Patent Trial and Appeal Board

Inventor Hour: Episode 18

Janet Gongola, Vice Chief Administrative Patent Judge
Jeffrey Fredman, Administrative Patent Judge
Ryan Flax, Lead Administrative Patent Judge

Special guests:
  Phillip Kauffman, Lead Administrative Patent Judge
  Mariessa Terrell, Attorney Advisory for Trademark Customer Outreach

May 25, 2023
What is the Patent Trial and Appeal Board?

PATENTS
- examine patent applications
- grant patents

PTAB
- ex parte appeals,
- AIA proceedings, other

TTAB*
- ex parte appeals, inter partes proceedings

TRADEMARKS
- examine and register trademarks

*Trademark Trial and Appeal Board (TTAB)
Today’s agenda

1. Meet a judge
2. Appeal byte: Anticipation
3. Trademarks basics (Part 1)
4. Walkabout the web: Resources
5. Q&A

*INFORMATION NOT INTENDED AS LEGAL ADVICE
Question/comment submission

To send in questions or comments about the presentation, please email:

– PTABInventorHour@uspto.gov
Meet a judge
Phillip Kauffman, Lead Administrative Patent Judge
Phil Kauffman
Lead Administrative Patent Judge
Question/comment submission

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– PTABInventorHour@uspto.gov
Appeal byte:
What is anticipation?

Jeffrey Fredman, Administrative Patent Judge
Patentability: statutory requirements

- novelty §102
- subject-matter eligibility §101
- non-obviousness §103
- definiteness §112(b)
- written description §112(a)
- enablement §112(a)
(a) NOVELTY; PRIOR ART.—A person shall be entitled to a patent unless—

(1) the claimed invention was patented, described in a printed publication, or in public use, on sale, or otherwise available to the public before the effective filing date of the claimed invention; or

(2) the claimed invention was described in a patent issued under section 151, or in an application for patent published or deemed published under section 122(b), in which the patent or application, as the case may be, names another inventor and was effectively filed before the effective filing date of the claimed invention. . . .

Compare with prior art

- articles
- treatises
- advertising/sales
- patents
Differences from prior art

Claimed invention

Prior art 1

Prior art 2
Invention:
Holiday themed cookies
filed January 4, 2022

Prior Art:
Halloween pumpkin cookie
patent published April 15, 2004
Inherency

Invention:
Condiment (ketchup) container with cover

Prior art:
Product container with a cover
Invention: ice cream with 10-16% milkfat

Prior art 1: Ice cream with 14% milkfat

Prior art 2: Ice cream with 9.5-16.5% milkfat

Prior art 3: Ice cream with 3-20% milkfat
Enabling prior art

Invention: Gas turbine engine for airplane

Prior art: Proposal for advanced gas turbine engine (didn’t work)
Practice tip

Cited prior art

Anticipated original claim

New amended claim
Intellectual property basics and helpful resources sessions

Unfamiliar with **patents, trademarks, copyrights, and trade secrets**? Don’t miss this opportunity to learn from USPTO experts about intellectual property (IP) basics and potential ways to protect your innovation as you transition from idea to product. The discussion will cover:

- An overview of patents, trademarks, copyrights, and trade secrets
- Why innovators and entrepreneurs should consider protecting their IP
- Local resources and assistance available through the USPTO and other agencies

**Multiple online sessions**

- June 1, 2023 at 12 p.m. – 1:30 p.m. ET
- July 6, 2023 at 12 p.m. – 1:30 p.m. ET
- August 3, 2023 at 12 p.m. – 1:30 p.m. ET
- September 7, 2023 at 12 p.m. – 1:30 p.m. ET

For more information, go to:
www.uspto.gov/about-us/events/intellectual-property-basics-and-helpful-resources-18
Question/comment submission

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– PTABInventorHour@uspto.gov
Discussion topics

- Trademarks and intellectual property
- Benefits of federal registration
- Selecting a trademark
- How to find help
Discussion topic

Trademarks fundamentals
What is a trademark?
What does a trademark do?

