

PUBLIC PATENT FOUNDATION

Representing the Public's Interests in the Patent System



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Executive Director

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February 4, 2008

The Honorable Patrick J. Leahy, Chairman
Committee on the Judiciary
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Arlen Specter, Ranking Member
Committee on the Judiciary
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

Re: Senate Patent Reform Bill, Preserve Third Party Reexamination

Dear Chairman Leahy and Ranking Member Specter:

As Executive Director of the Public Patent Foundation, a not-for-profit legal services organization whose mission is to defend the public from undeserved patents and unsound patent policy, I write to express our deep concern over the Senate's apparent intent to eliminate all third-party requested reexamination as part of the Senate's Patent Reform Act, S. 1145, § 5. If enacted, this provision would absolutely devastate the public interest we represent because both *ex parte* and *inter partes* reexamination are extremely powerful tools for the public to use in helping to ensure that only valid patents are maintained.

We have successfully used both forms of reexamination to bring to the Patent Office's attention new prior art that invalidated issued patents having a significantly negative impact on the American public. For example, through both the *ex parte* and *inter partes* reexamination processes, we have provided the Patent Office previously unseen evidence regarding the merits of patents on critical biotech, internet and pharmaceutical technologies. The PTO has granted every request for reexamination we have ever made and ultimately canceled many overly broad claims. This elimination of undeserved patent scope significantly advances the public interest by removing unmerited restraints on competition and research, none of which would be possible if the public's right to request reexamination is taken away.

While a Post Grant Review procedure could provide a way to achieve our public interest goals, the form of Post Grant Review currently proposed in the Senate's bill is a woefully inadequate substitute for reexamination because it would only permit us to question the validity of issued patents within twelve months of issuance. (We are not commercial actors, and thus would never be threatened with infringement, a requirement to request Post Grant Review after twelve months.) Since the true effect of a patent on the public is frequently not realized until well after the first year of its term, there would be no way for us to then have any concerns we may have regarding its validity addressed. For these reasons, we favor the Patent Reform Act passed by the House last year (H.R. 1908), which, while also creating a Post Grant Review procedure, actually strengthens reexamination.

In closing, we respectfully urge the Senate to preserve third party reexamination because it is an essential tool for the public to use in helping to ensure high patent quality.

Sincerely,

A handwritten signature in blue ink that reads "Daniel B. Ravicher". The signature is fluid and cursive, with the first name being the most prominent.

Daniel B. Ravicher