



POLICY BRIEF

Positive Reforms, Persistent Gaps:

How Inconsistent PTAB Decision-Making Is Allowing Critical Cases to Fall Through the Cracks

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Alliance of U.S. Startups and Inventors for Jobs (USIJ)

The Alliance of U.S. Startups and Inventors for Jobs (USIJ) commends the significant steps taken by USPTO Director Squires and current Administration leadership to restore balance and fairness to the Patent Trial and Appeal Board (PTAB) and the broader U.S. patent system. The Notice of Proposed Rulemaking on PTAB discretionary denial, the emerging practice of denying institution based on "settled expectations" in cases where district courts have upheld patent validity, renewed support for injunctive relief for patent holders, and the recent restoration of robust Real Party in Interest (RPI) disclosure requirements through the precedential designation of Corning Optical — each of these actions reflects a serious commitment to protecting American innovators from the weaponization of administrative patent proceedings.

However, despite these important policy signals from the Director's office, it appears that in a number of significant, high-profile cases, individual PTAB panels are rendering decisions that are flatly inconsistent with these new policy directions. Cases are falling through the cracks — and in each instance, the beneficiary of PTAB's inconsistency is a large, often foreign, infringer, while the victim is an American innovator.

We respectfully urge the Director to take immediate steps to ensure that the policy reforms articulated at the leadership level are being systematically applied by PTAB panels in all institution and final written decision proceedings.

I. Significant and Welcome Reform: USIJ Commends Director Squires' Actions

Since the beginning of the Trump Administration, USPTO leadership has taken a series of consequential steps to rebalance the patent system in favor of American inventors and innovators:

- **Discretionary Denial Reform** - Notice of Proposed Rulemaking on PTAB Discretionary Denial

The proposed rulemaking would restore PTAB's authority to deny institution of IPR and PGR petitions in cases where the same patent validity question has been, or is being, addressed in parallel district court proceedings. This common-sense reform prevents the serial litigation abuse that large infringers have long exploited to re-litigate patent validity even after losing in federal court.

- **Settled Expectations Doctrine** - Denial of Institution Based on 'Settled Expectations'

PTAB has begun denying institution in cases where the patent at issue has a strong record of validity — reflecting a recognition that allowing repeated administrative challenges to already-tested patents is unfair to patent owners and wasteful of government resources.

- **Injunctive Relief** - Support for Injunctive Relief

USPTO has collaborated with DOJ to issue **two strong statements** (in [Radian v Samsung](#) and [Collision Communications v Samsung](#)) that have signaled that the Administration strongly supports restoring meaningful injunctive relief as a remedy for patent infringement — a critical tool for small innovators who cannot be made whole by damages alone when a large infringer continues to exploit their technology.

- **Real Party in Interest** - Restoration of RPI Disclosure Requirements (Corning Optical)

Most significantly for the cases discussed in this brief, Director Squires designated Corning Optical as precedential, restoring the statutory requirement that PTAB petitioners disclose all real parties in interest. The Director's accompanying memo made clear that foreign entities — including those on the Department of Commerce Entity List — have been exploiting lax RPI enforcement to file PTAB challenges they would otherwise be time-barred from bringing. Director Squires has since applied this principle to vacate institution decisions against [Yangtze Memory Technologies Co. \(YMTC\)](#) and others.

These are exactly the kinds of reforms USIJ and its member companies have advocated for years. They reflect the Administration's understanding that a strong, reliable patent system is essential to American economic competitiveness and national security. We applaud this leadership.

II. The Problem: Inconsistent Implementation at the Panel Level

Unfortunately, the promising policy signals from USPTO leadership have not yet translated into consistent practice across all PTAB panels. In at least three significant, recent cases — each involving a large foreign entity challenging the valid patents of an American innovator — PTAB panels have issued decisions that appear directly at odds with the Director's stated policy priorities.

These are not obscure or technical edge cases. They involve major jury verdicts, active ITC exclusion orders, and clear RPI compliance concerns. The inconsistency between Director-level policy and panel-level decisions is creating damaging uncertainty for patent holders and sending exactly the wrong signal to potential infringers.

