IAM

The Patent Prosecution Review

2027

Specialist chapter: how patent challenges are being rewritten

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The fourth edition of the *IAM Patent Prosecution Review* takes a wide-ranging view of best strategies for securing patents in the key regions of the Americas, the Asia-Pacific, and Europe, the Middle East and Africa. The review combines on-the-ground knowledge and analytic insight to offer an unparalleled deep dive into the prosecution landscape in specific markets.

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Specialist chapter: how patent challenges are being rewritten

Robert D Leonard and **Daniel H Golub**
Volpe Koenig

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IN SUMMARY

Patent validity challenges at the USPTO have not slowed, but they have shifted forums. Discretionary denials of institution and the requirement that patent challengers advance consistent claim construction positions before the Patent Trial and Appeal Board and the district courts, have made inter partes review (IPR) a less favourable tool for challengers. In response, challengers have moved rapidly to ex parte re-examination (EPR). The Office has responded by giving patent owners a pre-order response in EPR and paying closer attention to repeat challenges under 35 USC section 325(d). The result is a post-grant system with different threshold standards, and very different bargains after institution. Practitioners choosing to initially proceed with an IPR challenge should draft the IPR petition with an EPR request already in view.

DISCUSSION POINTS

- The official AIA trial institution rate (for both IPR and post grant review (PGR)) was 39% through July 2026.
- Director discretionary dispositions were 58% denials and 42% referrals.
- First-half IPR filings fell by 75%, while re-examination requests rose by 163%.
- A re-examination order is an opening of examination, not an invalidity finding.
- Patent owners now have 30 days and 30 pages to oppose a substantial new question (SNQ) finding.
- Section 325(d), estoppel and cross-forum consistency make sequencing critical.

REFERENCED IN THIS ARTICLE

- 35 USC §§ 302–307, 35 USC §§ 311–319, and 35 USC § 325(d)
- USPTO Interim Director Discretionary Process
- *Magnolia Medical Technologies, Inc v Kurin, Inc*, IPR2026-00097, Paper 17 (PTAB 14 May 2026)
- *Ford Motor Co v AutoConnect Holdings, LLC*, IPR2025-01234, Paper 12; *Terumo BCT, Inc v Haemonetics Corp*, IPR2025-00987, Paper 15; and *TikTok, Inc v Shopsee, Inc*, IPR2025-01456, Paper 18, decisions applying the USPTO's interim Director discretionary-institution framework
- *Tesla, Inc v Bulletproof Property Management, LLC*, IPR2026-00204, Paper 14 (PTAB 15 June 2026)
- MPEP §§ 2209, 2236, 2242, 2246 and 2289
- USPTO, *Pre-order Procedure Regarding Substantial New Question Determination in Ex Parte Reexamination Proceedings*, effective for requests filed on or after 5 April 2026
- USPTO proposed rule requiring identification of all real parties in interest in third-party ex parte re-examination requests, published 22 July 2026

- Unified Patents, ***Patent Dispute Report: First Half 2026***

THE FORUM SHIFTS

Patent challengers have not disappeared. They have switched forums.

For much of the America Invents Act era, an accused infringer with arguably invalidating patents or printed publications had an obvious administrative destination: inter partes review (IPR). That choice has become considerably less obvious.

Through 31 July 2026, the USPTO reported an institution rate of 39% for petitions for AIA trials. The figure covers IPRs and post-grant review (PGR), although IPRs accounted for 386 of the 428 petitions filed. Of the petitions disposed of on the USPTO Director's discretionary considerations, 58% were denied and 42% were allowed to proceed to a panel for consideration on the merits. Of those advancing to a panel, 76% resulted in the granting of institution and 24% denied.

Challengers have responded rationally. They have moved to another forum.

Unified Patents, a membership-based patent-risk and analytics organisation, counted 174 IPR petitions in the first half of 2026, down from 698 a year earlier. During the same period, ex parte re-examination (EPR) requests rose from 226 to 594. Thus, IPR filings fell by approximately 75%, while EPR requests increased by approximately 163%. In the second quarter alone, EPR reached an all-time quarterly high of 336 requests, while IPR fell to an all-time low of 57 petitions.

The official fiscal-year data tells the same story. The Central Reexamination Unit (CRU) received 831 EPR requests through 30 June 2026. That was already 69% more than the 491 filed during the whole of fiscal year 2025.

This is not a retreat from administrative patent challenges. It is a migration between two different forums. As one became less favourable for challengers, filings shifted to the other.

