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Submitted via Federal eRulemaking Portal (www.regulations.gov)
Docket No. PTO-P-2025-0545
August 20, 2026

The Honorable John A. Squires
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Mail Stop Comments—Patents, P.O. Box 1450
Alexandria, VA 22313-1450

Re: Comments on Notice of Proposed Rulemaking, "Requirement To Identify All Real Parties in Interest to a Third Party Request for an Ex Parte Reexamination"

37 CFR Part 1, 91 Fed. Reg. 46038 (July 22, 2026)

I. Introduction

Unified Patents, LLC ("Unified") submits the following comments for consideration of the United States Patent and Trademark Office (the "Office") relevant to Docket No. PTO–P–2025–0545, the Request for Comments on the Notice of Proposed Rulemaking Requirement To Identify All Real Parties in Interest to a Third Party Request for an Ex Parte Reexamination (the "NPRM").

Unified seeks to bolster patent quality by deterring the use of invalid and overbroad patents by non-practicing entities (NPEs) in various technology zones. Unified deters the assertion of invalid patents through many tools, including crowd-sourced prior art contests, marketplace monitoring, NPE information tracking, data aggregation, the creation and use of tools to evaluate patent quality, and advising on policy, as well as by objectively challenging the merits of patents, both in the U.S. and abroad (including through ex parte reexamination proceedings). Unified challenges patents that are objectively invalid, at its sole discretion. Sometimes, those patents are or have been involved in assertion campaigns; often, the patents have not yet been asserted. Unified is not a litigation solution for any entity. It seeks to deter the commodification and misuse of the courts by disinterested NPEs seeking to extort nuisance settlements from productive businesses.

The USPTO proposes to add 37 CFR § 1.510(b)(7), requiring every third-party request for ex parte reexamination to include a separate statement identifying all real parties in interest ("RPIs") to the request, and to revise § 1.501(d) to confine anonymous submissions to prior-art citations under § 1.501. The Office grounds the rule in its need to administer the AIA estoppel provisions of 35 U.S.C. §§ 315(e)(1) and 325(e)(1) and to mitigate fraud. *See* 91 Fed. Reg. 46038–39.

Unified Patents respectfully opposes the proposed rule. The Office's stated concerns are already addressed by existing safeguards; the rule reaches far beyond those concerns; it imposes real costs on legitimate requesters and on the Office itself; and it revives an identification requirement the Office correctly declined to adopt in 2012. To the extent the Office perceives a genuine gap, a narrower, less-restrictive alternative would address it.

Accordingly, Unified Patents urges the Office to withdraw the proposed rule and, if it nonetheless proceeds, to adopt one of the narrower, less-restrictive alternatives described in Section VIII rather than the blanket disclosure mandate as proposed.

II. Existing Safeguards Already Address the Office's Stated Concerns

The Office already has the tools for addressing its purported concern. For example, since 2012, § 1.510(b)(6) has required every third-party requester to certify that it is not estopped under § 315(e)(1) or § 325(e)(1), and § 11.18(b) subjects that certification to the Office's truthfulness and improper-purpose obligations, backed by criminal penalties for knowing false statements. The Office itself found this existing framework "sufficient to ensure compliance with the statutory estoppel requirements" in ex parte reexamination in the August 2012 Final Rule. 77 Fed. Reg. 46615, 46621–22 (Aug. 6, 2012). Additionally, a registered practitioner filing on behalf of an anonymous requester already certifies non-estoppel under § 1.510(b)(6); the identity is thus vouched for by an officer of the Office subject to § 11.18. See MPEP 2214(I).

The NPRM reverses the Office's 2012 position without any factual basis. When it declined to adopt an identical § 1.510(b)(7) in 2012, the Office expressly found the existing framework adequate: "The Office's proposal in § 1.510(b)(7) to require an ex parte reexamination requester to identify themselves upon the filing of the request has not been implemented. The certification requirement of § 1.510(b)(6), coupled with a party's obligations under § 11.18 when transacting business before the Office, are considered sufficient to ensure compliance with the new statutory estoppel requirements." 77 Fed. Reg. 46622 (Response to Comment 25); see also *id.* at 46621 (Response to Comment 20) ("Instead, the Office will rely upon the ex parte reexamination requester's certification required by § 1.510(b)(6)."). The NPRM now states the opposite — "the § 1.510(b)(6) certification and the obligations of § 11.18(b) are no longer deemed sufficient to ensure compliance with the statutory estoppel provisions." 91 Fed. Reg. 46040. An agency that reverses a reasoned prior position must, at a minimum, supply a reasoned explanation that accounts for the facts underlying the earlier policy; the USPTO's conclusory assertion that the prior framework is "no longer deemed sufficient" does not meet that standard. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).

