

April 6, 2012

Via Electronic Mail
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Attention: Lead Judge Michael Tierney
Inter Partes Review Proposed Rules

IBM Corporation Comments regarding “Changes to implement *Inter Partes* Review Proceedings”, 77 Fed. Reg. 7045 (February 10, 2012)

IBM thanks the United States Patent and Trademark Office (“Office”) for the opportunity to provide input and comments regarding changes to implement *inter partes* review proceedings under the Leahy-Smith America Invents Act.¹

The general thrust of our comments is to insure that the rules pertaining to *inter partes* review, as well as associated practice guidance documentation, provide a reasonable level of certainty to the parties involved, such that the risks of instituting and proceeding with the *inter partes* review are understood at all points of the process. Thus many of our remarks constitute suggestions for how to increase clarity. We have also pointed out instances where rules and/or guidance proposed by the Office are in conflict with our reading of the statute, most significantly with regard to aspects of the institution decision.

Institution Decision

Reasonable Likelihood of Prevailing

Greater detail and clarity is necessary with regard to the “reasonable likelihood” standard set forth in Rule **42.108** for determining whether to institute an *inter partes* review.

Section 314(a) of the statute provides that the Director may not authorize institution of an *inter partes* review, unless the Director determines that there is a “reasonable

¹ References to sections and language in the statute are made herein by reference to 35 USC Chapter 31. References to sections and language in the proposed inter parties rules are made herein by reference to 37 CFR 42. References to the Practice Guide for Proposed Trial Rules (“Practice Guide”) are made herein by reference to 77 Fed. Reg. 6868 (February 9, 2012).

likelihood that the petitioner would prevail with respect to at least one of the challenged claims”. No meaningful description of that standard of review has been provided in applicable Rule 42.108 or associated documentation. The only guidance provided by the Office is: “the ‘reasonable likelihood’ standard is a somewhat flexible standard that allows the judge room for the exercise of judgment” (at 7046 in the rules package and 6873 in the Practice Guide).

A more meaningful and detailed description of the “reasonable likelihood” standard would increase certainty for petitioners and patent owners. The PTO has a number of reasonable reference points from which to provide more helpful guidance. For instance, Congress has signaled its intent that this be an “elevated” threshold relative to the previous “substantial new question” standard previously employed for *inter partes* reexaminations.² Likewise, Congress has indicated a similarity of this new test to the equitable evaluation of whether a party is entitled to a preliminary injunction.³ Moreover, the Office has been applying the new standard in *inter partes* reexam for several months now. Given the legislative record and the Office’s experience applying this standard, it seems only reasonable the Office provide more than a bald reference to the standard.

A lack of clarity with regard to this standard will have an unnecessary “chilling effect” on petitioners since the consequences to petitioner for failing to meet the standard are serious. A judgment that the standard has not been met, which is made only after the patent owner has been made aware of and responded to the challenge, is “final and nonappealable” under 314(d) of the statute. In addition to the risk of drawing the attention of a patent owner, there is also the petitioner’s significant outlay of fees which must accompany the petition. Certainty with regard to this standard is required to help the petitioner accurately assess all of the financial and business risks associated with filing the *inter partes* petition.

Threshold determination vs. limiting scope

To the extent that Rule provisions **42.108(a) and (b)** limit the scope of the *inter partes* proceeding, we see a potential conflict with the statute.

Taking a closer look at the institution decision, under Section 314(a) of the statute, institution of an *inter partes* review is proper when there is “a reasonable likelihood that the petitioner would prevail *with respect to at least 1 of the claims challenged in the petition*” (*emphasis added*). IBM understands this to be essentially a threshold test to insure there is a minimally legitimate challenge, not a test to be used to limit the scope of the review. By way of contrast, the Office proposes in Rule 42.108 and the Practice Guide (at 6874) to apply that test against each challenged claim individually and to limit the scope of the review to only those individual claims which satisfy the standard after

² 157 Cong. Rec. S1375 (daily ed. March 8,2011) (statement of Sen. Kyl).

³ Ibid

considering the original petition and the patent owner's response. We read this implementation as being unfairly prejudicial to challengers and potentially at odds with the statute.

