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Recent Changes to Discretionary Denial Procedures in Post-Grant Proceedings Before the Patent Trial and Appeal Board

Since they were first established in 2012 by the Leahy–Smith America Invents Act, *inter partes* review (“IPR”) proceedings have been a popular tool for accused patent infringers to seek to invalidate patents in parallel patent office proceedings, thereby potentially avoiding the costs and risks associated with district court litigation. Starting in spring 2025, the patent office revised its procedures to implement separate discretionary denial briefing. Since then, there has been a steep increase in discretionary denials of IPR petitions, cumulating in an October 17, 2025 Notice of Proposed Rulemaking that seeks to cement these changes and further constrict availability of IPRs. These changes have led to a fundamental paradigm shift in how accused patent infringers need to approach IPRs, from a standard tactic applicable

to most patent infringement litigation to a surgical tool to be evaluated and applied on a case-by-case basis.

Discretionary Denial Overview

IPRs and post-grant reviews (“PGRs”) are adversarial proceedings for challenging the validity of an issued patent. Within three months of filing the petition, the patent owner is permitted to submit a preliminary response (“POPR”) addressing the grounds raised in the petition. Three months after the POPR is filed, a panel of three Administrative Patent Judges (“APJs”), commonly referred as the “Board,” determines whether or not to institute an IPR or PGR proceeding. After that, the parties submit further briefing, there is a hearing, and ultimately the panel has 12 months to

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Manisha Sheth Honored with Thought Leadership Award

The Women, Influence, and Power in Law Awards by Law.com presented New York Partner, Manisha Sheth, with the Law Firm Thought Leadership Award for 2025. This recognition celebrates Manisha’s unwavering commitment to driving meaningful change across the legal industry. Her strategic vision, dedication to mentorship, and ability to elevate those around her exemplify true leadership.

Chambers and Partners UK Recognizes Quinn Emanuel in 2026 Guide

We are proud to share that fifteen attorneys and eleven practice areas have been ranked in Chambers UK 2026, reflecting the exceptional work of our London team. Here is what our clients have to say:
“Quinn Emanuel Urquhart & Sullivan is one of the best litigation outfits in London.”
“They leave no stone unturned and win the unwinnable fights.”
“They are true entrepreneurial litigators with both counsel and barristerial technical ability, on top of their commercial skill.”

Quinn Emanuel Shortlisted by Financial Times

The 2025 Financial Times Innovative Lawyers North America Awards have recognized Quinn Emanuel for Innovation in Digital Tools. New York partner Christopher Kercher has spearheaded the Firm’s adaptation to AI, and this recognition reflects our firm’s commitment to innovation and advancement in legal technology. We celebrate this milestone and remain focused on driving thoughtful, practical legal-tech solutions.

decide whether the challenged patent claims are invalid.

35 U.S.C. § 314(a) provides limits on when the Director is *permitted* to institute an IPR, requiring the Director to first determine that there is a “reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition,” but does not enumerate any circumstances or facts under which the Director is *required* to institute an IPR. Before the Acting Director Stewart’s overhaul of the discretionary denial procedures, the Director’s discretion was delegated to and exercised by the Board assigned to the particular IPR or PGR proceeding. The parties would brief the relevant discretionary factors in the petition, POPR, and potentially a preliminary reply and sur-reply (if allowed by the Board). The Board would then consider both the discretionary factors and the merits of the petition when rendering an institution decision.

In the past, Directors had provided some guidance on the appropriate scope of discretionary denial through precedential decisions or by reversing a Board’s institution decision in response to a request for Director review. For example, in *Apple v. Fintiv*, the Director designated as precedential a Board decision analyzing whether discretionary denial is appropriate when a parallel, co-pending proceeding involving the same patent has an earlier trial date than the projected deadline for a final written decision. IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential). The parallel district court litigation had set a trial date “six months prior to the projected deadline for a final written decision.” *Id.* at 4. The Board articulated a six-factor test to determine “whether efficiency, fairness, and the merits support the exercise of authority to deny institution in view of an earlier trial date in the parallel proceeding.” *Id.* at 6. The Board ultimately exercised its discretion and denied institution, finding that “instituting a trial would be an inefficient use of Board resources.” After *Apple v. Fintiv* was decided, the six-factor test (commonly referred to as the “*Fintiv* factors”) quickly became the most frequent reason cited for discretionary denial.

