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Issue 150

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PRIVACY ISSUES AND FREEDOM OF INFORMATION

All 50 states in the US have public records laws which allow members of the public to obtain documents and other public records from state and local government bodies. The open records laws in most states guarantee that police records are open unless some specific exemption would allow officers to deny access to the information. Statutes and case law on media access to police records vary greatly from state to state. Most police agencies also have written policies concerning what information is public and who may release arrest and incident reports². Since 1967, the Freedom of Information Act (FOIA)³ has provided the public the right to request access to records from any federal agency. Not all records can be released under the FOIA. Congress established certain categories of information that are not required to be released in response to the FOIA request because release would be harmful to the government and/or private interest. These categories are called "exemptions" from disclosures. Still, even if an exemption applies, agencies may use their discretion to release information when there is no foreseeable harm in doing so and disclosure is not otherwise prohibited by law. There are nine categories of exempt information:

1. Information that is classified to protect national security.
2. Information related solely to the internal personnel rules and practices of an agency.
3. Information that is prohibited from disclosure by another federal law.
4. Trade secrets or commercial or financial information that is confidential or privileged.
5. Privileged communications within or between agencies, including: Deliberative Process Privilege, Attorney-Work Product Privilege, and Attorney-Client Privilege
6. Information that, if disclosed, would invade another individual's personal privacy.
7. Information compiled for law enforcement purposes that:
 - a. Could reasonably be expected to interfere with enforcement proceedings
 - b. Would deprive a person of a right to a fair trial or an impartial adjudication
 - c. Could reasonably be expected to constitute an unwarranted invasion of personal privacy
 - d. Could reasonably be expected to disclose the identity of a confidential source
 - e. Would disclose techniques and procedures for law enforcement investigations or prosecutions
8. Could reasonably be expected to endanger the life or physical safety of any individual
9. Information that concerns the supervision of financial institutions

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10. Geological information on wells

In most states, one can be sued for publishing private facts about another person⁴, **even if those facts are true**. The term "private facts" refers to information about someone's personal life that has not previously been revealed to the public, that is not of legitimate public concern, and the publication of which would be offensive to a reasonable person. A plaintiff bringing a publication of private facts claim must show that the defendant disclosed a private fact. Common examples of private facts include information about medical conditions, sexual orientation, history, and financial status. It may also include things like someone's social security or phone number if that information is not ordinarily publicly available. A plaintiff has no privacy interest with respect to a matter that is already known to the public.



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CHIEF PRIVACY OFFICER & FEDERAL TRADE COMMISSION

The privacy policy statement posted on a company's website binds the company and should be taken very seriously. Accordingly, to protect privacy rights and to notify customers of their obligations and choices, the Office of the Chief Privacy Officer⁵ is founded on the following six fundamental principles:

1. **Notice:** Customers should receive full disclosure of who is collecting information about them, what is being collected, and for what purpose. The company should notify individuals about the purposes for which the information is collected and used, and provides information about how individuals can contact the responsible authority with any inquiries or complaints, the types of third parties to which it discloses the information and the choices and means the organization offers for limiting its use and disclosure.
2. **Choice:** Individuals should be allowed to choose how information about them will be used, how long that information will be retained, under what circumstances that information would be transferred to other parties, and so on. Companies should give individuals the opportunity to choose to opt-out whether their personal information will be disclosed to a third party or used for a purpose incompatible with the purpose for which it was originally collected or subsequently authorized by the individual.
3. **Access:** Companies have to establish transparency by enabling customers to view, and even edit, the information to make sure it is accurate and relevant. Companies should provide access to information to individuals held about them, and correct or delete it if it is inaccurate.
4. **Security:** Companies must ensure that a customer's data are protected from unauthorized access, distribution, loss, or corruption, by taking reasonable precautions and take reasonable steps to ensure that data is accurate, complete, current, and reliable for its intended use.
5. **Self-regulation:** We prefer robust self-regulation as we police ourselves as responsible citizens of a democracy. Self-regulation allows us to keep up with changing technological, social and legal norms in a global economy⁶. However, the company should also recognize that self-regulation should be backed up by a robust enforcement mechanism to build consumer confidence and to hold the company accountable for complying with the stated policies.
6. **Enforcement:** Therefore, companies should provide effective means of enforcing these rules, in order to ensure compliance with the US-EU Privacy Shield and/or the US-Swiss SafeHarbor principles, and commit:

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a) to make readily available and affordable independent recourse mechanisms such as Federal Trade Commission (FTC) or other US courts that may have jurisdiction so that each individual's complaints and disputes can be investigated and resolved and damages awarded where the applicable law or private sector initiatives so provide; (b) to have implemented the procedures for verifying the commitment to adhere to the privacy policy; and (c) to fulfill obligations to remedy problems arising out of a failure to comply with the principles through the FTC or other US courts and the company's privacy office. When the company receives a formal written complaint, the responsible office should contact the person who made the complaint to follow up and resolve the issue.

The FTC has [released a video](#), [business blog](#), and [Data Breach Response: A Guide for Business](#) to assist organizations on what to do following a data breach⁷. The guide details the steps companies can take to safeguard their systems during a security incident, including securing physical areas related to the breach, stopping any further loss of data, removing information illicitly placed on the web, and who to contact such as law enforcement, affected businesses, and individuals. The FTC also wrote a sample data breach notification letter⁸.