- **Identifies** the source of goods and services
- **Distinguishes** them from the goods and services of another party
- Provides legal **protection for a brand**
Traditional types of marks

Common **source identifiers**: 
- Brand names 
- Slogans 
- Logos

**COCA-COLA**

*IT’S THE REAL THING*
Discussion topic

Benefits of federal registration
Common law trademark rights

Rights

– Created **when you use** trademark in commerce
– Limited to **geographic** area where mark is used

Symbols

– Optional: TM  SM
– Never:  ®
Federal registration rights

Rights

– Created when you federally register a trademark
– Can bring legal action concerning trademark in federal court
– Enables recordation of registration with United States Customs and Border Protection
– Can be used as a basis for filing in another country
– May use the registration symbol, ®
Discussion topic

Selecting a trademark
Trademark selection challenges

Remember:

– Our mission is to register any trademark that is eligible for registration
– Not every trademark is registrable
– Not every trademark is enforceable
– Select a trademark that is both federally registrable and legally protectable
Registrable and protectable

Two main concepts:

• Likelihood of *confusion*
  – Likelihood of confusion refusal

• **Strength** of the trademark
  – Descriptiveness refusal
Selecting a trademark: Likelihood of confusion
Likelihood of confusion

Concept:

– Avoid confusing consumers about the source of the goods and services.

Test:

– Are the trademarks confusingly similar?

and

– Are the goods and/or services related?
Likelihood of confusion example

Your trademark

T.MARKEY

for

shirts

Registered trademark

T.MARKEY

for

pants
Likelihood of confusion example

**Your trademark**

T.MARKEY

for

shirts

**Registered trademark**

TEE MARQEE

for

pants
Likelihood of confusion example

Your trademark

T.MARKEY for shirts

Registered trademark

TEE MARQEE for golf flags
Suggestions for searching

• On your own:
  – USPTO database
    • **TESS** (Trademark Electronic Search System)
    • [www.uspto.gov/SearchTrademarks](http://www.uspto.gov/SearchTrademarks)
  – The internet
    • Option for searching for common law use
Discussion topic

How to find help
How to find help

Trademark Assistance Center
- www.uspto.gov/TrademarkAssistance

Trademark basics registration toolkit
- www.uspto.gov/TrademarkBasicsToolkit

Trademark Basics Boot Camp webinars
- www.uspto.gov/about-us/events/trademark-basics-boot-camp
Climate Change Mitigation Pilot Program

- Expedites examination for qualifying applications involving technologies that mitigate climate change by reducing greenhouse gas emissions
- Opened June 3, 2022
- Runs until June 5, 2023, or 1,000 grantable petitions (whichever is earlier)
- Free for qualifying applications
Walkabout the web: Office resources

Ryan H. Flax, Lead Administrative Patent Judge
The USPTO’s hub for startup resources can help you address the intellectual property (IP) challenges specific to startups, including securing funding and guarding against costly infringement litigation. For information on IP fundamentals, such as filing a patent or registering a trademark, check out these resources for inventors and entrepreneurs.

Here you will find practical information and useful tools, available from a wide variety of government agencies, including the Small Business Administration (SBA), the Minority Business Development Administration (MBDA), and Small Business Development Centers (SBDCs). These agencies can assist you at every stage of growing your business, from your initial idea to entering the global marketplace.
www.uspto.gov/startups

Protect IP rights
Guard your valuable work
You need to protect your IP if you want to succeed and attract investors.

> Identify the kind of IP you have
> Protect your IP in the U.S.
> Protect your IP abroad
> Fight costly counterfeits
> Access IP training modules in five languages
> Access resources for small and medium-sized enterprises

Plan for success
Do your homework
Explore free government resources that can help you create a foundation for business success.

> Learn the steps to start your business
> Find a MBDA Center in your state
> Get free business counseling near you

Find funding
Access capital
There are many sources of startup funding, including grants, loans, and different kinds of investors.

> Choose the right funding
> Search federal grants
> Learn about America's Seed Fund
> Access SBA loans
> Review additional funding resources

Engage experts
Get advice and assistance
Find mentors, partnerships, and technological assistance in your industry. Learn to navigate the domestic and international IP markets.