Within a year, however, the PTAB provided petitioners with a means to avoid discretionary denial based on the *Fintiv* factors in *Sotera Wireless v. Masimo*. IPR2020-01019, Paper 12 (Dec. 1, 2020). The petitioner in *Sotera* filed a stipulation in the parallel district court litigation stating that “if IPR is instituted, they will not pursue in the District Court Litigation any ground raised or that could have been reasonably raised in an IPR.” *Id.* at 18. The Board found that this stipulation “mitigate[d] any concerns of duplicative efforts between the district court and the Board, as well as concerns of potentially conflicting decisions,” and thus “weigh[ed] strongly in favor of not exercising discretion to deny institution.” *Id.*

at 18-19.

The *Sotera* decision encouraged petitioners to avoid discretionary denial by filing similar stipulations, referred to as “*Sotera* stipulations.” Indeed, for years, *Sotera* stipulations were seen as a silver bullet to discretionary denial. For example, from June 2020 to December 2021, over 96% of petitions in which a petitioner filed a *Sotera* stipulation were instituted.

In June 2022, former Director Katherine Vidal formally adopted *Sotera* stipulations as PTAB policy in a memorandum, stating that the PTAB will not discretionarily deny institution in view of parallel district court litigation where a petitioner presents a *Sotera* stipulation. Director Vidal also limited the *Fintiv* factors to district court litigation only, not parallel ITC proceedings.

Acting Director Stewart’s Overhaul of Discretionary Denial Procedures

On February 28, 2025, Acting Director Coke Morgan Stewart began expanding the scope of discretionary denial by rescinding former Director Vidal’s 2022 memorandum. On March 24, 2025, Chief Administrative Patent Judge Scott R. Boalick issued a memorandum (the “Boalick Memo”) clarifying the practical consequences of the rescission, explaining that a “timely-filed *Sotera* stipulation” is still “highly relevant” to discretionary denial, it “will not be dispositive by itself,” and instead would be considered as part of a holistic analysis under *Fintiv*. Boalick Memo at 2-3. Chief APJ Boalick also confirmed that ITC parallel proceedings would no longer be exempt from the *Fintiv* analysis. *Id.*

On March 26, 2025, Acting Director Stewart issued a memorandum titled “Interim Processes for PTAB Workload Management” (the “Workload Management Memo”). The Workload Management Memo completely overhauled the PTAB’s discretionary denial process for IPRs and PGRs both procedurally and substantively. Procedurally, the Workload Management Memo instituted a new process for raising and resolving discretionary denial issues. Workload Management Memo at 1-2. Decisions on institution are bifurcated between discretionary factors and the merits of the petition—a patent owner now files a separate, standalone brief within two months of the filing date of the petition, devoted entirely to discretionary denial issues (the “DD Request”). The petitioner then has one month to submit an opposition brief (the “DD Response”). In addition, all discretionary denial issues are now decided by the Director before any institution decision. If the Director determines that discretionary denial is appropriate, the institution is denied before the projected date for an institution decision on the merits. Otherwise, the Director refers the petition to the Board

to decide institution solely on the merits of the petition following the usual time frame (*i.e.*, within six months of the filing of the petition).

Substantively, the Workload Management Memo expanded the criteria for discretionary denial by providing a list of “relevant considerations,” including: (1) Whether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims; (2) Whether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability; (3) The strength of the unpatentability challenge; (4) The extent of the petition’s reliance on expert testimony; (5) Settled expectations of the parties, such as the length of time the claims have been in force; (6) Compelling economic, public health, or national security interests; and (7) Any other considerations bearing on the Director’s discretion. *Id.* Of particular note is the “settled expectations,” a factor never previously relied on as a basis for discretionary denial, and which has since become one of the predominant bases for discretionary denial.

In September, the Senate confirmed John Squires as the new Director of the USPTO, with Coke Morgan Stewart continuing to serve as the Deputy Director of the USPTO. Within days of being confirmed, Director Squires delegated his discretionary authority over IPRs and PGRs to Deputy Director Stewart, suggesting that the procedures and considerations set forth in the Workload Management Memo will continue to remain in effect going forward.

Finally, on October 17, 2025, the patent office issued a Notice of Proposed Rulemaking cementing many of these recent changes. The new proposed rules confirm the Director’s role in deciding discretionary denial, and further expand that role to also ruling on the merits of the petition at the institution stage, and define specific circumstances where an IPR “shall not be instituted or maintained.” The proposed rules are not subject to a 30-day comment period, after which the final rules will be published in the Federal Register.