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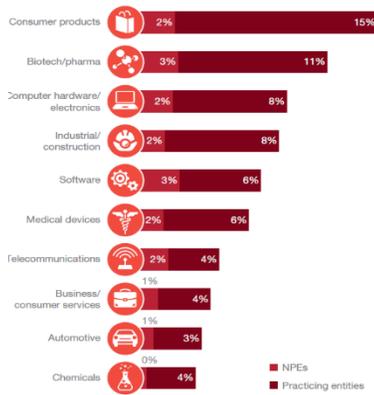
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PRE- AND POST-GRANT PATENT STRATEGIES

Introduction

Intellectual property spurs innovation by raising the rewards for the discovery of novel and non-obvious inventions that boost the economy and employment, by the government grant of a limited time monopoly to the inventor for the discovery. However, the patent monopoly induced spurt in research and development must outweigh the loss from the monopoly. Otherwise, the monopoly becomes detrimentally resulting in the loss of consumer welfare and the high cost of healthcare⁹.

Distribution of cases: top ten industries: 1996–2015



After many years of steady increases, the number of patent infringement cases filed dropped for the second year in a row in 2016. The ten most active industry classifications (out of 20) collectively account for almost 90% of identified decisions. Patent cases associated with the consumer products industry were the most prevalent cases, relating to products such as diapers, infant carriers, cosmetic palettes, coffee cartridges, etc. (see figure on the left)¹⁰.

The median cost of a patent infringement litigation involving more than \$25 million at risk ranged from \$ 4.5 million in 2005 to \$ 5.5 million in 2013¹¹. In an attempt to curtail the runaway litigation costs and to improve the quality of the patents, Congress has passed [the America Invents Act in 2011](#) introducing several [pre- and post-grant proceedings](#), which became effective in 2013. Since then, the median litigation costs have slightly dropped from \$ 5.5 million in

2013 to \$ 5.0 million in 2015, although this slight reduction may not be related to the AIA implementation.

Pre- and Post-Grant Proceedings available to improve the overall patent quality include:

- Pre-Issuance 3rd Party Submission (3PS)
- Ex Parte Reexamination (EPR)
- Inter Partes Review (IPR)
- Post Grant Review (PGR)

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- Transitional Program for Covered Business Method Patents (TPCBM or CBM)
- Derivation Proceeding (DER)

Potential Advantages of Pre- and Post-Grant Proceedings

In addition to the unnecessarily high costs of infringement litigation, low-quality patents have negative consequences such as high cost of the patent application process, entry avoidance of innovators, slower pace of innovation, deterrence of commercialization of new technologies and alternatives to incumbent technologies, and negative effect on consumer welfare¹². These negative impacts on welfare due to low-quality patents including NPE activity and ever-greening, make limitations on the legal protection conferred by intellectual property rights necessary¹³.

Long before America Invented its Act (AIA) and instituted the Pre-Grant 3rd Party Submission (3PS), provisions for such submissions were already well established in the PCT, Europe, and in several countries like India, New Zealand, Australia, Peru etc., to assist the patent office in granting valid and high quality patents. Due to its centralized nature, the PCT 3rd Party Observations (3PO) may afford a single shot to provide quality control of patents granted at the national stage prosecution, through the PCT International Search Report (ISR) and Written Opinion of the ISA (WOISA) effective in all the designated states, without any extra effort.

Additional advantage of PCT 3PO¹⁴ include:

- 1) PCT 3PO allows third parties to make observations through ePCT public services referring to the prior art which they believe to be relevant to the question of whether the invention claimed in the international application is novel and/or involves an inventive step, which is prohibited in the US.
- 2) There is no fee for this service, which is limited to one submission of up to a maximum of 10 references, which costs \$ 180 in the US.
- 3) 3POs may be submitted at any time after the date of publication of the international application and before the expiration of 28 months from the priority date, provided that the application is not withdrawn or considered withdrawn, whereas in the US, no 3PS is not allowed after later of the 6 months after publication or issue of first office action.
- 4) The third party may choose to remain anonymous without hiring a surrogate.

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In the US, the 3PS offers, not-free, but an inexpensive mechanism for bringing pertinent prior art to the attention of the USPTO so that valid patents are granted. The 3PS, also known as pre-issuance/pre-grant submissions, anonymous submissions, and third party observations, may actually strengthen the patent, as it is harder to invalidate a patent where the USPTO has considered the prior art submitted resulting in amended claims. In addition, the 3PS is free if the submission contains three or less reference. Therefore, through effective use of this process, it is possible to limit the patent scope or rejection of all claims of a competitor's pending patent application by introducing prior art with clear and concise relevance to each and every claim. For example, 3PSs in the 12/829,968 application resulted in its abandonment, while in the 13/460,635 application resulted in the cancellation of one claim and allowance of one method claim. Another interesting example is 13/493,787, a TrackOne application, in which the examiner rejected all claims on the grounds of nonstatutory obviousness-type double patenting, requiring terminal disclaimers for allowance. However, the 3PS filed later forced the claim amendments substantially narrowing of the claims.

Pre- and Post-Grant Proceedings may provide cost and time savings, as evidenced by the increase in the number of *Ex Parte* Reexamination (EPR) filings from 272 in 2002 to 787 in 2012¹⁵. Of the total 13217 EPR requests (out of which, 9217 or 70% were third party requests and 167 were by order of Commissioner) filed since start of the EPR on 17/01/1981 to 30/09/2014, 11402 (92%) requests were granted, 10698 certificates were issued, of which 2303 (22%) certificates were with all claims confirmed, 8395 (78%) certificates were with all claims canceled (12%) and with claims changed (7094, 66%).

