

A Model Post-Grant Opposition System

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Desired Elements

Set period of time in which to request opposition

Evidence must be provided in request for opposition

Patentee must be given opportunity to respond in kind

Discovery not unduly limited

Administrative Patent Judge that is legally trained

Time limit extendable only for cause

Appeal to the Court of Appeals for the Federal Circuit

Key Elements

Set time period in which to oppose

- Prevents abuse once initial period passes

- Provides some sense of certainty

Legally trained Administrative Patent Judges

- Must follow Federal Rules of Evidence

- Assures appropriate procedural rules followed

- Prevents reliance on the Astrology Factor

Key Element – Right to Amendment

Right to amend the claims of the patent should be limited in both scope and procedure

To protect the public interest in certainty of patent claims, patentee should not be allowed to broaden the scope of any claim during post-grant opposition

To guarantee a speedy resolution of the opposition, the patentee should be allowed to amend the claims only once during the course of the opposition proceeding, except for good cause