

**UNITED STATES
PATENT AND TRADEMARK OFFICE**



Patent Trial and Appeal Board (PTAB) update

Scott Boalick, Chief Administrative Patent Judge
Jacqueline Bonilla, Deputy Chief Administrative Patent Judge
Janet Gongola, Vice Chief Administrative Patent Judge
David McKone, Lead Administrative Patent Judge
Stacey White, Lead Administrative Patent Judge
Amanda Wieker, Lead Administrative Patent Judge
Jeffery Fredman, Administrative Patent Judge
Brandy Zukanovich, Office of the Chief Judge Patent Attorney detailee
May 10, 2022
Patent Public Advisory Committee meeting

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Agenda

- PTAB Survey of Patents
- PTAB Pro Bono Program
- Legal Experience and Advancement Program (LEAP)

Jeffrey Fredman, Administrative Patent Judge

David McKone, Lead Administrative Patent Judge

Survey of Examining Corps about PTAB Decisions

Background

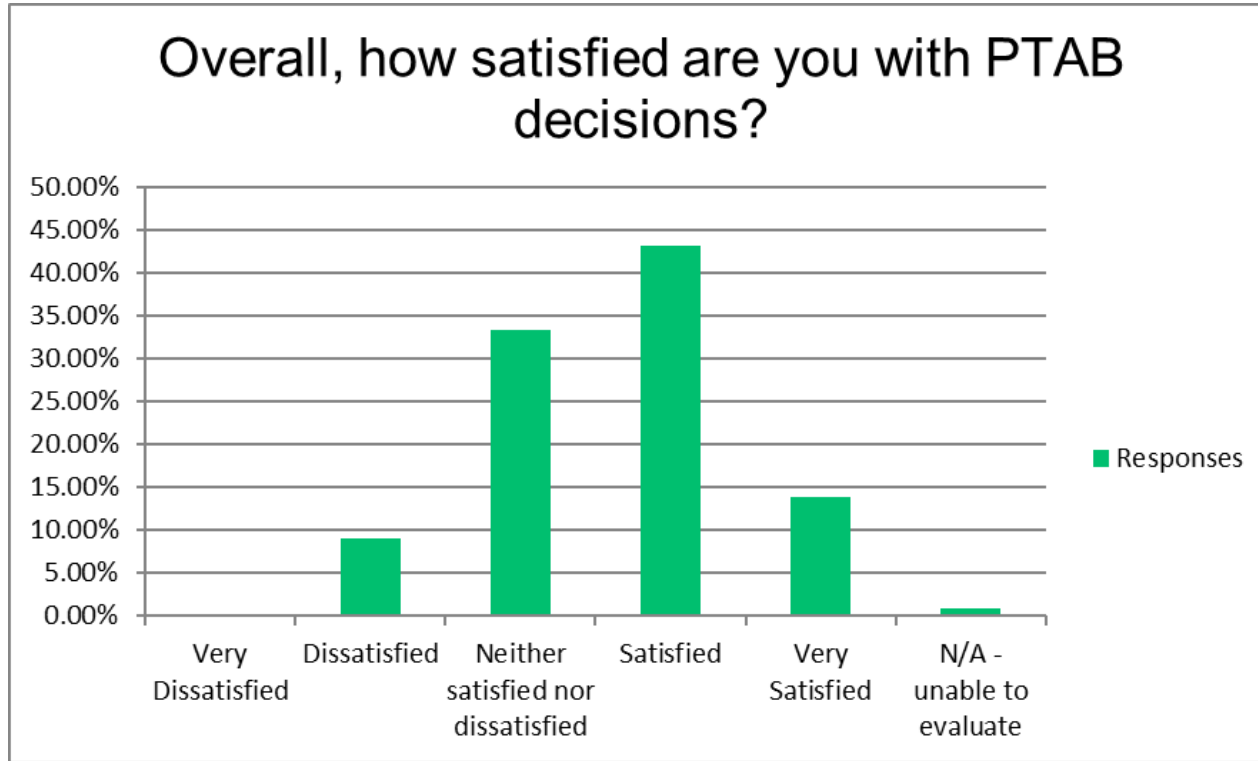
- PPAC asked how the patent examining corps (Patents) and PTAB collaborate to exchange information and learning
- Patents surveyed PTAB in 2020
 - 48% of PTAB judges responded
 - Presented to PPAC in November 2020
 - Resulted in recommendations for patent examiner training