From an equity perspective, the institution decision, as proposed, is effectively and unfairly being used to decide portions of the case without having all the evidence before the Office. Challenges against particular claims or with regard to particular issues which the Office deems, on a preliminary look, not to have a reasonable likelihood of prevailing are cut off from further review in a decision which is statutorily "final and nonappealable". At this point, not only has petitioner alerted patent owner of a potential infringement, it has lost its ability to challenge such claims during the *inter partes* review, and it may have legitimate concerns about being estopped from further civil proceedings under 315(e).

In an apparent attempt to lessen concerns about estoppel effects, the Office states in the rule package (at 7046) and in the Practice Guide (at 6874): "Any claim or issue not included in the authorization for review is not part of the trial.", though we find no similar statement in the rules themselves. That is disturbing in itself, but more importantly, we find no statutory basis for the Office's position. The statutory estoppel provisions of 315(e), are triggered by a "final written decision under 318(a)". Under 318(a) final written decisions are required for **all** reviews which are "instituted and not dismissed". The statute makes no provisions for reviews which are "instituted-in-part" or "dismissed-in-part". In other words, a review is a review; if the threshold requirement is made, the entire review goes forward and is heard on the merits. The same provision further provides that the Board "**shall** issue a final written decision with respect to the patentability of **any patent claim challenged** by the petitioner and any new claim ..." (emphasis added). Thus, any claim challenged in the initial petition in a review that was instituted *must* be decided upon in the final written decision; the statute does not appear to leave discretion to provide a final written decision not addressing any claim that was initially challenged by the petitioner on the basis that the Office determined it to be "not part of the trial". We do not see how the Office squares its attempt to limit the scope of review with the referenced statutory requirements; in essence, the scoping decision amounts to a premature final decision. We believe the Office should, consistent with the statute, allow all challenged claims to be included in the *inter partes* review when it has found a reasonable likelihood of prevailing with respect to one challenged claim.

Other aspects of institution decision

Additional clarity is required with regard to other aspects of the institution decision as implemented in **Rules 42.108, 42.71 and 42.102(a)**:

- The Office is noncommittal concerning whether the institution decision will include a statement as to why the requirements were not met. The rules are silent on this point. The Practice Guide at 6874 states only: "The Board expects that the decision will contain a short statement as to why the requirements were not met, **although this may not be necessary in all cases**"(emphasis added).

Such a statement should be included. At the very least, the Office should set forth the circumstances it believes make such a statement unnecessary.

- Rule 42.108(c), which mirrors Rule 42.208 for post grant review, provides that an *inter partes* review will not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would “if un rebutted” demonstrate a reasonable likelihood that at least one of the challenged claims is unpatentable. It goes on to say that the Board will take into account the preliminary patent owner response. The phrase “if un rebutted” makes the Office’s intent ambiguous. If the Board “will take into account the preliminary owner response”, which it is required to do under 314(a), is that not a form of rebuttal? Unlike the corresponding threshold requirement for post grant review found in 324(a), the threshold requirement for *inter partes*, 314(a) does **not** include “if un rebutted” language. It is suggested that 42.108 (c) be modified to read: “the petition supporting the ground demonstrates a reasonable likelihood ...”.
- The Office’s Rule 42.71 and related guidance with regard to rehearings creates confusion as to the finality of institution decisions because of apparently different meanings for the word “final”. The statute makes the Director’s determination whether to institute an *inter partes* appeal “final and nonappealable”, which suggests no further recourse within the Office with regard to that decision. Meanwhile, Rule 42.71(c) relating to rehearings, refers to “final ” and “nonfinal” “decisions” as both being eligible to rehearings, but with different time limits. The Office’s statement at 6874 of the Practice Guide is not much help, seemingly contradicting itself: “A party dissatisfied with a decision may file a request for a rehearing before the Board, but the Board’s determination on whether to institute a trial is final and nonappealable.” If the Office intends to make rehearings available for review of all decisions except institution, it is suggested Rule 42.71(c), in pertinent part be modified to read: “A party dissatisfied with a decision other than a decision whether to institute may file a request for rehearing.” The Practice Guide at 6874 would require similar modification. If the Office intends something else, then even greater clarification is required.
- While Rule 42.102(a) is consistent with the statutory timing requirements, as articulated in 311(c), there is a problem with the description provided in the discussion at 7044, which may be a typographical error. Specifically, the petition must be filed after 9 months after issuance and after termination of a properly instituted post-grant proceeding. In the referenced discussion the PTO also states “Petitions requesting the institution of an *inter partes* review that are filed nine months after the grant of the patent or of the issuance of the reissue patent, **but prior to the institution of a post-grant review** would be considered timely.” (emphasis added) The highlighted language is in conflict with the statute.

