

Post-Grant Review



Post-grant review (PGR) is another proceeding that allows a third party to challenge the validity of a granted patent before the United States Patent and Trademark Office's (USPTO) Patent Trial and Appeal Board (PTAB). Similar to an inter partes review (IPR), a PGR is initiated by the filing of a petition with the PTAB. It must demonstrate there is a reasonable likelihood that at least one of the claims is unpatentable. Unlike an IPR, however, a PGR must be filed within nine months of the patent's issuance (as opposed to after the nine month mark).

A petition for PGR may challenge the validity of the claims on additional grounds, as compared to an IPR. For example, in addition to anticipation and obviousness, a petition for PGR may also challenge validity based on written description, enablement and indefiniteness.

Like in an IPR, the patent owner in a PGR has an opportunity to respond to the petitioner's arguments and present counterarguments and evidence to support the patent's validity. The PTAB will then conduct a review of the patent and consider the petitioner's arguments and any evidence presented. The PTAB will ultimately issue a decision on whether the challenged claims are patentable or not. If the claims are found to be unpatentable, they may be cancelled or amended. Because of these similarities, the petitioner in a PGR may similarly be subject to estoppel, which may bar them from challenging the patent in subsequent proceedings.