

owner may file 1 motion to amend the patent in 1 or more of the following ways:

(A) Cancel any challenged patent claim.

(B) For each challenged claim, propose a reasonable number of substitute claims.

(2) **ADDITIONAL MOTIONS.**—Additional motions to amend may be permitted upon the joint request of the petitioner and the patent owner to materially advance the settlement of a proceeding under section 327, or upon the request of the patent owner for good cause shown.

(3) **SCOPE OF CLAIMS.**—An amendment under this subsection may not enlarge the scope of the claims of the patent or introduce new matter.

(e) **EVIDENTIARY STANDARDS.**—In a post-grant review instituted under this chapter, the petitioner shall have the burden of proving a proposition of unpatentability by a preponderance of the evidence.

(Added Pub. L. 112-29, §6(d), Sept. 16, 2011, 125 Stat. 308.)

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.

§ 327. Settlement

(a) **IN GENERAL.**—A post-grant review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed. If the post-grant review is terminated with respect to a petitioner under this section, no estoppel under section 325(e) shall attach to the petitioner, or to the real party in interest or privy of the petitioner, on the basis of that petitioner's institution of that post-grant review. If no petitioner remains in the post-grant review, the Office may terminate the post-grant review or proceed to a final written decision under section 328(a).

(b) **AGREEMENTS IN WRITING.**—Any agreement or understanding between the patent owner and a petitioner, including any collateral agreements referred to in such agreement or understanding, made in connection with, or in contemplation of, the termination of a post-grant review under this section shall be in writing, and a true copy of such agreement or understanding shall be filed in the Office before the termination of the post-grant review as between the parties. At the request of a party to the proceeding, the agreement or understanding shall be treated as business confidential information, shall be kept separate from the file of the involved patents, and shall be made available only to Federal Government agencies on written request, or to any person on a showing of good cause.

(Added Pub. L. 112-29, §6(d), Sept. 16, 2011, 125 Stat. 310.)

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.

§ 328. Decision of the Board

(a) **FINAL WRITTEN DECISION.**—If a post-grant review is instituted and not dismissed under this chapter, the Patent Trial and Appeal Board shall issue a final written decision with respect to the patentability of any patent claim challenged by the petitioner and any new claim added under section 326(d).

(b) **CERTIFICATE.**—If the Patent Trial and Appeal Board issues a final written decision under subsection (a) and the time for appeal has expired or any appeal has terminated, the Director shall issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent by operation of the certificate any new or amended claim determined to be patentable.

(c) **INTERVENING RIGHTS.**—Any proposed amended or new claim determined to be patentable and incorporated into a patent following a post-grant review under this chapter shall have the same effect as that specified in section 252 for reissued patents on the right of any person who made, purchased, or used within the United States, or imported into the United States, anything patented by such proposed amended or new claim, or who made substantial preparation therefor, before the issuance of a certificate under subsection (b).

(d) **DATA ON LENGTH OF REVIEW.**—The Office shall make available to the public data describing the length of time between the institution of, and the issuance of a final written decision under subsection (a) for, each post-grant review. (Added and amended Pub. L. 112-29, §§6(d), 20(j), Sept. 16, 2011, 125 Stat. 310, 335.)

AMENDMENTS

2011—Subsec. (c). Pub. L. 112-29, §20(j), struck out “of this title” after “252”.

EFFECTIVE DATE OF 2011 AMENDMENT

Amendment by section 20(j) of Pub. L. 112-29 effective upon the expiration of the 1-year period beginning on Sept. 16, 2011, and applicable to proceedings commenced on or after that effective date, see section 20(l) of Pub. L. 112-29, set out as a note under section 2 of this title.

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.

§ 329. Appeal

A party dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 328(a) may appeal the decision pursuant to sections 141 through 144. Any party to the post-grant review shall have the right to be a party to the appeal.