Expect Major Shifts In Patent And Trademark Policy This Year

By **Rosaleen Chou, Ted Cannon and Philip Nelson** (January 28, 2026)

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A new year brings new changes to the practice of intellectual property law. This article highlights how major shifts in policy will influence patents and trademarks in 2026.

Patent Practice

John Squires was confirmed as the director of the U.S. Patent and Trademark Office in September 2025, and he has already made significant policy changes in the USPTO's patent practice.

Many of his changes involve patent eligibility under Title 35 of the U.S. Code, Section 101; artificial intelligence; and reforms to the Patent Trial and Appeal Board. 2026 will likely bring more initiatives consistent with the policy preferences he has already championed.

The director's recent speech to the American Intellectual Property Law Association, for example, touted "the signing of the first two patents of [his] tenure, a crypto/DL business method and a medical diagnostic."

He used this forum to articulate his views on eligibility, using the U.S. Court of Appeals for the Federal Circuit's 2016 decision in Enfish v. Microsoft Corp. and the U.S. Supreme Court's 1854 decision in O'Reilly v. Morse to support a practical application test for eligibility.

His own decision in Ex parte Desjardins in September further states his view that Title 35 of the U.S. Code, Sections 102, 103 and 112, are the "traditional and appropriate tools to limit patent protection to its proper scope," so those statutory provisions "should be the focus of examination."

The USPTO has since updated the Manual of Patent Examining Procedure consistent with these cases and has issued formal guidance suggesting that applicants use declarations to support Section 101 eligibility.

Another hint at the USPTO's 2026 policy direction comes from its recent pilot programs. In the Artificial Intelligence Search Automated Pilot, applicants receive the results of an automated patentability search from the USPTO's AI search tool prior to examination by a live examiner.

This can have strategic benefits for patent applicants who have not yet determined how novel their inventions may be, allowing them to make early amendments.

In the Streamlined Claim Set Pilot Program, applicants receive an office action sooner — essentially advancing closer to the head of the line for examination — by limiting initial examination to 10 or fewer claims.

Before, the privilege of expedited examination was reserved for older or ailing inventors, for applications with claims treated favorably by a foreign patent office under the Patent Prosecution Highway, or for applicants willing to pay an extra fee for Track One examination.

Based on these strong and recent signals and with Squires at the helm, patent applicants in 2026 can expect policies and programs favorable to patent allowance and issuance. Because Section 101 eligibility had been commonly raised in software and medical diagnostics, the change will particularly affect patent applications in these fields.

Patent Trial and Appeal Board

In 2025, the USPTO also implemented procedural changes at the PTAB. These changes are widely viewed to favor patent owners seeking to enforce their patents over patent challengers seeking to invalidate patents.

In February and March, the USPTO reinvigorated its Fintiv precedent.[1] Fintiv sets out factors that the PTAB considers when deciding whether to exercise its discretion to deny a petition for inter partes review or post-grant review of a patent involved in parallel litigation.

Fintiv was largely dormant under guidance issued by former Director Kathi Vidal. Then, USPTO acting Director Coke Morgan Stewart announced that the director would directly decide discretionary denial by taking into account Fintiv's factors and several newly identified considerations.[2]

One of the newly identified considerations — settled expectations — has been a game

changer. Under this rationale, when a patent has been in force for at least six years, the director generally finds that the patent owner has developed strong settled expectations that shield the patent from challenge via IPR.

In In re: Cambridge Industries USA Inc. last month, the Federal Circuit denied a petition for a writ of mandamus challenging the director's use of settled expectations when deciding whether to institute review.[3] Thus, in 2026, patent litigants will likely see an increase in patent infringement lawsuits asserting patents that are at least six years old.

After his confirmation, Squires signaled he would continue to make his mark on PTAB procedure. In October, Squires announced he would make all institution decisions, with assistance from PTAB judges, to evaluate discretionary-denial considerations and the merits of a petition.[4] Squires has denied most petitions he has considered so far.