Analyzing the Recent Trends

Statistics showing the PTAB’s institution rates over time reflect a sharp increase in the rate of denials in the months following the Workplace Management Memo. For example, the USPTO’s PTAB Trial Statistics for October 1, 2024 to December 31, 2024 indicate that of 274 institution decisions entered during that period, 97 petitions were denied institution, corresponding to a denial rate of 35%—a rate consistent with denial rates over the three previous years, which range between 34% and 32%. For the 3-month period between April 1, 2025 and June 30, 2025, however, 166 out of 310 institution

decisions were denied, resulting in a denial rate of 54%. A closer review of recent decisions shows that discretionary denials reflect a substantial portion of all proceedings where institution was denied. Of the proceedings subject to the new discretionary denial briefing process, 58 were discretionarily denied, and only 43 were referred to the Board for a decision on the merits—a discretionary denial rate of 57%. The discretionary denial rate further increased to 61% for decisions entered in July 2025, without even accounting for additional denials on the merits for referred petitions.

A review of exemplary discretionary denial decisions issued since the Workplace Management Memo suggests that the sharp increase in the rate of discretionary denials is largely due to the new “settled expectations” consideration, and the renewed focus on the *Fintiv* factors (especially trial date) even when a *Sotera* stipulation is in place.

Fintiv Factors and Sotera Stipulations

Several recent decisions demonstrate that the *Fintiv* factors have newfound force in discretionary denial decisions and that *Sotera* stipulations are no longer a silver bullet that can overcome an early trial date.

For example, in IPR2025-00780, the petitioners, on top of a *Sotera* stipulation, filed an additional stipulation not to “rely in the litigation on any product or system that is ‘based on the same evidence presented’ in this IPR” or “advance a theory of obviousness based on the combination of prior art that is asserted in any ground presented in the Petition with any other prior art, including product or system prior art, against the challenged claims.” Paper 7, at 2. Petitioners alleged that this stipulation would “materially reduce overlap with district court proceedings.” *Id.* However, as the district court trial was scheduled six months before the projected final written decision due date, the Director still found that it would “result[] in significant duplication of effort, additional expense for the parties, and a risk of inconsistent decisions” and denied the petition. *Id.*

In IPR2025-00223, the petitioners filed a *Sotera* stipulation, and the projected final written decision due was only 16 days after the trial date set in parallel district court litigation. Paper 9, at 2. The time-to-trial statistics further suggested that trial could begin months *after* the final written decision would be due. The Director even acknowledged that “a district court trial date that occurs after a projected final written decision date reduces the possibility of conflicting decisions,” but ultimately held that “that benefit does not outweigh the efficiencies gained by avoiding parallel proceedings in this instance because of the parties’ meaningful investment in the district court proceeding discussed above” and denied the petition. *Id.*

These decisions indicate that the Director appears to

be affording *Sotera* stipulations substantially less weight than under Director Vidal's guidance, even if the only relevant denial factors are addressed by the stipulation. Notwithstanding the above, in several cases that were discretionarily denied, the failure to file a *Sotera* stipulation was still cited as one reason for the denial. Thus, filing a *Sotera* stipulation is no longer a silver bullet against discretionary denial, failing to file such a stipulation can still doom a petition.

"Settled Expectations" Is the Strongest Predictor of Discretionary Denial

In recent decisions, "settled expectations"—and specifically, "the length of time the claims have been in force"—has become the primary basis for discretionary denial and serves as the strongest predictor for whether a petition will be denied at the discretionary denial phase. The Director has stated that "there is no bright-line rule on when expectations become settled," and that "[t]he longer the patent has been in force, the more settled expectations should be." IPR2025-00408, Paper 21. However, a review of the actual decisions evaluating "settled expectations" suggests otherwise: if the challenged patent is more than six years old, the Director routinely finds that "settled expectations" applies; and if the challenged patent is less than six years old, the Director routinely finds that "settled expectations" does not apply. *Compare* IPR2025-00664 Paper 12 ("strong settled expectations" for 6 years, 1 month) *with* IPR2025-00436 Paper 11("[PO] has not developed strong settled expectations" for 5 years, 7 months).

Cambridge Industries USA, Inc. v. Applied Optoelectronics, Inc. demonstrates the power of settled expectations. The discretionary denial decision resolved DD Requests for five different petitions challenging five patents asserted in a parallel district court case. IPR2025-00436, Paper 11 at 2. The Director acknowledged that the district court had not yet set any trial or *Markman* dates and that the patent owner's other arguments were not persuasive. *Id.* at 2-3. As a result, the Director found that discretionary denial was not appropriate for the three petitions challenging patents that had been in force for less than six years. *Id.* But for the two petitions challenging patents that had been in force for 8 years and 1 month and 6 years and 5 months, respectively, the Director found that "Patent Owner's settled expectations ... are stronger and discretionary denial is appropriate as to these proceedings." *Id.*

Although "settled expectations" is a strong indicator of the likelihood of discretionary denial, it is not dispositive; some petitioners have been successful in avoiding discretionary denial of petitions challenging older patents. Recent cases suggest that effectively rebutting "settled expectations" requires strategic marshalling and

presentation of facts specific to the particular petition and patent at issue.

