## 美國專利紛爭解決之關鍵性變革<sup>\*</sup> ——論美國專利複審程序的結構功能 分析與實施成效

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## 摘 要

美國發明法的設計,反映出美國專利法制對於專利權與公眾利益間平衡點之重新思索。美國發明法下之專利複審制度,提供具備高度效率的專利再審查平台,平衡專利權人與潛在被控侵權人間之攻防武器,對於美國專利制度之運作影響極大。本文係針對複審程序設計架構與程序性質之特點深入研究。複審程序主要係以靜態之三層次架構以及動態的兩階段審理結構所組成。架構上,係由不同性質與類型之專利,設計出核准後複審(Post-Grant Review, PGR)、多方複審(Inter Partes Review, IPR)、商業方法過渡期複審(Covered Business Method Patent Review, CBMR)之三層次程序架構。在此三層次架構之中,各個程序之進行採取兩階段的審理結構,亦即每個層次均包括立案申請與本案審判等兩階段。複審制度結構功能之設計,大幅引進典型司法審判程序之程序元素,與行政程序之程序元素重組交錯適用後,達到

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特殊的制度功能,兼採審判程序與行政程序的優點,以達到平衡專利權利與公眾利益的目的。複審程序的結構元素的設計,係此一制度得以達到其制度目的之重要關鍵。本文並爲檢視複審制度實施至今的運作情況是否反映其制度功能,利用 Lex Machina 專利訴訟資料庫的實證數據,針對複審程序至今的發展狀態加以分析,爲專利審判及上訴委員會(Patent Trial and Appeal Board, PTAB)前4年5個月的審判活動提供具體的審視。

關鍵詞:專利、複審程序、專利訴訟、美國發明法、核准後複審程序、 多方複審程序、商業方法過渡期複審程序 Cite as: 2 NCTU L. REV., Dec. 2017, at 1.

## The Mechanism and Characteristics of the Revolutionary Patent Review System before the PTAB and an **Empirical Review of Its Practice**

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## **Abstract**

The Leahy-Smith America Invents Act (AIA) establishes a new patent review system before the Patent Trial and Appeal Board (PTAB) of the United States Patent and Trademark Office. The purpose of the system is to review issued patents with a view to ensure a proper balance between the interests of patent right holders and that of the general public. The new review system is composed of three types of mechanisms, and the procedure of each type of mechanism has two distinct stages. On the one hand, the new procedure provides a patent challenger broader participation rights, and has strong adjudicatory characteristics. In this regard, the new procedure is a judicial proceeding in which parties resolve concrete disputes between them. On the other hand, the review procedure maintains strong administrative procedure characteristics and is a specialized agency proceeding. Indeed, the

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mixture of the characteristics and its procedural design are the hallmark of the efficiency and success of the new system.

Keywords: Patent, Patent Litigation, AIA, Post-Grant Review, Inter Partes Review, Covered Business Method Patent Review