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# No More Surprises: How the PTAB's Latest SOP 1 (Rev. 17) Overhauls Panel Changes

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The Patent Trial and Appeal Board (PTAB) has formalized its internal rules for assigning administrative patent judges (APJs) through Standard Operating Procedure 1 (SOP 1), now in its 17th revision. While the SOP clarifies that these rules serve only as internal norms and do not create legally enforceable rights, Revision 17 marks a significant evolution from older iterations. The latest revision systematically dismantles practices like “panel stacking” and reinforces judicial independence.

Here is a detailed breakdown of the critical takeaways from SOP 1 (Rev. 17) and how they contrast with past guidelines.

## 1. The End of “Panel Stacking”: Capping Panel Size

Earlier versions of SOP 1 (such as Revision 15 from 2018) permitted panels to be expanded beyond the standard three judges in rare circumstances. This flexibility led to practitioner concerns over “panel stacking,” a controversial practice where additional judges could theoretically be added to a panel to sway a specific legal outcome.

Revision 17 closes the door on this practice. The updated policy unequivocally states that panels shall not be expanded beyond three judges. It also strictly dictates that all paneling actions must remain impartial. The SOP creates a hard rule that no panel members shall be selected to influence an outcome.

## 2. The Director's Role: Pre-Decision vs. Post-Decision

In earlier years, the boundaries of the USPTO Director's influence over ongoing PTAB trials were a subject of intense legal scrutiny, culminating in the Supreme Court's *Arthrex* decision. Earlier SOPs lacked the precise guardrails required to navigate these separation-of-powers concerns.

Under Rev. 17, the boundaries are rigidly defined. The Director will not be involved in directing or otherwise influencing the paneling or repaneling of any specific proceeding before the PTAB prior to the issuance of the panel decision. This ensures APJ's can adjudicate without executive interference. The Director maintains the authority, however, to repanel a proceeding when reviewing or rehearing an issued panel decision. If the Director chooses to do so, it must be enacted through an Order entered into the record.

### 3. Enhanced Transparency in Panel Changes

In the past, replacing a judge on a panel could be an opaque process, sometimes explained to the public via a simple footnote. Revision 17 demands a much higher level of transparency and standardization.

While a judge can request removal from a panel for any reasonable reason before the panel officially appears on the record, late panel changes are now heavily restricted. If the panel has already appeared (e.g., in a hearing or an order), panel changes are strictly limited to three categories:

- **Recusal:** Required when judges must step away to comply with ethical rules and conflict-of-interest guidelines.
- **Case Management:** Reassignments allowed to ensure efficient case management or to meet the PTAB's statutory deadlines.
- **Unavailability:** Permitted due to approved leave, serious illness, retirement, or other reasonable workload changes.

Most importantly, if an approved change occurs after the panel has appeared, a formal Panel Change Order must be entered into the public record. This order notifies the parties of the new panel and must explicitly state the reason for the change (recusal, case management, or unavailability).

### 4. Anatomy of a Panel: Roles and Composition

Under Rev. 17, panels are capped at three judges, internally designated as "APJ1," "APJ2," and "APJ3". Providing a more rigid structure for workload division than earlier guidelines, Rev. 17 specifies that if APJ1 is in the majority, they will generally do a significant portion of the writing and case management in consultation with the other two judges. However, it retains collaborative flexibility: any of the three judges can draft written work product, including memoranda, concurrences, and dissents. Additionally, all three judges will provide input on writing assignments.

## 5. Formalized Paneling by Technology and Related Cases

While earlier SOPs emphasized balancing broad workloads, Rev. 17 heavily prioritizes technical alignment and docket efficiency.

- **Technology Matching:** Designees must strive to ensure, to the maximum extent possible, that at least two judges on a panel have a technology discipline designation matching the technology of the case.
- **Consistency:** To facilitate efficiency, reexamination appeals and AIA proceedings involving the same patent or related subject matter are directed to the same panel of judges whenever feasible. For large families of AIA proceedings (e.g., four or more writing assignments in a month), designees should normally assign a panel with at least two judges who have the availability to author multiple decisions.

## Conclusion

SOP 1 (Revision 17) reflects a PTAB that has matured through legal challenges and practitioner feedback. By strictly capping panel sizes, walling off pre-decision executive interference, and mandating transparent Panel Change Orders, the USPTO has structured these internal norms to bolster public trust in the independence, efficiency, and predictability of the Board's rulings.