For example, in IPR2025-00480, an IPR was instituted on a patent that has been in force for *twelve years* because the patent had not been "commercialized, asserted, marked, licensed, or otherwise applied in its technology space" and "Patent Owner only previously targeted smartphones, tablets, and watches, whereas Petitioner, Home Depot, is the proprietor of a chain of hardware stores and did not have reason to anticipate assertion of the patent against it." Paper 11, at 2-3. Similarly, in IPR2025-00438, the Director referred a petition challenging a ten-year old patent to the Board for addressing its merits, reasoning that although the age of the patent "creat[ed] strong settled expectations," the petitioner presented evidence that "the challenged patents have never been 'commercialized, asserted, marked, licensed, or otherwise applied' in Petitioner's 'particular technology space,'" which "weigh[ed] against Patent Owner's claim of strong settled expectations." Paper 10 at 3.

Another avenue for overcoming settled expectations is by identifying examiner error or facts the examiner overlooked during original prosecution of a patent. In IPR2025-000847, for example, the Director allowed a petition challenging a fifteen year old patent to proceed to the merits determination (while discretionarily denying other petitions) because the petitioner successfully demonstrated that "the patent examiner overlooked certain teachings in [a prior art reference considered by the examiner] that appear to disclose the claimed features that the patent examiner indicated were not taught by the prior art of record." Paper 11, at 3-4. According to the Director, "it is an appropriate use of Office resources to review the potential error" even though the age of the patent might otherwise weigh in favor of discretionary denial. *Id.*

Finally, a recent discretionary denial opinion in IPR2025-00806 went in almost the exact *opposite* direction as other settled expectations outcomes, finding that because the patents in question were expired, the petitioner reasonably "expected non-enforcement of the challenged patents." Paper 13 at 2-3. So while an older patent might entitle a patent owner to strong settled expectations, a patent that is *too* old might tilt the scales back in favor of a petitioner.


The above decisions highlight that while settled expectations can very likely result in a petition's discretionary denial, other factors can still lead to institution, meaning that filing an IPR on an older patent isn't a simple lost cause.

The October 17, 2025 Notice of Proposed Rulemaking ("NPFM") Extends the New Normal

The NPFM is the culmination of the changes first started with the Workplace Management Memo. The NPFM codifies that a *Sotera* stipulation is no longer sufficient, instead requiring a stipulation that “petitioner will not raise grounds of invalidity or unpatentability with respect to the challenged patent under 35 U.S.C. 102 or 103”—which includes prior art systems—in any other proceeding.” See Proposed 37 § 42.108(d). The NPFM also partially implements the “settled expectation” doctrine by specifying that IPRs are unavailable if the challenge patent’s validity was previously upheld in another proceeding, including by a district court on summary judgment or in trial, a prior IPR, or a prior *ex parte* reexamination. See Proposed 37 § 42.108(e). Finally, an IPR will not be instituted if, “more likely than not,” there will be a district court or ITC trial before the due date of the final written decision in the IPR. See Proposed 37 § 42.108(f). Although the absolute nature of these requirements will give practitioners pause, they are not fundamentally different from the requirements

the Director imposed in recent discretionary denial decisions. Rather, they are further confirmation that, unlike previously, IPRs are no longer available as an additional forum for deciding invalidity in many patent infringement lawsuits and instead need to be evaluated on a case-by-case basis as potential replacement for litigating prior art invalidity in district court.

Conclusion

It remains to be seen whether the PTAB’s revised discretionary denial procedures are temporary or just the start of a new world order and whether the proposed new rules will become final. But in any event, it is harder than ever to achieve success in IPR institutions. Significant litigation progress, an approaching trial, or even simply an older patent could serve as a death knell for a petition. Petitioners would be wise to consider these factors when deciding whether pursuing an IPR is the best course of action, and if so, under what circumstances petitions should be filed. 