III. Cases Falling Through the Cracks: Three Cautionary Examples

Case 1: Netlist, Inc. — RPI Violations Ignored Despite Clear Corning Optical Precedent

Netlist, Inc. is a U.S. semiconductor company whose patented AI memory technologies have been found by federal courts to have been willfully infringed by Samsung Electronics on multiple occasions, with cumulative jury verdicts exceeding \$420 million in two cases. In another case involving these patents Micron was found to have infringed and was subject to nearly \$450 million in damages. Despite these rulings — and despite Director Squires' clear directive requiring strict compliance with RPI disclosure obligations — the PTAB recently instituted two Samsung AIA challenges to Netlist patents in decisions that are difficult to reconcile with the Corning Optical framework.

Case at Issue: *PGR2025-00071 (U.S. Patent No. 12,308,087) and IPR2025-01431 (U.S. Patent No. 10,025,731), both filed by Samsung Electronics against Netlist.*

The Corning Optical memo, designated precedential on October 28, 2025, restores the statutory requirement under 35 U.S.C. §§ 312(a)(2) and 322(a)(2) that petitions may be considered "only if the petition identifies all real parties in interest." Director Squires' accompanying analysis expressly cited Samsung as the top PTAB petitioner from 2019 through 2024 — a record that itself raises questions about the extent to which Samsung employs affiliates, subsidiaries, or proxies to file challenges that circumvent time bars and estoppel obligations. The Director's own Notice of Proposed Rulemaking warned that large technology firms use repeated AIA challenges to consolidate market dominance at the expense of smaller competitors.

Despite this clear directional signal, the PTAB panels reviewing Samsung's challenges to Netlist's patents proceeded to institution without rigorously applying the Corning Optical RPI analysis. Samsung — the world's largest PTAB petitioner — is precisely the type of frequent, well-resourced challenger that the new RPI framework was designed to scrutinize. Netlist's other patents have already survived federal court scrutiny, and the infringement verdicts demonstrate that Samsung's challenges serve not to weed out weak patents, but to eliminate the intellectual property of a smaller competitor it has been found to have already wronged.

The institution of these proceedings, without rigorous RPI analysis consistent with Corning Optical, represents exactly the kind of gap between Director-level policy and panel-level practice that USIJ is calling attention to in this brief.

Case 2: Pictiva Displays International — PTAB Invalidation Undermines a \$191 Million Jury Verdict

Pictiva Displays International Ltd. holds foundational patents — originally developed by Osram — covering core OLED display technologies that power the screens of modern smartphones, tablets, and wearables. In November 2025, a Texas federal jury found that Samsung willfully infringed two of Pictiva's key patents (U.S. Patent Nos. 8,314,547 and 11,828,425) and awarded Pictiva \$191.4 million in damages.

Case at Issue: *PTAB Final Written Decision (January 2026): U.S. Patent No. 11,828,425 found invalid as obvious, jeopardizing \$92.6 million of the \$191.4 million verdict. PTAB also issued a written decision finding claims in U.S. Patent No. 8,723,164 anticipated or obvious based on prior OLED research.*

Samsung's response to the jury verdict was immediate and entirely predictable: it turned to PTAB. In January 2026, PTAB invalidated U.S. Patent No. 11,828,425 on obviousness grounds — the very same patent a federal jury had just found valid and infringed only weeks earlier. This decision places at risk \$92.6 million of Pictiva's hard-won verdict and exemplifies the core structural problem that USPTO's own NPRM on discretionary denial is designed to address: the ability of large infringers to relitigate patent validity in an administrative forum — under a lower standard of proof — after losing to a jury in an Article III court.

The PTAB's decision is in direct tension with the Administration's stated policy preference for protecting "settled expectations" of patent validity — a principle that should apply with particular force when a federal jury has just validated the patent at issue. The January 2026 invalidation of Pictiva's patent does not reflect the policy direction articulated by Director Squires. It reflects a panel operating under older assumptions that the Director is actively working to change — but has not yet reached these proceedings.

