

Insights: Publications

Nearly All Post-Alice Eligibility Rejections are Affirmed in Whole by the PTAB

JD Supra

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Frequently, the fate of a patent application lies with a single patent examiner. This power frustrates applicants when an impasse has been reached in terms of interpretation of the claims, cited art, or patent statutes. However, the applicant has the opportunity to change the decision-maker by appealing a rejection. Then, the decision-maker changes from the patent examiner to a panel of Patent Trial and Appeal Board (PTAB) administrative law judges (ALJs). This strategy may appear to be particularly advantageous when the applicant believes that allowance prospects with the examiner are slim to non-existent.