TWO FORUMS, TWO BARGAINS

IPR and EPR both allow the Office to reconsider issued claims using patents and printed publications. Beyond that shared feature, they offer markedly different bargains.

An IPR is an adversarial proceeding before the Patent Trial and Appeal Board (PTAB). A person other than the patent owner may challenge claims under 35 USC sections 102 (anticipation) or 103 (obviousness). The statutory threshold for instituting trial is whether the petition and preliminary response show a reasonable likelihood that the petitioner would prevail as to at least one challenged claim.

An EPR request may be filed by any person, subject to applicable estoppel. The requestor must explain the pertinence and manner of applying the cited prior art to each claim for which re-examination is sought. Within three months, the Office decides whether the request raises a substantial new question of patentability, or SNQ. If it does, the Office orders re-examination.

The wording matters. An IPR institution decision asks whether the challenger is reasonably likely to win. An SNQ decision asks whether a prior-art teaching warrants reopening

examination. An order granting re-examination is therefore not a preliminary invalidity ruling. It is permission to begin asking the patentability question again.

After institution, an IPR petitioner remains an active party. It may submit expert evidence, cross-examine declarants, respond to the patent owner and participate in an oral hearing before the PTAB. The proceeding ends, absent earlier termination, in a final written decision. Statutory estoppel may then follow for the petitioner, its real parties in interest and privies as to grounds raised or reasonably capable of being raised.

Re-examination is different. If the patent owner files an optional statement after the order, the third-party requestor may reply. Thereafter, the proceeding is between the patent owner and the Office. The examiner may conduct a further search, develop grounds that differ from the requestor's presentation and consider amendments or new claims. The requestor starts the process but is required to step aside and remain silent soon after it begins.

The lack of an ability to actively participate in the process is not always a defect. It depends on the desired result.

A challenger seeking an adversarial ruling on the original claims, expert cross-examination and a litigation-ready record may still prefer IPR. A challenger whose objective can be achieved by narrowing the claims, creating intervening-rights issues or generating prosecution statements may prefer re-examination.

The historical figures make the distinction plain. Through fiscal year 2025, the Office had ordered re-examination in 92.7% of decided requests. Yet among certificates arising from third-party requests, only 16.1% cancelled all requested claims. Some claims were changed in 61% of certificates, while all requested claims were confirmed in 22.9%.

An order of re-examination, in other words, is a reopening of examination, not a verdict. The front-end percentage says little about whether the requestor will ultimately obtain the result it desires.

Feature	Inter partes review (IPR)	Ex parte re - examination (EPR)
Governing provisions	35 USC sections 311–319	35 USC sections 302–307
Who may file	A person other than the patent owner, subject to statutory bars and estoppel	Any person, subject to applicable estoppel
Permitted grounds	Sections 102 and 103, based on patents and printed publications	Patentability based on patents and printed publications
Threshold for initiating proceeding	Reasonable likelihood that the petitioner would prevail as to at least one challenged claim	Substantial new question of patentability
Decision - maker	Patent Trial and Appeal Board	Central Reexamination Unit
Patent owner's initial response	Preliminary response, generally addressing	Pre - order paper for requests filed on or after

	institution and discretionary denial	5 April 2026; otherwise, a statement after the order
Third - party participation after institution or order	Active party throughout the proceeding, including discovery, expert testimony and oral hearing	Generally limited to the request and, if the patent owner files a statement, a reply
Claim amendments	Limited amendments through a motion to amend	Patent owner may amend claims or propose new claims during examination, subject to applicable requirements
Typical result	Final written decision confirming, cancelling or finding claims unpatentable	Re - examination certificate confirming, cancelling or changing claims
Estoppel	Statutory estoppel may apply to the petitioner, real parties in interest and privies after a final written decision. No estoppel attaches when institution is denied.	Earlier AIA proceedings may limit a later request
Strategic advantage	Controlled adversarial record and a final ruling on the challenged claims	Lower historical threshold for initiation and potential for claim amendments, intervening - rights arguments or useful prosecution statements
Strategic risk	Discretionary denial, statutory bars and estoppel	Loss of requestor control, possible confirmation of claims and amendments that preserve or expand litigation risk
USPTO Filing Fees	US$51,875 for up to 20 challenged claims, comprising a US$23,750 request fee and a US$28,125 post - institution fee. Both are paid when the petition is filed, although the post - institution portion may be refunded upon request if institution is denied.	US$6,775 for a qualifying streamlined request – generally 40 pages or fewer and meeting prescribed formatting requirements – or US$13,545 for a non - streamlined request.

