

Publications

New Settled Expectations Policy at the PTAB Augurs Major Practice Changes

Related Professionals

William H. Oldach III

Michael V. Messinger

Related Services

Intellectual Property

Patents

CLIENT ALERT | 6.23.2025

In a startling development, Acting Director of the USPTO Coke Morgan Stewart has denied institution of an *inter partes* review (IPR) on the basis of “settled expectations,” on the sole ground that the subject patent had been granted almost eight years previously. *Dabico Airport Solutions Inc. v. AXA Power APS*, IPR-2025-00408, Paper No. 21, June 18, 2025. This dramatic use of the settled expectations rationale comes less than three months after the Office first announced settled expectations as a factor in its discretionary denial review in a March 26, 2025 Memorandum for Interim Processes for PTAB Workload Management.

In its short decision denying institution of an IPR, the Acting Director stated that “although there is no bright-line rule on when expectations become settled, in general, the longer the patent has been in force, the more settled expectations should be.” *Id.*, 3. In this instance, the “challenged patent has been in force almost eight years, creating settled expectations.” *Id.*, 2. The decision says that this approach is in line with other expectations, such as the six-year period for recovery of past damages. Moreover, “actual notice of a patent or possible infringement is not necessary to create settled expectations.” *Id.*, 3.

While this decision is limited to the case at hand, its impact is likely to be far greater. Many patents enforced by operating companies and patent assertion entities (PAEs) were granted more than six to eight years ago, and many are at the end of their term. Thus, the settled expectations rationale as applied here to prevent Dabico Airport Solutions’ IPR challenge may be used in many more cases. Companies will have to carefully consider whether to challenge issued patents sooner to avail themselves of the lower cost alternative of *inter partes* review before the USPTO compared to district court litigation. It is also worth noting that the patent owner in this case, AXA Power ASP, appears to be the operating company originally responsible for obtaining the patent, apart from a change of corporate name. Other cases involving ownership changes or enforcement history, as in the case of many PAEs, may impact an overall discretionary denial assessment and creation of settled expectations.

To see a PDF of the decision, [click here](#).

