WHO IS BEHIND THE CHALLENGE?

Anonymous Patent Reexamination, the Honor System, and One Company's Completed Case Study

A White Paper

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"Requirement To Identify All Real Parties in Interest
to a Third Party Request for an Ex Parte Reexamination"

Every fact in this paper is drawn from a public record and cited to it. Every ruling against the author is stated plainly. The author asks for nothing for itself.

Contents

Executive Summary

1. The Problem in Plain Terms

2. A Completed Case Study: Nine Years, Every Page Public

3. The Courts Have Stepped Back

4. The Patent Office in Its Own Words

5. The Numbers

6. What the Public Record Says: The Docket

7. The Design Question: Disclosure Without Verification Is an Honor System

8. Answering the Objections

9. Recommendations

Appendix A — Timeline

Appendix B — The Docket at a Glance

Appendix C — The Filed Comment

Notes and Sources

Executive Summary

Anyone can ask the United States Patent and Trademark Office to take a second look at an issued patent. The procedure is called ex parte reexamination. It is inexpensive, it is increasingly popular, and the person asking does not have to say who they are. In the third quarter of 2026, nearly one in five reexamination requests was filed by someone who declined to be identified. [1]

That matters because of a rule Congress wrote in 2011. A party that challenges a patent at the Patent Office's trial board and loses is barred from challenging it again on the same grounds — and so is anyone who was really behind the first challenge. The Patent Office has said, in plain terms, that it cannot enforce that bar if it does not know who is behind a reexamination request. [2]

In July 2026 the Office proposed to fix this. The proposed rule would require every third-party reexamination request to identify all "real parties in interest" — the people and companies who fund, direct, control or benefit from the request — and would let the requester ask that the list be kept confidential. Twenty-six comments were filed. Technology-industry trade groups opposed the rule, chiefly on the ground that no one has shown it is needed. Patent owners supported it.

Verify Smart Corp. filed one of those comments. This paper is the long version.

Verify Smart is a small public company that spent nine years — 2015 to 2023 — in litigation over one patent. In that litigation the question this rule addresses was asked, partly answered, and then placed beyond the reach of any court. The Office's trial board found that a party challenging Verify Smart's patent had failed to name the organization that formed and funded it, and ordered that organization added. The further question — whether banks that had recently settled with Verify Smart over the same patent were also behind the challenge — was never decided by anyone. The Federal Circuit held it had no power to look. The Supreme Court declined to hear the case. Verify Smart's patent was cancelled, its separate civil claims were dismissed, and every one of those rulings is final. Verify Smart's patent expires in September 2027 whatever happens here.

That record is useful precisely because it is finished. It shows an identification requirement working exactly as designed at the front door — a patent owner objected, the Board checked, and a missing party was added — and then failing at the back, because the accuracy of what remained could not be tested by anyone. A disclosure rule whose accuracy no one can check is not a disclosure rule. It is an honor system.

Since the comment period closed, three things have happened that make this point for us. In October 2026 the Supreme Court declined to review whether courts may second-guess the Office's decisions on who stands behind a patent challenge — closing that door to Google,

and so to everyone. In a pending case brought by FedEx, the Office withdrew its defense of its Board's refusal to decide a real-party-in-interest dispute, and the United States has told the Supreme Court that the Office now agrees it should resolve such disputes before considering a petition — while maintaining that courts still may not review the result. [3] And an organization that opposes the rule published data showing that anonymous reexamination requests tripled as a share of filings in the quarter after the rule was proposed.

The conclusion is short. The Office is right to ask who is behind a reexamination request. But the Office should also build the means to test the answer: a stated consequence for a false or incomplete identification; a bounded procedure for a patent owner to show that an identification is incomplete, resolved in writing; a duty to correct; and access for the patent owner, under confidentiality protections, to the identification the rule exists to produce. None of these is expensive. All of them are already familiar in the Office's own trial practice. Without them the rule will collect names that no one can question — which is what Verify Smart's record shows an identification requirement becomes when checking is impossible.

1. The Problem in Plain Terms

Two ways to attack a patent

When a company believes a patent should not have been granted, it has two main ways to ask the Patent Office to reconsider.

The first is inter partes review, or IPR, created by Congress in 2011. It is an adversarial trial before the Patent Trial and Appeal Board (PTAB). The challenger files a petition, the patent owner responds, and a panel of administrative judges decides. From the first day, IPR petitions have had to name every real party in interest. [4]

The second is ex parte reexamination, which has existed since 1981. Anyone may file a request and prior art, pay a fee, and ask the Office's Central Reexamination Unit to re-examine the patent. After the request is filed the requester largely drops out; the proceeding is between the examiner and the patent owner. The requester may file anonymously, through a lawyer, and today need not tell the Office who is behind the request. [5]

Who is a "real party in interest"?

The phrase means the person or company that is really behind a filing — the one that funds it, directs it, controls it, or stands to benefit from it — as distinct from the name that happens to appear on the paper. A trade association filing on behalf of its members, a company that pays a law firm to file in the firm's own name, or an investor that bankrolls a challenge are all candidates. The Office's own precedential guidance treats the question as a practical one, looking at funding, formation, membership and benefit rather than corporate labels. [6]

Why it matters: estoppel

Congress attached a consequence to losing an IPR. Under 35 U.S.C. § 315(e)(1), a petitioner whose IPR ends in a final written decision "may not request or maintain a proceeding before the Office" on any ground it raised or reasonably could have raised. The same bar applies to the petitioner's real parties in interest and privies. In plain terms: you get one bite. You cannot lose at the PTAB and then come back through the reexamination door, and neither can the people who were behind you. [7]

The Federal Circuit confirmed in 2025 that once a reexamination is ordered, this bar does not stop the Office from continuing it; the bar binds the requester, not the agency. [8] The practical result is that the only moment estoppel can do its work in reexamination is at the request stage, before the Office orders the proceeding. And at that moment, if the request is anonymous, the Office does not know whether the requester — or the party behind it — is someone Congress said may not request.

What the Office proposed

On July 22, 2026, the Office proposed to add a new paragraph to 37 C.F.R. § 1.510(b). Every third-party request for reexamination would have to include a separate statement identifying all real parties in interest. The requester could ask that the statement be kept confidential, in which case the Office would exclude it from the public file. The Office explained that it needs this information to evaluate estoppel and to respond to false certifications, and noted that it received 452 reexamination requests in fiscal year 2025, a significant number directed at patents that had already been challenged in IPR or post-grant review. [9]

The Office also acknowledged that it had proposed the same requirement in 2012, during the original implementation of the 2011 Act, and had withdrawn it after commenters warned of a chilling effect on legitimate requests. [10] Fourteen years of experience, the Office said, now supplies evidence that was missing then.

The question this paper addresses

The debate on the docket is mostly about whether to require identification at all. This paper takes that as settled by the Office's own reasoning and asks a narrower question that the docket largely skipped: once the Office has the names, can anyone check them? The answer, on the record below, is that unless the rule says so, no.

2. A Completed Case Study: Nine Years, Every Page Public

What follows is drawn entirely from public court and agency dockets, cited at each step. Verify Smart states the outcomes against it without qualification. Where Verify Smart made allegations in court that were rejected, it says so.

