

PANITCH Intellectual Property Law SCHWARZE

(Last Updated February 2026)

On March 26, 2025, the then-Acting Director of the USPTO (Coke Morgan Stewart) issued a memorandum detailing [interim processes for PTAB workload management](#). On October 17, 2025, the Director of the USPTO (John A. Squires) issued another memorandum setting forth the current [PTAB trials procedures](#). The Director is now determining whether institution is appropriate, via brief “summary” notices (unless particular issues warrant a more detailed analysis).

Under the new procedure, Patent Owners may file a discretionary brief (limited to 20 pages) within two months of the date on which a Notice of Filing Date Accorded is entered. The discretionary brief “may argue circumstances that warrant denial based on existing PTAB precedent, the Consolidated Trial Practice Guide, relevant considerations enumerated in the Process Memorandum, and any other consideration or circumstance that the patent owner believes bears on the Director’s discretion.”

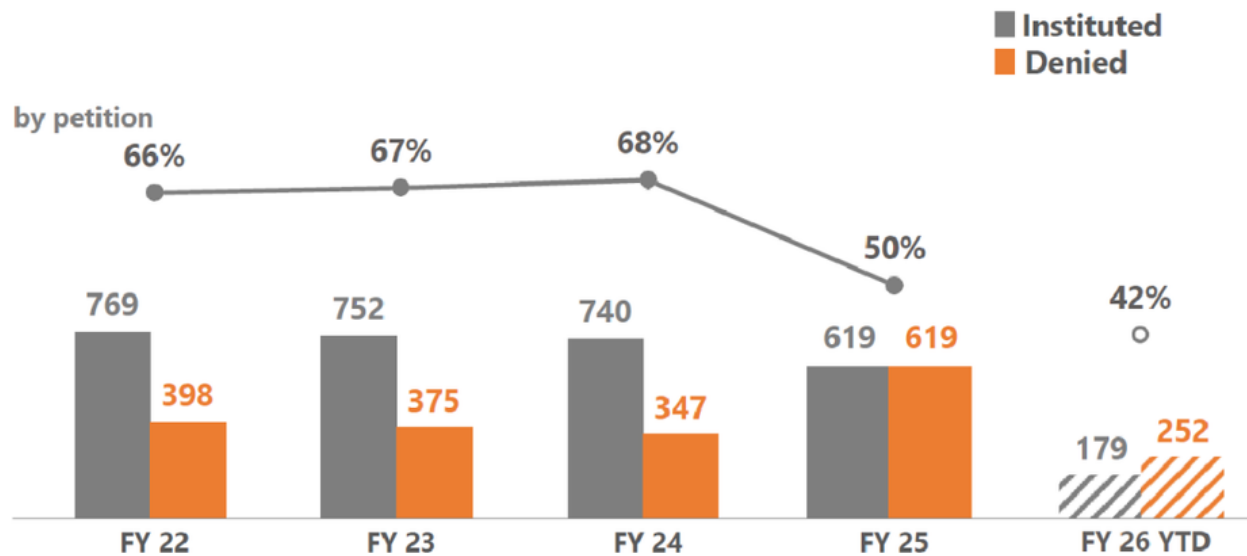
Petitioners may then file an opposition brief (limited to 20 pages), within three months of the date on which a Notice of Filing Date Accorded is entered. The Petitioner’s brief “should be responsive to the arguments raised in patent owner’s discretionary denial brief and should raise any discretionary issues, including issues relating to 35 U.S.C. § 325(d), parallel proceedings, parallel petitions, serial petitions, and any other matter bearing on the Director’s discretion to institute. A petitioner’s brief should also explain why, notwithstanding discretionary considerations, the Office should institute review of the challenged patent, including all facts or circumstances, such as those set forth in current Board precedent or the Process Memorandum.”

“The Director will receive each petition, discretionary denial brief, opposition brief, and [Patent Owner Preliminary Response] , as well as any evidence the parties have made of record in support of their papers. The Director retains responsibility for resolving whether the proceeding should be denied on discretionary grounds, unless the Director otherwise states. . . . In deciding whether to exercise discretion to institute an IPR or a PGR, the Director may consult with other USPTO employees as needed, as long as those individuals do not have a conflict of interest.”

These new changes have resulted in a dramatic decrease in institution rates, from about 65% down to about 50% (and down to 21% for calendar year 2026).

Institution rates by petition

FY 22 to FY 26 through Q1: Oct. 1, 2021 to Dec. 31, 2025



Disposition rates by institution decision type

FY 26 through Q1: Oct. 1, 2025 to Dec. 31, 2025