Further signaling a pro-patent-owner stance, in October, the USPTO published a proposed rule that Squires refers to as "one and done." If implemented, this rule would significantly limit multiple validity challenges against a patent.[5]

Most significantly, the rule would require a petitioner to stipulate that, if an IPR is instituted, the petitioner will not also use another forum to challenge the validity of the same patent based on prior art. That requirement to forfeit subsequent or parallel prior-art validity challenges would likely deter most infringement defendants from filing IPRs.

The comment period for the proposed rule ended on Dec. 2, and the rule has not yet been implemented. But even if it is not implemented, the proposed rule signals a pro-patent-owner stance that is likely to manifest itself in 2026 by Squires scrutinizing, and likely mostly denying, PTAB petitions.

Legislative Developments

With Sen Thom Tillis, R-N.C., leading the Senate Judiciary Committee in 2026, there is a strong possibility that the Patent Eligibility Restoration Act[6] and the Prevail Act[7] will make progress in the U.S. Congress, and related hearings will be held. However, after progress in 2024, the bills stalled in 2025. Accordingly, it is not clear these bills will overcome existing hurdles to become law in 2026.

Trademark Practice

Five years after the Trademark Modernization Act, the USPTO continues to make changes to keep trademark practice up to date.

First, the USPTO continues to push practitioners to use newer software for all trademark functions. This trend started with the transition from the Trademark Electronic Application System to the Trademark Center portal. But the USPTO recently launched the Trademark Trial Appeal Board Center for TTAB proceedings, which is now the only location for filing notices of opposition and petitions for cancellation.

Though the Electronic System for Trademark Trial and Appeals portal still remains the platform for other TTAB filings, it is likely that 2026 will see the USPTO transition most if not all functionality to its new sites, making trademark practice more efficient and centralized.

Second, the USPTO will likely focus on combating fraud and nonuse in applications and registrations. Between January and December 2025, there were over 5,000 director-initiated filings for expungement and reexamination of marks that were not in use in commerce, with one action by the USPTO canceling 50,000 fraudulent marks at once.

As technology such as AI makes finding unused marks easier, the USPTO's continued emphasis will help clear the register for actual users to protect their goodwill.

Finally, the USPTO has made it apparent that AI is on the horizon for trademark filers. Following the Artificial Intelligence Search Automated Pilot, discussed above, the USPTO is now seeking a contractor to provide the equivalent service to trademark applicants. It is possible that, in the near future, applicants will be able to get an early idea of registrability using AI search tools provided by the USPTO.

Efficiency and technological advancement are the primary goals for trademark practice at the USPTO in 2026. The office's new tools seem promising.

Conclusion

Shifts in leadership and new initiatives promise to bring further consequential changes to the USPTO's policies and practice in the new year. It is important for both patent and trademark practitioners to stay up to date with these changes in 2026.

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[1] https://www.uspto.gov/about-us/news-updates/uspto-rescinds-memorandum-addressing-discretionary-denial-procedures; https://www.uspto.gov/sites/default/files/documents/guidance_memo_on_interim_procedure_recission_20250324.pdf.

[2] https://www.uspto.gov/sites/default/files/documents/InterimProcesses-PTABWorkloadMgmt-20250326.pdf.

[3] In re Cambridge Indus. USA Inc. , Appeal No. 2026-101 (Fed. Cir. Dec. 9, 2025), slip opinion available at https://www.cafc.uscourts.gov/opinions-orders/26-101.ORDER.12-9-2025_2616340.pdf.

[4] https://www.uspto.gov/sites/default/files/documents/open-letter-and-memo_20251017.pdf.

[5] https://www.govinfo.gov/content/pkg/FR-2025-10-17/pdf/2025-19580.pdf.

[6] S. 2140, the Patent Eligibility Restoration Act (https://www.tillis.senate.gov/services/files/4B41CBF2-57AB-4E8E-9E93-7D714A7AAB40).

[7] S. 2220, the PREVAIL Act (Text - S.2220 - 118th Congress (2023-2024): PREVAIL Act | Congress.gov | Library of Congress); see https://www.knobbe.com/blog/current-congressional-attempts-patent-reform.