PTAB survey of Patents

PTAB surveyed Patents in 2021

- Goal: To engage Patents management and listen to their views of PTAB appeal decisions
- Population: Supervisory Patent Examiners, Quality Assurance Specialists, and other Patents management; about 124 responded
- Timing: Survey administered in summer 2021

Overall result



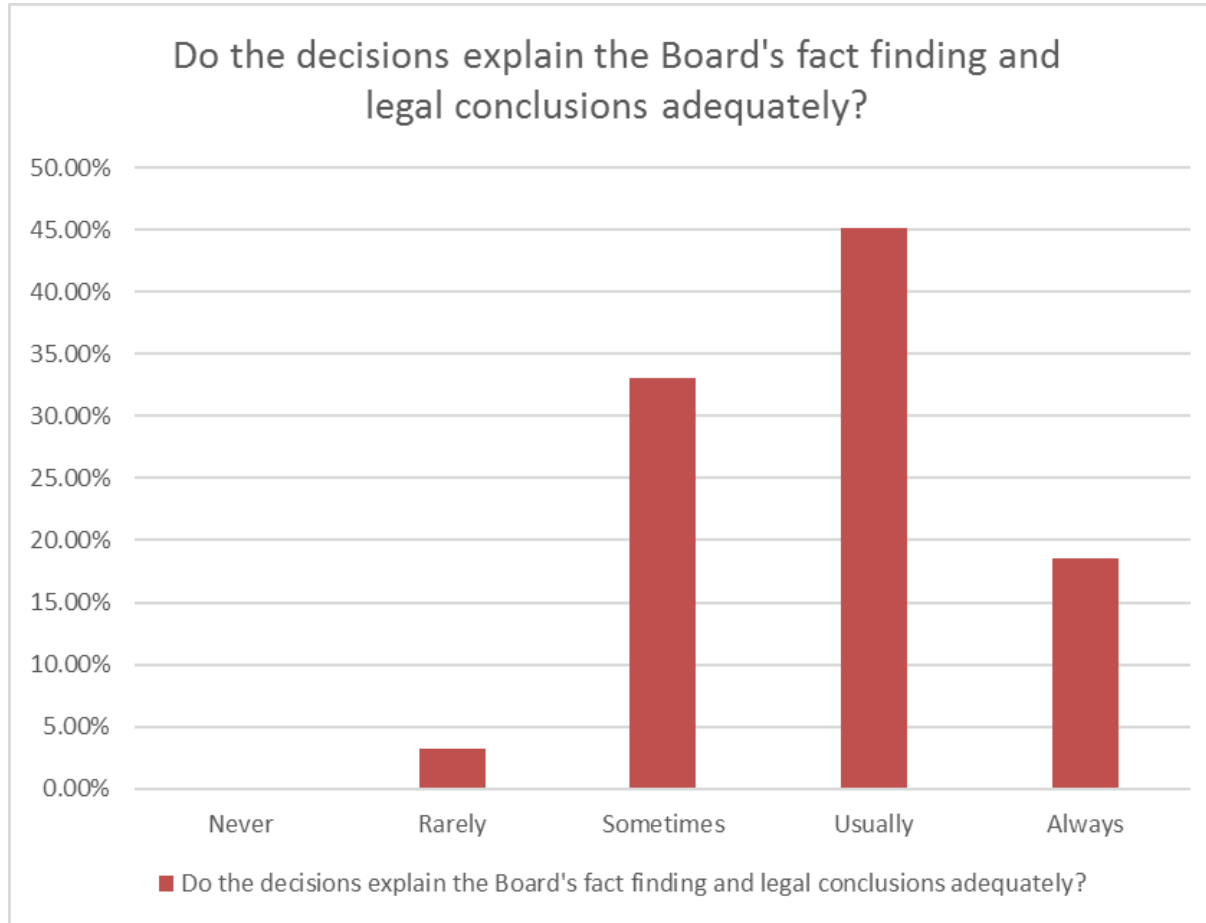
Ratio of
 $\frac{\text{satisfied} + \text{very satisfied}}{\text{dissatisfied} + \text{very dissatisfied}}$
= 6.4

Net promoter score*
= 48

*(satisfied + very satisfied %) –
(dissatisfied + very dissatisfied %)