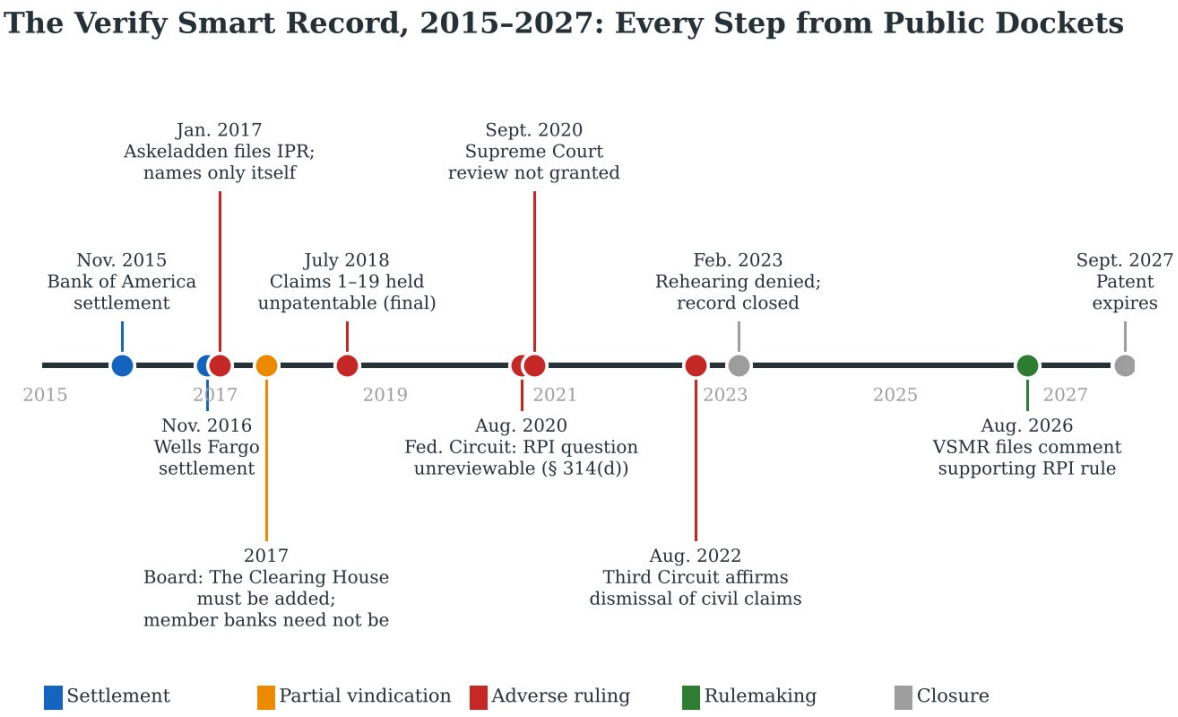


Figure 1. The Verify Smart record, 2015–2027.

The patent and the settlements

Verify Smart Corp. holds rights in U.S. Patent No. 8,285,648, issued in 2012, directed to authentication technology — the kind of system that confirms a person is who they claim to be before a transaction goes through. [11]

In November 2015, Verify Smart and Bank of America resolved patent litigation over the '648 patent, including a challenge the bank had filed at the Patent Office that was thereafter not maintained. In November 2016, Verify Smart and Wells Fargo resolved parallel litigation over the same patent. The terms of both settlements are confidential; this paper describes them only as they appear on public dockets. [12]

Both banks are members of The Clearing House Payments Company L.L.C., a payments association owned by major banks that clears and settles more than $2 trillion a day. [13]

The petition

On January 18, 2017 — about two months after the second settlement — an entity called Askeladden L.L.C. petitioned for inter partes review of the '648 patent. Askeladden describes itself as an education and advocacy organization that, through its Patent Quality Initiative, asks the Office to take a second look at patents it believes are invalid. It is a wholly owned subsidiary of The Clearing House. The petition certified Askeladden as the sole real party in interest. Neither The Clearing House nor any member bank was named. [14]

The requirement works — at the front door

Verify Smart challenged the certification. The Board agreed in part: it determined that The Clearing House was a real party in interest and had to be identified, and it allowed Askeladden to amend its notices rather than dismissing the petition. The Board also determined that The Clearing House's member banks did not need to be named. This paper states both halves of that ruling together, as Verify Smart does everywhere it describes this record. [15]

This was not the first time. In an earlier IPR involving a different patent owner, Askeladden's identification had likewise been amended to add The Clearing House after the omission was challenged. [16]

The merits

In July 2018 the Board issued its final written decision holding claims 1 through 19 of the '648 patent unpatentable and denying Verify Smart's motion to amend. That decision is final. Verify Smart does not contend here, and has not contended in any public material, that the Board's merits decision was wrong. [17]

The requirement becomes unreviewable — at the back door

On appeal, Verify Smart pressed the question whether Bank of America was a real party in interest. The question had teeth: if the bank was behind the petition, the petition might have been filed too late under the one-year time bar of § 315(b), and the bank's settlement might have barred it under § 315(e). On August 5, 2020, the Federal Circuit affirmed the Board's decision and held that, under 35 U.S.C. § 314(d) as the Supreme Court had read it earlier that year in Thryv v. Click-to-Call, the court had no power to review the real-party-in-interest question. The court did not say Verify Smart was wrong. It said it could not look. [18]

Verify Smart asked the Supreme Court to hear the case in September 2020. Review was not granted. [19]

The civil action

Separately, Verify Smart sued in federal court in New Jersey, alleging among other things that the petition was connected to the parties that had settled with it. Those claims were dismissed. On August 31, 2022, the Third Circuit affirmed in a nonprecedential opinion; rehearing was denied on February 28, 2023. That closed the record. Verify Smart acknowledges those rulings without qualification. [20]

Two observations in the Third Circuit's opinion frame the issue with unusual precision, and they belong together. The court said Verify Smart was "understandably suspicious" of the petition's timing. And it agreed that Askeladden's governing LLC agreement showed the member banks do not control which patents Askeladden challenges. Both are the court's words. Read together they make the point of this paper: whether a bank controlled Askeladden under its corporate documents is one question; whether a bank was a real party in interest with time-bar and estoppel consequences is another; and the second question — the one that mattered — was the one no court could reach. [21]

What the record establishes

Verify Smart draws only the narrow conclusion the documents compel. In a system that has always required real parties in interest to be named:

- a petition named a single party;
- when challenged, the Board itself found the identification incomplete and ordered an addition;
- the further question — whether entities that had recently settled over the same patent also belonged on the petition — was held unreviewable by statute; and
- no tribunal, at any level, ever examined it.

Verify Smart alleged in court that this structure was used to get around its settlements. Those allegations were dismissed and the dismissals affirmed, and Verify Smart says so plainly. But the structural fact needs no allegation and no villain. The accuracy of a mandatory identification was, at the decisive level, something no one could audit. That is what an honor system looks like from the inside.

3. The Courts Have Stepped Back

Three decisions since February 2026 confirm that what happened to Verify Smart in 2020 is now the settled rule, and that the Patent Office's own procedures are the only place a patent owner can be heard on who is behind a challenge.

Apple v. Squires: the Director may set policy by memo

Apple, Google, Cisco and Intel sued the Office over its practice of refusing to institute IPRs when a parallel court case is well advanced. They argued the Office could not adopt that policy without formal notice-and-comment rulemaking. On February 13, 2026, the Federal Circuit disagreed. The Director's instructions to the Board, it held, are "general statements of policy" exempt from rulemaking requirements, and no petitioner has a right to have an IPR instituted. [22]

What it means: the Director's entire real-party-in-interest program today — the October 2025 memorandum restoring strict identification requirements, the February 2026 guidance on anonymous reexamination requests, the withdrawal of precedents that had relaxed enforcement — rests on memoranda. Apple v. Squires says that is lawful. It also means those policies last exactly as long as the Director who issued them. A rule outlasts a memo. That is one reason the proposed rule matters.