> Get free advice from business experts at SCORE
> Get help with manufacturing your technology
> Learn about IP protection in other countries
> Utilize IP attachés to navigate the global market
INVENTOR & ENTREPRENEUR RESOURCES

Get started
Learn about types of intellectual property (IP) and how to protect your idea or product.
> Types of IP protection
> Identify the kind of IP you have
> Patents basics
> Trademark basics
> Copyright basics

Before you apply
Search existing patents and trademarks to find out if your idea is unique. If it is, create an account.
> Search patents
> Search trademarks
> Create an account to apply
> Attend a free training

Get help to apply
Set yourself up for success by learning via USPTO’s free resources and find expert help.
> Access our free services
> Find resources near you
> Find a patent attorney
> Do I need a trademark attorney?

Apply for IP rights
Submit your application for a patent or trademark. See if you qualify for reduced patent fees.
> Apply for a patent
> Apply for a trademark
> Costs to file
> Reduced patent fees

www.uspto.gov/inventors
After you apply
As your patent or trademark is examined you may need to take additional steps.
> Check application status
> Respond to a patent decision
> Prepare for a patent interview
> Respond to a trademark decision

Appeal or fix an issue
An applicant may petition a procedural rule or issue, or appeal a patent rejection or trademark refusal.
> Learn about patent petitions
> Learn about patent appeals
> Learn about trademark petitions
> Learn about trademark appeals

Entrepreneur resources
Learn about small business resources at the USPTO and other federal agencies.
> Startup resources
> License or sell your IP
> Change patent owner
> Change trademark owner
> Other federal resources

Protect yourself
Don’t be misled by false claims, scams, or companies offering services for unusually low prices.
> Known patent scams
> Known trademark scams
> Prevent or report a scam

PATENT BASICS
Learn about the patent process

TRADEMARK BASICS
Learn about trademark registration

COPYRIGHT BASICS
Learn about protecting authorship
Inventor and entrepreneur resources by state

There are lots of resources and assistance to make filing for a patent or registering a trademark easier, more affordable, and ultimately result in strong legal protection for your invention or brand. For example, if you can't afford an attorney, there are several programs that provide free legal representation. Use the map below to find out what is available in your state or at your regional office.

And remember, our Inventor and entrepreneur resources page is the USPTO hub for resources and information for inventors, entrepreneurs, and small businesses.
Select your state below to find resources

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<th>List of State Names</th>
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<td>Alabama</td>
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<td>Puerto Rico</td>
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<td>District of Columbia</td>
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<td>Maine</td>
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<td>Tennessee</td>
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Intellectual property rights (IPR) infringement resource tool

The intellectual property rights (IPR) infringement resource tool provides access to a library of information produced by U.S. government agencies. Topics include bilateral and multilateral trade agreements with intellectual property (IP) provisions and annual (or other periodic) reports produced by executive branch and independent IP enforcement agencies. For more information, visit the economic resources on IPR infringement page.

LINK TO RESOURCE TOOL

Instructions for using the tool

- Use the Title/Description search boxes to filter the results to only include items with titles that contain the text that you searched for. To search for two separate strings, set the drop-down to either "AND" or "OR" and type in both string values. "AND" will only return results that contain both entered strings while "OR" will return results that contain at least one of the entered strings.
- Use the Country drop-down to filter the results to only include items concerning the selected country(ies).
- Use the U.S. Agencies drop-down to filter the results to only include items concerning the selected agency(ies).
- Use the Year drop-down to filter the results to only include items concerning the selected document year(s).
- Use the Document Type drop-down to filter the results to only include items matching the selected document type(s).
- To clear all filters, click the "Reset Filters" button on the top right hand side of the data inventory window.
List of U.S. agencies available on the tool

- Department of Homeland Security (DHS)
  - U.S. Customs and Border Protection (USCBP)
  - U.S. Immigration and Customs Enforcement (ICE)
- Executive Office of the President (EOP)
  - U.S. Intellectual Property Enforcement Coordinator (IPEC)
  - Office of the U.S. Representative (USTR)
- U.S. Department of Justice (DOJ)
  - Office of Justice Programs (OJP)
- Federal Bureau of Investigation (FBI)
- Federal Trade Commission (FTC)
- U.S. Food and Drug Administration (FDA)
- U.S. Government Accountability Office (GAO)
- U.S. Patent and Trademark Office (USPTO)
- U.S. International Trade Commission (USITC)

For questions, please contact: economics@uspto.gov ✉️
The United States Patent and Trademark Office (USPTO) published a report in 2022 that found intellectual property (IP)-intensive industries account for 41% of U.S. gross domestic product. Many of the businesses operating in those industries are small and medium-sized enterprises (SMEs). To support SMEs and other innovators, the USPTO created this page to share resources from federal agencies and international organizations for growing a business and for protecting intangible business assets like IP.

