More than two years have passed since the United States Patent and Trademark Office (USPTO) created the Legal Experience and Advancement Program (LEAP) to develop the skill of practitioners in presenting oral arguments to the Patent Trial and Appeal Board (PTAB). LEAP, which is available in both ex parte and post-grant proceedings, provides additional argument time for a requesting party represented by a practitioner with three or fewer substantive oral arguments in any federal tribunal, including the PTAB. The practitioner must be offered a “meaningful and substantive opportunity to argue,” but there are no other substantive requirements. Practitioners and parties should consider how LEAP can be utilized to their advantage. Foley & Lardner LLP has submitted a significant number of LEAP requests and was recently named a Leading Sponsor of LEAP by the USPTO.

LEAP provides a mechanism for practitioners to learn how to prepare for and conduct an oral hearing before the PTAB. Teams can utilize LEAP to facilitate growth of their
practitioners for future disputes while also securing the immediate and significant benefit of additional argument time. This additional time can be leveraged to provide a requesting party with a significant tactical advantage. While a party can typically request that the PTAB grant additional argument time beyond that which is ordinarily prescribed, there is a risk that this request will be denied. LEAP practically eliminates the risk that requesting extra time will be denied. With this extra time, a party can dive deeper into select issues or can reserve additional time to respond to arguments raised by an opposing party in the context of post-grant proceedings such as inter partes reviews.

In conjunction with LEAP, the USPTO has rolled out a substantial amount of training material and instructional opportunities geared toward oral arguments. These include frequent webinars with both practitioners and judges as speakers, multiple mock argument practicums run by judges, and a newly announced program where LEAP practitioners will meet one-on-one with PTAB judges at the USPTO’s Alexandria headquarters. This programming and LEAP provides practitioners the real-world experience they need to fill critical roles on their teams. With her illustrious background representing clients in post-grant proceedings, it will be interesting to watch how the new USPTO Director Kathi Vidal seeks to further expand the USPTO’s efforts in this regard.

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