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# Patent Reform and Current Events

Class 6 – October 10, 2008

SI 519 / PubPol 688

Bryce Pilz

Fall 2008

# Post-Grant Oppositions

- Rationale – efficient mechanism for challenging patents of suspect validity
  - PTO issues invalid patents that block innovation
  - Litigation is too costly and too long
  - Litigation not available to challenge a patent unless the patentee threatens you first

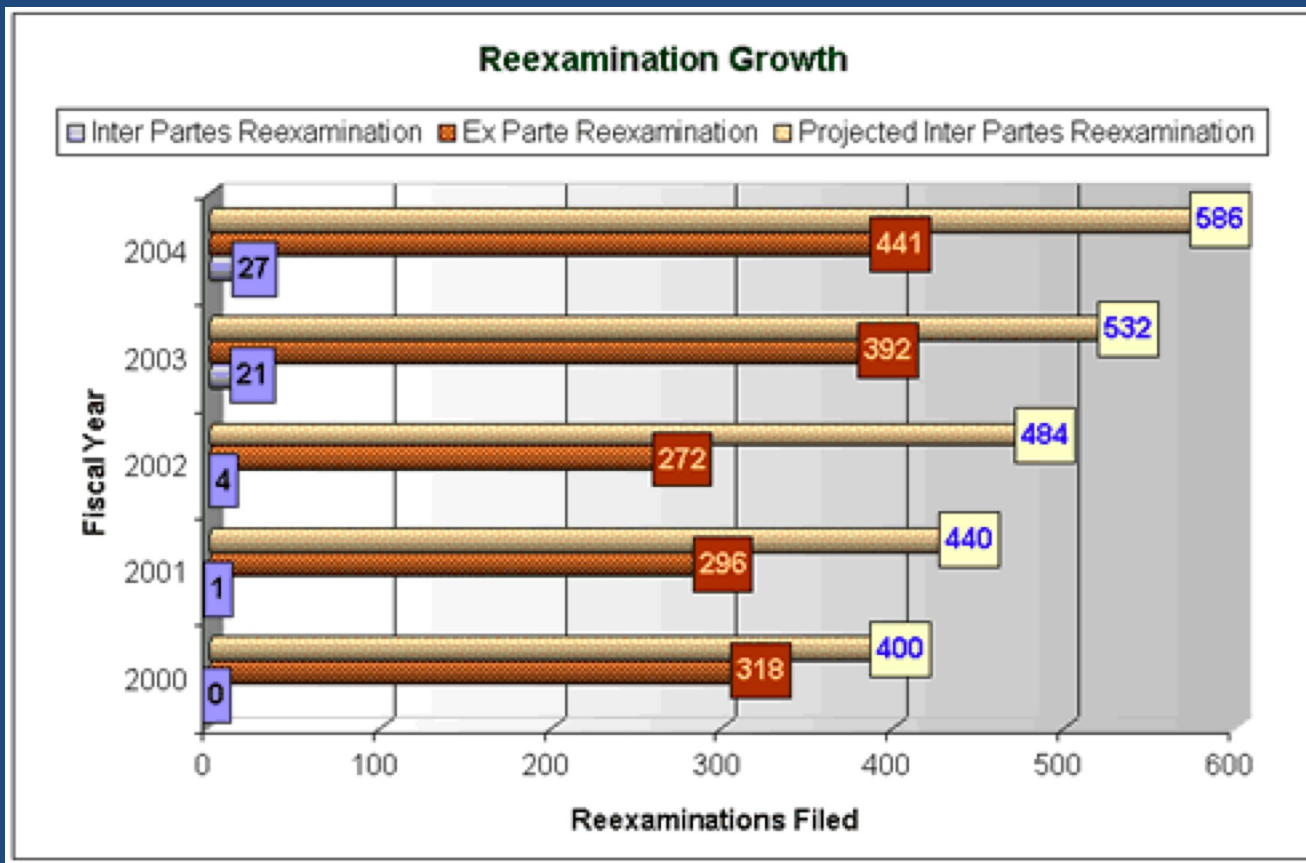
# Current Re-examination System

- Ex-parte (involving only one party)
  - Request for PTO to take second look at patent in light of certain prior art
  - No ability for challenging party to argue in front of PTO
  - Risky because juries view a patent that has survived a re-examination as especially bullet-proof

# Current Re-examination System

- Inter partes (between the parties)
  - Challenging party allowed to participate, but not fully
  - Severe estoppel effect
    - Barred from later raising any issue you raised or could have raised in the re-examination
  - Juries still place great weight on a patent that survived re-examination
  - Only available for patents filed after 1999

