were instituted, a rate of 71%.