For information on IP fundamentals, such as filing a patent or registering a trademark, visit the USPTO’s inventor and entrepreneur resources page, and to find out about some of the ways the USPTO can assist you, browse our free services.
Federal funding for innovation

- CARES Act funding through the Minority Business Development Agency
- National Institutes of Health funding opportunities
- National Science Foundation programs for small businesses
- COVID-19 relief options through the Small Business Administration
- Additional funding resources can be found here
Access our free services

The United States Patent and Trademark Office (USPTO) offers a wide range of intellectual property (IP) resources, including application assistance, education and training, and other services that support the full spectrum of customers—from independent patent and trademark filers, to attorneys and business advisors in both the private and public sectors. Learn more about what USPTO is doing to expand participation in the innovation ecosystem through inclusive innovation, including our Council for Inclusive Innovation (CIP).

Using the icons below, select a category to filter the list by your area of interest.

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<tr>
<th>Title</th>
<th>Description</th>
<th>Resource category</th>
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<tbody>
<tr>
<td>Application Assistance</td>
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<tr>
<td>Application Assistance Unit (AAU)</td>
<td>Provides assistance with questions and issues pertaining to pre-examination processing of patent applications and the post-examination processing of patent applications.</td>
<td></td>
</tr>
<tr>
<td>Finding a patent practitioner</td>
<td>Search the registry of active patent practitioners who are eligible to represent others before the USPTO in patent matters.</td>
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</tr>
<tr>
<td>Hiring a U.S.-licensed attorney for trademarks</td>
<td>Discover if you are required to hire an attorney and why you should hire an attorney for trademark matters, even if you are not required to.</td>
<td></td>
</tr>
<tr>
<td>Inventors Assistance Center</td>
<td>Provides patent assistance and information to the public to help make filing a patent process.</td>
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<tr>
<td>Service</td>
<td>Description</td>
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<tr>
<td><strong>Inventors Assistance Center</strong></td>
<td>Provides patent assistance and information to the public to help make filing a patent application simple and efficient before, during, and after the patent application process (i.e., patent maintenance).</td>
<td></td>
</tr>
<tr>
<td><strong>Law School Clinic Certification Program</strong></td>
<td>Under the supervision of an approved faculty clinic supervisor, law school students provide pro bono representation to individuals and small businesses throughout the country in the prosecution of patent and trademark applications before the USPTO.</td>
<td></td>
</tr>
<tr>
<td><strong>Patent and Trademark Resource Centers</strong></td>
<td>Nationwide network of 80+ libraries that offers the public trademark and patent assistance. These libraries provide access to examiner-based search systems, and staff demonstrate how to use search tools and offer classes on intellectual property.</td>
<td></td>
</tr>
<tr>
<td><strong>Patent Electronic Business Center (EBC)</strong></td>
<td>Assists customers with the various Patent Electronic Systems, including help with filing their electronic patent application submissions, reviewing patent applications, and using the patent search databases.</td>
<td></td>
</tr>
<tr>
<td><strong>Patent Pro Bono Program</strong></td>
<td>Provides patent application preparation, filing, and prosecution services to qualifying under-resourced inventors and small businesses. A nationwide network of non-profit regional programs match volunteer patent practitioners with applicants.</td>
<td></td>
</tr>
<tr>
<td><strong>Patents Ombuds</strong></td>
<td>Provides assistance to all applicants who get stalled or encounter challenges navigating the patent application process after submitting their application (post-filing), managing cases for each inquiry until they are resolved.</td>
<td></td>
</tr>
<tr>
<td><strong>Pro Se Assistance Program</strong></td>
<td>Helps independent inventors successfully navigate the entire patent application process. Services include scheduled consultations, quick clinics, and reference materials to increase the applicant’s likelihood of success.</td>
<td></td>
</tr>
<tr>
<td><strong>PTAB ex parte appeal brief preparation assistance</strong></td>
<td>Provides an instructional tool on how to write an ex parte appeal brief and file it with the Patent Trial and Appeal Board (PTAB) after a patent examiner rejects claims in a</td>
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Visit [www.uspto.gov/FreeServices](http://www.uspto.gov/FreeServices) for more information.