# Current Re-examination System



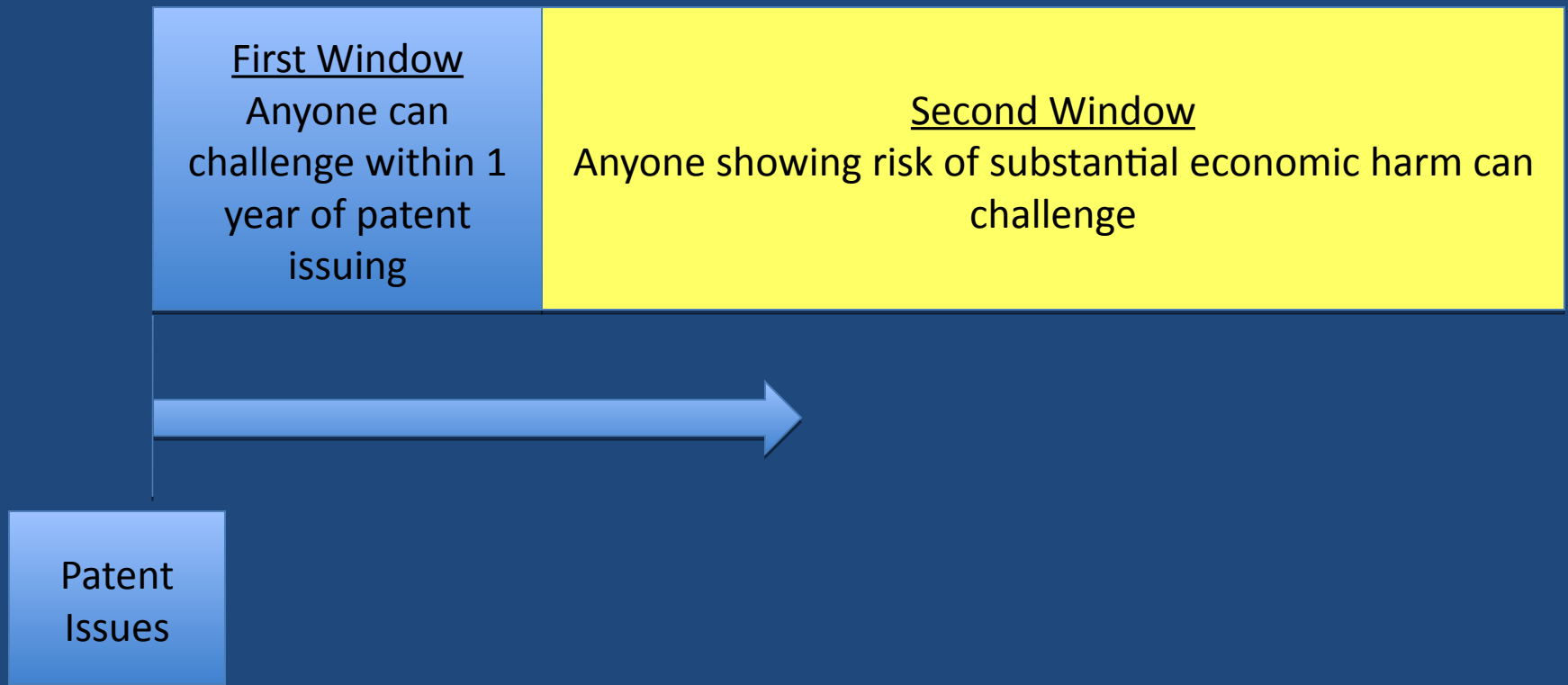
Source: [http://www.uspto.gov/web/offices/dcom/olia/reports/reexam\\_report.htm](http://www.uspto.gov/web/offices/dcom/olia/reports/reexam_report.htm)

Use of inter partes re-examination has increased in recent years although still not prevalent.

# Proposed Post-Grant Opposition

- Available for all patents, whenever filed
- Substantial ability to argue and provide evidence
- No presumption of validity for patent

# Proposed Post-Grant Opposition





# Class Exercise

- 1) Senator McCain (software constituents)
- 2) Senator Obama (Bio/Pharm constituents)
- 3) Senator Stabenaw (small inventor constituents)
- 4) Coalition for Patent Fairness (Software/IT)
- 5) BIO Representative (Bio/Pharm other companies opposing drastic reform)
- 6) Small Inventor's Association Representative

# Current Events

- Real DVD (TRO entered)
  - Irreparable harm? (Handbrake?)
  - First to file paid off – moved to N.D. Cal.

# Current Events

- ABC sued over “Wipeout”
- Many suits over reality TV shows
- Idea/expression



Source: <http://www.dvdtalk.com/reviews/27679/mxc-most-extreme-elimination-challenge-season-2/>

Source: <http://www.realityvmagazine.com/blog/2008/08/26/floating-block-maze-on-wipeout/>



# New Apple Patent – 7,434,177

“1. A computer system comprising: a display; a cursor for pointing to a position within said display; a bar rendered on said display and having a plurality of tiles associated therewith; and a processor for varying a size of at least one of said plurality of tiles on said display when said cursor is proximate said bar on said display and for repositioning others of said plurality of tiles along said bar to accommodate the varied size of said one tile.”



Source:  
Undetermined

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Source: <http://peertopatent.org/>

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