

Standing on Edge: The Lack of Standing Requirements in the USPTO Inter Partes Review Raises a Constitutional Issue

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In 2012, the American Invents Act created a process called inter partes review (IPR), an administrative proceeding to challenge the validity of an issued patent. This new proceeding allows anyone to challenge the validity of a patent, regardless of the challenger's relation to the patent or patent holder. Inter partes review represented a powerful alternative to challenging a patent in Article III court, a proceeding that normally requires the patent challenger to show standing. In recent years, inter partes review has become a hot button issue due to its use as a stock manipulation tool by hedge funds.

Inter partes review is unconstitutional because it is an improper delegation of judicial power, in that it confers the ability to decide on an issue already adjudicated by an administrative agency and removes this authority from the constitutional protection provided by an Article III court proceeding. The call for review comes not from the administrative agency itself, but instead is instituted by a third party. Administrative adjudications of this type are allowable only when the parties are afforded the regular constitutional protections that would be available in an Article III court. These constitutional protections are not present in inter partes review proceedings because the relaxed standing requirement allows challenges in an adversarial proceeding from a seemingly limitless group of people. [View the entire article -->](#)