NOTED WITH INTEREST

Copyrightability of AI-Generated Content in China and the US

Since November 2023, there have been several important decisions in the Chinese court system granting AI users copyrights to AI-generated content. In contrast, the U.S. Copyright Office (“USCO”) has historically hesitated to grant copyrights to AI-generated images, pointing to a lack of human authorship and contribution. Then, on January 29, 2025, the USCO released a “Report on Copyright and Artificial Intelligence,” which emphasized that, where “creativity is expressed through the use of AI systems, it continues to enjoy protection.” Just one day later, on January 30, USCO granted for the first time copyright protection to an AI image titled “A Single Piece of American Cheese.” The USCO’s release of the “Report on Copyright and Artificial Intelligence” and subsequent grant of copyright protection to an AI image demonstrates a convergence of Chinese and U.S. law that certain AI-generated content warrants copyright protection though differences in the applicable analysis remain.

The Chinese Court Decisions

The Beijing Internet Court Case—On November 27, 2023, the Beijing Internet Court (BIC) issued a decision recognizing copyright in AI-generated images. There, the plaintiff generated the images at issue using an open-source generative AI model called Stable Diffusion with textual prompts and published the images on a first platform

(Xiaohongshu). The defendant later used one of the AI-generated images in her article on a different, second platform (Baijiahao) without plaintiff’s permission.

The BIC decided that the author put in a sufficient amount of intellectual investment, such as selecting over 150 prompts, arranging their order and setting specific parameters, and continuing to adjust and modify prompts and parameters until the final image aligned with his conception. The BIC found that the resultant images were thus not just “mechanical intellectual achievements” but rather were independently completed by the author and reflected the author’s personalized expression, thereby qualifying for copyright protection.

The Zhangjiajie Case—In contrast, on March 19, 2025, the Zhangjiagang People’s Court issued a decision dismissing a copyright infringement and unfair competition suit brought by a designer against furniture manufacturers and distributors. There, the plaintiff created three images using the AI image generation tool Midjourney. These images depicted a butterfly-shaped chair with a jelly-like texture in varying hues of pink, bluey and orange. Seeking to attract interest from furniture manufacturers, the plaintiff posted the images on social media along with the prompts used to generate them. Defendants in the case approached the plaintiff expressing interest in the design,

but the parties failed to reach an agreement. Despite this, the defendants proceeded to use Midjourney to recreate similar images using plaintiff's publicly shared prompts before manufacturing and selling butterfly chairs based on a final design.

The court ruled in favor of the defendants on the grounds that the plaintiff's AI-generated images were not protected by copyright and that the defendants were not liable for copyright infringement. The court differentiated content produced by a user exercising their "original human intellectual" input in the creation process with the assistance of AI as a tool with content mainly autogenerated by AI with minimal human contribution. Only the former is protectable by copyright.

The USCO Guidance

The 2023 USCO Registration Guidance

In March 2023, the USCO issued a guidance on works containing material generated by AI, taking the position that "authorship" requirement of US copyright law refers to "human authorship," and that if a work contains more than a *de minimis* amount of AI-generated material, the applicant must disclose that information and provide a brief statement describing the human author's contribution.

Copyright Decisions After the 2023 USCO Registration Guidance

USCO copyright registration decisions following the 2023 USCO registration guidance routinely denied copyright registration to material generated using AI unless the human user subsequently made further, substantial changes without AI.

A Recent Entrance to Paradise (Feb. 2023) (*Thaler v. Perlmutter*, D.C. Circuit, Aug. 2023)—rejected work that lacked "traditional human authorship" and was "autonomously generated by an AI" as both copyrightability and registrability require human authorship.

Zarya of the Dawn (Feb. 2023)—rejected images in a book that were generated by Midjourney, identifying "significant distance" between the user's input and Midjourney's output.

Théâtre D'opéra Spatial (Sept. 2023)—refused to register artwork partially generated by AI as the work contains more than a *de minimis* amount of AI-generated content that applicant refused to disclaim.

Suryast (Dec. 2023)—refused to register artwork generated by GenAI painting tool which was prompted to combine Vincent Van Gogh's *Starry Night* with a photograph of a sunset because "the expressive elements of pictorial authorship were not provided by [the author]."

Rose Enigma (Mar. 2023)—granted partial

protection to elements created directly by the artist by hand, while excluding portions of the work generated by AI on the grounds that they did not result from an autonomous human creative effort.

A Single Piece of American Cheese (Jan. 2025)—granted copyright registration to the digital graphic composition produced by AI with "*inpainting*" technique that allows artists manually to select and substantially modify parts of the work, resulting in human intervention sufficient to satisfy the creativity criteria required for copyright recognition.

2025 USCO Report: Copyright and Artificial Intelligence - Part 2: Copyrightability

USCO released on January 29, 2025 its report on the copyrightability of outputs generated by AI systems.

