

USPTO INTER PARTES REEXAMINATIONS INCREASED SIGNIFICANTLY IN FISCAL YEAR 2009

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Based on recently published U.S. Patent and Trademark Office (USPTO) data for the USPTO fiscal year ending September 30, 2009, there were 258 Inter Partes Reexamination filings during FY 2009, an increase from 168 filings during FY 2008. Since the inception of inter partes reexamination procedures in November 29, 1999, the number of filings has steadily increased each year. The number of issued patents eligible for inter partes reexamination also increased as the number of patents issued from applications filed on or after November 29, 2009 increases.

Inter Partes Reexamination is a limited alternative to litigation. The process is less costly and has a somewhat shorter pendency than litigation; the average pendency of inter partes reexamination is 35.8 months with a medium pendency of 32.4 months. Currently, 68% of inter partes reexamination cases are known to be in litigation. Inter partes reexamination differs from ex parte reexamination in that in an inter partes reexamination, a third party that requested the process may participate by filing replies to the patentee's responses. In ex parte reexamination, all correspondences are between the USPTO and the patentee only after a third party requests the process.