The Office is undermining its own current and future ability to rely on self-certification by registered practitioners in analogous situations, such as:

- Certification of small entity status 37 C.F.R § 1.27(c)(2)(ii);
- Statements that the entire delay in filing a reply was unintentional in a petition to revive an abandoned application under 37 C.F.R. § 1.137(b)(2); and
- Proof that an attorney has satisfied their duty to disclose information under 37 C.F.R. § 1.56, such as proof supporting the timing of the assertions made under 37 C.F.R. § 1.97(e) (e.g., that individual required to disclosure information within three months did so within the timeframe).

The Office's proposed selective treatment of self-certification undermines the credibility of the entire self-certification system, and may open the door to future impositions on stakeholders.

III. The Proposed Changes Do Not Address Any Documented Problem

There is no evidence of a problem the certification framework has failed to catch. The NPRM only asserts a general, subjective allegation that a "significant number" of ex parte reexaminations target patents previously challenged at the PTAB (91 Fed. Reg. 46039–40). The Office offers no figure to support its general allegation and, critically, given that estoppel only applies to IPRs that have reached a final written decision, the cited "significant number" does not even speak to the alleged concern. Instead, historically only about 4% of ex parte reexaminations filed have had a final written decision in an IPR and therefore have an estoppel attached to some party. The vast majority of the "significant number" of recent reexaminations filed (that previously had an IPR, CBM, or PGR petition filed) never reached final written decision. In over 99% of reexaminations, either no estoppel applies or the Office has been given the identity of the requestor and can assess estoppel without further information.

Historically, the cases in which estoppel could even theoretically apply is small. Estoppel under § 315(e)(1)/§ 325(e)(1) can attach only where a prior IPR, CBM, or PGR on the same patent reached a final written decision. Of the 4,295 ex parte reexamination requests filed from 2014 through the first half of 2026, only 174 (4.1%) were directed to a patent that had a prior PTAB final written decision entered before the reexamination was filed. Thus, in fewer than 5% of reexaminations could an estoppel theoretically exist on any entity in the world, let alone the requestor. In the vast majority of instances, the request identifies the requestor. Unified Patents was only able to find 25 anonymous reexamination filings during this 12-year period where a reexamination was filed after a final decision in an IPR, PGR, or CBM. Thus, fewer than 1% of reexaminations involve an unknown requestor challenging a patent in which estoppel applies to a prior IPR, CBM, or PGR petitioner.

The recent bump in ex parte reexamination filings is driven by changes in Office policy, not potentially estopped parties. Of the 1,306 ex parte reexamination requests filed in 2025 through the first half of 2026, only 37 (roughly, 2%) were directed to a patent that had a prior PTAB final written decision entered before the reexamination was filed. Thus, even fewer reexaminations subject to an estoppel provision have been filed in the past two years than has historically been the case. However, while the number of reexaminations having estoppel to some party has dropped, the number of reexaminations filed after discretionary denials in IPRs have risen tremendously. Notably, of the 593 reexamination requests filed in the first half of 2026, 155 (nearly one-third of reexamination filings) were directed to a patent that had a prior PTAB petition filed that was discretionarily denied. Historical numbers of reexamination requests filed after a discretionary denial average about 5%; the present filings represents a 6-fold increase in reexaminations filed after IPR discretionary denials. Thus, the dramatic rise in reexamination filings are tied to recent changes in discretionary denials of IPRs. Given that the number of IPR filings has dropped precipitously, it is unlikely that another bump will occur.

Named third-party requesters are unjustifiably swept in by the NPRM. The concern the NPRM articulates is the Office's inability to assess estoppel for **anonymous** requesters (91 Fed. Reg.

