



IPWatchdog

Rethinking Article III Standing in IPR Appeals at the Federal Circuit

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[In 2011, as part of the American Invents Act \(“AIA”\), Congress significantly restructured the way in which previously issued patents could be challenged. In some cases, existing post-issuance proceedings, like *ex parte* reexamination and reissue proceedings, were kept intact as such proceedings existed prior to the AIA. In other cases, existing post-issuance proceedings, like *inter partes* reexamination, were replaced with new proceedings, such as the *inter partes* review proceedings \(“IPRs”\). In addition, brand new proceedings were created, such as post-grant review proceedings \(“PGRs”\), covered business method patent review proceedings \(“CBMs”\), and supplemental examination proceedings. In each instance, Congress made policy choices as to who could \(or could not\) bring and/or participate in such proceedings, and who could \(or could not\) raise challenges to decisions made by the government in such proceedings. See *SAS Instit. v. Iancu*, 584 U.S. ____ \(slip op. at 6\) \(2018\) \(confirming different structure of reexamination proceedings and IPRs, and recognizing Congressional “structural” choices are deserving of deference; “Congress’s choice to depart from the model of a closely related statute is a choice neither we nor the agency may disregard.”\).](#)