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<thead>
<tr>
<th>Service</th>
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<tr>
<td>PTAB pro bono program</td>
<td>Matches financially under-resourced inventors with volunteer patent professionals to provide free legal assistance in preparing ex parte appeals to the PTAB.</td>
</tr>
<tr>
<td>Regional offices and assistance</td>
<td>Provide resources, education, and assistance in your state for filing patent or trademark applications, options for legal assistance, methods for searching for existing inventions and trademarks, and networking opportunities.</td>
</tr>
<tr>
<td>Small and micro entity patent discounts</td>
<td>Fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents are reduced by 50% for qualifying small entities and 75% for qualifying micro entities that meet statutory definitions.</td>
</tr>
<tr>
<td>Trademark Assistance Center</td>
<td>Provides general information about the trademark registration process.</td>
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<tr>
<td>TTAB Assistance Center</td>
<td>Provides online assistance with filing documents in a Trademark Trial and Appeal Board (TTAB) proceeding, directs customers to specific TTAB Manual of Procedure sections for additional information, and provides status updates in pending proceedings.</td>
</tr>
<tr>
<td>TTAB pro bono clearinghouse program</td>
<td>Recognizes organizations that act as a referral clearinghouse to coordinate free legal services, by matching eligible members of the public with volunteer member attorneys, in proceedings before the Trademark Trial and Appeal Board.</td>
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<tr>
<td>Business Resources</td>
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<tr>
<td>AccessUSPTO</td>
<td>Collaborates with national organizations whose members have intellectual property needs and connect them to USPTO’s free services that can help them grow their business.</td>
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<td>International IP Attaché Program</td>
<td>Specialized IP attachés help U.S. businesses, legal representatives, and rights holders internationally. They also advocate to improve IP policies, laws, and regulations abroad, as well as provide IP training to foreign government officials.</td>
</tr>
<tr>
<td>International IP Toolkits</td>
<td>Provides detailed information about protecting and enforcing IP rights when doing business in specific international markets, along with contact information for local IP offices abroad and U.S. government officials who can assist.</td>
</tr>
<tr>
<td>Inventor and entrepreneur resources webpage</td>
<td>USPTO’s hub for resources and information for inventors, entrepreneurs, and small businesses. This webpage provides centralized access to a variety of USPTO products and services.</td>
</tr>
<tr>
<td>Small and medium-sized enterprise resources</td>
<td>Resources provided by federal agencies and international organizations for small and medium-sized enterprises looking to grow or expand a business and protect intangible business assets, like intellectual property.</td>
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<tr>
<td>Startup resources webpage</td>
<td>Provides resources for new businesses, including securing funding, and guarding against infringement litigation. Also contains links to related startup and commercialization resources located at other government agencies.</td>
</tr>
<tr>
<td>TTAB Reading Room</td>
<td>Allows users to search for final decisions and precedential orders issued by the Trademark Trial and Appeal Board.</td>
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<td>Education and Training</td>
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<td>Description</td>
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<td>China IP Road Shows and webinars</td>
<td>Programming initiative for U.S. businesses and rights holders on how to better protect IP in China. Related pilot programming for a similar audience covers how to better protect IP in the Southeast Asian region and other export markets.</td>
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<tr>
<td>Events offering CLE credits</td>
<td>Provides a list of upcoming USPTO events that may be eligible for continuing legal education (CLE) credits in your state.</td>
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<td>Global Intellectual Property Academy IP eLearning modules</td>
<td>Self-study modules in English, Spanish, French, Arabic, and Russian, which cover all areas of IP protection, including trade secrets, patents, copyrights, trademarks, geographical indications, enforcement and trade.</td>
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<td>Innovator events for everyone</td>
<td>Annual programs that provide relevant intellectual property, innovation, and invention resources to independent inventors, small businesses, entrepreneurs, and underrepresented or underserved populations (e.g., women and veterans).</td>
