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Developments re Fintiv Discretionary Denials of IPR Petitions

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As we've noted in earlier blog posts, following the *Fintiv* decision, the PTAB has been denying petitions where a federal court is likely to decide validity before a final would be reached by the PTAB. A study by Unified Patents shows that 38% of petition denials in 2021 are due to *Fintiv*.

Many believe *Fintiv* goes against the intent of the America Invents Act, to allow determining patent validity in the Patent Office, before technical examiners who are best qualified to evaluate validity. Senator Patrick Leahy (D-VT), a co-author of the original Leahy-Smith America Invents ACT, announced on Weds., Sept. 29 that he is introducing a bill that would restore the IPR process to what Congress intended. Among other reforms, it reportedly would overrule *Fintiv*, and replace it with a list of limited factors for discretionary denial.