This is a purely personal advance preliminary input, on what I consider to be important issues which should be raised and addressed in this public process (on what I consider to be a very important topic of this intended system for great cost-savings and risk reductions for American companies). I hope the following list of issues will stimulate further discussion and inputs:

(a) Is the existing scope of inter partes reexamination estoppel in 35 USC 315(c) and 317(b) (applying to any subsequent civil proceeding), as to any ground or issues the requestor "could have raised" [not just as to cited patent or publication prior art], so undefined in scope and legal dangers as to be discouraging greater reexamination use? [As an alternative to the many difficulties, costs and risks of attempting to obtain patent invalidity decisions by litigation.]

(b) In that respect, how costly and extensive a prior art search, if any, is required to (possibly) avoid this "could have raised" estoppel, and/or to meet the accompanying statutory exception of "unavailable to the requestor or the PTO"? [In what was contemplated to be a low cost administrative proceeding] How can the public rely on interpretations of these key but disputable estoppel terms "could have raised" and "unavailable" when the Federal Circuit is unlikely to receive such a case for some years, with only 21 such reexaminations even requested to date?

(c) Should the current limitation of inter partes reexaminations to only those patents originally filed after 11/29/99 (inconsistent with ex parte reexaminations) be maintained?

(d) How can inter partes (contested case) reexaminations, with relatively complex PTO rules, be effectively "tried" by ordinary patent examiners lacking legal training or experience in such matters? Should the PTO assign Board APJs with contested case experience to supervise [the relatively small number of] inter partes reexaminations? Would that save time and effort in reducing Board reversals? and/or,

(e) Should an alternative be a new and APJ-managed "opposition system", if Congress so provides? and

(f) if so, of what scope? In particular, how could an opposition system limited to only one year after the issue date of a patent be of value as to the vast majority of asserted patents (which are asserted later than one year), or provide invalid patent harassment protection for any unforeseeable future U.S. products [unlike reexaminations]? [Why has Japan just abandoned such a limited-term opposition system for an unlimited-term invalidity system?]

(g) Is the response time provided sufficient for parties to effectively respond, in situations in which expert declarations or other additional evidence is needed?

(h) In view of the statutory requirements for expedited handling of all reexaminations, why are [reportedly] some of them taking up to a year just to be assigned to an examiner, and then allegedly not all being adequately supervised, with excessive PTO delays or even plural non-final office actions in some cases? Also, 3d party obtaining of copies of pending reexamination files (to which the public is entitled, and often needs expeditiously) has been reported to be a problem in some cases, and even resulted in a lawsuit against the PTO to force such access in one known case.

Thank you,

Respectfully submitted,

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