46039–40), yet the rule compels an RPI statement from **every** third-party requester, including those who already identify themselves. As mentioned above, Unified Patents was only able to identify 25 anonymous reexamination filings in the past 12 years on patents where there was a potential estoppel issue. A situation that is only theoretically possible in less than one half of one percent of reexaminations should not drive significant burdens on the 99.5% of filers for whom the issue does not apply.

IV. "Real Party in Interest" Is a Notoriously Difficult Standard To Apply

RPI is not a bright line. The NPRM concedes the determination is "highly fact-dependent" and case-by-case, pointing requesters to *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018), *Taylor v. Sturgell*, 553 U.S. 880 (2008), and the Trial Practice Guide. 91 Fed. Reg. 46041. Importing that unsettled standard into the streamlined reexamination process invites disputes the proceeding was never designed to accommodate.

The difficulty is not merely theoretical: RPI is routinely contested, and the resulting disputes are costly. Even in IPR practice, where the standard is most developed, requesters acting in good faith can reach different but defensible conclusions about who qualifies as an RPI. A judgment that appears reasonable when a request is filed could later be recharacterized as a "misrepresentation" or "fraud," the very rationale the Office invokes to justify the rule. 91 Fed. Reg. 46040. The predictable result is a set of costly satellite disputes over RPI status. These disputes arise in a proceeding meant to be driven by examiners and focused on prior art. The effect is to shift the focus of reexamination away from patentability and toward procedural sparring over the requester's identity.

The resource cost of RPI disputes is well documented. For example, in *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.* (IPR2013-00453), the Board instituted an IPR and only later vacated institution and terminated the proceeding after determining that the petitioner had failed to name its parent, AGL Resources, as a real party in interest and that the petition was time-barred under 35 U.S.C. § 315(b). *See Bennett Regulator Guards, Inc. v. Atlanta Gas Light Co.*, 905 F.3d 1311 (Fed. Cir. 2018). The RPI and time-bar dispute carried the matter through institution, reconsideration, a sanctions proceeding, and multiple Federal Circuit appeals spanning nearly a decade—from the 2013 petition to *Atlanta Gas Light Co. v. Bennett Regulator Guards*, 33 F.4th 1348 (Fed. Cir. 2022)—showing that a single RPI question can consume Office and party resources far out of proportion to the underlying patentability merits.

In summary, the proposed rule would inject a notoriously fact-intensive and heavily litigated standard into a proceeding built to avoid exactly that kind of dispute. Congress designed ex parte reexamination to be simple, inexpensive, and examiner-driven. Reexamination provides no discovery, no trial, and no adversarial mechanism for resolving the fact-intensive questions an RPI inquiry demands—yet the rule would make every third-party request a potential occasion for precisely those disputes. The predictable cost—satellite litigation over who stands behind a request, untethered from patentability—is reason enough not to adopt it.

V. The Rule Will Chill Legitimate Reexamination Filings

Congress created ex parte reexamination in 1980 because it recognized that the public has a strong interest in removing improperly issued patents from the register. The 1980 statute was enacted with the intent of achieving three principal benefits: settling validity disputes more quickly and less expensively than litigation, allowing courts to refer validity questions to an agency with subject-matter expertise, and reinforcing investor confidence in the certainty of patent rights by affording an opportunity to review patents of doubtful validity. H. Rep. No. 107-120, at 4 (2002) (citing 126 Cong. Rec. 29, 895 (1980) (Statement of Rep. Kastenmeier));
see also H.R. Rep. No. 96-1307 (1980). Central to achieving these goals was third-party participation, which Congress viewed as vital because third parties often hold the most relevant prior art and the strongest incentive to bring a defective patent to the Office's attention. Industrial Innovation and Patent and Copyright Law Amendments: Hearing on H.R. 6033, H.R. 6934, H.R. 3806, H.R. 2414 Before the Subcomm. on Courts, Civil Liberties & the Admin. of Justice of the H. Comm. on the Judiciary, 96th Cong. 576 (1981) (statement of Sidney A. Diamond, Commissioner of Patents and Trademarks). Confidentiality was not incidental to this design — it was the mechanism that made third-party participation possible. Congress explained that without the confidentiality provision, competitors of a patent owner might be reluctant to cite prior art to the Office. Any rule that undermines that confidentiality strikes at the same participation Congress viewed as essential to reexamination's core purpose.