Google v. VirtaMove: the Supreme Court will not open the door

Google asked the Supreme Court to hold that § 314(d) — the provision that makes institution decisions "final and nonappealable" — still permits courts to intervene when the Office exceeds its authority. The Solicitor General opposed. On October 19, 2026, the Court denied review without comment, at its first opportunity. [23]

What it means: this is the same provision that ended Verify Smart's appeal. The Court has now declined to revisit it at the request of one of the largest companies in the world. If Google cannot get a court to review an institution decision, no one can. Askeladden, notably, filed a brief supporting Google's petition, arguing that § 314(d) should not shield agency action that exceeds statutory limits. [24] This paper notes that filed position without characterizing it.

FedEx v. Qualcomm: the government concedes the principle

FedEx sued a small company, Roambee, for patent infringement. On the last day Roambee could have filed its own IPR, Qualcomm — not a party to the suit, but an investor in Roambee that had discussed the litigation with it for months and had used Roambee's non-public invalidity contentions — filed four petitions without naming Roambee. FedEx asked the Board to decide whether Roambee was a real party in interest. The Board declined to decide, instituted, and cancelled most of FedEx's claims. On April 29, 2026, the Federal Circuit held the Board's refusal unreviewable under § 314(d): because the identification

requirement is closely tied to institution, FedEx's arguments "effectively attack the decision to institute review." During the appeal, the Office withdrew its defense of the Board's approach and informed the court that the Director had determined that real-party-in-interest disputes must be resolved before a petition is considered. [25]

FedEx petitioned the Supreme Court. In its brief in opposition, reported on November 2, 2026, the United States urged the Court to deny review — while stating that the Office "now agrees that it should resolve such disputes before considering an IPR petition." [26] The petition remains pending.

What it means: the United States has now told the Supreme Court, in its own name, the two halves of Verify Smart's comment. The Office must decide who is behind a challenge before it proceeds. And no court will check whether it did. FedEx's facts and Verify Smart's differ; the Board decided Verify Smart's question and refused to decide FedEx's. The legal result was identical. In neither case could anyone outside the Office look.

The consequence for this rulemaking

Put the three cases together and the picture is simple. The Director may set real-party-in-interest policy by memo; the Supreme Court will not review how the Office applies it; and the government itself says the Office must decide these questions up front. The accuracy of a real-party-in-interest identification before the Office will therefore be tested by the Office or not at all. That makes the design of the final rule — not merely its adoption — the matter of consequence.

4. The Patent Office in Its Own Words

Nothing in this section is advocacy. It is the Office's own stated reasoning, in sequence, since the fall of 2025.

> *The integrity of PTAB proceedings depends on knowing who is behind a petition — who funds it, directs it, and/or benefits from it.*
>
> — Director John A. Squires, Memorandum to All PTAB Judges, Precedential designation of Corning Optical Communications RF, LLC v. PPC Broadband Inc. (Oct. 28, 2025) [27]

- **September 26 and October 28, 2025.** The Director de-designated the SharkNinja decision, which had allowed real-party-in-interest disputes to be deferred past institution, and then designated Corning Optical as precedential, restoring the practice of requiring petitioners to identify all real parties in interest before institution.
- **January 15, 2026.** In Yangtze Memory v. Micron, the Director declined to institute where a petitioner refused to identify its real parties in interest — the first decision applying the restored standard to a petitioner's refusal. [28]
- **February 3, 2026.** The Office de-designated Proppant Express v. Oren Technologies and Adello Biologics v. Amgen, which had allowed petitioners to correct real-party-in-interest identifications while keeping their original filing dates, as inconsistent with Corning Optical. [29]
- **July 22, 2026.** The Office published the proposed rule, stating that it needs real-party-in-interest information in reexamination to evaluate the estoppel provisions and to respond to false certifications, misrepresentations and fraud, and that ordering reexamination on a barred request "would waste Office resources in conducting an improper reexamination proceeding." [30]
- **February 6, 2026.** The Office updated the certification required for anonymous reexamination requests: where a claim was previously the subject of an IPR or post-grant final written decision, the requester should affirmatively state that the real party in interest is not the prior petitioner or its real party in interest or privy. [31] This is the interim measure the proposed rule would replace with mandatory identification.
- **April 27, 2026.** In HID Global v. CPC Patent Technologies, on remand from the Federal Circuit, the Office held that an IPR final written decision issued after a reexamination request is filed but before it is ordered triggers the estoppel bar; the word "request" covers the whole pre-order period. [32] The Office enforced estoppel at the threshold against a named requester. The proposed rule would let it do the same against an anonymous one.
- **April and October 2026.** In the FedEx appeal, the Office withdrew its defense of the Board's refusal to decide a real-party-in-interest dispute, informing the Federal Circuit that the Director had determined such disputes must be resolved before a petition is considered; in October, the United States told the Supreme Court the Office "now agrees that it should resolve such disputes before considering an IPR petition." [33]

The through-line is unmistakable. For a year the Office has said, in every forum available to it, that it must know who is behind a challenge. The proposed rule extends that principle to the one proceeding where the Office currently does not ask.

5. The Numbers

Opponents of the rule say there is no evidence of a problem. The figures below are all from third parties, several of them from organizations that oppose the rule.

Measure	Figure	Source
Reexamination requests, FY2025	452	USPTO, 91 Fed. Reg. 46038
Reexamination requests, Q2 2026	331 (record)	Unified Patents, Q3 2026 report
Reexamination requests, Q3 2026	198	Unified Patents, Q3 2026 report
Reexam share of all post-grant challenges, Jan–Sept 2026	71.9% (vs. 27.7% same period 2025)	Unified Patents, Q3 2026 report
Requests with requester not identified, H1 2026	6%	Unified Patents, Q3 2026 report
Requests with requester not identified, Q3 2026	18% (35 of 198)	Unified Patents, Q3 2026 report
Open reexaminations at CRU, Sept. 30, 2026	1,354	Unified Patents, Q3 2026 report
Anonymous requests against one patent owner, Oct. 2025–Apr. 2026	10, all through one law firm	Adeia Inc. comment, entry -0014
Order rate before pre-order statement program (2023–25)	96.4%	Wolf Greenfield analysis, IPWatchdog, Nov. 2, 2026
Order rate since April 5, 2026	84.1%	Wolf Greenfield analysis, IPWatchdog, Nov. 2, 2026
Denials in which examiner adopted a patent-owner argument	12 of 28	Wolf Greenfield analysis, IPWatchdog, Nov. 2, 2026

Three things stand out. [34]

First, reexamination has become the main event. For the first time since the 2011 Act, more patents are being challenged through reexamination than through IPR — nearly three to one in 2026. Whatever rules govern reexamination now govern most patent challenges in the country.

Second, anonymity is rising, not falling. The share of requests filed by unidentified requesters tripled between the first half of 2026 and the third quarter — the quarter in which the rule was proposed. The organization that published that figure opposes the rule. The figure should be stated without overclaiming: one quarter is one quarter, and anonymity has innocent uses. But the direction is not in doubt.

Third, the Office has shown it can handle patent-owner input at the threshold. Since April 2026 patent owners have been able to file a short paper before the Office decides whether to

order reexamination. Examiners have expressly adopted the patent owner's argument in twelve of twenty-eight denials. That is a contest mechanism, working. It has one gap: a patent owner cannot argue that a requester is barred by estoppel if it does not know who the requester is.