The number of *Inter Partes* Reexam (IP Reexam) filings from 4 in 2002 to 530 in 2012, and by the 78% to 93% of certificates issued with cancellation or amendment of claims, and the reduction in median litigation costs (may not be related to AIA Pre- and Post-Grant Proceedings). Of the total 1919 IP Reexam requests filed from 11/29/99 to 9/16/2012, 1872 were granted, and 964 certificates were issued, of which only 7% of the certificates confirmed all claims confirmed, while remaining 93% were issued with either all claims canceled or with claim amendments¹⁶.

Under the [America Invents Act](#)¹⁷, in addition to the above EPR, a third party can challenge a patent's validity using *Inter Partes* Review (IPR) in place of IP Reexam, Post Grant Review (PGR), Transitional Program for Covered Business Method Patents (TPCBM), or Derivation Proceeding (DER). As the IP Reexam was replaced by IPR in

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2012, the number of IPR petitions filed against NPE patents increased naturally, from 262 in 2013 to 758 in 2014, along with the number of covered business method (CBM) petitions filed against NPE patents from 48 in 2013 to 88 in 2014¹⁸.

These results illustrate the success and effectiveness of Post-Grant Proceedings. However, preparation of a request for one of the Post-Grant Proceedings is not cheap, e.g., a request for the IPR costs about \$278,000 and reaches more than \$500,000 to obtain the final written decision¹⁹. Non-practicing entity (NPE) activity for operating companies is the legal cost of defending against NPE suits, costing between \$100 thousand and \$1 million to resolve, with the median resolution cost of \$482,000 and the mean resolution cost of \$5.6 million²⁰.

Pre-Grant 3rd Party Submission (3PS)

The 3PS offers an inexpensive mechanism for bringing pertinent prior art to the attention of the USPTO so that valid patents are granted. The 3PS may actually strengthen the patent. Courts have repeatedly stated that it is harder to invalidate a patent where the USPTO has considered the allegedly invalidating prior art. Consequently, third parties should carefully consider the pros and cons before making a pre-grant submission.

The 3PS may be filed in any pending application before the later of (a) six months after the publication of the patent application, or (b) the date of the first rejection of any claim. The 3PS may be filed anonymously and electronically including 1) list identifying the items being submitted; 2) a concise description of the relevance of each item listed; 3) a legible copy of each non-US patent document listed; 4) an English language translation of any non-English language item listed; 5) a statement by the submitting party that the submission complies with the applicable statute and USPTO rule, that the submitting party does not have a duty of disclosure for the application; and 6) the required fee for more than 3 references. There is no fee if the submission includes three documents or less and it is the first submission by the third party. The examiner is required to consider compliant pre-grant submissions in preparation of the next official action. The submitted documents will be listed on the face of any patent that may mature from the patent application, indicating that the USPTO has considered them.

The 3PS may be useful in limiting the scope of a patent, as the patent applicant may narrow the scope of the claims in view of the printed publications, or may make statements on the record surrendering subject matter,

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resulting in a stronger patent in view of the prosecution history reflecting that the examiner considered the submitted documents. Invalidity based on the submitted publications may be more difficult to prove at trial than would have been the case if the USPTO had never considered the publications. The 3PS may be useful in defining claim terms and clarifying the overall scope of the patent. Thus, the 3PS helps the USPTO in improving the quality of the patent prosecution and patents.

Ex Parte Reexamination (EPR)²¹

A patent owner, any third party, or the director of the USPTO may file the EPR request for reexamination of any claim of a patent. The patent owner may strategically use the EPR to bolster a patent or clarify any ambiguous claims. A third party (anonymously or openly) may file an EPR request, but may not participate during the examination process. The EPR is useful to minimize possible patent litigation costs and to have a final determination regardless of the outcome. If the requester is a third party, the EPR may lead to an unfavorable outcome with at least 22% resulting in certificates with claims confirmed and with favorable outcome at least 78% resulting in certificates with claims canceled or amended (see above).

A request for the EPR must include the following parts:

- (1) A statement pointing out each substantial new question of patentability based on prior patents and printed publications;
- (2) An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited prior art to every claim for which reexamination is requested. For each statement of the patent owner and accompanying information submitted pursuant to § 1.501(a)(2) which is relied upon in the detailed explanation, the request must explain how that statement is being used to determine the proper meaning of a patent claim in connection with the prior art applied to that claim and how each relevant claim is being interpreted. If appropriate the party requesting reexamination may also point out how claims distinguish over cited prior art;
- (3) A copy of every patent or printed publication relied upon or referred to in paragraph (b)(1) and (2) of this section accompanied by an English language translation of all the necessary and pertinent parts of any non-English language patent or printed publication;

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- (4) A copy of the entire patent including the front face, drawings, and specification/claims (in double column format) for which reexamination is requested, and a copy of any disclaimer, certificate of correction, or reexamination certificate issued in the patent. All copies must have each page plainly written on only one side of a sheet of paper;
- (5) If by a third party requester, a certification that a copy of the request filed by a person other than the patent owner has been served in its entirety on the patent owner at the address as provided for in § 1.33(c). The name and address of the party served must be indicated. If service was not possible, a duplicate copy must be supplied to the Office along with an explanation; and
- (6) A certification by the requester that the statutory estoppel provisions of 35 USC 315(e)(1) or 35 USC 325(e)(1) do not prohibit the requester from filing the EPR request.

