

**UNITED STATES
PATENT AND TRADEMARK OFFICE**



Patent Trial and Appeal Board (PTAB) Boardside Chat: The future of PTAB hearings

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June 30, 2022

UNITED STATES
PATENT AND TRADEMARK OFFICE



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Erica Swift, Chief Clerk of the Board, Patent Trial and Appeal Board

PTAB Hearings in the “New Normal”

Question/comment submission

- To send in questions or comments during the webinar, please email:
 - PTABBoardsideChat@uspto.gov

Agenda

- PTAB hearings
 - Hearings during the pandemic
 - Benefits of virtual hearings
 - Important dates for hearings
 - Hearing options for parties
 - Hearing access information for the public
 - Accessing USPTO facilities
- Panel discussion: Tips for successful hearings in remote and in-person environments

Status of hearings

Hearings before the pandemic

- On March 13, 2020, the USPTO closed its offices to the public and PTAB suspended in-person hearings and transitioned to all virtual hearings.
- In the year prior to mandatory virtual hearings, 29.8% of appeals and less than 1% of AIA trials were conducted virtually.

Hearings during the pandemic

- Over the past two years, PTAB has held over 2,300 virtual hearings
 - ~1,300 appeals
 - ~1,000 trials
- PTAB provided the public with remote access to over 600 hearings. Nearly 98% of requests were approved.

Benefits of virtual hearings

- Saves time and money
- Positive environmental impact
- Easy sharing of demonstratives
- APJs appear virtually, regardless of location
- Easier access for interested parties who are not giving oral argument

Important dates for hearings

- The USPTO officially reopened to the public on May 25, 2022.
- The option for in-person hearings will be available for hearings scheduled on or after July 11, 2022.

Options for hearings

Hearing options for parties

- Virtual hearings will continue for appeals and AIA trials.
 - No in-person hearings unless requested by both parties.
- In-person hearings are available if both parties request.
 - Arguing counsel may appear in person from any location with an APJ present.
 - Most in-person hearings will still likely have one or more judges attending the hearing virtually.
 - Non-arguing personnel are encouraged to attend remotely.
 - Parties who are no longer able to appear in-person should contact PTABHearings@uspto.gov.



Selecting a hearing option

- How to express a preference for virtual or in-person
 - Parties can request virtual or in-person hearing at initial conference, in a separate filing with the Board, or in their request for oral argument.
 - If parties don't express a preference for virtual or in-person, the Board will email parties to determine preferences.

Email to parties from PTAB

- If parties haven't made their preferences known, parties should expect an email from Trials@USPTO.gov about 6-8 weeks before the scheduled hearing date.
- Email will ask parties to inform the Board (1) whether the parties would prefer either a virtual hearing or an in-person hearing and (2) for in-person hearings, which of the locations (as offered by the Scheduling Order) the parties would prefer.

Hearing access information for the public

- Remote access will continue for PTAB hearings, either by video or audio. This is the primary means for public access.
- Subject to availability of space, in-person public access may also be granted.
 - Includes the designated hearing location as well as alternate sites
- Public access not available for hearings with confidential information.
- For virtual or in-person access to a hearing, submit a request to PTABHearings@uspto.gov at least 3 days before the hearing.

Hearing schedules

- Hearing schedules are posted on the PTAB page of the USPTO website at <https://www.uspto.gov/patents/ptab/hearings>

Hearings

An appellant in an ex parte appeal and the parties in an AIA trial may request an oral hearing to explain their position before the Patent Trial and Appeal Board (PTAB). An oral hearing gives the Board an opportunity to ask questions of the parties to aid the Board in deciding the case. An oral hearing may be held in a courtroom with a court reporter present to prepare a transcript of the proceeding.

[Expand all](#) | [Collapse all](#)

▼ Hearing schedule

Until further notice, Patent Trial and Appeal Board (PTAB) oral hearings will be conducted remotely by video or telephone. During this time, to listen in on any particular oral hearing, please make a request via email to PTABHearings@uspto.gov at least three business days prior to the oral hearing date. Please include any requests for accommodations for individuals with disabilities, including captioning. The Board will respond to the request, and provide any connection information. Transcripts for each oral hearing will subsequently be entered into the record of the relevant proceeding, and be publicly available in [PTAB E2E for AIA Trials](#) or in [Public Pair for appeals](#), unless an exception applies.

NOTE: Due to last minute cancellations or no shows, there are no guarantees that a hearing on a particular proceeding will occur, although it may be posted.

* [PTAB June 2022 Hearing Schedule \[PDF\]](#) ←

* [PTAB July 2022 Hearing Schedule \[PDF\]](#) ←

Accessing to USPTO for hearings

Accessing USPTO facilities

- Information on access to USPTO facilities can be found at <https://www.uspto.gov/coronavirus>
 - Community transmission levels
 - Safety protocols
 - Self-certification
- Applies to any person accessing USPTO facilities.

Community transmission levels

- CDC COVID-19 Community Levels are applied to each USPTO location.
- Information is updated every Friday and applies for one week.
- Levels can be low, medium, or high.

COVID-19 community levels and safety protocols at USPTO office locations

Chart showing the CDC community transmission level for the locations of USPTO offices

USPTO facility operating status: June 20, 2022 - June 24, 2022	
Alexandria Campus	Medium
Randolph Square	Medium
Lorton Warehouse	Medium
Midwest Regional Office	Low
Texas Regional Office	Low
Rocky Mountain Regional Office	High
Western Regional Office	High

*When the community level is high, all persons entering that facility must wear a mask.

<https://www.uspto.gov/coronavirus/covid-19-community-levels-and-safety-protocols-uspto-office-locations>



Safety protocols

- USPTO safety protocols correspond to the CDC Community Level for that location.
- In communities with low or medium transmission levels, masks are optional.
- In communities with high transmission levels, wearing a mask in our buildings is mandatory.

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Self-certification

- Visitors should review self-certification health questionnaire prior to entering and may not enter USPTO facilities if they answer "yes" to any of the questions.
- If this makes attending a scheduled in-person hearing impossible, contact PTABHearings@uspto.gov.

USPTO notices regarding COVID-19

Updates from the United States Patent and Trademark Office during the COVID-19 coronavirus outbreak.

USPTO moves to Phase 3 of reopening plan

May 25, 2022

On May 25, 2022, the United States Patent and Trademark Office (USPTO) fully reopened all locations to employees and resumed some in-person events and appointments for the public. Visitors should review this [health questionnaire](#) prior to entering and may not enter facilities if they answer "yes" to any of the questions.

We continue to monitor local conditions for all locations as determined by the [Center for Disease Control's \(CDC\) COVID-19 community levels](#). Levels can be [low, medium, or high](#). In communities with low or medium transmission levels, wearing a mask in our buildings is optional. In communities with high transmission levels, wearing a mask in our buildings is mandatory. Please check the CDC's levels and [our office location pages](#) for details, including which services are now being provided in-person as well as virtually.



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LEAP



- [Legal Experience and Advancement Program \(LEAP\)](#)
- Designed to:
 - Aid in development of the next generation of patent practitioners
 - Encourage a diverse group of advocates to develop their skills before the PTAB
- To qualify, a patent agent or attorney must have:
 - Three or fewer substantive oral arguments in any federal tribunal, including PTAB

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Panel Discussion: Tips for Successful Hearings

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Next Boardside Chat



- Thursday, July 7, 2022, at 12–1 pm ET
- Topic: interim procedure for discretionary denials and data study
- Register for and learn about upcoming Boardside Chats, and access past Boardside Chats at:
<https://www.uspto.gov/patents/ptab/ptab-boardside-chats>