6. What the Public Record Says: The Docket

Twenty-six comments were filed by the August 21, 2026 deadline. They sort into three groups. This section describes filed positions only; it says nothing about anyone's motives.

Opposed

BSA | The Software Alliance, Unified Patents, the Software & Information Industry Association, ACT | The App Association, US*MADE, the PTAB Bar Association, the Intellectual Property Owners Association (in part), the Japan Intellectual Property Association and the Japan Business Machine and Information Industry Association. Their shared argument: the Office has not shown that estopped parties are actually abusing anonymous reexamination; Congress opened reexamination to "any person" without an identification requirement and provided for confidentiality in § 301(e); the real-party-in-interest inquiry is fact-intensive and will spawn satellite disputes in a proceeding with no discovery; and the 2012 withdrawal should be respected. Several offered narrower alternatives — disclosure only where there is a prior IPR, a safe harbor for good-faith errors, or a bar on using the information for discretionary denials. [35]

In support

Adeia Inc., Nokia, Dolby, the Council for Innovation Promotion (C4IP), The Standard Strategy and Verify Smart Corp. Their shared argument: the Office cannot administer estoppel blind; the burden on an honest requester is trivial; and the rule aligns reexamination with the standard that has governed IPR since 2012. Adeia and Dolby urged the Office to look past names to funding and membership. Adeia and Verify Smart, independently, asked that the patent owner be able to see the identification under confidentiality safeguards. [36]

Supporting the goal, narrowing the terms

Askeladden L.L.C. wrote that it supports the proposal's general goals of transparency and compliance with statutory estoppels, but urged the Office to adhere to the "fixed, common-law meanings" of "real party in interest" and "privity," and devoted most of its comment to case law holding that coordination, shared counsel or aligned interests do not amount to control. [37]

Supporting the rule, objecting to the process

PTAAARMIGAN supported the rule on the merits but argued the Office should restart the rulemaking because it omitted required data, allowed only thirty days for comment rather than sixty, and shortcut Paperwork Reduction Act steps. [38]

The concession that organizes the record

The PTAB Bar Association, opposing the rule, observed that a requester willing to certify falsely that it is not estopped could equally omit a real party in interest from a disclosure statement. [39] That is exactly right, and it is the premise of this paper. The Bar Association drew the conclusion that disclosure therefore adds little. Verify Smart draws the opposite one: disclosure must be verifiable. Both sides agree on the fact. The final rule will be judged by which conclusion it adopts.

7. The Design Question: Disclosure Without Verification Is an Honor System

Imagine a rule that says: tell us who is behind your request, and we will keep it secret if you ask. Now imagine that no one — not the patent owner, not a court — can test whether what you said is complete, and that the rule states no consequence if it is not. What would such a rule accomplish? It would collect names from honest requesters, who were never the problem, and it would collect nothing reliable from anyone else.

That is not a hypothetical. It is what the IPR identification requirement became, at the level that mattered, in Verify Smart's case. The requirement existed. It was invoked. It worked in part. And then the question of whether it had been fully satisfied was placed where no one could ask it.

The Office can prevent that outcome in reexamination with four provisions, each of which it already uses somewhere in its own practice.

1. A stated consequence

The rule should say that identifications are subject to the certification duties of 37 C.F.R. § 11.18(b) and the duty of candor, and should state what happens when an identification is materially wrong — for example, that the request's filing date may be vacated or the request refused. The Office has done this in IPR: since October 2025 a petition "may be considered only if" it names all real parties in interest. An obligation with no stated consequence is an invitation.

2. A bounded procedure for the patent owner

The rule should say how a patent owner may bring evidence that an identification is incomplete, and should commit to resolving that challenge in a written determination in the file. The pre-order statement program shows the Office can take patent-owner input at the threshold and act on it. The Director Review process, created after the Supreme Court's Arthrex decision, shows the Office's own view that determinations of consequence deserve a second look. [40] In Verify Smart's case the challenge mechanism existed and produced a result — The Clearing House was added. Reexamination needs the equivalent.

3. A continuing duty to correct

Real parties in interest change. The rule should require updates within a stated period, as IPR practice already does.

4. Access for the patent owner

Confidentiality from the public is defensible. Confidentiality from the patent owner defeats the purpose. The patent owner is the party who knows whether a named entity settled with it, was time-barred, or lost a prior challenge. The rule should provide that the identification is available to the patent owner under confidentiality protections, and should state the standard for granting non-public treatment, so that secrecy is a reasoned exception rather than a default. Adeia reached the same conclusion independently.

The cost-benefit case

Opponents warn that importing a fact-intensive inquiry into a proceeding without discovery will generate satellite disputes. A rule that collects identifications but specifies no consequence, no procedure and no duty to correct does not avoid those disputes; it defers them and invites inconsistent handling. A rule that states the consequence, confines challenges to a written, record-based procedure, and fixes a correction period gives requesters a clear standard and the Office a bounded process. It resolves the question once, at the threshold, on paper. It imposes no burden on any requester with nothing to obscure.

Answering the § 301(e) argument

The strongest legal objection, advanced in a November 2026 analysis by Baker Botts, is that the rule conflicts with 35 U.S.C. § 301(e), which lets a person who submits prior art ask that their identity be kept confidential, and with § 302's "any person" language. [41] The answer, which the final rule should state expressly, is that the proposed rule honors both. It preserves confidentiality from the public on request, exactly as § 301(e) contemplates. And it does not narrow who may request; it asks only that the Office itself know who is requesting, which is the minimum needed to apply the estoppel bar Congress wrote in § 315(e)(1). A statute that bars certain persons from requesting cannot be administered without knowing who the persons are. The provisions are read together, not against each other.

8. Answering the Objections

"There is no evidence of abuse."

The Office reported 452 requests in fiscal 2025, a significant number aimed at patents already challenged in IPR. Adeia reported ten anonymous requests in six months. Unified Patents' own data shows the anonymous share tripling in the quarter after the proposal. And the FedEx record — an investor filing on the last possible day with the sued party's non-public materials, and the Office declining to ask who was behind it — is a documented instance of the pattern. The argument is no longer that the evidence is missing; it is that the evidence is not yet enough. The Office is entitled to act before the pattern becomes universal.

"Congress allowed anonymity."

Congress allowed any person to request reexamination and allowed confidentiality from the public. Congress also barred certain persons from requesting. The rule gives effect to both. A reading that lets the second provision be defeated by the first is not fidelity to Congress; it is a choice between its commands.

"The Office dropped this in 2012."

It did, for lack of evidence. The Office said so in the July 2026 notice and explained what has changed. Fourteen years of practice, a three-fold increase in reexamination's share of challenges, and the Office's own experience administering estoppel are the evidence that was missing then.

"It will chill legitimate requests."

A requester acting for itself lists itself. The requirement is burdensome in proportion to the complexity of the interests behind a request — which is precisely the information the rule exists to surface. Identification has been required in IPR since 2012; IPR petitions have not stopped.

"It will create satellite litigation."

Only if the rule leaves the procedure undefined. A bounded, written, record-based process at the threshold produces fewer disputes than an undefined obligation argued about later.

"Verify Smart's case is an outlier."

It may be unusual chiefly in being complete — closed, public, fully litigated, with no pending interest to discount. Disputes of this shape ordinarily remain hidden behind confidential terms and live litigation. The Office rarely receives a finished specimen. That is what this paper contributes.

