



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

May 2022

ACUS is an independent federal agency within the executive branch that develops recommendations to improve administrative processes, including adjudication, and arranges for the interchange of information to carry out its mission. The ACUS Office of the Chairman issues monthly *Updates* to share adjudication-related developments with agencies, Congress, and the public. For additional resources, visit www.acus.gov/adjudication.

This resource is for informational purposes only. Except as noted, these updates do not represent the position of ACUS or the federal government. New developments, feedback, and corrections are welcome at info@acus.gov.

IN THIS ISSUE

Accessibility
Administrative Review
Caseload Management
Constitutionality
Judicial Review
Procedural Rules
Program Integrity
Technology
Transparency

ACCESSIBILITY

[Identifying and Reducing Burdens in Administrative Processes](#) (ACUS).

ACUS is undertaking a project to identify best practices for identifying and reducing unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes.

ADMINISTRATIVE REVIEW

[Precedential Decision Making in Agency Adjudication](#) (ACUS). ACUS is undertaking a project to identify best practices on the use of precedential decisions in agency adjudication. Christopher Walker (OSU Moritz College of Law), Melissa Wasserman (Texas Law), and Matthew Wiener (ACUS) are serving as consultants.



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USPTO Director Involvement in PTAB Proceedings (USPTO, May 26). The U.S. Patent and Trademark Office adopted an [interim process](#) for Patent Trial and Appeal Board decision circulation and internal PTAB review. USPTO also updated its [interim process for Director review](#), which was implemented in response to the Supreme Court's [Arthrex](#) decision.

CASELOAD MANAGEMENT

[USCIS Forum on Backlog Reduction](#) (May 18). The U.S. Citizenship and Immigration Services participated in a virtual meeting with more than 2000 stakeholders to discuss backlog reduction efforts.

CONSTITUTIONALITY

[SEC v. Cochran](#) (SCOTUS, May 16). The Supreme Court granted certiorari to decide whether federal district courts have jurisdiction to hear collateral attacks challenging the constitutionality of Securities and Exchange Commission adjudication. At issue is the constitutionality of multiple layers of for-cause removal protections for SEC administrative law judges.

[Jarquesy v. SEC](#) (5th Cir., May 18). The Fifth Circuit held that the SEC's in-house adjudication of an enforcement action for securities fraud violated the defendant's Seventh Amendment right to a jury trial, that Congress unconstitutionally delegated legislative power to the SEC when it gave the agency authority to bring enforcement actions before an ALJ or in federal district court, and that statutory removal restrictions on SEC ALJs violated the separation-of-powers.

[Arthrex v. Smith & Nephew](#) (Fed. Cir., May 27). The Supreme Court held in its 2021 [Arthrex](#) opinion that only a Senate-confirmed official, such as the USPTO Director, may issue a final decision on inter partes review of a patent. The Federal Circuit held the Commissioner for Patents, who is not Senate-confirmed, may, without violating the Constitution or the Federal Vacancies Reform Act, issue a final decision on a temporary, acting basis in the absence of the Director.

JUDICIAL REVIEW

[Sourcebook of Federal Judicial Review Statutes](#) (ACUS). ACUS recently released a new sourcebook by Jonathan Siegel (GW Law) that analyzes more than 650 *U.S. Code* provisions governing how courts review agency actions, including final adjudicative orders.



PROCEDURAL RULES

[Copyright Claims Board Rules of Practice](#) (May 17). The U.S. Copyright Office issued a rule establishing procedures for active proceedings before the Copyright Claims Board and post-determination procedures. The Office is also soliciting public comments on procedures for “smaller claims.”

[Small Claims Patent Court Study](#) (ACUS). ACUS is requesting information on issues associated with and options for designing a small claims patent court. The request is part of an [ongoing study](#) for USPTO. Comments are due by July 5.

[EOIR Requesting Public Input on Practice Manuals](#). The Executive Office for Immigration Review held a public forum on May 24 to obtain input on the Immigration Court Practice Manual and Board of Immigration Appeals Practice Manual. EOIR is also inviting written feedback on the manuals.

PROGRAM INTEGRITY

[Social Security Administration Rulings on Evaluation of Claims Involving Fraud or Similar Fault](#) (SSR 22-1p, SSR 22-2p). SSA issued two rulings that revise the process used to redetermine eligibility for disability benefits when there is reason to believe that fraud or similar fault was involved in an application or payment. The revised process changes the evidentiary standard for fraud and similar fault from a “preponderance of the evidence” to “reason to believe.”

TECHNOLOGY

[Electronic Filing](#) (USPTO). USPTO has proposed amending its rules of practice to require parties to submit patent term extension applications and related materials electronically.

[Online Process in Agency Adjudication](#) (ACUS). ACUS is undertaking a project to identify best practices for developing online processes by which private parties, representatives, and other participants in agency adjudications can file forms, evidence, and briefs; view case materials and status information; receive notices and orders; and perform other common adjudicative tasks.



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TRANSPARENCY

[Disclosure of Agency Legal Materials](#) (ACUS, May 19). ACUS is requesting public input on what legal materials, including adjudicative decisions, agencies should make publicly available and how they ought to do so. The request is part of a [project](#) that will consider whether the main statutes governing disclosure of agency legal materials should be amended. Comments are due by July 18.

[USCIS Updates How It Provides Case Processing Data](#) (May 5). USCIS recently [announced](#) changes to simply and improve how it communicates data on case processing times to the public.