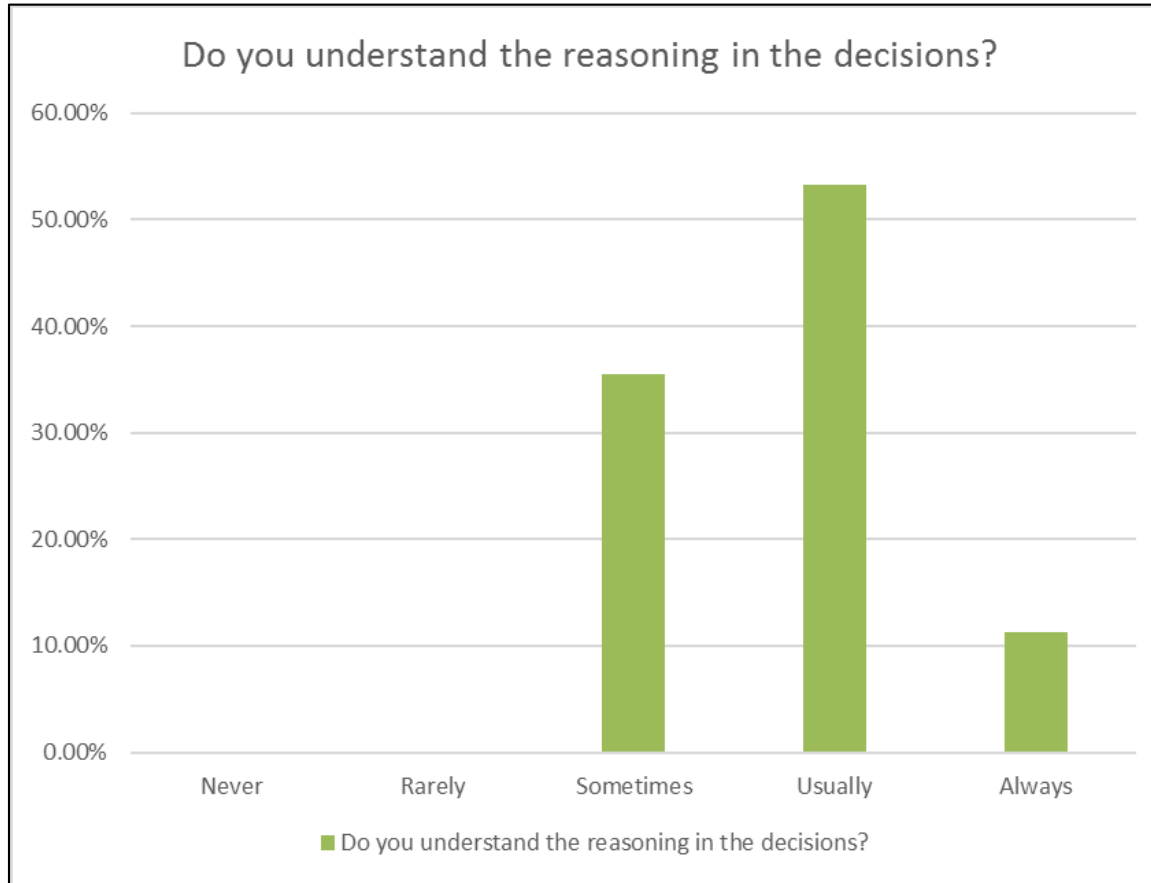
Decision content – facts, law, outcome



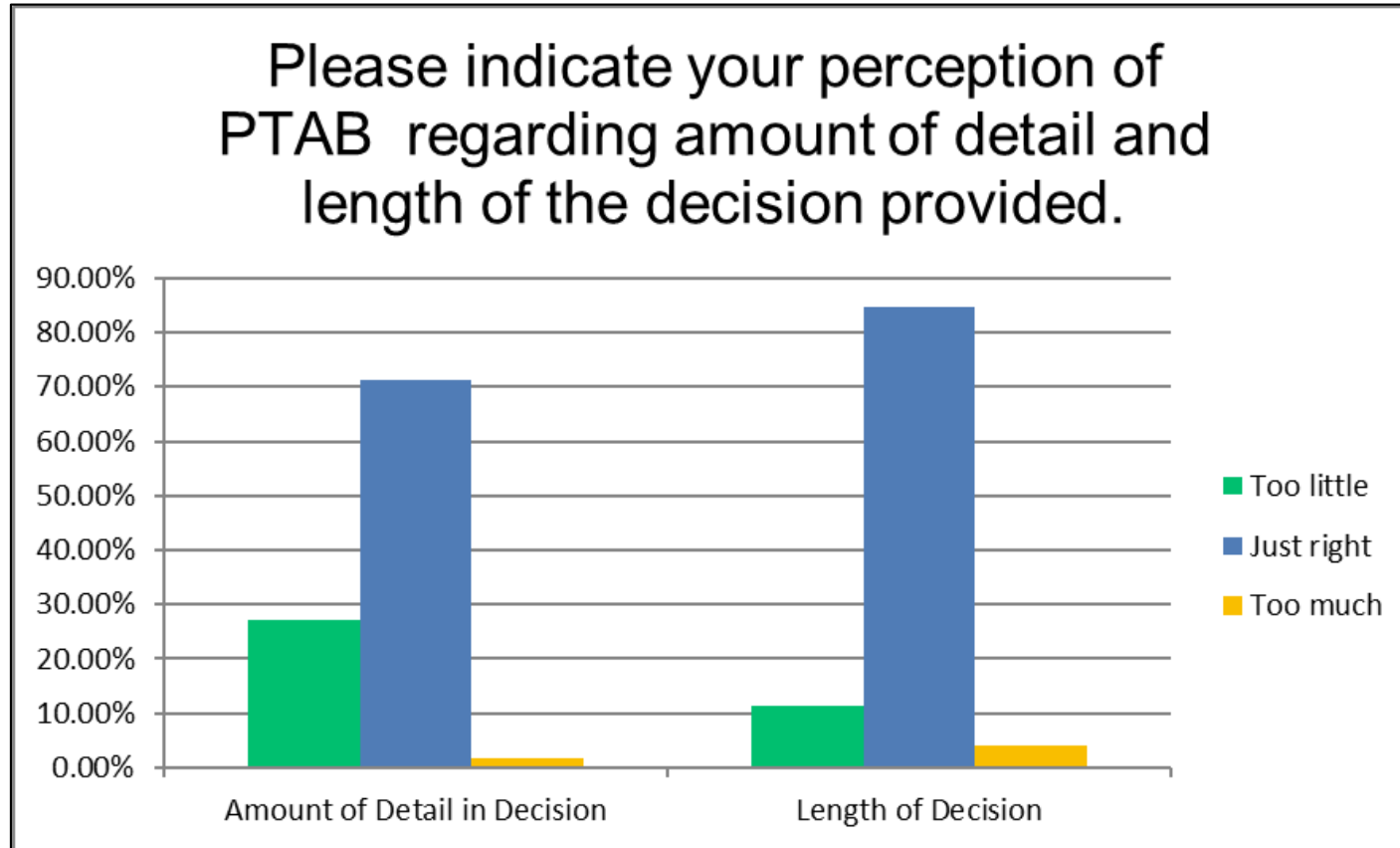
Decision content – facts, law, outcome



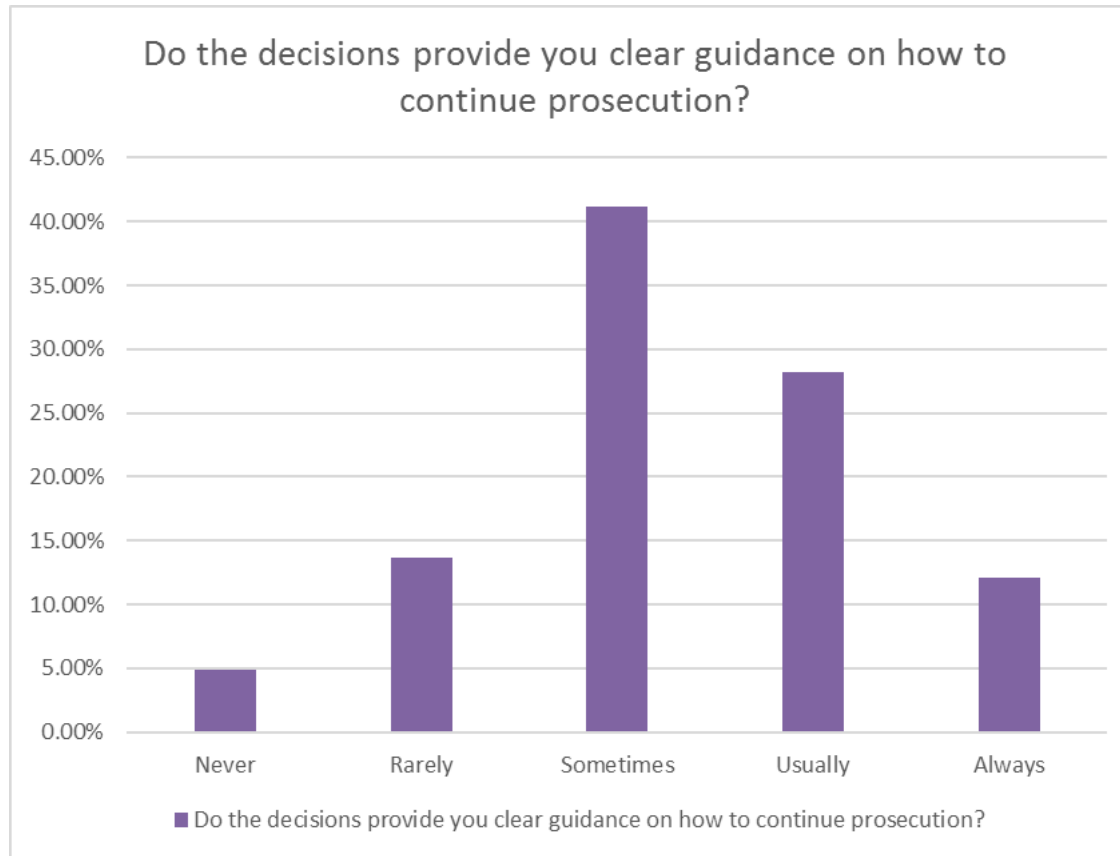
Decision content – reasoning



Decision content – length and detail



Decision content – prosecution guidance



Next steps: improving decision content

- Established a task force to:
 - Identify where to improve, enhance, or expand decisions in ways that benefit stakeholders and patent examiners, such as providing additional guidance in decisions on post-appeal next steps
 - Provide training to judges on best practices

Next steps: training

- Use survey results to improve current PTAB training to Patents on:
 - Understanding and applying the authority governing PTAB decisions (e.g., Federal Circuit case law, precedential PTAB decisions, USPTO guidance)
 - What judges like to see in Examiner Answers
 - How judges approach their decisions
 - Issues particular to Technology Centers
- Work with Patents to develop training materials for post-appeal examination (e.g., new grounds and other non-typical continued prosecution)

PTAB takeaways

- General satisfaction with PTAB decisions
- No significant differences across Technology Centers
- Identified ideas for possible improvement:
 - Establish a task force to investigate improvements to decision content