The Pictiva case illustrates a broader danger: if PTAB panels are not affirmatively directed to apply the "settled expectations" doctrine and the discretionary denial framework in cases where district court validity findings are recent and clear, the policy reforms announced at the Director level will be systematically undermined at the case level.

Case 3: Efficient Power Conversion Corp. — PTAB Delivers a Win for a Chinese Infringer Over an ITC Ruling

Efficient Power Conversion Corporation (EPC) is a U.S. power semiconductor company headquartered in El Segundo, California. Founded in 2007, EPC developed and commercialized the first enhancement-mode gallium-nitride (GaN) transistors built on standard silicon substrates — a foundational innovation enabling more efficient power conversion in AI servers, automotive systems, drones, and wireless power applications. EPC's GaN technology is at the cutting edge of American semiconductor innovation.

Case at Issue: *PTAB IPR Final Written Decision, March 18, 2025: Two claims of EPC's U.S. Patent No. 8,350,294 ('294 patent) invalidated at the request of Chinese challenger Innoscience (Zhuhai) Technology Company, directly contradicting the ITC's July 2024 ruling that Innoscience infringed that same patent.*

The timeline of this case is instructive. In May 2023, EPC filed a Section 337 complaint against Innoscience at the ITC, alleging infringement of EPC's core GaN semiconductor patents. Notably, the China National Intellectual Property Administration (CNIPA) independently upheld the validity

of EPC's counterpart patents in April and May 2024 — meaning that even China's own patent authority agreed EPC's patents were valid. In July 2024, the ITC agreed, ruling that Innoscience infringed EPC's '294 patent and imposing a limited exclusion order barring imports of the infringing product. That order survived a 60-day presidential review and remained in force — meaning the Trump Administration accepted and enforced the ITC ruling. In August 2025, the Beijing IP Court upheld CNIPA's validity finding on appeal.

Yet on March 18, 2025, PTAB invalidated two claims of EPC's '294 patent — the very claims the ITC found valid and infringed — based on IPR challenges filed by Innoscience at PTAB. In a single administrative decision, PTAB effectively handed Innoscience the legal victory it could not achieve in the ITC, in China, or through the courts. If the Federal Circuit sustains PTAB's invalidation on appeal, the ITC exclusion order protecting EPC from infringing Chinese imports will cease to apply, and Innoscience will once again be free to flood the U.S. market with products built on stolen American innovation.

This outcome is precisely the type of misuse of PTAB that the Administration's reform agenda is intended to prevent. A Chinese company was permitted to use the U.S. patent system's own administrative proceedings — after losing before the ITC, after losing in China — to neutralize an American court's ruling and an active exclusion order. This is not what PTAB was designed for, and it is inconsistent with any coherent vision of using IP policy in service of American competitiveness and national security.

IV. The Pattern and Its Consequences

Taken together, these three cases reveal a troubling pattern. In each instance:

- An innovator obtained a significant legal validation of its patents — through a jury verdict, an ITC ruling, or both.
- A large, often foreign, infringer responded by turning to PTAB to invalidate those same patents through an administrative proceeding.
- PTAB panels ruled in favor of the challenger — without applying, or being required to apply, the RPI scrutiny, the "settled expectations" doctrine, or the discretionary denial framework that the Director's office has put in motion.
- The result in each case is to undermine or extinguish the legal protections that Article III courts and the ITC had extended to American patent holders.

The consequences of this inconsistency are serious. For individual patent holders like Netlist, Pictiva, and EPC, hundreds of millions of dollars in validated claims are placed at risk. For the American innovation economy more broadly, the message sent to startups, inventors, and their investors is that even a jury verdict or an ITC exclusion order does not guarantee patent security — because a well-resourced infringer can always go to PTAB for a second chance.

This dynamic is precisely what USIJ has documented in years of advocacy: so-called "efficient infringement" — the calculated decision by large companies to infringe first, then use PTAB to destroy the patent. As the USPTO's own NPRM stated, when large companies can freely copy

patented inventions with confidence they can eventually invalidate the patent, their other competitive advantages — brand, scale, capital — ensure that smaller innovators cannot survive. The result is market concentration, reduced innovation investment, and diminished American competitiveness.