Estoppel

Greater clarity is necessary with respect to rules relating to estoppel; in particular, petitioner estoppel under rule **42.101(c)** and rule **42.73(d)(1)** (which has its statutory bases in 35 U.S.C. 315(e)(1) (for *inter partes* review) and 35 U.S.C.325(e)(1) (for post grant or covered business method review)), and patentee estoppel under rule **42.73(d)(3)** (the statutory basis for which is not completely clear).

Rule 42.101(c) states that “a person who is not the owner of a patent may file with the Office a petition to institute an *inter partes* review of the patent unless: (c) The petitioner, the petitioner’s real party in interest, or a privy of the petitioner is estopped from challenging the claims on the grounds identified in the petition”. Rule 42.73(d)(1) prohibits a petitioner or privy “from taking an action that is inconsistent with a judgment as to any ground that the petitioner raised or reasonably could have raised during the trial...”. The statute states, in 35 U.S.C. 315(e)(1), that “the petitioner in an *inter partes* review in a claim in a patent under this chapter that results in a final written decision under section 318(a), or the real party in interest or privy of the petitioner, may not request or maintain a proceeding before the Office with respect to that claim on any ground that the petitioner raised or reasonably could have raised during that *inter partes* review.” It is noted that the statute raises an estoppel bar with respect to a CLAIM in a patent (for which a final written decision has been issued), and is limited to requesting or maintaining a proceeding, whereas rule 42.101(c) appears to raise estoppel against a petition at the PATENT level, and applies more broadly to “taking an action”. It is submitted that the rule should follow the statute in raising estoppel at the claim level and be limited to requesting or maintaining a proceeding. Further, it would be desirable for the Office to provide some guidance regarding the meaning of the statutory phrase “... that the petitioner raised OR REASONABLY COULD HAVE RAISED...”; for example, it is not clear whether a ground that was part of an originally filed petition, but that was not part of the review authorized by the Board (under its authority, as stated in rule 42.108(b) , to deny inclusion of a ground for non-patentability in the review), may be raised in a subsequent petition by the same petitioner. More substantively, the meaning of “reasonably could have raised” leaves much room for confusion, and is clearly something that the Office will need to grapple with. An example that is readily apparent is a potential situation where information that was not available to the petitioner in the review (perhaps because of a limitation on discovery, or because of an intentional withholding by the patent owner) comes to the attention of petitioner. It surely seems that a new petition should be accepted in such a case; it would thus be helpful if rather than simply reciting the statutory language in the rule, the rule went further to explain that the Board will not consider a ground to be one that could “reasonably have been raised” (or even one that the petitioner “raised”) where highly relevant information was not reasonably available to the petitioner within the constraints of the prior review.

Regarding patentee estoppel, rule 42.73(d)(3) precludes “..a patent applicant or owner whose claim is cancelled from taking action inconsistent with the adverse judgment, including obtaining in any patent: (i) a claim to substantially the same invention as the finally refused or cancelled claim; (ii) a claim that could have been filed

in response to any properly raised ground of unpatentability for a finally refused or cancelled claim; (iii) an amendment of a specification or of a drawing that was denied during the trial proceeding”. The statutory ground for this rule is not clear: it may lie in 35 USC 315 dealing with the relationship of an IPR to other proceedings or actions. The explicit estoppel provisions of 35 USC 315 deal with petitioner (rather than patentee) estoppel (35 USC 315 (e)), as discussed previously; however, there is a more general section (35 USC 315 (d) – “Multiple Proceedings”) giving the Director power to determine how other “proceedings or matters involving the patent” may proceed, including “providing for stay, transfer, consolidation or termination”. This power is clearly directed to proceedings “involving the patent”, while the proposed rule estoppes the patent owner with respect to implicated claims in “any patent”. The rule is troubling since it raises the specter of foreclosing closely related claims in (for example) continuation or parent applications based on the PTO’s determination of whether those claims might be considered to be “to substantially the same invention”, or might have been filed in the *inter partes* review. If the intent is to prevent an “end-run” approach by the patent owner, the rule might be unnecessary since such an approach would seem to raise duty of disclosure issues on the part of the patent owner, in the separate patent application. It is submitted that the rule, as written, raises more questions that it resolves, and that the rule be revised to focus more explicitly on the issue that the Office is attempting to deal with, within its statutory authority. If the Office determines that the rule (or a variant of it) is needed, guidance should be provided regarding the consequences of a patentee seeking or obtaining such a claim despite the preclusion. For example, would such a claim be unenforceable? Would a patentee obtaining such a precluded claim be in violation of the duty of candor under Rule 56 with respect to the application or patent containing such a claim, if the claim were obtained knowing of the *inter partes* review? The Office should also provide clarity regarding means for avoiding such potential Rule 56 issues; for example, is it sufficient to identify, in a still active prosecution, the *inter partes* review which had potentially related claims cancelled or refused?

