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IPR Practice: “Good Causes” and Responding to Patent Owners’ Preliminary Responses



In an *inter partes* review (IPR) proceeding, the petition challenging the validity of a patent may be followed by a patent owner’s preliminary response (POPR).

The petitioner can then, in turn, ask the Patent Trial and Appeal Board (PTAB) for leave to reply—a request that must satisfy “a showing of good cause” under federal regulations, and which, if granted, may open the door for further short filings from both sides before the PTAB issues an institution decision.

We wondered, what are the most effective good causes when a petitioner replies to the POPR? Can the filing of a reply predict the outcome of the institution decision?

This article examines the most common arguments used in petitioners’ replies to POPRs and how they correspond to recent PTAB decisions. In our analysis, we consider how our findings may alter the strategies that IPR practitioners pursue.

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