9. Recommendations

To the Patent Office

- **1.** Adopt § 1.510(b)(7) as proposed.
- **2.** State that identifications are subject to § 11.18(b) and the duty of candor, and state the consequence of a material misidentification.
- **3.** Provide a bounded procedure by which a patent owner may submit evidence that an identification is incomplete, resolved in a written determination in the file.
- **4.** Confirm that "real party in interest" carries the Office's functional, fact-dependent meaning — attentive to funding, formation, membership and benefit — rather than a test satisfied by corporate structure alone.
- **5.** Require correction of identifications within a stated period upon any change.
- **6.** Make the identification available to the patent owner under confidentiality protections, and state the standard for non-public treatment.
- **7.** Address § 301(e) and § 302 expressly in the preamble, so that the final rule's statutory reasoning is on the record before it is challenged.

To Congress

- Consider codifying real-party-in-interest identification across all post-grant proceedings, so that the policy does not depend on which Director holds office. The Director's current program rests on memoranda that Apple v. Squires confirms are lawful and that will last only as long as he does.
- Consider whether § 314(d), as now read, leaves any check on the accuracy of real-party-in-interest determinations, and whether a narrow avenue of review for that specific question would serve the statute's purposes.

To patent owners

- Check whether your patent has been the subject of a prior IPR or post-grant final written decision; if so, any reexamination request against it is one where estoppel may apply.
- Use the pre-order statement procedure. File within the window, and raise estoppel where the record supports it.
- If the final rule provides for patent-owner access to identifications, use it. If it does not, say so on the record.

A closing word

Verify Smart's nine-year record — every page public, every adverse ruling acknowledged — stands for one modest proposition: identification requirements do their work only when someone is able to check the answer. The Office is asking the right question. This paper is offered so that the record contains at least one complete answer.

Appendix A — Timeline

Date	Event	Source
Oct. 2012	U.S. Patent No. 8,285,648 issues	USPTO
Aug. 2012	USPTO withdraws proposed RPI requirement for reexamination	77 Fed. Reg. 46621
Nov. 2015	Verify Smart and Bank of America resolve litigation; bank's CBM petition not maintained	D.N.J. No. 2:15-cv-05348; CBM2015-00173
Nov. 2016	Verify Smart and Wells Fargo resolve litigation	D.N.J. No. 2:16-cv-06389
Jan. 18, 2017	Askeladden petitions for IPR; names itself as sole RPI	IPR2017-00726
2017	Board: The Clearing House must be added; member banks need not be	IPR2017-00726; Fed. Cir. No. 19-1076 at 4–5
July 2018	Final written decision: claims 1–19 unpatentable	IPR2017-00726
Apr. 2020	Supreme Court decides Thryv v. Click-to-Call	590 U.S. 45
Aug. 5, 2020	Federal Circuit affirms; RPI question unreviewable under § 314(d)	No. 2019-1076
Sept. 2020	Certiorari sought; not granted	U.S. Supreme Court
Aug. 31, 2022	Third Circuit affirms dismissal of civil claims	No. 21-2353
Feb. 28, 2023	Rehearing denied; record closed	No. 21-2353
Sept. 26, 2025	SharkNinja de-designated	USPTO
Oct. 28, 2025	Corning Optical designated precedential; pre-institution RPI identification restored	USPTO memorandum
Jan. 15, 2026	Director vacates institution where petitioner fails to identify RPIs (Yangtze v. Micron)	IPR2025-00098, Paper 38
Feb. 3, 2026	Proppant Express and Adello Biologics de-designated	USPTO
Feb. 6, 2026	USPTO updates certification for anonymous reexamination requests	USPTO alert
Feb. 13, 2026	Apple v. Squires: Director may set institution policy by memo	Fed. Cir. No. 24-1864
Apr. 5, 2026	Pre-order patent-owner statement program begins	USPTO
Apr. 27, 2026	HID remand decision: FWD before order triggers estoppel	Control No. 90/019,617
Apr. 29, 2026	Federal Circuit: Board's refusal to decide RPI unreviewable; Office withdraws defense of Board's approach (FedEx v. Qualcomm)	Fed. Cir. No. 24-1236
May 29, 2026	Askeladden files amicus brief supporting Google's petition	No. 25-1230
July 22, 2026	USPTO proposes RPI identification for reexamination; PTAB rule sent to OIRA	91 Fed. Reg. 46038; reginfo.gov
Aug. 21, 2026	Comment period closes; Verify Smart files (-0018);	regulations.gov

	Askeladden files (-0025)	
Oct. 16, 2026	Unified Patents reports anonymous share at 18% in Q3	Patent Dispute Report Q3 2026
Oct. 19, 2026	Supreme Court denies review in Google v. VirtaMove	No. 25-1230
Nov. 2, 2026	U.S. brief in FedEx reported: Office now agrees it should resolve RPI disputes before considering a petition	Mealey's
Sept. 2027	'648 patent expires	USPTO

Appendix B — The Docket at a Glance

Commenter	Position	Principal point
Adeia Inc.	Support	Ten anonymous requests in six months; patent owner should see identification
Nokia	Support	Align reexamination with IPR standard
Dolby	Support	Look to funding and membership, not just names
C4IP	Support	Office cannot administer estoppel blind
The Standard Strategy	Support	Align reexamination with IPR identification practice
Verify Smart Corp.	Support	Disclosure must be verifiable; four design elements
PTAAARMIGAN	Support merits / object to process	Restart rulemaking; 30-day period too short
Askeladden L.L.C.	Support goals / narrow terms	Confine RPI and privity to common-law meanings
BSA	Oppose	No showing of abuse; chilling effect
Unified Patents	Oppose	No evidence; satellite disputes
SIIA	Oppose	Congress permitted anonymity
ACT | The App Association	Oppose	Burden on small challengers
US*MADE	Oppose	2012 withdrawal should stand
PTAB Bar Association	Oppose	False certifier would also omit RPI (conceding verification point)
IPO	Oppose as drafted	Limit to reexaminations with parallel IPR
AIPLA	Oppose / narrow	Fact-intensive inquiry unsuited to ex parte proceeding
JIPA / JBMIA	Oppose	Burden on foreign requesters
Individuals (8)	Mixed	—

Positions summarized from the comments as posted on regulations.gov, Docket No. PTO-P-2025-0545, and from IPWatchdog's August 25, 2026 survey of the docket.

Appendix C — The Filed Comment

The Comment of Verify Smart Corp. in Support of the Proposed Rule, With Recommendations Concerning Verification and Review (Aug. 21, 2026), Docket No. PTO-P-2025-0545-0018, signed by Tony Cinotti, President and Chairman of the Board, is reproduced in full at the end of this paper.

Notes and Sources

1. Unified Patents, Patent Dispute Report: Q3 2026 (Oct. 16, 2026) (35 of 198 ex parte reexamination requests in Q3 2026 filed by unidentified requesters, versus 6 percent in the first half of 2026).

2. Requirement To Identify All Real Parties in Interest to a Third Party Request for an Ex Parte Reexamination, 91 Fed. Reg. 46038 (July 22, 2026) (proposed rule).

