

Proposed Amendments to 35 U.S.C. § 314(d) and Added New § 314(e)
(Relating to Limitations on Appeals)

35 U.S.C. 314 INSTITUTION OF INTER PARTES REVIEW ...

(d) NO APPEAL.--~~The A~~ determination by the Director ~~whether~~ not to institute an inter partes review under this section shall be final and nonappealable.

(e) INTERLOCUTORY APPEAL.—

(1) RIGHT OF APPEAL.—A determination by the Director to institute an inter partes review under this section may be appealed to the United States Court of Appeals for the Federal Circuit.

(2) TIMING.—A party shall file a notice of interlocutory appeal under paragraph (1) not later than 7 days after the date on which the Director enters the institution decision.

(3) LIMITATION.—An interlocutory appeal filed under paragraph (1) may challenge the institution decision on any basis except for the determination made under section 314(a)(1).

(4) EFFECT ON PROCEEDINGS.—An interlocutory appeal filed under paragraph (1) shall not stay proceedings in the inter partes review unless the Director or the United States Court of Appeals for the Federal Circuit so orders.

(5) DECISION.—An interlocutory appeal filed under paragraph (1) may be granted at the discretion of the United States Court of Appeals for the Federal Circuit, which may include consideration of whether—

(A) the institution decision appears to be in error and mere institution presents a risk of immediate, irreparable injury to the patent owner;

(B) the institution decision presents an unsettled and fundamental issue of law, important both to the specific proceeding and generally, that is likely to evade end-of-the-proceeding review; or

(C) the institution decision is manifestly erroneous.