

# Fed. Circ. Highlights Peril of Using 'Common Sense' at PTAB

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James Gale, co-chair of Cozen O'Connor's Intellectual Property Litigation group, discusses a recent Federal Circuit decision that faults the Patent Trial and Appeal Board for using the expression "common sense" in patent law. The decision requires the PTAB to provide more rigorous explanations for "obviousness rejections." James explains that "The decision makes clear that there are two things patent challengers need to do to secure an obviousness decision that won't be overturned on appeal. One, provide sufficient evidence to support a finding of common sense, and two, if the board is stating its decision in a conclusory fashion, you need to seek amendment or rehearing to get more clarity." The appeals court wrote that common sense can still be used to find a patent obvious, but supporting evidence and a reasonable explanation are still important elements in any PTAB decision.

To read the full article, [click here](#).



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