3. Federal Express Corp. v. Qualcomm Inc., No. 24-1236, slip op. (Fed. Cir. Apr. 29, 2026) (Hughes, J.) (recounting that the Office withdrew its defense of the Board's approach and informed the court that the Director had determined real-party-in-interest disputes must be resolved before a petition is considered); Brief for the Federal Respondent in Opposition, Federal Express Corp. v. Qualcomm Inc., No. 26-170 (U.S. 2026), as reported in Mealey's Intellectual Property, "U.S. Urges Justices To Reject FedEx Challenge In Real-Party-In-Interest Row" (Nov. 2, 2026) ("the U.S. Patent and Trademark Office (PTO) now agrees that it should resolve such disputes before considering an IPR petition").

4. 35 U.S.C. § 312(a)(2) (petition may be considered only if it identifies all real parties in interest).

5. 35 U.S.C. § 302 ("Any person at any time may file a request for reexamination"); 37 C.F.R. § 1.510 (current requirements for a request).

6. Applications in Internet Time, LLC v. RPX Corp., 897 F.3d 1336 (Fed. Cir. 2018) (real-party-in-interest inquiry is flexible and fact-dependent); USPTO, Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019), at 12–17.

7. 35 U.S.C. § 315(e)(1); see also § 325(e)(1) (post-grant review).

8. In re Gesture Technology Partners, LLC, 164 F.4th 1361 (Fed. Cir. 2025).

9. 91 Fed. Reg. at 46038–40.

10. Changes To Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act, 77 Fed. Reg. 46615, 46621 (Aug. 6, 2012) (Comment 20 and response).

11. U.S. Patent No. 8,285,648 (issued Oct. 9, 2012).

12. Verify Smart Corp. v. Bank of Am., N.A., No. 2:15-cv-05348 (D.N.J.); Bank of Am., N.A. v. Verify Smart Corp., CBM2015-00173 (P.T.A.B.); Verify Smart Corp. v. Wells Fargo & Co., No. 2:16-cv-06389 (D.N.J.).

13. Comment of Askeladden L.L.C., Docket No. PTO-P-2025-0545-0025 (Aug. 21, 2026), at 1 (describing The Clearing House).

14. Askeladden L.L.C. v. Verify Smart Corp., IPR2017-00726, Petition (P.T.A.B. filed Jan. 18, 2017); Comment of Askeladden L.L.C., supra, at 1.

15. Verify Smart Corp. v. Askeladden L.L.C., No. 2019-1076, slip op. at 4–5 (Fed. Cir. Aug. 5, 2020) (recounting the Board's determinations); IPR2017-00726 (orders on mandatory notices).

16. Askeladden L.L.C. v. McGhie, IPR2015-00137 (P.T.A.B.).

17. IPR2017-00726, Final Written Decision (P.T.A.B. July 2018).

18. Verify Smart Corp. v. Askeladden L.L.C., No. 2019-1076, slip op. at 15–16 (Fed. Cir. Aug. 5, 2020) (citing Thryv, Inc. v. Click-to-Call Techs., LP, 590 U.S. 45 (2020)).

19. Petition for a Writ of Certiorari, Verify Smart Corp. v. Askeladden L.L.C. (U.S. filed Sept. 21, 2020).

20. Verify Smart Corp. v. Bank of Am. Corp., No. 21-2353 (3d Cir. Aug. 31, 2022) (nonprecedential), reh'g denied (Feb. 28, 2023); No. 2:17-cv-04248 (D.N.J.).

21. No. 21-2353, slip op. (3d Cir. Aug. 31, 2022).

22. Apple Inc. v. Squires, No. 24-1864 (Fed. Cir. Feb. 13, 2026).

23. Google LLC v. VirtaMove, Corp., No. 25-1230 (U.S. cert. denied Oct. 19, 2026).

24. Brief of Askeladden L.L.C. as Amicus Curiae in Support of Petitioner, Google LLC v. VirtaMove, Corp., No. 25-1230 (U.S. filed May 29, 2026) (arguing that § 314(d) does not bar judicial review of agency action that exceeds statutory authority).

25. Federal Express Corp. v. Qualcomm Inc., No. 24-1236 (Fed. Cir. Apr. 29, 2026) (Hughes, J., joined by Cunningham and Stark, JJ.) (appeal from IPR2022-00585); companion decisions Nos. 24-1235 and 24-1237 (nonprecedential); Petition for a Writ of Certiorari, Federal Express Corp. v. Qualcomm Inc., No. 26-170 (U.S. filed July 28, 2026); Brief in Opposition of Qualcomm Inc. (Sept. 28, 2026).

26. Mealey's Intellectual Property, "U.S. Urges Justices To Reject FedEx Challenge In Real-Party-In-Interest Row" (Nov. 2, 2026).

27. USPTO, Memorandum from the Director to All PTAB Judges, "Precedential designation of Corning Optical Communications RF, LLC v. PPC Broadband Inc., IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015)" (Oct. 28, 2025), available at uspto.gov.

28. Yangtze Memory Technologies Co. v. Micron Technology, Inc., IPR2025-00098, Paper 38 (Director decision Jan. 15, 2026) (vacating institution; petitioner's "failure to provide clarity as to its actual identity proved fatal to its petitions"), designated informative Jan. 16, 2026.

29. USPTO, "USPTO de-designates two decisions involving real party in interest" (Feb. 3, 2026) (Proppant Express Investments, LLC v. Oren Technologies, LLC, IPR2017-01917, Paper 86; Adello Biologics LLC v. Amgen Inc., PGR2019-00001, Paper 11).

30. 91 Fed. Reg. at 46040.

31. USPTO, "Update regarding filing anonymous requests for ex parte reexamination" (Feb. 6, 2026).

32. HID Global Corp. v. CPC Patent Technologies Pty Ltd., Decision on Remand, Control No. 90/019,617 (USPTO Apr. 27, 2026).

33. See notes 3 and 26.

34. Unified Patents, Patent Dispute Report: Q3 2026 (Oct. 16, 2026); Comment of Adeia Inc., Docket No. PTO-P-2025-0545-0014 (Aug. 20, 2026); "Six Months of Patent Owner Pre-Order Statements in Ex Parte Reexamination," IPWatchdog (Nov. 2, 2026).

35. Comments of Unified Patents (PTO-P-2025-0545-0013), SIIA (-0020), ACT (-0027), US*MADE (-0019), PTAB Bar Association (-0017), IPO (-0015), AIPLA (-0024), JIPA (-0011), JBMIA (-0010); BSA | The Software Alliance as reported in "Commenters Split on USPTO Proposal to Require RPI Disclosure for Reexams," IPWatchdog (Aug. 25, 2026).

36. Comments of Adeia Inc. (PTO-P-2025-0545-0014), Nokia (-0021), Dolby (-0023), C4IP (-0026), The Standard Strategy (-0022), Verify Smart Corp. (-0018).

37. Comment of Askeladden L.L.C., Docket No. PTO-P-2025-0545-0025 (Aug. 21, 2026).

38. Comment of PTAAARMIGAN, Docket No. PTO-P-2025-0545-0008.

39. Comment of the PTAB Bar Association, Docket No. PTO-P-2025-0545-0017, at 2 ("If the concern is that a requester would falsely certify that no estoppel applies, it is unclear why the Office believes that the same requester would not falsely fail to identify any estopped real parties in interest under the proposed rule.").

40. United States v. Arthrex, Inc., 594 U.S. 1 (2021); USPTO, Director Review process (July 2023, as modified).

41. Baker Botts, "Estoppel Considerations in Post-Grant Proceedings and the Potential Impact of Proposed USPTO Rule Changes to Anonymous EPR Filings" (Nov. 2026).

About Verify Smart Corp.

