

Proposed Amendments to 35 U.S.C. § 315(c)
(And Associated Technical Amendments to Subsections (b) and (d))
(Relating to Deference to Federal Court Judgments)

35 U.S.C. 315 RELATION TO OTHER PROCEEDINGS OR ACTIONS ...

(b) PATENT OWNER'S ACTION.--An inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent. The time limitation set forth in the preceding sentence shall not apply to a request for joinder under ~~subsection (e)~~ subsection (d).

(c) FEDERAL COURT VALIDITY DETERMINATIONS.—

(1) INSTITUTION BARRED.—An inter partes review of a patent claim may not be instituted if, in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), a court has entered a final judgment—

(A) that decides the validity of the patent claim with respect to section 102 or 103; and

(B) from which an appeal under section 1295 of title 28 may be taken, or from which an appeal under section 1295 of title 28 was previously available but is no longer available.

(2) STAY OF PROCEEDINGS.—

(A) IN GENERAL.—If, in a civil action arising in whole or in part under section 1338 of title 28 or in a proceeding before the International Trade Commission under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), a court has entered a final judgment that decides the validity of a patent claim with respect to section 102 or 103 and from which an appeal under section 1295 of title 28 may be taken, the Patent Trial and Appeal Board shall stay any ongoing inter partes review of that patent claim pending a final decision of the court or Commission, as applicable.

(B) TERMINATION.—If the validity of a patent claim described in subparagraph (A) is finally upheld by a court or the International Trade Commission, as applicable, the Patent Trial and Appeal Board shall terminate the inter partes review.

~~(e)~~ (d) JOINDER.--If the Director institutes an inter partes review, the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director, after receiving a preliminary response under section 313 or the expiration of the time for filing such a response, determines warrants the institution of an inter partes review under section 314.