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USPTO to exclude entities partially owned by foreign governments from challenging patent validity in PTAB

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Through two March 2026 directives, the USPTO signals a willingness to exclude entities at least partially owned by foreign sovereigns from being petitioners in AIA proceedings.

The first directive is Tianma Microelectronics v. LG Display, IPR2025-01579, a precedential decision wherein the Director determined that the AIA bars Tianma from AIA proceedings because Tianma is likely at least 10% owned by the Chinese government. The Director reasoned:

- The US government is not a person.[i]
- Foreign governments are similarly not persons.[ii]
- AIA proceedings are only available to persons.[iii]
- Thus, foreign governments cannot initiate an AIA proceeding. Matters must be denied or terminated whenever a foreign government is a petitioner in an AIA proceeding.

The Director expanded the logic:

- To prevent "mischief," a foreign government cannot be a real party in interest (RPI) to an AIA proceeding.[iv]
- The Office expects parties to identify any entity at least partially owned by a foreign government as a potential RPI.[v]
- Thus, an entity at least partially by a foreign government may be excluded from an AIA proceeding.[vi]

Here, LG provided evidence that Tianma was 10% owned by the Chinese government. A patent owner has the burden of production when challenging a petitioner's eligibility due to RPI, but then the burden shifts to the petitioner.[vii] Tianma responded to LG's evidence by filing a declaration that the Chinese government did not fund, control, or direct the IPR, or had the ability to control the IPR. The Director said that Tianma's declaration was insufficient to meet the petitioner's burden because the declaration was "unsupported by relevant

documents." Tianma at 10. Thus, the Director determined that a foreign government was an RPI and excluded from seeking PTAB review of LG's patents.

This ruling underscores why petitioners must proactively identify any 10% owners and/or government owners and potentially secure concrete, documentary evidence to rebut a presumption of foreign sovereign control before filing a petition. It also provides patent owners with a powerful defensive strategy: aggressively investigate a petitioner's corporate structure for foreign sovereign ties that can prevent institution or cause termination of an AIA proceeding.

The second directive is a March 11 Memorandum issued by the USPTO one week before Tianma. The Memorandum places the Tianma decision in a broader policy context.

In the Memorandum, the USPTO introduces new discretionary institution factors that respond to concerns over offshore manufacturing and international competition:

> When determining whether to institute IPR and PGR proceedings, the Director will consider:
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> (1) the extent to which any products accused of infringement are manufactured in the United Sates or are related to investments in American manufacturing operations;
>
> (2) the extent to which any products made, sold, or licensed by the patent owner that compete with the accused products are manufactured in the United States; and
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> (3) whether the petitioner is a small business that has been sued for infringement of the patent at issue.[viii]

"Manufacturing" may include producing components, assembling a final product, and/or whether products made in the US are sent elsewhere for further processing. These new considerations apply to all pending IPRs and PGRs where the deadline for a patent owner discretionary brief has not yet elapsed.

Consequently, patent challengers must adapt their petition strategies to account for these new economic and policy factors. Petitioners and patent owners should highlight the domestic manufacturing and investment footprint of their products. Additionally, small business petitioners may benefit from a thumb on the scales in institution decisions and should specifically note their small business status.

In summary:

- **Petitioners:**
  - Disclose accurately any entity with a 10% or greater ownership stake in petitioner's business.
  - Locate and assess evidence that any government that partially owns petitioner's business is not an RPI before filing.
  - Consider addressing U.S.-based manufacturing, investment, and small business interests related to accused products in discretionary briefing.

- **Patent Owners:**
  - Investigate petitioners' corporate structure to uncover ties to foreign sovereigns.
  - Highlight U.S.-based manufacturing and investment interests to leverage the new discretionary factors.

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[i] *Return Mail Inc. v. United States Postal Service*, 587 U.S. 618 (2019).

[ii] *Sturdza v. United Arab Emirates*, 281 F.3d 1287, 1307 (D.C. Cir. 2002); *Beard v. Greene*, 523 U.S. 371, 378 (1998); *Dist. Att'y of N.Y. Cty v. Republic of the Phil.*, No. 14-890, 2019 WL 13177047, at *1 (S.D.N.Y. June 11, 2019).

[iii] 35 U.S.C. §§ 311(a), 321(a).

[iv] *Tianma* at 5.

[v] Fed. R. Civ. P. 7.1; Fed. R. App. P 26.1.

[vi] Evidence showed Tianma was 10% owned by the Chinese government, but the USPTO noted that percentage ownership is not dispositive of RPI status. *Tianma* at 8, fn. 6.

[vii] *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242, 1244 (Fed. Cir. 2018).

[viii] Memorandum at 2.