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<tr>
<td>Invention-Con</td>
<td>An annual three-day conference that provides an overview of IP protection and commercialization best practices. Participants learn about the importance of IP, what resources are available to them, and how to develop an IP strategy.</td>
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<tr>
<td>IP Identifier</td>
<td>Learn how to identify which of your creative ideas might be intellectual property assets and how to protect them.</td>
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<td>IP workshops for K-12 educators</td>
<td>A monthly workshop for K-12 educators interested in integrating IP activities into their STEM/STEAM curriculum. Educators learn about IP and other topics related to innovation and entrepreneurship. Virtual “Office hours” are also available.</td>
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<tr>
<td>Legal Experience and Advancement Program (LEAP)</td>
<td>Provides training and oral advocacy opportunities for less experienced advocates to gain practical experience in proceedings before the Patent Trial and Appeal Board.</td>
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<td>National Summer Teacher Institute</td>
<td>A multiday professional development course offered to K-12 teachers to inspire and motivate student achievement in STEM disciplines, intellectual property, and entrepreneurship.</td>
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<td>One-day patent and trademark boot camps</td>
<td>Collaborates with local organizations to bring IP knowledge to internet deserts from rural areas to urban areas. Provides single-day, in-person, comprehensive overviews of how to file for a patent or register a trademark.</td>
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<tr>
<td>Path to a Patent webinar series</td>
<td>A quarterly webinar series that provides education on intellectual property basics, patent searching, and guidance for drafting and submitting your patent application.</td>
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<td>PTAB Boardside Chat webinars</td>
<td>Webinars that explain more complex aspects of Patent Trial and Appeal Board practices for ex parte appeals and AIA trial proceedings on a topic-by-topic basis.</td>
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<tr>
<td>PTAB Inventor Hour webinars</td>
<td>Webinars that cover several introductory aspects of Patent Trial and Appeal Board practices, such as proceeding basics and other useful information for practicing before the PTAB.</td>
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<tr>
<td>Public Search Facility</td>
<td>In-person assistance that provides public access to patent and trademark information, including online, microfilm, and books. Staff are available to assist public users with resources and training. Located in Alexandria, VA.</td>
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<tr>
<td>Stakeholder Application Readiness Training (StART)</td>
<td>Three-day workshops that provide training and one-on-one assistance to independent inventors in preparing their patent application packet materials and filing those applications with the USPTO.</td>
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<tr>
<td>Stakeholder Offerings and Resources (SOaR)</td>
<td>Provides publicly-offered virtual training courses for both continuing legal credit and supporting inventors filing applications without legal representation.</td>
</tr>
<tr>
<td>Stakeholder Training on Examination Practice and Procedure (STEPP)</td>
<td>Provides courses to help patent attorneys, agents, and inventors understand how, and why, a patent examiner makes decisions while reviewing patent applications.</td>
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<tr>
<td>Student programs</td>
<td>Provides a list of USPTO’s paid and unpaid internship and externship opportunities for high school, college, graduate, and law school students.</td>
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<tr>
<td>Trademark Basics Boot Camp series</td>
<td>An eight-week series provides a comprehensive overview of federal trademark registration, including modules on searching, filing, examination, and keeping registered marks active. Attendees can register for some or all of the modules.</td>
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<tr>
<td>Trademark Registration Toolkit (PDF)</td>
<td>Provides an overview of what a trademark is, the benefits of federal registration, how to apply for registration, and how to keep your registration alive.</td>
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</tbody>
</table>
PTAB contact info

By telephone:
- 571-272-9797 (general; appeals; and interferences)
- 571-272-7822 (trials; and PTACTS)

By email:
- PTAB_Appeals_Suggestions@USPTO.GOV
- Trials@uspto.gov
- PTABStatisticsQuestions@USPTO.GOV
- PTABOutreach@uspto.gov
- PTABP-TACTSAdmin@uspto.gov
Questions?
Future programs

Inventor Hour, Episode 19
Thursday, June 22, noon (ET)

Inventor Hour, Episode 20
Thursday, July 27, noon (ET)