Inter Partes Review (IPR)

The IPR may be requested by a third party, but that party must identify itself as a real party in interest and set forth the pertinency and manner of applying the cited prior art to every claim for which the review is requested. The IPR is available for any unexpired patent that has been issued for more than nine months and is not undergoing the PGR. The standard for initiating the IPR, i.e., that there is a "reasonable likelihood that at least one of the claims challenged in the petition is unpatentable," is more stringent than the standard for granting the EPR request. The IPR has the 50/50 chance of at least one of the claims invalidated²². In the IPR, the third party requester may submit declarations of supporting evidence and opinions, and additionally has a right to an oral hearing. Limited discovery is available regarding evidence "directly related to factual assertions advanced by either party." Both parties will also have the opportunity to appeal any adverse final decision. Although limited to challenges based on novelty and obviousness over patents and printed publications previously not considered, the IPR is a highly valuable alternative to expensive litigation.

Post Grant Review (PGR)

A third party may use the PGR request to challenge a patent having at least one claim with an effective filing date March 16, 2013, within nine months after the issue date of the patent or the reissue certificate. If the petitioner has already been sued for infringement of the patent, the PGR petition must be filed no later than one year after the petitioner was sued. The PGR request may be based on any grounds that may be raised under 35 USC

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282(b)(2) or (3), such as utility under 35 USC 101, novelty under 35 USC 102, obviousness under 35 USC 103, and enablement, written description and definiteness under 35 USC 112.

Limited motion-based discovery is available to the parties to the PGR. Unless the patent owner and petitioner agree to one of the mandatory discovery provisions under 37 CFR § 42.51, all other discovery by the patent owner and petitioner must be requested by motion, which requires a showing of good cause as to why the discovery is needed. The petitioner is required to produce any exhibits, and any affiants, declarants or experts whose testimony was referenced in the petition for cross-examination. Each party is also required to provide any relevant information that is inconsistent with a position it advances during the proceeding concurrently with the filing of the documents or things that contain the inconsistency.

Transitional Program for Covered Business Method Patents (TPCBM)

The TPCBM is a trial proceeding conducted at the Board to review the patentability of one or more claims of a covered business method patent. The TPCBM proceedings employ the standards and procedures of the PGR, with certain exceptions. For example, for first to invent patents only a subset of prior art is available to support the petition. Further, a person may not file a petition for the TPCBM proceeding unless the person or the person's real party in interest or privy has been sued for infringement of the patent or charged with infringement under the patent. The procedure for conducting the TPCBM review took effect on September 16, 2012. The program will sunset for new TPCBM petitions on September 16, 2020²³.

Derivation Proceeding (DER)

The **DER** proceeding requires that an applicant for patent file a petition to institute the proceeding. The petition must set forth with particularity the basis for finding that an inventor named in an earlier application derived the claimed invention from the petitioner. The petition must be made under oath and supported by substantial evidence. The petition must be filed within 1 year of the date of the first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention. In a petition for a derivation proceeding, the petitioner must (i) identify which application or patent is disputed; and (ii) provide at least one affidavit addressing communication of the derived invention and the lack of authorization for filing the earlier application.

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Submission of IPR, PGR, TPCBM, and DER

While the United States Patent and Trademark Office (USPTO) processes the Ex Parte Reexamination (EPR) Request, the Patent Trial and Appeal Board (PTAB) conducts trials, including *Inter Partes* Review (IPR), Post Grant Review (PGR), Transitional Program for Covered Business Method Patents (TPCBM), and Derivation Proceeding (DER), hears appeals from adverse examiner decisions in patent applications and reexamination proceedings, and renders decisions in interferences.

The procedural requirements for filing petitions for the IPR, PGR, TPCBM, and DER at the PTAB's [Patent Trial and Appeal Board End to End \(PTAB E2E\)](#) and [the Patent Review Processing System \(PRPS\)](#) can be summarized as follows:

The first step in the process for IPR, PGR, and TPCBM at the PTAB E2E, and DER at PRPS is the submission of a proper petition.

- Click on the "New Petitions" tab
- Select "Create New Petition"
- Select the relevant proceeding on the following screen, and
- Enter the information for the petition.

Once a petition is submitted via PTAB E2E /PRPS, a PTAB will review the petition for regulatory and statutory compliance.

Regulatory Requirements

The regulatory requirements under 37 CFR 42.4, 6, such as page limits, font size, signature, and identification of lead and back-up counsel that must be met. If there are regulatory defects, the PTAB will enter a Notice of Filing Date Accorded to Petition and the individual who filed the petition will receive a notification by email giving an opportunity to correct the regulatory defects.

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While the petition will be accorded the filing date of the original submission, the regulatory defect must be corrected within one week. If the defect is not corrected within one week, the petition will be forwarded to a PTAB judge who may initiate a conference call and/or issue an order to show cause, and terminated if the petitioner fails to respond to such an order.

Statutory Requirements

The statutory requirements requirements for all these proceedings are very similar, except for the **DER**.

IPR, PGR, and TPCBM: The top statutory requirements under 35 USC 135(a), 312(a), and 322(a) that must be met for IPR, PGR, and CBM petitions to be accorded a filing date:

- Appropriate fee successfully paid,
- Identification of the patent and the specific claim(s) being challenged,
- Identification of the real party in interest,
- Copies of the patents and printed publications relied upon in the petition, and
- Evidence (e.g., certificate of service) that a copy of the petition was provided to the patent owner.