V. Recommendations

USIJ respectfully urges Director Squires and USPTO leadership to take the following steps to close the gap between policy intent and PTAB panel practice:

1. Issue Expedited Guidance to PTAB Panels

Director Squires should issue clear, binding internal guidance requiring PTAB panels to apply the Corning Optical RPI framework, the "settled expectations" doctrine, and the discretionary denial factors in all pending and newly filed proceedings. Panels should be required to make express findings on each of these factors before proceeding to institution. The three cases discussed above should be reviewed to determine whether Director Review is appropriate.

2. Initiate Director Review of the Netlist, Pictiva, and EPC Decisions

Given the apparent inconsistency between the institution and final written decisions in these three cases and the Director's stated policy priorities, USIJ urges the Director to initiate sua sponte Director Review of the relevant PTAB decisions — particularly the institution decisions in PGR2025-00071 and IPR2024-01431 (Netlist), the final written decision on Pictiva's U.S. Patent No. 11,828,425, and the IPR final written decision that invalidated EPC's '294 patent claims. Where the policy record requires a different result, the Director should not hesitate to exercise that authority.

3. Finalize and Accelerate the NPRM on Discretionary Denial

The discretionary denial rulemaking, if finalized and implemented promptly, will provide PTAB panels with clear legal authority to deny institution in cases — like Pictiva's — where parallel district court proceedings have recently addressed the same validity questions. USIJ encourages the Director to move this rulemaking to final rule as expeditiously as possible, and to make clear in the final rule that recent jury verdicts and ITC determinations on validity create a strong presumption in favor of discretionary denial.

4. Extend RPI Scrutiny to Frequent Foreign Petitioners

The Corning Optical memo focused particular attention on Chinese state-linked entities. But as Director Squires' own analysis acknowledges, Samsung — a Korean corporation — is the single largest PTAB petitioner of all time. USIJ urges the Director to extend robust RPI scrutiny to all high-volume foreign petitioners, requiring enhanced disclosure of corporate affiliates, litigation coordination arrangements, and funding sources. The policy rationale for preventing foreign adversaries from weaponizing PTAB applies with equal force to any foreign company using the U.S. administrative patent system to systematically eliminate the IP of American competitors.

5. Coordinate with USTR and ITC on Whole-of-Government Consistency

The EPC/Innoscence case reveals a particularly troubling disconnect: PTAB invalidated patent claims that were the subject of an active ITC exclusion order, potentially nullifying the work of

another federal agency and an active trade enforcement tool. USIJ urges USPTO to coordinate with the U.S. Trade Representative and the ITC to develop protocols ensuring that PTAB proceedings do not inadvertently — or deliberately — undercut active trade enforcement mechanisms. A PTAB decision that effectively reverses an ITC finding is not only unfair to the patent holder; it undermines the United States' ability to enforce its trade laws against foreign infringers.

Conclusion

The policy direction set by Director Squires and the current Administration is the right one. USIJ has long advocated for a patent system in which American innovators — not deep-pocketed infringers — hold the upper hand. The reforms underway at USPTO represent meaningful progress toward that goal.

But policy reform announced at the Director level must translate into consistent, disciplined application at the PTAB panel level. The cases of Netlist, Pictiva, and EPC are not isolated anomalies — they are a warning that without active implementation oversight, the same mechanisms of efficient infringement that the Director has pledged to curtail will continue to operate, case by case, panel by panel, while American innovators bear the cost.

USIJ stands ready to support USPTO's reform efforts through additional analysis, advocacy, and coalition engagement. We respectfully request a meeting with Director Squires or senior USPTO policy staff to discuss these concerns and the concrete steps needed to close the implementation gap.

About USIJ

The Alliance of U.S. Startups and Inventors for Jobs (USIJ) is a coalition of inventors, startups, venture capital investors, and research organizations committed to maintaining a strong U.S. patent system that protects American innovation and competitiveness. USIJ advocates before Congress, the USPTO, and federal agencies on patent policy, PTAB reform, and the intersection of intellectual property and trade policy.