

115TH CONGRESS
2D SESSION

H. R. 7366

To reform and improve procedures for amending patents subject to post-issuance review proceedings of the United States Patent and Trademark Office, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2018

Mr. ISSA introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reform and improve procedures for amending patents subject to post-issuance review proceedings of the United States Patent and Trademark Office, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Revitalizing Amend-
5 ment Motions for Patents Act of 2018” or the “RAMP
6 Act”.

1 **SEC. 2. REFORM OF PATENT AMENDMENTS IN PTAB PRO-**
2 **CEEDINGS.**

3 (a) PROCEDURES FOR MOTIONS TO AMEND.—Sec-
4 tion 316(d) of title 35, United States Code, is amended
5 by inserting at the end the following new paragraphs:

6 “(4) PROCEDURES FOR MOTIONS TO AMEND.—

7 “(A) IN GENERAL.—With respect to a mo-
8 tion to amend filed under paragraph (1) or (2)
9 that proposes 1 or more substitute claims—

10 “(i) a substitute claim shall be con-
11 strued according to its broadest reasonable
12 interpretation for the purposes of deter-
13 mining the patentability of the substitute
14 claim;

15 “(ii) the petitioner shall be given a
16 reasonable opportunity to respond to each
17 substitute claim;

18 “(iii) the Director shall assign an ex-
19 aminer to examine each proposed sub-
20 stitute claim (giving consideration to the
21 evidence and the arguments presented by
22 the parties) and to submit to the Patent
23 Trial and Appeal Board an advisory re-
24 port, which shall be non-binding, on the
25 patentability of each such substitute claim;
26 and

1 “(iv) the Board shall consider such re-
2 port in deciding the motion.

3 “(B) RULE OF CONSTRUCTION.—Nothing
4 in subparagraph (A) may be construed as af-
5 fecting the provisions of subsection (a)(11).

6 “(C) MATTERS NOT CONSIDERED ON AP-
7 PEAL.—With respect to an appeal described
8 under section 319, a party to the appeal may
9 not challenge the decision of the Patent Trial
10 and Appeal Board regarding a motion to amend
11 under this paragraph on the basis of—

12 “(i) the qualifications or expertise of
13 the examiner assigned by the Director
14 under subparagraph (A); or

15 “(ii) any content of the report sub-
16 mitted pursuant to subparagraph (A) that
17 was not expressly relied on by the Patent
18 Trial and Appeal Board in such decision.

19 “(5) EXPEDITED POST-REVIEW REEXAMINA-
20 TION.—

21 “(A) AVAILABILITY OF EXPEDITED POST-
22 REVIEW REEXAMINATION.—An owner of a pat-
23 ent may file a request for an expedited post-re-
24 view reexamination by the Office of a chal-
25 lenged patent claim for which a final written

1 decision of the Patent Trial and Appeal Board
2 under section 318(a) was issued if the following
3 requirements are met:

4 “(i) The challenged patent claim was
5 determined to be unpatentable in such
6 final written decision.

7 “(ii) During the inter partes review
8 for which such final written decision was
9 issued, the owner of the patent filed a
10 timely motion to amend the patent that
11 proposed 1 or more substitute claims for
12 the challenged patent claim.

13 “(iii) The motion to amend was de-
14 nied as to each substitute claim proposed
15 for the challenged patent claim.

16 “(iv) The request for the expedited
17 post-review reexamination of the chal-
18 lenged patent claim is made on the basis of
19 the prior art asserted during such inter
20 partes review against—

21 “(I) the challenged patent claim;

22 or

23 “(II) a substitute claim proposed
24 for the challenged claim.

1 “(B) PROCEDURES FOR REQUEST AND
2 CONDUCT OF REEXAMINATION.—A request for
3 expedited post-review reexamination under this
4 paragraph and the conduct of such reexamina-
5 tion under this paragraph shall be subject to
6 section 302 and sections 304 through 307, ex-
7 cept that—

8 “(i) the Director shall establish, by
9 regulation, a time period (which may not
10 exceed 60 days) after the time for filing an
11 appeal of a final written decision of the
12 Patent Trial and Appeal Board under sec-
13 tion 318(a) has expired, or after the final
14 disposition of any such appeal, during
15 which the owner of the patent may request
16 an expedited post-review reexamination
17 under this paragraph;

18 “(ii) only the owner of the patent may
19 file a request for an expedited post-review
20 reexamination under this paragraph;

21 “(iii) for the purposes of section 304,
22 a determination that a substantial new
23 question of unpatentability is raised shall
24 be assumed, and not later than 14 days
25 after a request for an expedited post-re-

1 view reexamination is filed, the Director
2 shall order the reexamination of the chal-
3 lenged patent claim identified in the re-
4 quest if the Director determines that the
5 request meets the requirements of subpara-
6 graph (A);

7 “(iv) the owner of the patent may not
8 file a statement under section 304 and the
9 reexamination shall begin immediately
10 upon the order of the reexamination;

11 “(v) in any expedited post-review reex-
12 amination proceeding under this para-
13 graph, the owner of the patent may only
14 propose amended or new claims that are
15 patentably distinct from the challenged
16 patent claim of which the expedited post-
17 review reexamination was requested;

18 “(vi) the full record of the inter partes
19 review upon which the post-review reexam-
20 ination was requested shall be made avail-
21 able for consideration during the reexam-
22 ination; and

23 “(vii) the reexamination (excluding
24 any appeal thereof) shall be concluded on
25 the date that is not later than 180 days

1 after the date on which the Director orders
2 the reexamination.”.

3 (b) PATENT OWNER’S ACTIONS.—Section 315(b) of
4 title 35, United States Code, is amended to read as fol-
5 lows:

6 “(b) PATENT OWNER’S ACTIONS.—

7 “(1) IN GENERAL.—An inter partes review may
8 not be instituted if the petition requesting the pro-
9 ceeding is filed more than 1 year after the date on
10 which the petitioner, real party in interest, or privy
11 of the petitioner is served with a complaint alleging
12 infringement of the patent.

13 “(2) EXCEPTION FOR JOINDER.—The time lim-
14 itation in paragraph (1) shall not apply to a request
15 for joinder under subsection (c).

16 “(3) EXCEPTION FOR AMENDED CLAIMS.—The
17 time limitation in paragraph (1) shall not apply to
18 a challenge in a petition for inter partes review
19 against a patent claim that was amended pursuant
20 to section 316(d)(5) unless the complaint was served
21 after the issuance of a certificate under section
22 307(a) for the patent claim.”.

23 (c) AMENDMENT TO PROCEDURES FOR ISSUANCE OF
24 CERTIFICATE.—Section 318(b) of title 35, United States
25 Code, is amended—

1 (1) by striking “and the time for appeal” and
2 inserting “, the time for appeal”; and

3 (2) by inserting “and the time for filing a re-
4 quest under section 316(d)(5)(A) has expired or any
5 post-review reexamination has been terminated,”
6 after “terminated,”.

7 **SEC. 3. CLARIFICATION OF WHICH CLAIMS FOR WHICH THE**
8 **PTAB SHALL ISSUE A FINAL WRITTEN DECI-**
9 **SION.**

10 Section 318(a) of title 35, United States Code, is
11 amended by striking “challenged by the petitioner” and
12 inserting “on which the inter partes review was insti-
13 tuted”.

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