Derivation Proceeding (DER): The top statutory requirements under 35 USC 135(a), 312(a), and 322(a) that must be met for the **DER**:

- Appropriate fee successfully paid,
- Identification of the petitioner's pending application,
- Identification of the respondent's earlier filed patent or application, and
- Evidence, (e.g., certificate of service) that a copy of the petition was provided to the respondent.

Compliant Request

If any requirement is not met, the petition is incomplete, and petitioner will be notified as follows:

- The paralegal may call the individual who filed the petition and explain the deficiency or the defect.
- The paralegal will enter a Notice of Incomplete Petition and the individual who filed the petition will receive notification by email.

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- The deficiency may be corrected within one month and the petition will be accorded the filing date of the new submission.
- If the deficiency is not corrected within one month, the petition will be dismissed. One exception is when the petitioner challenges more than 20 claims (15 beginning March 19, 2013) but does not pay the excess claims fees - the petitioner will receive notification and can file a request to have the Board review just the first 20 challenged claims (15 beginning March 19, 2013).

The IPR/PGR/TPCBM post-institution fee is for each claim in excess of 15 claims and the IPR/PGR/TPCBM request of each claim in excess of 20 claims²⁴. For example, for a petition that is challenging 25 claims, the following fees are required for the submission:

- The IPR request fee (§ 41.15(a)(1)): \$9,000
- The IPR post-institution fee (§ 41.15(a)(2)): \$14,000
- Excess claims fee (§ 200 for each claim in excess of 20) for requesting 5 claims in excess of 20 (§ 41.15(a)(3)): \$1,000
- Post-institution excess claims fee (§ 400 for each claim in excess of 15) for requesting 10 claims in excess of 15 (§ 41.15(a)(4)): \$4,000
- Total: \$28,000

The Office will notify the petitioner of any fee deficiencies. When the petitioner pays the required excess claims fees within the time period set forth in the notice, the Office will accord the date on which the fees are paid as the filing date.

If there are no statutory or regulatory errors with the petition, the paralegal will enter a Notice of Filing Date Accorded to Petition, the petitioner will receive notification by email, and the patent owner/respondent will receive a copy via regular mail.

The following are the top 10 common errors noticed in the Petitions:

1. Improper usage of claim charts by including arguments, claim construction, and/or legal analysis in a claim chart;

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2. Failure to set forth claim construction of disputed or important claim terms expressly in a claim construction section;
3. Exhibits do not match the documents listed in the Exhibit List;
4. Failure to identify related matters or provide a statement that there are no related matters;
5. Exhibits are not sequentially numbered in the 1001-1999 range;
6. Failure to identify lead or backup counsel as required by §§ 42.8 and 42.10;
7. Margins less than 1 inch as required by § 42.06;
8. Failure to certify that the petitioner is not barred or estopped from requesting a review as required by § 42.104(a) or § 42.204(a);
9. The petition and supporting documents are served on the patent owner at an address that is not the correspondence address of record for the subject patent as required by § 42.105(a) or § 42.205(a); and
10. The petition and supporting documents are served on the patent owner later than the filing of the petition.



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INTELLECTUAL PROPERTY LAW CHANGES AROUND THE WORLD

Australia (AU)²⁵: The Intellectual Property Laws Amendment Act 2015 (the Act) amends the Patents Act 1990, Trade Marks Act 1995, Designs Act 2003, and the Plant Breeder's Rights Act 1994. An arrangement between the governments of Australia and New Zealand relating to Trans-Tasman Regulation of Patent Attorneys was signed in March 2016, which allowing a single trans-Tasman patent attorney regime for Australia and New Zealand, as part of the broader Single Economic Market agenda, effective on a day fixed by notification to each other through the diplomatic channels. This may impact the cost of prosecution using one law firm/agent for two countries.

Brazil (BR)²⁶: Brazilians have been using the results of the examination of the patent application at the INPI in the United States and vice versa, through Patent Prosecution Highway (PPH), since January this year. In October 2016, the INPI and the EPO agreed to launch a PPH pilot project.

Canada (CA)²⁷: Effective 11 October 2016, Canadian patents will be issued 6 weeks after the payment of the final fee (issue fee) in the application. Therefore, applicants have only 6 weeks to file divisional applications after the payment of the issue fee.

Cambodia (Democratic Kampuchea, KH)²⁸: The Kingdom of Cambodia (KH) acceded to the Patent Cooperation Treaty (PCT). Consequently, any international application filed on or after 8 December 2016 will automatically include the designation of KH.

Djibouti (DJ)²⁹: Djibouti (DJ) acceded to the PCT. Consequently, any international application filed on or after 8 December 2016 will automatically include the designation of DJ.

Dominican Republic (DO)³⁰: Effective from 1 November 2016, Dominican Republic (DO) accepts ePCT-Filing with applicable fee reductions, e.g., a reduction of USD 307 would be applied if the application is filed electronically (the request, description, claims and abstract in character coded format).

