

Post Grant Proceedings Chart

	Availability	Threshold	Anonymity	Appeal	Bases of Invalidity	Evaluating Body	Filing Fee
Ex Parte Reexamination	After patent grant.	Substantial new question of patentability (SNQ).	Yes	Only patentee can appeal to PTAB and then Federal Circuit.	Novelty and obviousness: printed publications and patents.	Central Reexamination Unit (CRU)	\$12,000 \$6,000 (Small entity)
Post Grant Review (PGR)	Within 9 months of patent grant or broadened reissue claims, where the patent or reissue is a new first inventor to file patent. Challenger must not have sought declaratory judgment of invalidity.	More likely than not, at least one claim is unpatentable.	No	Both parties can appeal to the Federal Circuit.	Broad grounds of attack, i.e. prior art, indefiniteness, written description, utility (most ground available at trial).	Patent Trial and Appeal Board (PTAB)	\$12,000 (for up to 20 claims; \$250 for each claim in excess of 20). Post-institution fee \$18,000 (for up to 15 claims; \$550 for each claim in excess of 15).
Inter Partes Review (IPR)	IPR is available immediately for patents with priority before 3/16/2013. For patents with priority after 3/15/2013, IPR is available 9 months after patent grant or after PGR. However, IPR must be filed by challenger within one year of being sued, and challenger must not have	Challenger must establish a reasonable likelihood that he will prevail on at least one claim. (RLP).	No	Both parties can appeal to the Federal Circuit.	Novelty and obviousness: printed publications and patents.	PTAB	\$9,000 (for up to 20 claims; \$200 for each claim in excess of 20). Post-institution fee \$14,000 (for up to 15 claims; \$400 for each claim in excess of 15).

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	sought declaratory judgment of invalidity.						
Business Method Post Grant Review (CBM)	CBM post grant review is available for patents that cover some type of financial data processing and do not involve a novel technological feature or solution.	More likely than not, at least one claim is unpatentable.	No	Both parties can appeal to the Federal Circuit.	Broad grounds of attack, i.e. prior art, indefiniteness, written description, utility (most ground available at trial).	PTAB	\$12,000 (for up to 20 claims; \$250 for each claim in excess of 20). Post-institution fee \$18,000 (for up to 15 claims; \$550 for each claim in excess of 15).
Supplemental Examination	After patent grant, only a patent owner can file a request, which allows for absolving inequitable conduct.	Substantial new question of patentability (SNQ).	N/A		Any information believed to be relevant to the patent, in accordance with such requirements as the Director may establish (broad scope).	CRU	\$4,400 Reexamination ordered as a result of supplemental examination \$12,100 (\$6,050 for small entity). Supplemental Examination Document

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							<p>size between 21 and 50 sheets \$180 (\$90 for small entity).</p> <p>Supplemental Examination Document for each additional 50 sheets or a fraction thereof in a nonpatent document \$280 (\$140 for small entity).</p>

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Derivation Proceeding	<p>Within 1 year of first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention —</p> <p>The final decision of the PTAB, if adverse to claims in an application for patent, shall constitute final refusal by the Office on those claims. The final decision if adverse to claims of a patent shall, if no appeal is taken, constitute cancellation of those claims.</p>	<p>Petition must show (by substantial evidence) that the petitioner has at least one claim that is the same or substantially the same as the invention disclosed to the respondent, the inventor from whom the claim invention was derived did not authorize the filing of the earlier application.</p>	No	<p>Director's decision whether or not to institute a derivation proceeding is nonappealable. The substantive decision of the PTAB may be appealed to the Federal Circuit.</p>	Broad evidentiary grounds.	PTAB	\$400