Privity/Real Party in Interest

Greater detail and clarity is required concerning **Rule 42.8** which requires in relevant part identification of each real party-in-interest and **Rule 42.104(a)** which requires petitioner to show it is not “barred or estopped from requesting an **inter partes** review” in order to establish standing.

The Office’s approach to handling determinations concerning real parties-in-interest (RPI) and privies is of serious concern, particularly in view of the degree to which estoppel attaches in *inter partes* review. Vague statements like “Such questions will be handled by the Board on a case-by-case basis” found in the Practice Guide (at 6870) are not helpful and the bare assertion that “control” is a consideration adds little. We think the Office is in a position to offer parties significantly greater certainty with regard to this issue. The Office should explicitly describe how its practices in making real party in interest and privity determinations will differ from its current approach in

inter partes reexaminations, which also deal with the issues of real parties in interest and privies.

Prior to enactment of the AIA, the RPI requirement was that the request “include the identity of the real party-in-interest.” With regard to the sampling of reexaminations cited at 6871 in the Practice Guide, the Office expressed an unwillingness to look beyond the request to insure that requirement was met: “The MPEP makes clear that the Office does not look beyond the required certification in the request for reexamination, except for the rare instances where a challenge to the certification **facially** establishes that the identified real party in interest is not accurate” (emphasis added).⁴ However, given the provisions of 312(a)(2) (that the petition identify “**all** real parties in interest” (emphasis added)) and 315(a) (that “an *inter partes* review **may not be instituted** if, before the date on which the petition for review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent” (emphasis added)) and 315(a)(2) (providing for a **stay of civil action** “if the petitioner or real party in interest files a civil action challenging the validity of a claim of the patent on or after the date on which the petitioner files a petition for *inter partes* review of the patent”), arguably, the Office does not have jurisdiction at all if it turns out not all real parties in interest and privies are identified. It seems such a jurisdictional question provides a serious impetus for the Office to consider whether it is obligated to take a more active role in making such determinations, and simultaneously provide more direction and certainty to parties. With specific reference to the question of control, the Office might consider adopting disclosure requirements similar to those used by district courts, thus providing the basis for an objective standard.

Moreover, in the same decision referenced above the Office stated “the burden is on the challenging patent owner to provide evidence of participation”⁵ by an alleged real party-in-interest in reexamination proceedings, showing a reluctance to compel testimony or to use extrinsic evidence *sua sponte*, with the noteworthy exception of the reexamination sought by Troll Busters.⁶ No such burden of proof is expressed or even acknowledged in connection with the new rules. The Office should clearly state its position with regard to burdens of proof in the context of *inter partes* reviews, and should explicitly distinguish its Troll Busters decisions over others.

Furthermore, at 6870 of the Practice Guide the Office has justified its reticence to provide more helpful guidelines with the statement that “courts and commentators agree ... there is no ‘bright line test’ for making privity and real party in interest determinations”. We submit, however, that the fact patterns presented in the context of the Office’s proceedings are far more limited and predictable than those addressed by

⁴ In re Arviv Reexamination Proceeding, Control No. 95/001,526, Decision Dismissing 1.182 and 1.183 Petitions, at 5 (Apr. 18, 2011)

⁵ *Ibid*, at 6

⁶ In re Guan Inter Partes Reexamination Proceeding, Control No. 95/001,045, Decision Vacating Filing Date, at 8 (Aug. 25, 2008)

the courts, thus putting a clearer standard within reach in the context of Office proceedings. In addition to the issues raised above, such standard should articulate the difference between a real party in interest and a privy, and should speak explicitly to the relevance, if any, of Joint Defense Agreements to the determination.

