

“(d) DEFINITION.—

“(1) IN GENERAL.—For purposes of this section, the term ‘covered business method patent’ means a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.

“(2) REGULATIONS.—To assist in implementing the transitional proceeding authorized by this subsection, the Director shall issue regulations for determining whether a patent is for a technological invention.

“(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as amending or interpreting categories of patent-eligible subject matter set forth under section 101 of title 35, United States Code.”

§ 322. Petitions

(a) REQUIREMENTS OF PETITION.—A petition filed under section 321 may be considered only if—

(1) the petition is accompanied by payment of the fee established by the Director under section 321;

(2) the petition identifies all real parties in interest;

(3) the petition identifies, in writing and with particularity, each claim challenged, the grounds on which the challenge to each claim is based, and the evidence that supports the grounds for the challenge to each claim, including—

(A) copies of patents and printed publications that the petitioner relies upon in support of the petition; and

(B) affidavits or declarations of supporting evidence and opinions, if the petitioner relies on other factual evidence or on expert opinions;

(4) the petition provides such other information as the Director may require by regulation; and

(5) the petitioner provides copies of any of the documents required under paragraphs (2), (3), and (4) to the patent owner or, if applicable, the designated representative of the patent owner.

(b) PUBLIC AVAILABILITY.—As soon as practicable after the receipt of a petition under section 321, the Director shall make the petition available to the public.

(Added Pub. L. 112–29, §6(d), Sept. 16, 2011, 125 Stat. 306.)

EFFECTIVE DATE

Section effective upon the expiration of the 1-year period beginning Sept. 16, 2011, and applicable only to patents described in section 3(n)(1) of Pub. L. 112–29 (35 U.S.C. 100 note), with certain exceptions and limitations, see section 6(f)(2), (3) of Pub. L. 112–29, set out as a note under section 321 of this title.

§ 323. Preliminary response to petition

If a post-grant review petition is filed under section 321, the patent owner shall have the right to file a preliminary response to the petition, within a time period set by the Director, that sets forth reasons why no post-grant review should be instituted based upon the failure of the petition to meet any requirement of this chapter.

(Added Pub. L. 112–29, §6(d), Sept. 16, 2011, 125 Stat. 306.)

EFFECTIVE DATE

Section effective upon the expiration of the 1-year period beginning Sept. 16, 2011, and applicable only to patents described in section 3(n)(1) of Pub. L. 112–29 (35 U.S.C. 100 note), with certain exceptions and limitations, see section 6(f)(2), (3) of Pub. L. 112–29, set out as a note under section 321 of this title.

§ 324. Institution of post-grant review

(a) THRESHOLD.—The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

(b) ADDITIONAL GROUNDS.—The determination required under subsection (a) may also be satisfied by a showing that the petition raises a novel or unsettled legal question that is important to other patents or patent applications.

(c) TIMING.—The Director shall determine whether to institute a post-grant review under this chapter pursuant to a petition filed under section 321 within 3 months after—

(1) receiving a preliminary response to the petition under section 323; or

(2) if no such preliminary response is filed, the last date on which such response may be filed.

(d) NOTICE.—The Director shall notify the petitioner and patent owner, in writing, of the Director’s determination under subsection (a) or (b), and shall make such notice available to the public as soon as is practicable. Such notice shall include the date on which the review shall commence.

(e) NO APPEAL.—The determination by the Director whether to institute a post-grant review under this section shall be final and nonappealable.

(Added Pub. L. 112–29, §6(d), Sept. 16, 2011, 125 Stat. 306.)

EFFECTIVE DATE

Section effective upon the expiration of the 1-year period beginning Sept. 16, 2011, and applicable only to patents described in section 3(n)(1) of Pub. L. 112–29 (35 U.S.C. 100 note), with certain exceptions and limitations, see section 6(f)(2), (3) of Pub. L. 112–29, set out as a note under section 321 of this title.

§ 325. Relation to other proceedings or actions

(a) INFRINGER’S CIVIL ACTION.—

(1) POST-GRANT REVIEW BARRED BY CIVIL ACTION.—A post-grant review may not be instituted under this chapter if, before the date on which the petition for such a review is filed, the petitioner or real party in interest filed a civil action challenging the validity of a claim of the patent.

(2) 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 post-grant review of the patent, that civil action shall be automatically stayed until either—