As acknowledged by the NPRM, chilling the filing of reexaminations was a concern of commenters in 2012 when the Office previously proposed conditioning reexamination on RPI disclosure. In those comments, many commenters raised this as a concern, primarily noting concerns with inadvertent disclosure. These risks are still present today and will have the same chilling effect.

Mis-docketing, a FOIA request, or even the incidental use of RPI information in an Office action or decision could expose a requester's identity to the patent owner without any deliberate disclosure by anyone. Once exposed, that information hands the patent owner valuable competitive intelligence — about a competitor's product plans, its assessment of the patent's validity, and its litigation posture — and invites retaliatory litigation or business consequences directed at that specific competitor. These are the severe competitive and litigation consequences that confidential reexamination was designed to prevent, and the rule does nothing to insulate requesters from them.

The predictable result is fewer requests, not better ones. A legitimate requester weighing whether to challenge a patent it believes is invalid must now also weigh the risk that a docketing error, a FOIA request, or a stray reference in an Office decision will hand the patent owner a roadmap for retaliation. Further, given the difficulty in applying the Real Party in Interest standard, legitimate requesters may be concerned about potential penalties for misidentification. Faced with these downsides, rational requesters — including those with the strongest, most legitimate prior art — will decline to file. That loss is not borne by the deterred requester alone; it undermines the very efficiency, expertise-based review, and investor certainty that reexamination was created to provide, and it leaves the system administering claims that a motivated party identified as invalid but declined to challenge because the personal cost of challenging became too high. That is precisely the chilling effect Congress and the Office's own 2012 commenters warned against, and the Office offers no new justification here for concluding that warning no longer applies.

VI. The Confidentiality Protections Are Insufficient and Impose Unnecessary Burden on the Office

The NPRM promises "robust data security measures" for the confidential RPI statement but defines none. The actual protective mechanism is left to "parameters established by the Office" and published only later, after the rule takes effect. A promise of confidentiality without a specified mechanism is not a safeguard the public can meaningfully evaluate in this rulemaking, and it asks requesters to trust a system whose design has not yet been disclosed. Before requesters can accept the risk that comes with mandatory RPI disclosure, the Office should show, concretely, how that information will be segregated and protected.

The rule also creates a new and ongoing administrative burden for the Office itself, separate from the risk to requesters. Maintaining a parallel confidential RPI record means the Office must segregate the statement from the public file consistent with § 1.11(d) while simultaneously relying on that same statement whenever it needs to determine whether estoppel bars a pending or subsequent request. Every reexamination request becomes an exercise in dual-track recordkeeping, and every point at which the confidential statement must be pulled, checked, or referenced is another point at which it could be mishandled. This is not a marginal addition to the Office's existing workload; it is a new category of file to secure, indefinitely, across every ex parte reexamination request going forward.

As discussed above, the risk of inadvertent disclosure was a major concern for commenters in 2012. The Office processes an enormous volume of filings, and mis-uploads to public-facing systems are a recognized and recurring feature of that volume, not an aberration. Each such error, however isolated, creates a risk of irreversible disclosure of the very information the rule promises to protect — and unlike most filing errors, a disclosed RPI identity cannot be un-disclosed once a competitor or patent owner has seen it. The NPRM's silence on how the confidential statement will actually be handled compounds this risk rather than mitigating it: the notice does not explain how RPI information will be treated in petitions to the Office, in show cause proceedings, or in any litigation that later touches the reexamination, leaving requesters unable to assess in advance what their real exposure will be at any of these stages.

Finally, the NPRM understates the burden the rule actually imposes, in a way that matters both for the Paperwork Reduction Act analysis and for the underlying cost-benefit case. The notice treats the requester's burden as "de minimis," but that characterization accounts for neither the confidentiality-handling costs the rule places on the Office nor the RPI-determination costs it places on requesters. The NPRM itself acknowledges that identifying the real party in interest requires a fact-intensive, case-by-case inquiry, which is precisely the kind of analysis that cannot be performed for free or without legal judgment. An estimate that ignores this analytical burden, and ignores the recordkeeping and data-security burden on the Office side of the same transaction, is not simply optimistic; it fails to reflect the rule the Office is actually proposing to implement.