 - Provide written guidance/training for examiners on post-appeal examination
 - Develop/improve training to examiners on appeal process
- Considering a survey of public to identify other opportunities for PTAB growth



Stacey White, Lead Administrative Patent Judge

Brandy Zukanovich, PTAB Office of the Chief Judge, Patent Attorney detailee

PTAB Pro Bono Program

Framework

- Starting with a pilot of limited scope
 - Beginning with *ex parte* appeals (10 during first year) and later expanding to AIA trials
- On March 24, 2022, we released details on the program structure and began recruitment of volunteer practitioners

Participant eligibility criteria

- Domiciled in U.S.
- Limited financial resources (income less than 300% of federal poverty guidelines)
- Certification of Micro Entity Status in patent application
- Not otherwise represented by a practitioner in the PTAB proceeding
- Request assistance within 1 month from date of Office Action at issue
- Able to pay all USPTO fees and ancillary costs associated with the appeal
- Completed a 2-part video training online
 - Part 1: PTAB Pro Bono Program and application process
 - Part 2: Overview of *ex parte* appeal



Volunteer qualifications

- Be a U.S. licensed attorney or patent agent
- Have experience in technology and proceeding type
- Provide malpractice insurance
- Agree to no fee for services
- Provide representation agreement

Matching

- Conducted by PTAB Bar Association Clearinghouse Committee
- Clearinghouse Committee reviews application for completeness
- Clearinghouse Committee contacts applicant prior to matching attempt
- Placement requests are sent to all volunteers via email
- Placement to occur <1 month after applicant qualifies for placement

Next steps

- March 24, 2022
 - Program opened to volunteers
- June 1, 2022
 - Program opens to applicants
- More information is available at <https://www.uspto.gov/patents/patent-trial-and-appeal-board/patent-trial-and-appeal-board-pro-bono-program-independent>





Amanda Wieker, Lead Administrative Patent Judge

Legal Experience and Advancement Program (LEAP)

LEAP updates

- **Qualifications:**
 - To qualify as a LEAP practitioner, a patent agent or attorney must have three or fewer substantive oral arguments in any federal tribunal, including the PTAB.
- **Statistics (May 2020 – Apr. 26, 2022):**
 - Total number of LEAP requests received: 127
 - Total number of LEAP requests granted: 126
 - One request denied due to practitioner not meeting eligibility requirements
 - Total number of law firms participating in LEAP: 70
- **Training Opportunities:**
 - May 6, 2022 – Preparing for your AIA Argument
 - May 13, 2022 – Mock AIA Argument Practicum
 - May 20, 2022 – AIA Oral Argument Encore





Thank you!

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