

Cain, Brigit

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At the USPTO Roadshow, the presenters mentioned that parties to a PGR will be encouraged to settle. While I am greatly in favor of parties settling their disputes and in trying to find resolutions before going to court and even during trial. This can be a very bad thing if the issue that is settled is patent validity. If the parties want to settle on infringement or damages, that is better for everyone. Patent validity is not an issue between the two parties, however. It affects many other parties and may even affect the public interest. There may also be antitrust and monopolization implications.

I would strongly urge that as to validity of a patent, that the USPTO's tradition (also common in the courts) be maintained that this is a matter of public interest. A party may be permitted to dedicate his patent to the public domain. An opponent may be permitted to withdraw a challenge. However, a patent should not be held to be valid or invalid with estoppel effect without a final appealable adjudication by the PTAB after reviewing and noting the salient facts in a record.

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