The 2025 Report emphasizes the necessity of human creativity in the creative process for copyrightability, addressing different scenarios of human contributions to AI-generated content. **Assistive uses**—The 2025 Report acknowledges the important distinction between "using AI as a tool to assist in the creation of works" and "using AI as a stand-in for human creativity," stating that assistive uses that enhance human expression do not limit copyright protection. **Using prompts**—The 2025 Report highlights that merely using prompts to generate content from an AI model, even with highly detailed prompts or repeatedly revised prompts, "do not provide sufficient human control to make users of an AI system the authors of the output." Even though "prompts may reflect a user's mental conception or idea," the 2025 Report decides that "they do not control the way that idea is expressed."

Using "expressive inputs"—When using creative work itself (such as original illustration, story, or other traditional copyrighted work) as inputs into an AI system, if that input work remains perceptible in the AI-generated output, the human can claim authorship of, and copyright in, the perceptible portion of the input work in the output. The 2025 Report noted that such expressive inputs, although they "may be seen as a form of prompts, are different from those that merely communicate desired outcomes."

Modifying or Arranging AI-Generated Content—The 2025 Report acknowledges human authorship may be added in the final product when AI is used as an initial or intermediate step, to the extent that "a human may select or arrange AI-generated material in a sufficiently creative way that 'the resulting work as a whole constitutes an original work of authorship.'"

The 2025 USCO Report's recognition that a human author may use AI as just another tool for generating a creative work entitled to copyright protection brings the USCO's position more in line with the approach taken by Chinese courts. Indeed, in the wake of the 2025 USCO

Report, the USCO granted for the first time copyright protection to an AI-generated work on January 30, 2025 – more than a year after Chinese courts first recognized copyright protection for AI images. However, even as courts and agencies on both sides of the Pacific begin to align on the basic concept that some AI-generated content qualifies for copyright protection, questions remain as to how much input is required to transition from content created predominantly by AI and thus not subject to copyright protection to content with a human

author that is merely using AI as a tool. For example, Chinese courts, including the November 27, 2023 BIC case, have found that repeatedly adjusting and modifying prompts and parameters may lead to copyright for the resultant AI-generated image. In contrast, in the 2025 USCO Report, the USCO still “conclude[d] that, given current generally available technology, prompts alone do not provide sufficient human control to make users of an AI system the authors of the output.” 2025 USCO Report at 18. [Q](#)

PRACTICE AREA NOTES

Sports Litigation Update:

The Jordan Chiles Olympic Medal Case: Procedural Justice in International Sports Arbitration

Background

On August 5, 2024, American gymnast Jordan Chiles competed in the women’s floor exercise final at the Paris Olympics. She initially finished fifth, but after her coach Cecile Landi submitted a scoring inquiry, judges increased her difficulty score by 0.1 points, raising her total to 13.766 and moving her to third place for the bronze medal. The moment was historic, marking the first time an all-Black podium appeared in Olympic gymnastics history, with Chiles joining Simone Biles (USA) and Rebeca Andrade (Brazil).

The celebration proved premature. Days later, the Romanian Gymnastics Federation appealed to the Court of Arbitration for Sport (CAS), arguing that Coach Landi’s inquiry had been submitted four seconds beyond the one-minute deadline established by International Gymnastics Federation rules. On August 10, 2024, a three-person CAS panel ruled in Romania’s favor, ordering Chiles’ original fifth-place score reinstated. The panel never disputed the merits of the scoring inquiry itself—only its timing. The International Olympic Committee subsequently reallocated the bronze medal to Romania’s Ana Barbosu.

The controversy intensified when USA Gymnastics submitted timestamped video evidence purporting to show that Coach Landi’s inquiry was filed 47 seconds after Chiles’ score was posted, well within the required one-minute window. CAS refused to reconsider its decision based on this new evidence, leaving Chiles with only one remaining option: bring the matter to the Swiss Federal Supreme Court.

Pending Proceedings Before the Swiss Federal Supreme Court

Jordan Chiles has initiated two distinct legal actions before the Swiss Federal Supreme Court, each addressing different aspects of the CAS decision. The two proceedings utilize different legal mechanisms available under Swiss law.

The Setting-Aside Application

On September 16, 2024, Chiles’ legal team filed an application to set aside the CAS arbitral award. This is the traditional appeal mechanism under Swiss law for challenging international arbitration decisions. The setting-aside application presents two principal arguments.

First, the application argues that CAS violated Chiles’ right to be heard—a fundamental principle in Swiss law and international arbitration—by disregarding video evidence concerning whether the inquiry was filed within the time limit. The “right to be heard” is a procedural guarantee that parties may present relevant evidence and have it considered by the tribunal. The application contends that CAS failed to adequately consider this evidence.

