

IP Firms Cheer PTAB Program Giving New Attys Opportunities

By Britain Eakin

Law360 (April 29, 2020, 7:07 PM EDT) -- Intellectual property firms say a new U.S. Patent and Trademark Office program giving newer attorneys courtroom experience, and allowing parties up to 15 additional minutes to argue when less experienced attorneys handle Patent Trial and Appeal Board arguments, will benefit their firms and clients.

The Legal Experience and Advancement Program, or LEAP, aims to give "next generation" attorneys — those relatively new to the practice of law or to PTAB practice — opportunities to gain oral argument skills that can be hard to come by, USPTO Director Andrei Iancu and PTAB Chief Judge Scott Boalick said in a blog post announcing the program Tuesday.

To qualify, attorneys can have up to seven years of experience and up to three substantive oral arguments in a federal tribunal, including at the PTAB. They can handle the entire argument, or just a portion of it, provided they have "a meaningful and substantive opportunity to argue," the blog post said. Additionally, the program will allow more experienced attorneys to jump in during arguments to correct any errors.

Michael D. Specht, director of Sterne Kessler Goldstein & Fox PLLC's electronic practice group and co-chair of its patent office litigation practice, told Law360 he sees a lot of potential benefit to the program, particularly since he said it can be challenging to give less experienced attorneys opportunities to argue.

One key to keep a practice growing, he said, is getting them that experience.

"This program provides a runway of sorts to give people, incrementally, a shot at having those opportunities while balancing the risk to clients that something would go awry," Specht said.

Attorneys told Law360 on Wednesday that the way the USPTO designed the program — allotting extra time and allowing senior attorneys to step in — will make it easier to get clients on board with less experienced attorneys handling at least portions, if not all, of oral arguments.

While some clients are open to junior attorneys arguing, some are hesitant, Rick Bisenius, a partner in Fish & Richardson PC's patent group, told Law360.

"They don't want to be the guinea pig," Bisenius said. "They want the person who has stood up 50 times and is full of confidence to argue."

Bisenius noted that firms often represent the same clients more than once, so the new program will make it easier to convince clients that they will benefit from newer attorneys gaining experience they can build on for arguing future PTAB cases, which he said will likewise benefit the attorneys as they grow their practices.

With Fish & Richardson already placing a strong emphasis on getting next-generation attorneys more arguing time, Bisenius said this is one more tool the firm can use to further that goal.

Meanwhile, Cory C. Bell, a partner with Finnegan Henderson Farabow Garrett & Dunner LLP, told Law360 the extra time that will be tacked on to arguments under the program will alleviate client concerns about the time it can take to transition when splitting up an argument if a less experienced attorney will only be handling a portion of arguments.

"By giving the extra time, it takes that out of the equation and makes it more accommodating, which can mitigate clients' concerns about splitting time," Bell said.

Bell added that the program also falls in line with the PTAB's existing tendency to accommodate newer attorneys, and said the board prefers that attorneys who best know the record argue. Those are often the junior attorneys who wrote the briefs, he said.

The PTAB is not the only judicial body looking for ways to give newer and more diverse attorneys courtroom experience. The federal judiciary is also grappling with how to accomplish this, though that effort has often manifested itself in standing orders from individual judges.

Specht of Sterne Kessler suggested that the PTAB's program could serve as a model for the federal judiciary.

"The district courts are also looking at ways to encourage participation in hearings by less experienced associates," he said. "They may be able to adapt some of this as well and integrate it into what they're trying to do."

--Editing by Bruce Goldman.