THE SQUIRES FILTER

The present process for discretionary denial of an IPR petition predates the current USPTO Director. The Office introduced bifurcated institution review on 26 March 2025, before John Squires became Director. Squires inherited the framework. He has since made its logic clearer.

Under the bifurcated process, the parties brief discretionary considerations separately from merits and other non-discretionary issues. The Director decides whether discretion warrants denial. If not, the petition is referred to a PTAB panel for the statutory institution analysis.

The discretionary inquiry is deliberately broad. Factors relevant to the Director's discretionary denial analysis include whether the same or substantially the same prior art or arguments were raised in an earlier IPR or EPR challenge, and whether there is parallel district court litigation where the court will adjudicate validity before an IPR trial would reach a final written decision. Another factor includes whether the challenger is presenting inconsistent claim construction positions, such as alleging in district court that the claims are indefinite while contending in an IPR petition that a person of ordinary skill in the art would understand what the claim means. Other factors include intervening changes in law, the strength of the challenge, reliance on expert testimony, the parties' settled expectations, public or economic interests and any other circumstance bearing on whether the Office should undertake review. Stipulations are considered according to whether they actually reduce duplication, not merely whether they carry a familiar label. In this context, a stipulation generally means a petitioner's binding commitment to refrain from pursuing specified invalidity grounds or substantially similar issues in the parallel district-court litigation, although the scope of the commitment matters: a narrow or conditional stipulation may do little to prevent overlapping proceedings, while a broad stipulation can more effectively address concerns about duplicative litigation.

That wider lens explains the current statistics. A petitioner may now lose before the Board decides what the prior art teaches.

In ***Magnolia Medical Technologies v Kurin***, Squires denied institution after the petitioner had litigated the same validity issues in district court and lost. The decision treated AIA review as an intended alternative to litigation, not a means of obtaining another attempt after litigation had run its course. It emphasised administrative economy and the integrity of the patent system.

The principle is not simply that an earlier trial date may favour denial. It is that the proposed function of the IPR matters. A proceeding that replaces part of a district court contest looks different from one that repeats a contest already lost.

A second line of decisions makes consistency part of that inquiry. In ***Ford Motor v AutoConnect*** and ***Terumo v Haemonetics***, the Director vacated institution where the petitioners advanced indefiniteness positions in court that were not adequately reconciled with their PTAB positions. In ***TikTok v Shopsee***, the petitioner used different claim constructions in court and before the Board, then offered a conditional stipulation that did not sufficiently reduce duplication or the risk of inconsistent outcomes.

The tactical lesson is clear. A district court position is no longer merely something an adversary may quote during the IPR. The Director's discretionary review asks whether the proposed IPR will reduce duplication, promote consistent outcomes and make appropriate use of the Office's resources. If a petitioner advances materially different claim constructions, indefiniteness theories or invalidity positions in the two forums without explaining the difference, the inconsistency suggests that the IPR may require the Board to revisit issues already being litigated elsewhere or risk reaching a result that conflicts with the district court. That concern can justify discretionary denial before the Board reaches the merits. A stipulation offered only after the inconsistency is exposed may therefore look less like genuine case management and more like repair work: it may not cure the existing

inconsistency, undo the duplication already created, or demonstrate that the petitioner planned from the outset to make the IPR an efficient alternative to litigation.

The policy is not simply "deny more IPRs". *Tesla v Bulletproof Property Management* supplies the counterexample. There, Squires declined discretionary denial where the district court trial date had been vacated, the petitioner had offered a broad stipulation, the record suggested apparent Office error and the challenge had been filed early. Evidence that the accused products were manufactured in the United States also weighed against denial.

That consideration followed a March 2026 USPTO memorandum inviting parties to address US manufacturing and investment, competing domestic production, and whether the petitioner is a small business that has been sued for infringement. These facts do not bear directly on anticipation or obviousness. They bear on whether the Office regards a particular review as a sensible use of its authority.

The resulting message is more discriminating than the institution rate alone suggests. A petitioner should be able to explain why the IPR deserves scarce agency attention, why it will replace, rather than duplicate, another proceeding, and why its positions remain coherent across forums.

