

Subject: Inter Partes Reexamination Rule Changes

According to 35 U.S.C. 311 (a), "any third-party requester at any time may file a request for inter partes reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301."

There does not appear to be any restrictions in 35 U.S.C. 311(a) as to which patents are eligible for inter partes reexamination. However, 37 C.F.R. 1.913 limits inter partes reexamination to any "patent which issued from an original application filed in the United States on or after November 29, 1999" It would seem that 37 C.F.R. 1.913 should be amended to remove the filing date restriction so that all patents would be eligible for inter partes reexamination. This would rectify the disparity between 37 C.F.R. 1.913 and 35 U.S.C. 311(a). Such an amendment to 37 C.F.R. 1.913 would also further the policy goal of reducing civil litigation by having validity issues decided more economically by the USPTO for a larger universe of currently enforceable patents.

Best regards,

Ronald S. Henderson
Reg. No. 43,669