

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.

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2018

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

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## 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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