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Intellectual Property Alert

August 1, 2025

IPR petitions may no longer rely on “general knowledge” to supply missing claim limitations

By Dan Georgiev and Angelo Christopher

The USPTO issued a memorandum requiring that IPR petitions specify where each element of a challenged claim is found in a prior art patent or printed publication.



What's the impact?

- IPR petitions must show that each claim limitation is found in a prior art patent or printed publication.
- Petitioners cannot rely on “general knowledge” in the art, such as applicant-admitted prior art, to supply missing claim limitations.

On July 31, 2025, the acting director of the United States Patent and Trademark Office (USPTO) issued a [memorandum](#) to the Patent Trial and Appeal Board (PTAB), providing that, effective September 1, 2025, every petition for *inter partes* review (IPR) must specify where each element of a claim at issue is found in a prior art patent or printed publication. The memorandum's guidance is based on relevant statutory text and the PTAB's rules. Pursuant to 35 U.S.C. §

312(a)(3), an IPR petition must identify, “in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim.” Under 37 C.F.R. § 42.104(b)(4), the IPR petition also “must specify where each element of the claim is found in the prior art patents or printed publications relied upon.”

The memorandum makes clear that petitioners cannot rely on “general knowledge” in the art—including applicant-admitted prior art (AAPA), expert testimony, common sense, or any other evidence that is not a patent or printed publication—to supply a missing claim limitation that is not otherwise disclosed in a prior art patent or printed publication. The memorandum directs PTAB to deny any IPR petition that runs afoul of this requirement.

The memorandum supersedes the USPTO’s [2020](#) and [2022](#) memorandums concerning the use of AAPA in IPRs. The 2020 memorandum provided that a petition may point to general knowledge to satisfy a claim limitation. The 2022 memorandum similarly provided that the PTAB should not deny a petition that points to general knowledge and/or AAPA to satisfy a claim limitation. The acting director states that the prior guidance is no longer consistent with Federal Circuit precedent.

In 2022, the Federal Circuit held that AAPA does not form the “basis” of a ground in an IPR petition, but may be used as evidence of the background knowledge of a person having ordinary skill in the art.¹ Then, in 2025, the Federal Circuit held that the basis for a petition may not include AAPA *in combination* with prior art patents and printed publications.² The Federal Circuit also clarified that AAPA evidences general knowledge in the relevant art and that general knowledge can be used to supply a missing claim limitation.³

The acting director states the PTAB’s narrower approach “is the best course of action to provide certainty to the parties, the Board, and the public, and to allow for the efficient administration of the Office.” However, general knowledge may still play a role in an IPR petition. For example, AAPA may be used to support arguments regarding motivation to combine references or to demonstrate the knowledge of a person of ordinary skill in the art.

Practical implications for petitioners and patent owners

The memorandum’s stated intent is to reduce uncertainty and litigation over the permissible use of general knowledge in IPRs:

/ For Petitioners: IPR petitions should be drafted to map every element in the challenged

¹ *Qualcomm Inc. v. Apple Inc.*, 24 F.4th 1367, 1375–77 (Fed. Cir. 2022).

² *Qualcomm Inc. v. Apple Inc.*, 134 F.4th 1355, 1364–65 (Fed. Cir. 2025).

³ *Shockwave Med., Inc. v. Cardiovascular Sys., Inc.*, No. 2023-1864, 2025 WL 1922023, at *4 (Fed. Cir. July 14, 2025).

claims to a prior art patent or printed publication. However, the petition still may rely on general knowledge for some permissible purposes, such as supporting a motivation-to-combine argument.

- / **For Patent Owners:** Patent owners should scrutinize IPR petitions filed on or after September 1, 2025, for any reliance on general knowledge, such as AAPA, to supply missing claim limitations.

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