Limitation on Number of *Inter Partes* Reviews

The following comments are directed to new section **42.102(b)**, relating to the setting of limits on the number of *inter partes* reviews that may be instituted in each of the first four one-year periods after *inter partes* review takes effect; the rule is authorized by section 6(c)(2)(B) of the Leahy-Smith America Invents Act, which provides that the “Director may impose a limit on the number of *inter partes* reviews that may be instituted under chapter 31 of title 35, United States Code, during each of the [aforementioned four one-year periods], if such number in each year equals or exceeds the number of *inter partes* reexaminations that are ordered under chapter 31 of title 35, United States Code, in the last fiscal year ending before the effective date of the [AIA amendments]”.

Proposed rule 42.102(b) states that “The Director may impose a limit on the number of *inter partes* reviews that may be instituted during each of the first four one-year periods in which the amendment made to chapter 31 of title 35, U.S.C., is in effect by providing notice in the Office’s Official Gazette or Federal Register. Petitions filed after an established limit has been reached will be deemed untimely”. Even though the Office’s commentary on *inter partes* review states that “The Office ... does not expect to limit the number of petitions at this time”, IBM respectfully submits that, should a limit be in fact imposed, it could have an undesirable effect on a petitioner who submits a petition late in the year, which petition is, because of such limit, deemed untimely. An example of such an undesirable effect could be to alert the patent owner to petitioner’s concerns about the affected patent, and related arguments, well in advance of patent owner’s having to respond to them – thereby affording patent owner extra time (the time during which the petition is suspended because of the limit, and before it will be reconsidered) to prepare responses. Furthermore, should such a limit be imposed, it is not clear what effect that limit might have on petitioners whose petition is rejected because of such limit, with respect to re-submission of such petition: would the petition be automatically afforded the opportunity to have an early filing date the following year? Would the petition automatically be considered at the beginning of the following year? Or would petitioner need to re-submit later as if the foreclosed filing had never occurred? Given statutory time limits for bringing *inter partes* review if there is pending litigation, a petitioner could be permanently foreclosed from such review if it loses the filing date, so it is imperative to know the consequences.

IBM suggests that the Office modify the proposed rule 42.102(b) to provide additional information to petitioners who might be affected by the setting of a limit on the number of *inter partes* reviews in one of the four identified years – information that such petitioners might use in determining when or whether to file such a petition (or, for

example, to wait for the subsequent year). For example, since the power to set such a limit only arises if and when the number of instituted *inter partes* reviews exceeds a known number (the number of *inter partes* reexaminations that are ordered under chapter 31 of title 35, U.S.C., in the last fiscal year ending before the effective date of the AIA amendments), the Office could make available online, during the four year period, a monthly count of the number of instituted *inter partes* reviews compared to that known number. In addition, IBM suggests that the office modify the rule to make clear whether, if such a limit is imposed, petitions deemed untimely because of that limit having been exceeded, will be afforded any benefit in priority or otherwise in the following year; if the petition must be resubmitted; or if the petitioner will automatically be taken up by the Office the following year.

Claim Construction

The following comments are directed to the provisions of *inter partes* review provided in new 35 U.S.C. 312(a)(3) , which the Office addresses at least in part with new **37 C.F.R. 42.104(b)(3)**.

Section 312(a)(3) of the statute requires that the petition identify "... each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the challenge to each claim....." Proposed Rule 42.104(b)(3) goes substantially farther in requiring that the petition to institute an *inter partes* review identify (*inter alia*) "How the challenged claim is to be construed. Where the claim to be construed contains a means-plus-function limitation the construction of the claim must identify the specific portions of the specification that describe the structure, material, or acts corresponding to each claimed function." Even though the statute further provides that the Director may require additional information as part of the petition (35 USC 312(a)(4)); and even while acknowledging the need to require clear and detailed information from a petitioner to permit expeditious resolution of the matter; the proposed rule may result in the petitioner being unnecessarily restricted in claim construction later in the proceeding. For example, it is noted that proposed rule 42.23(b) states that "a reply may only respond to arguments raised in the corresponding opposition"; this may leave open the possibility that a petitioner who realizes (for example in light of discovery, or of claim construction presented by the Patent Owner) that an alternative claim construction needs to be addressed might be precluded from presenting arguments based on such alternative claim construction either because that alternative was not presented in the petition, or because the arguments are deemed "not responsive to arguments" in the Patent Owner's corresponding paper. For these reasons IBM respectfully suggests that rule 42.104(b)(3) explicitly permit alternative claim constructions in the petition, and revised claim constructions subsequently.

