

# *Inconsistent Intellectual Property Judgments*

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This article explores, both analytically and empirically, inconsistent judgments by courts and administrative tribunals regarding the validity of patents and trademarks. Although correcting the erroneous grant of these IP rights was historically the province of the courts, robust administrative mechanisms now provide alternate means for error-correction. Patents are subject to review in the Patent Trial and Appeal Board; trademarks, in the Trademark Trial and Appeal Board. These administrative proceedings are competitive substitutes for judicial resolution, and litigants often have diverging preferences for court or agency process. Concurrent litigations are a frequent result, creating the potential for inconsistent judgments. Using comprehensive data on Patent Office petitions for administrative ex post review, I quantify the extent to which initial PTAB decisions to grant or deny review, as well as final PTAB decisions about patent validity, are consistent with prior or subsequent court decisions on the same patents. To evaluate these findings, I also examine analogous TTAB and court decisions pertaining to the same trademarks as a baseline. The article's key contributions are to put traditional understandings of consistent judgments into perspective with modern agency adjudication of intellectual property rights, and to recommend reforms for conserving adjudicatory resources by minimizing the potential for inconsistency and relitigation.