Second, the application alleges that the CAS panel was improperly constituted because its president, Hamid G. Gharavi, had a conflict of interest due to ongoing legal ties with Romania that were not disclosed to Chiles during the CAS proceedings. The application raises questions about whether these alleged undisclosed relationships affected arbitrator independence.

The Swiss Federal Supreme Court’s review of this setting-aside application is limited in nature. Unlike typical appeals courts, it does not reassess factual findings or substitute its judgment for that of the arbitration panel. Instead, the Court examines whether the arbitration violated fundamental principles of Swiss law, including procedural fairness, arbitrator independence, and public policy.

The Request for Revision

Eight days later, on September 24, 2024, Chiles' legal team filed a separate request for revision with the Swiss Federal Supreme Court. In the revision request, Chiles submits that video evidence that emerged after the CAS proceedings shows that the inquiry was filed within the one-minute time limit.

A request for revision is the procedural tool used when newly discovered facts might have led to a different outcome had they been available during the original proceeding. This mechanism allows the court to reopen an arbitration award based on evidence that was not previously available. For the revision request, the Court must determine whether the submitted evidence qualifies as "new" in the legal sense and whether it would have materially affected the outcome.

As of October 2025, the Swiss Federal Supreme Court has not issued decisions on either the setting-aside application or the request for revision. No timeline has been established for when rulings will be rendered.

Implications of an Eventual Decision

The Jordan Chiles case has catalyzed critical conversations about the structure and accountability of international sports arbitration. CAS, established in 1984, functions as the de facto final arbiter for virtually all international sports disputes, with athletes typically required to accept CAS jurisdiction as a condition of Olympic participation. The case raises questions about several aspects of the sports arbitration system: the scope of appellate review in international arbitration, arbitrator disclosure requirements and conflict of interest standards, the balance between procedural efficiency and evidentiary completeness in time-sensitive Olympic disputes, and the consideration of evidence that emerges after arbitral proceedings conclude. The Swiss Federal Supreme Court's decisions will address these procedural and substantive questions, with implications for future dispute resolution in international sport.

Internal Investigations Update:

DOJ Declines Prosecution Following Voluntary Disclosure in M&A

Background: NSD M&A Safe Harbor Policy

The National Security Division's Mergers and Acquisitions Safe Harbor Policy, incorporated into the NSD's broader Voluntary Self-Disclosure framework and revised in March 2024, incentivizes acquirers to promptly report national security-related misconduct uncovered during deals. The policy targets potential criminal violations of export control, sanctions, and related national security laws discovered in pre-closing diligence or shortly after closing. When acquiring companies voluntarily disclose

such violations, fully cooperate with the Department of Justice, and undertake timely remediation, the NSD presumes it will decline prosecution. Benefits include avoiding guilty pleas, forfeiture, criminal fines, and preventing the misconduct from affecting the company's future compliance record.

Although the policy establishes 180-day and one-year benchmarks for timeliness and remediation, the NSD retains discretion to determine what is "reasonable under all circumstances." Aggravating factors like senior management involvement or pervasive misconduct may preclude eligibility, though the NSD will consider whether such factors were adequately addressed post-acquisition.

The White Deer Declination

On June 16, 2025, the DOJ announced its first public declination under the M&A Safe Harbor Policy to White Deer Management LLC, a private equity firm. White Deer had acquired Unicat Catalyst Technologies LLC, a Texas-based manufacturer of chemical catalysts, and subsequently discovered that Unicat's former CEO and another employee had engaged in an export violations scheme. The misconduct included selling catalysts to customers in Iran, Venezuela, Syria, and Cuba while falsifying export documents, fabricating invoices to reduce tariffs, and falsely attesting to U.S. law compliance. White Deer learned of the scheme after closing and, together with Unicat's new CEO, initiated an internal investigation in June 2021. After confirming likely sanctions violations and before completing the investigation, White Deer voluntarily disclosed the matter to NSD.

Although the disclosure occurred approximately ten months after closing—well beyond the nominal 180-day window—DOJ determined it was "timely under all of the circumstances," citing COVID-19 disruptions and the firm's two-part acquisition strategy as mitigating factors. The resolution followed a split approach: Unicat entered into a non-prosecution agreement and paid a \$1.6 million penalty, and its former CEO pleaded guilty to sanctions violations and money laundering, but White Deer received a declination.

The DOJ cited the lawful nature of the acquisition, the absence of a pre-existing disclosure obligation, prompt action to prevent further harm, full cooperation (including providing foreign-language and overseas records), and robust remediation, such as terminating culpable employees and installing a comprehensive compliance program. Although senior management involvement would typically count as an aggravating factor barring a declination, DOJ found it fully addressed post-acquisition, allowing Safe Harbor treatment.