European Patent Office³¹: On October 10, 2016, at the annual Assemblies of the member states of the World Intellectual Property Organization in Geneva, the EPO also agreed to launch PPH pilot programs with the patent

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offices of Malaysia, the Philippines, and Russia to accelerate the treatment of patent applications, to run for 3 years starting in the course of 2017. On 1 October 2016, EPO and Colombia launched the Patent Prosecution Highway (PPH) to run for an initial period of three years. Also, three Memoranda of Understanding were signed with the Eurasian Patent Office (EAPO) relating to Cooperative Patent Classification (CPC), the extension of EPOQUE Net (the EPO's professional online patent search tool) until the end of 2018. An agreement was also signed with Rospatent extending its involvement in the CPC. Notice of opposition may be filed in electronic form using the EPO Online Filing software or using the new online filing service (CMS) provided on the EPO website, but it may not be filed using the EPO web-form filing service³². The outcome of the UK referendum (Brexit) has no consequence on the membership of the UK to the European Patent Organisation, nor on the effect of the European Patents in the UK³³.

Indonesia (ID)³⁴: Indonesia enacted a new patent law with sweeping changes effective 26 (or 28) August 2016*. All patent applications in Indonesia filed on or after the effective date will be processed under the new patent regime. Therefore, it is important to note the changes and the requirements for applications in Indonesia, e.g., petty patent, unpatentable subject matter such as second use and computer programs, disclosure obligations, and infringement exemptions.

India (IN)³⁵: India introduced an expedited examination that requires the Indian Patent Office (IPO) to grant or finally reject a patent application within 18 months. A request for the expedited examination can be filed at the time of filing a patent application or within 48 months from the filing date of the application. Non-Indian and Non-Iranian patent applicants who do not qualify as start-ups and Indian and Iranian patent applicants who did not choose India as ISA or IPEA are not eligible to request the expedited examination. However, the number of such requests per year are limited at the discretion of the IPO. For the year 2016, the IPO will accept a maximum of 1000 requests for the expedited examination under Rule 24C(13), submitted on or before 31 December 2016.

Effective May 2016 under the Patent Amendments Rules³⁶, the extendable time limit for placing an application in an allowable condition for the grant has been reduced to 6 months.

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Kuwait (KR)³⁷: Kuwait acceded to the Patent Cooperation Treaty on June 9, 2016, effective September 9, 2016. Consequently, any international application filed on or after 9 September 2016 will automatically include the designation of Kuwait.

PCT³⁸: The deadline for requesting supplementary international search has been extended from 19 to 22 months from the priority date, effective 1 July 2017. For further information, see document PCT/WG/9/6 and paragraph 123 of document PCT/WG/9/27.

Singapore³⁹: On 30 June 2016, the Intellectual Property Office of Singapore (IPOS) published new regulations for post-grant amendments. According to the new regulations, amendments also have to meet the following requirements:

- All relevant matters in relation to the proposed amendment must be sufficiently disclosed, i.e. the patent owner must sufficiently explain the reasons for the amendment.
- There is no unreasonable delay on the part of the patentee in seeking the amendment, i.e. the patentee has to file an amendment as soon as becoming aware of new prior art which might affect the patent's validity.
- The patentee has not gained an unfair advantage by delaying the amendment.

Turkey⁴⁰: PCT Assembly appointed the Turkish Patent Institute (TPI) as an International Searching and Preliminary Examining Authority under the PCT (document PCT/A/48/4). The appointment will become effective from a future date to be notified by the Office when it is ready to begin operations.

Turkmenistan⁴¹: Hague System users can designate Turkmenistan in an international design application, effective 16 March 2016.

Belarus (BY)⁴²: Under the new trademark law in the Republic of Belarus effective 15 July 2016, trademark applicants must specify the International Classification of Goods and Services (the Nice Classification) in which the trademark is to be registered in their trademark applications, which was optional before.

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Brunei Darussalam (BN)⁴³: Brunei acceded to the Madrid Protocol for the International Registration of Marks as the 98th member of the Madrid System, effective January 6, 2017. From early next year, Brunei applicants may protect their marks in all the 114 territories of 98 members, by filing a single international application in one language and paying one set of fees in a single currency.

Cayman Islands (KY)⁴⁴: The General Registry of the Cayman Islands prohibits advance payment of annuities, Practice Note No. 01/2016, effective August 1, 2016, requiring all trademark and patent annuity fee payments to be made in a fixed time period from January 1 through March 31 of the annuity due year, with a penalty applicable to fees paid after 31 March. As a result, it is important to pay annuities by March 31st, but not before January 1st.

Korea (KR)⁴⁵: The Korean Intellectual Property Office (KIPO) announced a major revision of the South Korean Trademark Act which was recently approved by the National Assembly and will enter into force on 1 September 2016. The new provisions include, among many others, the following:

- Legal standing no longer necessary to file a request for cancellation due to non-use of the trademark. Up to now, a party requesting cancellation due to the non-use of the trademark had to prove that he/she is doing business in the same field as the trademark owner or that he/she is owning an application which is similar to the challenged trademark. By eliminating these conditions, the law revision will make it easier for third parties to challenge unused marks.
- Electronic use of trademarks accepted: According to the revised law, also the electronic use such as e.g. in e-commerce or other electronic services will be recognized as one of the possible types of trademark use
- Elimination of the one year period during which registration of a new mark similar to an expunged mark is not permitted: According to the revised law, applicants no longer have to wait until the end of this period to submit their application for the desired trademark.

Lao PDR (LA)⁴⁶: Lao PDR acceded to the Madrid Protocol for the International Registration of Marks as the 97th member of the Madrid System, effective March 7, 2016.