This work cannot sensibly begin after the patent owner files a discretionary-denial brief. The case for institution should be built alongside the case for unpatentability. Litigation counsel and IPR counsel should agree on claim construction, invalidity and indefiniteness positions before either record becomes fixed. Any stipulation should be filed early enough to affect the structure of the parallel case, rather than appearing as a late attempt to repair the institutional record.

WHY RE-EXAMINATION BECKONS

Re-examination looks attractive because it asks a different initial question and imposes a different set of costs.

An IPR generally must be filed within one year after the petitioner, or the petitioner's real party in interest or privy, is served with a complaint alleging infringement of the challenged patent. 35 USC 315(b) makes that deadline a statutory bar to institution, subject to limited exceptions. The deadline can be strategically important because a party may need time to investigate the patent, develop prior-art grounds, and decide whether to file an IPR, yet waiting too long can eliminate the IPR option altogether.

EPR has no equivalent one-year bar. A party that was served with an infringement complaint more than one year earlier may still request re-examination, assuming no other estoppel or procedural restriction applies. That does not mean the party can avoid all consequences of earlier litigation. A requestor, real party in interest or privy may still be barred by AIA estoppel from pursuing grounds that were raised or reasonably could have been raised in an earlier IPR that resulted in a final written decision. 35 USC 325(d) may also permit the Office to reject a re-examination request based on the same or substantially the same prior art or arguments previously presented to the Office.

The absence of a one-year bar therefore makes re-examination a potentially important alternative when the IPR deadline has expired. It is not, however, a way to reset the entire dispute. Counsel must still examine prior IPRs, litigation history, relationships among the parties and the patent's prosecution record before assuming that re-examination remains available or strategically useful.

An EPR proceeding has also historically been easier to start. Absent clear evidence of the Office's prior decision (during the original prosecution or some other proceeding in the Office), a competently framed request is usually sufficient to secure an order granting a re-examination request.

But a high order rate can flatter the remedy. The third-party requestor largely leaves the scene once examination begins. The examiner may prefer a different invalidity theory. And the final certificate may confirm, cancel, change or, worse, add new claims.

For some accused infringers, that is enough. An amended claim may no longer cover the accused product or may give rise to intervening-rights arguments. A prosecution statement may narrow a disputed term. Re-examination can alter the litigation even without cancelling every asserted claim.

For other requestors, the same features are liabilities. A requestor that needs a binary adjudication, a controlled expert record or continued participation may find that re-examination's lower threshold leads to the wrong forum.

The forum choice should include not only the commercial objective and timing needs, but also consideration of the current statistics on how often the Office will decide to initiate the proceeding and the likelihood of ultimate success on them merits if the proceeding is initiated. With respect to timing, an IPR must be filed within the statutory one-year period after service of a complaint alleging infringement, subject to limited exceptions, and the proceeding is generally structured to reach a final written decision within one year of institution, with a possible six-month extension for good cause. Re-examination has no comparable one-year filing deadline, but the statute requires the Office conduct the proceeding with "special dispatch". That standard does not provide a predictable completion date, and re-examination is likely to take longer than an IPR, particularly when the case involves amendments, further examination or an appeal. "Which proceeding is easier to start?" is therefore rarely as useful as "Which possible endings help the client, and when does the client need them?"

INSIDE THE CRU

Re-examination is not ordinary prosecution returned to the examiner who allowed the patent. Rather, the matter is handled by a separate group of examiners in the Office's Central Reexamination Unit (CRU).

The examiner assigned to an EPR in the CRU does not make the front-end decision to order re-examination entirely alone. The Office's Manual of Patent Examining Procedure (MPEP) provides for an examiner panel review of the proposed order or denial. Re-examination cases are then monitored and reviewed at later stages to promote uniformity in procedures peculiar to re-examination.

The Office must decide whether or not to order re-examination within three months of filing. The Office's published data through 10 August 2026 shows an average of 59 days to mail the determination. Average pendency to a notice of intent to issue a re-examination certificate was about 16 months overall and approximately 12 months where no appeal was filed.

For the requestor, those mechanics have a drafting consequence. The request should operate as an examination roadmap, not as a district-court brief with a new cover.

Each proposed SNQ of patentability raised in the EPR request should identify the relevant claim language, the precise prior-art teaching and why that teaching would matter to a reasonable examiner. Any combination should explain the role of each reference and provide a rational basis explaining why a person of ordinary skill would have combined the references. Necessary claim constructions should be stated. Relevant prosecution history should be confronted, not buried.

The aim is administrative usability. A CRU examiner and review panel should be able to understand, adopt or reject each proposed SNQ without first reverse-engineering the requestor's theory.