VII. The Same Concerns Apply to Patent Owners, and the Office's 2013–2014 "Attributable Owner" Rulemaking Counsels Restraint

The same rationales the Office offers for the proposed rule apply with equal force to patent ownership. The rule asks a third-party requester to identify everyone standing behind its challenge, but it does not ask a comparable question about who stands behind the patent being challenged. A patent may be assigned and reassigned, and its ultimate ownership is not always reflected in the public record, so a requester may have limited visibility into who actually controls the patent it seeks to reexamine. If the Office's concern is knowing who stands behind a filing and guarding against misrepresentation (91 Fed. Reg. 46040), then the ownership of the challenged patent is relevant to that same inquiry.

The Office has recognized this. In 2013-2014, it launched a major initiative to make patent ownership transparent, proposing to require that the "attributable owner"—including the ultimate parent entity—be identified during prosecution and at specified points in a patent's life. See Changes To Require Identification of Attributable Owner, 79 Fed. Reg. 4105 (Jan. 24, 2014). The Office justified that proposal on grounds directly applicable to the rationale for the current rule: providing greater transparency concerning the ownership of patents, verifying that a party requesting a post-issuance proceeding is a proper party, and ensuring that information provided to the public is accurate. In other words, when the Office last confronted the transparency concern it now invokes, it located the problem in patent ownership and sought to solve it by requiring owners—not challengers—to come forward.

The Office then abandoned that effort. After receiving 72 written comments raising concerns about burden, overbreadth, and the scope of the Office's rulemaking authority, it opted not to advance the proposed rules to final. Those same concerns apply with equal or greater force to the present rule, which would graft a fact-intensive, real-party-in-interest inquiry onto every third-party request while doing nothing about the ownership opacity the 2014 initiative was designed to address. Having retreated from a broad ownership-transparency mandate on burden and authority grounds, the Office should not now adopt a narrower, one-sided version aimed only at challengers.

The Office's earlier choice of words underscores the point. In 2014, it deliberately avoided the term "real party-in-interest"—coining "Attributable Owner" instead—precisely to keep its ownership-transparency effort distinct from the AIA's load-bearing uses of that phrase in 35 U.S.C. §§ 315, 317, 325, and 327. The proposed rule discards that caution, importing the disputed § 312(a)(2)/§ 315 real-party-in-interest inquiry (see Section III) into reexamination and reviving the very confusion the Office once took pains to avoid—all while leaving untouched the ownership question the Office actually set out to solve.

VIII. If the Office Proceeds, It Should Adopt a Narrower, Less-Restrictive Alternative

Should the Office nonetheless proceed with its proposed rule change, it should tailor the rule to the concern it has actually identified rather than impose a blanket mandate. A better-targeted alternative would be to require an RPI statement when both of the following conditions are met: (1) the requester is **anonymous**—the sole situation in which the Office cannot presently assess estoppel; and (2) the challenged patent was already subject to an IPR or PGR that reached a **final written decision** capable of triggering § 315(e)(1)/§ 325(e)(1) estoppel.

Both conditions are apparent on the face of the *ex parte* reexamination request, so there would be no ambiguity about when the RPI statement is required. This proposed alternative thus gives requesters clear guidance on when a statement is necessary, without burdening the Office with superfluous filings or irrelevant RPI and/or estoppel issues.

IX. Conclusion

For the foregoing reasons, Unified Patents urges the Office to withdraw the proposed rule. The existing § 1.510(b)(6) certification and § 11.18(b) obligations already secure compliance with the AIA estoppel provisions; the proposed mandate is overbroad, will chill legitimate filings, and rests on confidentiality assurances that the NPRM does not define. If the Office proceeds, it should adopt one of the narrower alternatives described in Section VIII.

Unified Patents appreciates the opportunity to comment and would welcome the chance to discuss these issues further.

Respectfully submitted,

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August 20, 2026