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Thailand (TH)⁴⁷: Thailand has implemented a comprehensive revision of its Trademark Act which entered into force on 28 July 2016. The amended Act shall bring Thailand's trade mark legislation in line with international standards. Some of the most important provisions are as follows:

- Introduction of sound marks, three-dimensional marks and shape marks
- Permission of trademark filings in multiple classes (previously only single class filings possible)
- Abolition of requirement for a registration of a mark in association with another identical or similar mark of the same owner
- Reduction of period for filing amendments, appeals or oppositions from previously 90 days to 60 days calculated from the day of receipt of related order from the Trademark Office
- The increase of time period for paying registration fees from 30 to 60 days.
- Introduction of a grace period for renewals: renewal still possible within six months from expiry date against a 20% surcharge
- Cost reduction: Flat fee for applications with more than six products

The United States (US)²⁵: Effective 14 January 2017, the amended rules pertinent to practice before the Trademark Trial and Appeal Board (TTAB) require all filings be made through ESTTA. The amended Rules of Practice in Trademark Cases include amendments to §§ 2.92-2.195.

Yemen (YE)⁴⁸: Effective 6 June 2016, applicants must specify goods and services in the International Classification of Goods and Services (the Nice Classification) for which registration is sought in their trademark applications. Trademark applications with just class headings are no longer accepted.



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REFERENCES AND NOTES⁴⁹

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<http://www.avvo.com/profile/dashboard>.

² State Public Record Laws: <http://www.foiadvocates.com/records.html>

³ The Freedom of Information Act (FOIA) FAQ: <https://www.foia.gov/faq.html#others>

⁴ Publication of Private Facts: <http://www.dmlp.org/legal-guide/publication-private-facts>

Publishing highly personal and embarrassing information about another, even if completely true:

<https://www.rcfp.org/browse-media-law-resources/digital-journalists-legal-guide/publishing-highly-personal-and-embarrassi>

Police Records: <http://www.rcfp.org/rcfp/orders/docs/POLICE.pdf>

Invasion of Privacy: Public Disclosure of Private Facts: <http://injury.findlaw.com/torts-and-personal-injuries/invasion-of-privacy--public-disclosure-of-private-facts.html>

⁵ As an Intellectual Property service provider, your privacy is very important to Cardinal Intellectual Property. [The privacy policy statement](#) posted on our company's website binds us and we take this very seriously. Accordingly, to protect your privacy rights and notify your obligations and choices, the Chief Privacy Officer is available to assist you in resolving your privacy issues related to your personal data submitted in order to procure intellectual property services. For further details please visit: [Cardinal Intellectual Property Privacy Policy \(CPP\)](#)

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services provider is secure with expertise in Pre- and Post-Grant Patent Strategies at the USPTO/PTAB and a wide array of paralegal support services, adhering to high-quality standards and supporting fast turnaround times. Our paralegal teams manage hundreds of thousands of matters for clients large and small. Well-versed in both patent and trademark procedures, our staff is trained to accurately and efficiently manage your intellectual property matters through well-documented, best practice processes. All Cardinal paralegals are based in the United States. Because we do not outsource our paralegal services, Cardinal is able to maintain the highest standards of confidentiality and security. Our technology platforms incorporate rigorous security and data protection standards. As an additional level of protection, we maintain confidentiality for our clients using the same diligence and procedures as a law firm.

⁶ Vepachedu, Giant Sucking Sound Of Inversion: <http://www.vepachedu.org/AJIN/AIJN-144.pdf>; <https://www.linkedin.com/pulse/giant-sucking-sound-inversion-rao-vepachedu>

⁷ [Responding to a data breach?](#) Check out the FTC's *Protecting Personal Information: A Guide for Business* and *Start with Security: A Guide for Business*.

⁸ FTC Suggested Model Letter

The following letter is an FTC model for notifying people whose personal information has been stolen. It is important to advise victims to place a free fraud alert on their credit reports. A fraud alert may hinder identity thieves from getting credit with stolen information because it's a signal to creditors to contact the consumer before opening new accounts or changing existing accounts. Also, advise victims to consider placing a credit freeze on their file. The cost to place and lift a freeze depends on state law.

Company/Institution/Logo

Date:

NOTICE OF DATA BREACH

Dear [Name]:

We are contacting you about a data breach that has occurred at [Company].

What Happened?

[Describe how the data breach happened, the date of the breach, and how the stolen information has been misused (if you know)].

What Information Was Involved?

[This incident involved ... describe the type of personal information that may have been exposed due to the breach].

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What the Company/Institution is Doing

[Describe how you are responding to the data breach, including: what actions you've taken to remedy the situation; what steps you are taking to protect individuals whose information has been breached; and what services you are offering (like credit monitoring or identity theft restoration services).]

What You (client) Can Do

[FTC recommends that you place a fraud alert on your credit file. A fraud alert tells creditors to contact you before they open any new accounts or change your existing accounts. Call any one of the three major credit bureaus. As soon as one credit bureau confirms your fraud alert, the others are notified to place fraud alerts. The initial fraud alert stays on your credit report for 90 days. You can renew it after 90 days.

Equifax: equifax.com (link is external) or 1-800-525-6285

Experian: experian.com (link is external) or 1-888-397-3742

TransUnion: transunion.com (link is external) or 1-800-680-7289

Request that all three credit reports be sent to you, free of charge, for your review. Even if you do not find any suspicious activity on your initial credit reports, the Federal Trade Commission (FTC) recommends that you check your credit reports periodically. Thieves may hold stolen information to use at different times. Checking your credit reports periodically can help you spot problems and address them quickly.