Patent owners should write for the same audience. The most useful response is not necessarily the most exhaustive one. A narrow defect that disposes of several proposed SNQs gives the examiner something that can be applied. Thirty pages of every conceivable defence may provide less help than five pages identifying the missing link.

A VOICE BEFORE THE ORDER

Until April 2026, patent owners generally entered the re-examination process only after the order of re-examination had issued. The patent owner could then file an optional statement, but they had no ordinary opportunity to oppose the SNQ finding before it was made by the Office.

A new pre-order procedure changes that for EPR requests filed on or after 5 April 2026. No petition or fee is required. The opportunity is substantial but narrow:

- The paper is limited to 30 pages.
- It must be filed no later than 30 days after service of the request.
- The deadline is not extendable.
- An optional expert declaration does not count towards the page limit.
- Arguments cannot be incorporated by reference from the declaration.
- The paper must respond to matters raised in the request.
- It should not address discretionary rejection under section 325(d).
- It should not address whether an asserted teaching is "new".

The last restriction is counterintuitive. Existing SNQ guidance still asks whether the request supplies a non-cumulative technical teaching or casts the prior art in a materially new light. Yet the notice directs patent owners not to use the pre-order paper to dispute "newness", given the compressed decision period. That argument may be made later if re-examination is ordered.

The Office has thus created a merits response in which it may be ill-advised to advance every merits argument. In some cases, it will be better for patent owners to resist the understandable temptation to test every argument explaining why the EPR request is flawed.

The procedure is also asymmetric. The third-party requestor does not receive an opportunity to reply to a pre-order brief. To submit a reply, the Requestor must file a grantable petition under 37 CFR section 1.182, pay the fee and show circumstances such as a material misrepresentation or another improper argument that impedes the SNQ decision.

A permitted response is limited to 10 pages and is due within 15 calendar days of service. That deadline is also non-extendable.

The requestor has already had the first and longest word, of course: the request itself. But it should now assume that the patent owner may have the last word before the order.

Patent owners adopted the procedure quickly. Unified Patents found pre-order papers in 97 of the 234 requests filed from 6 April through 11 June 2026, an uptake rate of approximately 42%.

For patent owners, the practical approach should be surgical.

First, identify whether one issue affects all proposed SNQs or all commercially important claims. Common candidates include a missing limitation, a misreading of the principal reference, an unsupported claim construction or a combination that does not produce the claimed arrangement.

Second, distinguish threshold arguments from later prosecution arguments. The paper should explain why the request has not raised an important patentability question. It need not prove, in advance, that every conceivable rejection would fail.

Third, use declarations only where technical evidence adds something that the patents and publications do not show for themselves. A declaration may sit outside the page limit, but the argument cannot. Moving the reasoning into an expert report and incorporating it by reference is not economy; it is non-compliance. Timing is a factor here. Arranging an expert and assembling a declaration in the 30-day time period will be challenging.

Fourth, coordinate every claim-scope statement with the litigation team. The pre-order paper enters the public patent record. A narrow interpretation that stops re-examination may also narrow infringement. Winning the threshold argument can be a poor trade if the price is conceding the district-court infringement case.

Requestors face the mirror image of those considerations. Their filing should contain its own pre-buttal. If a ground depends on a particular construction, say so and support it. If the prosecution history suggests an obvious response, answer it. If one limitation is likely to become the patent owner's organising theme, do not leave the connection to implication.

More grounds are not necessarily more protection. A catalogue of slightly different combinations may offer the appearance of redundancy while repeating the same defect. A smaller set of self-contained SNQs may be harder to dismantle and easier for the CRU to administer.

SECTION 325(D): THE OFFICE REMEMBERS

Section 325(d) is the statutory memory of the post-grant system.

It allows the Director, when deciding whether to institute or order a proceeding under the IPR, PGR, or EPR chapters, to consider whether "the same or substantially the same prior art or arguments" were previously presented to the Office and to reject the petition or request on that basis.

35 USC section 325(d) is quite different from the SNQ inquiry. Historically, very few EPRs have been denied under 35 USC section 325(d) even when the EPR presents the same prior art used in a prior (failed) IPR. Previously considered art may still raise an SNQ if it supplies a non-cumulative teaching or is presented in a materially different light. While section 325(d)

gives the Office discretion to refuse another proceeding because substantially the same art or arguments have already been presented, the CRU has rarely exercised that discretion. Instead, the CRU asks whether there is something materially new to examine and, as the present statistics demonstrate, typically answers that question in the affirmative.