Verify Smart Corp. is a United States public company and the holder of rights in U.S. Patent No. 8,285,648, directed to authentication technology. This paper is published as part of the Company's public-record advocacy on USPTO Docket No. PTO-P-2025-0545. It contains no information concerning the Company's securities and should not be read as an offer, solicitation or forecast of any kind. Media and policy inquiries may be directed to Annamarie Seabright, Executive Vice President of Communications, Verify Smart Corp.

Before the

UNITED STATES PATENT AND TRADEMARK OFFICE

Department of Commerce

In re: Requirement To Identify All Real Parties in Interest to a Third Party Request for an Ex Parte Reexamination

91 Fed. Reg. 46,038 (July 22, 2026)

Docket No. PTO-P-2025-0545 · RIN 0651-AD94

Submitted via the Federal eRulemaking Portal, regulations.gov

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COMMENT OF VERIFY SMART CORP. IN SUPPORT OF THE PROPOSED RULE, WITH RECOMMENDATIONS CONCERNING VERIFICATION AND REVIEW

August 21, 2026

I. Interest of the Commenter

Verify Smart Corp. ("Verify" or the "Commenter") is a United States public company and the holder of rights in U.S. Patent No. 8,285,648 (the "'648 patent"), directed to authentication technology.[1]

Verify submits this comment for one reason: it possesses what the Commenter respectfully suggests is a uniquely complete factual record bearing on the subject of this rulemaking — a fully concluded, entirely public, nine-year litigation and administrative history in which the identification of real parties in interest was required, contested, adjudicated in part, and ultimately placed beyond the review of any court. Every proceeding described in this comment is closed. The Commenter seeks no relief for itself, asks the Office to reopen nothing, and notes that its patent expires in September 2027 regardless of any action taken here.

The Commenter therefore writes not as an interested litigant but as the custodian of a completed case study. All facts recited herein appear in public court and agency records, cited throughout; adverse determinations are stated plainly; and characterizations of any party's conduct beyond the public record are identified as allegations that were made — and dismissed — in litigation.

II. Summary of Position

Verify **supports** proposed 37 C.F.R. § 1.510(b)(7), which would require any third-party request for ex parte reexamination to identify all real parties in interest.[2] The proposal is sound, modest in burden, and consistent with the Office's recent and sustained attention to the question of who stands behind post-

[1] U.S. Patent No. 8,285,648 (issued 2012). The patent will expire in September 2027. The Commenter notes the expiration at the outset: nothing in this comment, and no outcome of this rulemaking, alters the status of the Commenter's patent or any concluded proceeding concerning it.

issuance challenges — attention the Office itself grounds in the need to evaluate the statutory estoppel provisions and to respond to false certifications, misrepresentations, and fraud.

Verify's submission adds one point, drawn from its own record: **an identification requirement achieves its purposes only to the extent the identification can be verified, challenged, and reviewed.** The inter partes review regime has required real-party-in-interest identification since its inception. Verify's experience — set out in Part III — shows that requirement operating exactly as designed at the threshold: invoked by the patent owner, examined by the Board, and vindicated in part when the Board required an unnamed entity to be added. It then shows the same requirement rendered inert at the level of review: the question of whether further parties belonged on the petition was held, by statute, unreviewable by any Article III court. A disclosure obligation whose accuracy cannot be tested is, in practical effect, a certification on the honor system.

Accordingly, Part IV offers six recommendations for the final rule, directed to certification, a mechanism for patent-owner challenge, record-based resolution, consistency with the Office's functional real-party-in-interest jurisprudence, a continuing duty of correction, and availability of identifications.

III. The Commenter's Record: A Completed Case Study

The following chronology is drawn entirely from public dockets. The Commenter states the outcomes against it without qualification.

A. Settlements

In November 2015, Verify and Bank of America resolved patent litigation concerning the '648 patent, including the bank's own petition for covered business method review, which was thereafter not maintained.[3]

In November 2016, Verify and Wells Fargo resolved parallel litigation concerning the same patent.[4]

Both banks are members of The Clearing House Payments Company L.L.C. ("TCH"), a payments association owned by major banks. The settlements' terms are confidential; the Commenter describes these resolutions only as they appear on public dockets and in its public pleadings.

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[2]Requirement To Identify All Real Parties in Interest to a Third Party Request for an Ex Parte Reexamination, 91 Fed. Reg. 46,038 (July 22, 2026) (Docket No. PTO-P-2025-0545; RIN 0651-AD94).

[3]Verify Smart Corp. v. Bank of Am., N.A., No. 2:15-cv-05348 (D.N.J.); Bank of Am., N.A. v. Verify Smart Corp., CBM2015-00173 (P.T.A.B.). The resolution of these proceedings is reflected on the public dockets. The Commenter describes its settlements only as reflected in public filings; the agreements' terms are confidential.

[4]Verify Smart Corp. v. Wells Fargo & Co., No. 2:16-cv-06389 (D.N.J.) (resolved as reflected on the public docket).

B. The Petition

On January 18, 2017 — approximately two months after the second settlement — Askeladden L.L.C., an entity formed and funded through TCH, petitioned for inter partes review of the ’648 patent. The petition certified Askeladden as the sole real party in interest. Neither TCH nor any member bank was identified.[5]

C. The Requirement Works — at the Threshold

Verify challenged the real-party-in-interest certification before the Board. The Board determined that TCH was a real party in interest and was required to be identified, and it permitted the petition’s mandatory notices to be amended rather than terminating the proceeding. The Board further determined that TCH’s member banks need not be named. The Commenter states both halves of that determination together, as it does everywhere it describes this record.[6]

The Commenter notes, as a matter of public record, that this was not the first proceeding in which a challenge to Askeladden’s certification resulted in TCH’s addition: in an earlier inter partes review involving a different patent owner, Askeladden’s identification was likewise amended to add TCH after the omission was challenged.[7]

D. The Merits

In July 2018, the Board issued its final written decision holding claims 1–19 of the ’648 patent unpatentable and denying the contingent motion to amend. That decision is final. The Commenter does not contend here — and has not contended in any campaign material — that the Board’s merits determination was erroneous, and nothing in this comment should be read to suggest otherwise.[8]

E. The Requirement Becomes Unreviewable

On appeal, Verify pressed the question whether Bank of America was a real party in interest — a question with direct consequences under 35 U.S.C. §§ 315(b) (time bar) and 315(e) (estoppel). On August 5, 2020, the Federal Circuit affirmed the Board’s decision and held that 35 U.S.C. § 314(d), as construed in *Thryv, Inc. v. Click-to-Call Technologies, LP*, precluded its review of that question. The court did not reach the merits of the real-party contention; it held that it could not.[9]

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[5]Askeladden L.L.C. v. Verify Smart Corp., IPR2017-00726, Petition (P.T.A.B. filed Jan. 18, 2017).

[6]See Verify Smart Corp. v. Askeladden L.L.C., No. 2019-1076, slip op. at 4–5 (Fed. Cir. Aug. 5, 2020) (recounting the Board’s real-party-in-interest determinations); see also IPR2017-00726 (Board orders on mandatory notices).

[7]Askeladden L.L.C. v. McGhie, IPR2015-00137 (P.T.A.B.) (real-party-in-interest identification amended to add The Clearing House Payments Company L.L.C. after challenge; proceeding thereafter resolved).

[8]IPR2017-00726, Final Written Decision (P.T.A.B. July 2018) (claims 1–19 unpatentable; contingent motion to amend denied).

