



## New Procedure for *Ex Parte* Reexaminations: Patent Owners May File 'Pre-Order' Papers Prior to the Substantial New Question Determination

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In the April 1, 2026 edition of the Official Gazette, the U.S. Patent and Trademark Office announced a new procedural framework that permits patent owners to submit a limited, early response to a request for *ex parte* reexamination.

Beginning in 2025, policy initiatives introduced by the USPTO Director have substantially curtailed the number of inter partes review proceedings instituted by the Patent Trial and Appeal Board. In response, parties seeking to challenge patents have increasingly turned to *ex parte* reexamination as an alternative mechanism outside of district court litigation.

The USPTO's latest action appears aimed at addressing the growing volume of these requests while remaining within the three-month statutory deadline for determining whether a request raises a substantial new question of patentability. The new procedure is designed to provide examiners with "the benefit of relevant information from the patent owner." Under prior practice, the Office evaluated reexamination requests based solely on the challenger's submission, with no opportunity for patent owner input before a reexamination was ordered.

Citing "the recent increased volume of *ex parte* reexamination requests," the USPTO will now allow patent owners to file a pre-order paper for consideration during this initial review phase. This submission may respond directly to the arguments and factual assertions raised in the request. However, it may not address discretionary denial under § 325(d) or introduce issues beyond those presented by the requester.

The new pre-order response is subject to additional limits, including the following:

- Patent owner pre-order papers are allowed if the request for reexamination was filed on or after April 5, 2026;
- The pre-order paper must be filed no later than 30 days from when the patent owner served the reexamination request, and no extensions to this deadline are permitted;
- The paper is limited to 30 pages, with the page count excluding any supporting declaration; and
- The patent owner must properly serve the paper on the party requesting reexamination and the paper “must reflect service.”

In most cases, the requester will not have the right to file a reply. Limited replies—capped at 10 pages—may be authorized in situations involving alleged improper argument or material misstatements of fact or law.

**Practice Tip:** The new *ex parte* reexamination process seems designed to reduce the overall number of *ex parte* reexaminations by giving patent owners an early chance to argue that reexamination should not be ordered. Patent owners should move quickly to respond to *ex parte* reexaminations within the 30-day deadline, while Petitioners should take these new procedures into account when developing their invalidity strategies.

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