If you find suspicious activity on your credit reports or have reason to believe your information is being misused, file a police report and call [insert contact information for law enforcement if authorized to do so]. Get a copy of the police report; you may need it to clear up the fraudulent debts.

If your personal information has been misused, visit the FTC's site at IdentityTheft.gov to get recovery steps and to file an identity theft complaint. Your complaint will be added to the FTC's Consumer Sentinel Network, where it will be accessible to law enforcers for their investigations.

You also may want to consider contacting the major credit bureaus at the telephone numbers above to place a credit freeze on your credit file. A credit freeze means potential creditors cannot get your credit report. That makes it less likely that an identify thief can open new accounts in your name. The cost to place and lift a freeze depends on state law. Find your state Attorney General's office at naag.org to learn more.

Please visit [Identity Theft: A Recovery Plan, a comprehensive guide from the FTC](#) to help you guard against and deal with identity theft. We've also attached information from IdentityTheft.gov about steps you can take to help protect yourself from identity theft, depending on the type of information exposed.]

Other Important Information [other important information here.]

For More Information

Call [telephone number]

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or go to [Internet website]

[State how additional information or updates will be shared/or where they will be posted.]

[closing]

Your Name

⁹ Vepachedu et al., Patent Protection and the Pharmaceutical Industry in the Indian Union, Intellectual Property Today (2004):

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35 USC §§ 301-307, 35 USC §§ 301, 311-317, *In re Etter*, 225 USPQ 1, 3-4 (Fed. Cir. 1985) (stating that “[A] statute setting rules of procedure and assigning burdens to litigants in a court trial does not automatically become applicable to proceedings

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before the PTO” and “reexamination is thus neutral, the patentee and the public having an equal interest in the issuance and maintenance of valid patents”).

In re Etter, 225 USPQ at 4.

²² "Comparing the two standards, the "reasonable likelihood" standard is lower than the "more likely than not" standard. The reasonable likelihood standard allows for the exercise of discretion but encompasses a 50/50 chance whereas the "more likely than not" standard requires greater than a 50% chance of prevailing." Message from [Chief Judge James Donald Smith](#), Board of Patent Appeals and Interferences: USPTO Discusses Key Aspects of New Administrative Patent Trials: <https://www.uspto.gov/patent/laws-and-regulations/america-invents-act-aiia/message-chief-judge-james-donald-smith-board>

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In most countries, an industrial design needs to be registered in order to be protected under industrial design law as a “registered design”. In some countries, industrial designs are protected under patent law as “design patents”. Industrial design laws in some countries grant – without registration – time- and scope limited protection to so-called “unregistered industrial designs”. Depending on the particular national law and the kind of design, industrial designs may also be protected as works of art under copyright law. <http://www.wipo.int/designs/en/>

International Application, Item 8: Products which constitute the industrial design or in relation to which it is to be used (mandatory): <http://www.wipo.int/hague/en/guide/ia.html>

⁴² Intellectual Property News: <http://www.msp.ua/news/belarus-trademark-law-amendments.html>

List of Goods and Services in Class Order: <http://web2.wipo.int/classifications/nice/nicepub/en/fr/edition-20160101/taxonomy/>

Goods and services: <https://euipo.europa.eu/ohimportal/en/goods-and-services>

The International Classification of Goods and Services for the Purposes of the Registration of Marks was established by an Agreement concluded at the Nice Diplomatic Conference, on June 15, 1957, revised at Stockholm in 1967, and at Geneva in 1977, and was amended in 1979. Each of the countries party to the Nice Agreement is obliged to apply the Nice Classification in connection with the registration of marks, either as the principal classification or as a subsidiary classification, and has to include in the official documents and publications relating to its registrations of marks the numbers of the classes of the Classification to which the goods or services for which the marks are registered belong. The Nice Classification is a system of classifying goods and services for European Union (EU) trade mark applications. It consists of 45 classes.

http://www.wipo.int/nice/its4nice/ITSsupport_and_download_area/20160101/gs_in_pdf/nice_en_flat_nice_20160101.pdf.

Although only 84 States are party to the Nice Agreement, the trademark offices of about 65 additional States, as well as the

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International Bureau of WIPO, the African Intellectual Property Organization (OAPI), the African Regional Intellectual Property Organization (ARIPO), the Benelux Organisation for Intellectual Property (BOIP) and the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of the European Union (EU), also use the Classification.

http://www.wipo.int/treaties/en/classification/nice/summary_nice.html

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⁴⁶ The Lao People's Democratic Republic Joins the Madrid System:

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(<https://translate.google.com/translate?sl=auto&tl=en&js=y&prev=t&hl=en&ie=UTF-8&u=http%3A%2F%2Fapp-thca.krisdika.go.th%2FNaturesig%2FCheckSig%3FwhichLaw%3Dlaw2%26folderName%3D%25a447%26lawPath%3D%25a447-20-9999-update&edit-text=>)

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"Where the mind is without fear and the head is held high, Where knowledge is free Where the world has not been broken up into fragments, By narrow domestic walls." [Rabindranath Tagore \(1861-1941\), Gitanjali, 1912.](#)

One World One Family

AUM! SWASTI!

Om! Asatoma Sadgamaya, Tamasoma Jyotirgamaya, Mrityorma Amritamgamaya, Om Shantih, Shantih, Shantih! (Aum! Lead the world from wrong path to the right path, from ignorance to knowledge, from mortality to immortality, and peace!)

SWASTI! AUM!



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