

TABLE A – POST-ISSUANCE PTO PROCEEDINGS AVAILABLE TO CHALLENGERS

	Ex Parte Reexamination	Inter Partes Review (IPR)	Post-Grant Review (PGR)	Covered Business Method (CBM) Patents	Derivation
PTO Decision-Making Body	Central Reexamination Unit (CRU)	Patent Trial and Appeals Board (PTAB)			
Time Available	Any time during the enforceable life of a patent.	Nine months after the patent issues or after PGR final decision. Within one year of filing of infringement action.	Within nine months after a patent issues.	Within nine months after a patent issues. Not available after August 14, 2020.	Starting March 16, 2013, available within 1 year of first publication of a claim to an invention that is substantially the same as a claim in the earlier application.
Types of Patents	All patents.	All patents.	At least one claim has an effective date after March 15, 2013.	Method/apparatus for operations concerning financial products/ services, without any technological inventions.	Only patent for patent claims filed on or after March 16, 2013.
Grounds for Invalidity/Challenge	§§ 102 and 103, based on patents and printed publications only.	§§ 102 and 103, based on patents and printed publications only.	§§ 101, 102, 103 and 112. Challenge under §§ 102 and 103 may be based on prior public knowledge including prior sale or use.		Challenged claim must be substantially the same as a claim of petitioner’s application, and was an unauthorized derivation from an inventor named in the petitioner’s application.
Discovery	NO	YES	YES		YES
Standard to Institute Proceeding	Substantial new question of patentability.	Reasonable likelihood that at least one claim is invalid.	More likely than not, at least one claim is invalid.		Petition must be supported by substantial evidence
Standard for Showing Invalidity	Preponderance of the evidence				
Allowability of Amendments	YES, but cannot broaden	YES	YES		YES, for good cause
Estoppel	NONE	YES – Statutory	YES – Statutory		YES – Common Law Standard
Challenger Anonymity	YES	NO	NO		NO
Availability of Appeal	NO. Patentee only.	Direct appeal to CAFC.	Direct Appeal to the CAFC.		Direct Appeal to the CAFC or civil action in district court

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