Key Implications for Practitioners

The White Deer declination offers important guidance for companies navigating post-acquisition compliance issues and conducting internal investigations in the M&A context:

Timeliness is contextual, not mechanical. Despite exceeding the 180-day benchmark by four months, White Deer's disclosure was deemed timely because the company acted quickly after uncovering misconduct and before government awareness. This flexible approach recognizes that "promptness" depends on circumstances. Companies managing complex post-closing integrations should document integration delays, investigative steps, and mitigation efforts to preserve eligibility even when formal deadlines pass.


Aggravating factors can be remediated. Senior management involvement typically precludes declination. However, DOJ treated this as a historical issue because implicated individuals had been removed, misconduct had ceased, and controls were overhauled. This demonstrates that decisive personnel changes and structural remediation can cure otherwise preclusive factors. Assistant Attorney General for National Security Matthew Olsen emphasized this point, stating the declination "reflects the National Security Division's strong commitment to rewarding responsible corporate leadership."

Cooperation extends beyond domestic evidence. DOJ specifically credited White Deer's provision of foreign-language documents and overseas records. Internal investigations following cross-border acquisitions must anticipate DOJ's expectation of access to all relevant evidence, regardless of location or language, and should address translation needs and international data privacy constraints early.

Remediation requires demonstrated effectiveness. DOJ specifically credited that White Deer's new compliance program had already proven effective in identifying and preventing similar issues. Paper policies and aspirational controls are insufficient—acquirers must show tangible, operational results.

Looking Ahead

The White Deer declination underscores DOJ's broader enforcement approach under both the National Security Division's M&A Safe Harbor Policy and the Criminal Division's Corporate Enforcement Policy. Both frameworks emphasize transparency, predictable outcomes, and meaningful incentives for voluntary self-disclosure. Companies that promptly self-report, fully cooperate, and implement effective remediation can expect clearly defined resolution paths, including declinations, reduced-term non-prosecution agreements. The takeaway is clear: DOJ rewards companies that identify problems,

come forward, and demonstrate corrective action. For companies evaluating disclosure decisions in M&A contexts, White Deer confirms that the Safe Harbor framework provides tangible protection when companies act decisively to address inherited compliance issues. 

VICTORIES

Trademark & Copyright Protection Victory Against Counterfeit LABUBUs

Quinn Emanuel recently secured a critical temporary restraining order in the Central District of California, stopping multiple 7-Eleven stores from selling counterfeits of client POP MART's explosively popular LABUBU products.

POP MART has achieved unprecedented commercial success with LABUBU, a distinctive elf-like character that has evolved into a global cultural phenomenon since its 2019 debut. The character has garnered widespread attention through high-profile celebrity endorsements from figures including Cher, Rihanna, Kim Kardashian, David Beckham, Marc Jacobs, and Lisa of Blackpink, with features in The New York Times and other major publications and substantial social media engagement.

POP MART's "blind box" sales model—wherein consumers purchase sealed packages without knowing which character variant they will receive—has cultivated a robust collector culture and contributed to the company more than doubling its revenue over the past year.

LABUBU's commercial success has attracted widespread counterfeiting, with counterfeit products (colloquially termed "Lafufus") proliferating throughout retail channels, including 7-Eleven franchise locations across California. These counterfeit products present dual concerns: not just infringement of POP MART's intellectual property rights, but also consumer safety risks from substandard manufacturing quality. Sophisticated counterfeit packaging has made it difficult for consumers to distinguish authentic products from fraudulent imitations, with actual confusion among consumers documented on social media and in court filings.

On September 15, 2025, the United States District Court for the Central District of California granted POP MART's motion for a temporary restraining order against multiple 7-Eleven franchisees selling counterfeit LABUBU products. The Court's ruling was in POP MART's favor on every significant issue. The Court (1) found POP MART had demonstrated a strong likelihood of prevailing on its claims for trademark counterfeiting and for trademark and copyright infringement; (2) found irreparable injury from both POP MART's brand reputation damage and consumer safety concerns; (3) rejected one defendant's attempts to characterize counterfeit products as plausibly legitimate "gray market goods"; (4) found that defendants' assertions of ceased sales did not moot the need for injunctive relief; and (5) found that LABUBU had substantial brand equity generated through viral social media presence and celebrity features.

This victory provides critical protection for POP MART's intellectual property in the United States

during unprecedented brand expansion. The ruling also serves the public interest by protecting consumers, including children, from dangerous counterfeit products and preserving market integrity. [Q](#)

business litigation report

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