Insights: Publications

# Inter Partes Litigation and Ex Parte Appeals Before the Trademark Trial and Appeal Board: A Primer

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Kilpatrick Partner **Ted Davis** recently authored "Inter Partes Litigation and Ex Parte Appeals Before the Trademark Trial and Appeal Board: A Primer" for The University of Akron's *Akron Law Review*.

> *"No less an authority than the Supreme Court has repeatedly recognized in recent years the procedural and substantive advantages attaching to federal registrations of trademarks, service marks, certification marks, and collective membership marks on the Principal Register maintained by the United States Patent and Trademark Office ("USPTO"). Importantly, each case producing that recognition has originated in litigation before an administrative panel within the USPTO known as the Trademark Trial and Appeal Board. Particularly given the Court's concomitant holding that, under appropriate circumstances, determinations by the Board can have issue-preclusive effect in later litigation before Article III courts,2 as well as opinions by those courts giving claim-preclusive effect to Board decisions3 and otherwise acknowledging the Board's expertise in registrability matters,4 it is apparent that the Board is a tribunal of consequence.*
>
> *This Article introduces the Board to legal professionals who may be unfamiliar with it and the occasionally arcane aspects of Board practice. Part II addresses the composition of the Board and its jurisdiction. Part III surveys the two general types of matters heard by the Board, namely, inter partes disputes in which the Board acts as a panel of first resort hearing adversarial matters between two or more parties. Parts IV and V address the logistics of ex parte appeals to the Board and challenges to its decisions by dissatisfied litigants, respectively. Finally, Part VI examines the possibly preclusive weight received by Board decisions in later litigation between the same parties or those in privity with them."*

Read the full article.

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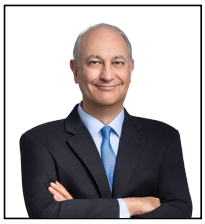

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