Identification of "Related Matters"

The Practice Guide indicates (p.6871, left column) that parties must "...identify any other judicial or administrative matter that would affect or be affected by a decision in the proceeding. Judicial matters include actions involving the patent in federal court. Administrative matters that would be affected by a decision in the proceeding include

every application and patent claiming, or which may claim, the benefit of the priority of the filing date of the party's involved patent or application as well as any *ex parte* and *inter partes* reexaminations for an involved patent." It is submitted that the quoted language does not provide sufficient specificity regarding what matters are to be identified: for example, it might be read as encompassing non-US matters. More precise language seems to be needed ... for example, "... identify any other action involving the patent in federal court, and every U.S. application and patent claiming or which may claim, the benefit of the priority of the filing date of the party's involved patent or application."

Discovery – Scheduling Order

The Practice Guide illustrates an exemplary Scheduling Order timeline (page 6869), noting in Appendix A-1 that "The parties may stipulate different dates for Due Dates 1 through 5 (earlier or later, but not later than Due Date 6)." Although the Guide states that "An initial conference call will be held about one month from the date of institution ... to determine if any adjustment needs to be made to the Scheduling Order", it is submitted that (for example) petitioner may learn only after seeing patent owner's response (shown in the exemplary scheduling order as 4 months after institution) that greater than 2 months may be needed for petitioner discovery and preparation of petitioner reply. In such cases, the proposed rules and Practice Guide appear to make no provision for later modification of the scheduling order (either to remain within the normal statutory one-year period for completion, or to take potential advantage of the statutorily authorized (for good cause) six-month extension), except by stipulation of adjusted dates (within the one-year period) between the parties. It is submitted that the Office should anticipate that (for example) patent owners may be expected to resist such a stipulation, leaving the petitioner with no reasonable recourse. Therefore, provision should be made for a modification of the date given in the Scheduling Order, beyond the time of the aforementioned initial conference call, upon good cause being presented by the party requesting the modification; further, such provision should permit the extension of the Scheduling Order timeline, again with a showing of good cause, to take advantage of the authorized six-month extension or some portion thereof.

Service Requirements

Rule 42.105(a) requires petitioner to "serve" the petition and exhibits on the patent owner at the correspondence address of record and may optionally serve at any other address known to it. IBM believes this rule should be clarified to explicitly express that service by mail fully satisfies the petitioner's responsibility to serve patent owner, and that there is no requirement for personal service. Additionally, the further requirement in Rule 42.105(b) that the petitioner "contact the Board to discuss alternate modes of service" when the petitioner cannot effect service at the correspondence address, is too vague and leaves open the possibility for unreasonable costs of effecting service. IBM would prefer that 41.105(b) be stricken. At the very least, it should be narrowed and clarified so that petitioners are able to assess their responsibilities in this regard prior to filing the initial petition.

Intervening Rights

In light of the recent decision in *Marine Polymer Technologies Inc. v. HemCom Inc.*, No 2010-1548 (Fed. Cir., 3/15/2012), we suggest it may be instructive for the rules and/or associated guidance to note that the intervening rights applicable to an *inter partes* review shall be accorded based on Sections 318(c) and 252 as interpreted by case law. Under Section 318(c), “any proposed amended or new claim determined to be patentable and incorporated into a patent following an inter partes review under this chapter shall have the same effect as that specified in section 252 for reissued patents ...”. The recent federal circuit decision would clarify that an existing claim must be amended in order for intervening rights to apply – i.e. that a new interpretation of the existing words arising from the *inter partes* review do not trigger such rights.

Conclusion

IBM thanks the Office for providing the public an opportunity to submit comments regarding implementation of the Leahy-Smith America Invents Act. We look forward to working with the Office on forthcoming regulations and guidance.

Respectfully submitted,

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