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Does Chevron deference apply to PTAB Precedential Opinion Panel decisions?

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In an August 12, 2019 order, the Federal Circuit asked the government what deference, if any, should the court give PTAB Precedential Opinion Panel ("POP") decisions. *Facebook, Inc. v. Windy City Innovations, LLC* (Fed. Cir. 2019). The director argues that *Chevron* deference should apply. The parties are to brief the issue on October 1st.

Specifically at issue in the case was the POP opinion in *Proppant Express Investments, LLC v. Oren Technologies, LLC*, No. IPR2018-00914, Paper 38 (P.T.A.B. Mar. 13, 2019). In that decision, the POP set out the scope of the Director's discretion to grant joinder under Section 315(c). That section allows joinder "as a party to [an instituted] *inter partes* review any person who properly files a petition under section 311." The *Proppant* decision addressed joining subsequent petitions by the same party. Facebook had originally filed four IPR petitions challenging a subset of the 830 patent claims. Subsequently and after the one-year bar had expired, Windy City identified the claims to be asserted at trial. Facebook then filed follow-on petitions challenging these claims and requesting joinder; the Board granted joinder. On Appeal, Windy City challenged the Board's authority to grant joinder.

In the government brief, the Director argues that *Chevron* deference should apply both not only to notice-and-comment rulemaking but also to adjudications. The Director noted that the Board invited amici briefing in the *Proppant* case, providing the public with the ability to address any potential concerns. The Director also noted that *Chevron* deference applies to ITC adjudications and Commerce Department antidumping rulings. Finally, the Director argues that if *Chevron* deference does not apply, then *Skidmore* deference should apply.