The MPEP instructs examiners to refer section 325(d) issues to the appropriate supervisory specialist or CRU Director. Relevant Office history may include original examination, reissue, earlier re-examination, supplemental examination and concluded AIA review.

That makes sequencing consequential even where statutory estoppel does not apply. A discretionarily denied IPR may not produce a final written decision and therefore may not trigger the estoppel provisions of 35 USC 315(e). It may nevertheless leave behind art and arguments that the Office can consider when evaluating a later re-examination request.

Before filing either proceeding, counsel should therefore prepare a map of the patent's administrative history. It should identify each reference, combination, claim construction and material argument presented during prosecution and every later Office proceeding. Where an old reference is used again, the new technical teaching or earlier material error should be stated expressly.

Patent owners should perform the same exercise as soon as a request arrives. But section 325(d) should not be shoehorned into the pre-order paper. The Office has specifically assigned it to a separate part of the analysis. A good argument filed in the wrong procedural vehicle may simply become an unauthorised one.

THE NUMBERS TURN

For more than a decade, the re-examination threshold decision was highly predictable. The USPTO's cumulative data through fiscal year 2025 shows a 92.7% order rate.

Then came spring 2026.

Official USPTO data shows 450 EPR orders and 13 denials through March 2026. By the end of June, the cumulative totals had risen to 666 EPR orders and 54 denials. The difference is 216 orders and 41 denials during April to June: an order rate of approximately 84% among those 257 dispositions.

Private monthly data shows a deeper, if temporary, trough. ExamPat reported a grant rate of 69.8% in May and 81.2% in June. Bloomberg Law subsequently reported an 88% rate for July. Thus, the rate fell sharply and then partly recovered.

The correct conclusion is modest but useful. The CRU's threshold review has become less predictable. The incorrect conclusion is that the pre-order paper alone cut the order rate by 25 percentage points.

The available data does not establish that.

Timing is one reason. The procedure applies only to requests filed on or after 5 April, while the average determination took 59 days. Spring decisions therefore include requests from different procedural timing sets.

Selection is another. Patent owners choose whether to file a pre-order paper. They may be more likely to do so where they have identified an unusually strong common defect. A simple comparison of paper and no-paper cases would suffer from adverse selection.

The underlying population changed too. A flood of former IPR users may have brought more complex requests, more repeat art and perhaps more marginal grounds into a system that had previously attracted a smaller, self-selected set of filings. At the same time, the Office was applying section 325(d) more visibly. Merits denials and discretionary rejections both appear in the aggregate as requests that were not ordered.

Finally, the USPTO has not published a controlled comparison of outcomes in cases with and without a pre-order paper. Nor has it published an official monthly series matching the private utility-patent dataset.

The statistics therefore support three propositions. Patent owners are using the new procedure. The aggregate order rate fell below its historic level in spring 2026. And the data does not yet isolate the contribution made by pre-order papers, section 325(d), request quality, workload or changing applicant behaviour.

That is enough to change advice, though. A requestor should no longer budget on the assumption that an order is nearly automatic. A patent owner should no longer assume that the first useful advocacy begins only after one issues.

THE NEXT TURN OF THE SCREW

The Office may soon add another layer of scrutiny.

On 22 July 2026, the Office proposed requiring every third-party re-examination requestor to identify all real parties in interest to the Office. The information could be kept confidential from the public upon request. The stated purposes include evaluating statutory estoppel and responding to false certifications, misrepresentations, and fraud. The comment period closed on 21 August, but the proposal had not become a final rule as of 4 September 2026.

The rule's eventual wording may change. Its direction is already clear. The Office wants to know who is behind a re-examination request and whether an earlier AIA proceeding restricts the new challenge.

That development fits the broader pattern. As challengers move from the PTAB to the CRU, the USPTO is carrying more institutional memory, party scrutiny, and front-end opposition into re-examination.

The two forums remain different. IPR is an adversarial trial subject to demanding discretionary review. Re-examination is a specialised examination in which the requestor relinquishes control. But neither forum now treats its threshold review as perfunctory.

The first filing is consequently more than a choice of forum. It is a choice about later options, positions and risk. Handled badly, it may make the second filing weaker. Handled well, there may be no need for a second filing at all.

Robert D Leonard rleonard@vklaw.com
Daniel H Golub dgolub@vklaw.com

https://www.vklaw.com/

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