Verify sought certiorari in September 2020; review was not granted.[10]

F. The Parallel Civil Action

Verify separately brought civil claims in the District of New Jersey alleging, among other things, that the petition was connected to parties that had settled with it. Those claims were dismissed, and on August 31, 2022, the Third Circuit affirmed in a nonprecedential opinion; rehearing and rehearing en banc were denied on February 28, 2023, closing the record. The Commenter acknowledges those dispositions without qualification.[11]

Two aspects of the Third Circuit's opinion frame the issue for this rulemaking with unusual precision. The court observed that Verify was "understandably suspicious" of the timing of the petition.[12] And it agreed that the governing LLC agreement showed the member banks do not control which patents Askeladden challenges.[13] Both statements are the court's; the Commenter quotes them exactly and together. Their juxtaposition is the point: contractual control under an entity's governing documents and statutory real-party-in-interest status are distinct questions — and the second, the one carrying time-bar and estoppel consequences, was the question no court could reach.

G. What the Record Establishes

The Commenter draws only the narrow conclusion the documents compel. In a regime that has always required real-party-in-interest identification: (1) a petition certified a single party; (2) upon challenge, the Board itself determined that certification was incomplete and ordered an addition; (3) the further question — whether entities that had settled and released claims involving the same patent belonged on the petition — was held unreviewable by statute; and (4) no tribunal, at any level, ever examined it. The Commenter alleged in court that this structure was used to circumvent its settlements; those allegations were dismissed and the dismissals affirmed, and the Commenter says so plainly. But the structural fact requires no allegation and no villain: **the accuracy of a mandatory identification was, at the decisive level, unauditable.**

IV. Recommendations for the Final Rule

Against that record, Verify respectfully offers six recommendations.

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[9]Verify Smart Corp. v. Askeladden L.L.C., No. 2019-1076, slip op. at 15–16 (Fed. Cir. Aug. 5, 2020) (citing Thryv, Inc. v. Click-to-Call Techs., LP, 590 U.S. 45 (2020)).

[10]Petition for a Writ of Certiorari, Verify Smart Corp. v. Askeladden L.L.C. (U.S. filed Sept. 21, 2020). Review was not granted.

[11]Verify Smart Corp. v. Bank of Am. Corp., No. 21-2353 (3d Cir. Aug. 31, 2022) (nonprecedential), reh'g and reh'g en banc denied (Feb. 28, 2023). The district court action was No. 2:17-cv-04248 (D.N.J.); the operative pleading was the Third Amended Complaint (filed July 30, 2020).

[12]No. 21-2353, slip op. (3d Cir. Aug. 31, 2022) (nonprecedential).

[13]Id.

1. **Adopt § 1.510(b)(7) as proposed.** Identification of all real parties in interest in third-party reexamination requests serves the same integrity, estoppel-enforcement, and conflict-screening functions the requirement serves in AIA trials, at negligible burden to any requester with nothing to obscure.

2. **Pair identification with certification and stated consequences.** The final rule should make explicit that identifications are subject to the certification obligations of 37 C.F.R. § 11.18(b) and the duty of candor, and should state the consequence of a material misidentification — for example, that the filing date of a request may be vacated or the request refused where the omission is material. An obligation without an articulated consequence invites the honor system the Commenter's record illustrates.

3. **Provide a mechanism for patent owners to contest identifications, resolved on the record.** The Office should specify how a patent owner may bring evidence that an identification is incomplete, and should commit to resolving such challenges in a reasoned, written determination in the file. In the Commenter's own proceeding, the challenge mechanism existed and functioned — the Board ordered TCH added. The final rule should ensure an equivalent path exists in reexamination, where the patent owner's participation is otherwise limited. The Office's own recent history supports building review into determinations of this kind: following *United States v. Arthrex*, the Office concluded that Board determinations warrant the availability of a second look and constructed the Director Review process to provide one.[14] The Commenter's real-party-in-interest determination predated that machinery and never received such review from any authority; the design lesson is prospective, and it applies squarely here: **where the Office requires an answer, it should also build the means to test the answer.**

4. **Apply the Office's functional real-party-in-interest standard.** The final rule should confirm that "real party in interest" carries the flexible, fact-dependent meaning reflected in the Office's precedential guidance — attentive to funding, formation, membership, and benefit — rather than a formalistic test satisfied by corporate structure alone. The Office's recent actions — restoring pre-institution identification requirements, withdrawing decisions that had relaxed enforcement, issuing guidance on anonymous requests, and holding that the identity of parties behind a petition can be dispositive — all point in this direction; the final rule should say so expressly.[15]

5. **Impose a continuing duty of correction.** Identifications should be required to be updated within a stated period upon any change in real parties in interest during the proceeding, as is familiar practice in AIA trials.

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[14]See United States v. Arthrex, Inc., 594 U.S. 1 (2021); USPTO, Director Review procedures (established July 2023, as subsequently modified).

[15]See USPTO, Patent Trial and Appeal Board precedential and informative decisions listings (as updated 2025–2026); USPTO guidance concerning anonymous requests for ex parte reexamination (Feb. 6, 2026).

6. **Make identifications available to those the disclosure is meant to protect.** The Commenter recognizes that the proposed rule would permit a requester to ask that its statement be kept confidential, with the Office excluding it from the patent and reexamination files. Disclosure to the Office alone is a genuine advance over the status quo: an identification the Office holds can be checked by the Office, and that alone defeats the pure honor system. But the value of identification is realized not only by the Office — it is realized by patent owners assessing estoppel and privity, by courts, and by future tribunals applying time-bar provisions. The final rule should provide, at minimum, that the identification is available to the patent owner subject to appropriate confidentiality protections, and should articulate the standard under which a confidentiality request will be granted, so that non-public treatment is a reasoned exception rather than a default.

The Commenter recognizes that this rulemaking concerns ex parte reexamination and does not — and cannot — alter the scope of judicial review of AIA trial institution determinations under § 314(d). Verify raises the reviewability of identifications not to ask the Office to exceed its authority, but because the design lesson of its record applies with full force within the Office's discretion here: **wherever the Office requires parties to say who they are, it should also build the means to test the answer.**

V. Anticipated Objections, Briefly Addressed

Burden. A requester acting for itself lists itself. The requirement is burdensome only in proportion to the complexity of the interests behind a request — which is precisely the information the rule exists to surface.

Anonymity interests. The Office has historically permitted anonymous ex parte requests, and some commenters may defend that tradition, as commenters did when the Office proposed a similar requirement in 2012 and, in the face of warnings about a chilling effect, did not adopt it. Fourteen years of subsequent experience supplies the evidence that was missing then: the Office itself now reports receiving a significant number of reexamination requests directed to patents previously challenged in inter partes or post-grant review proceedings — the precise pattern in which undisclosed identity and statutory estoppel collide.[16] Verify's record supplies the complementary case study: identification obligations carry real consequences — time bars, estoppel, conflict screening — and those consequences attach to identities. The Office's proposal reflects a judgment that these functions now outweigh anonymity in third-party requests; Verify's completed record supports that judgment with evidence rather than argument.

"An outlier case." The Commenter's record may be unusual chiefly in being complete — closed, public, and fully litigated, with no pending interest to discount. Disputes of this shape ordinarily remain obscured by confidential terms and live litigation postures. The Office rarely receives a finished specimen; that is what this comment contributes.

[16]See 91 Fed. Reg. 46,038 (recounting the 2012 rulemaking history and the comments then received); id. (Office's statement that it is currently receiving a significant number of ex parte reexamination requests directed to patents previously challenged in inter partes or post-grant review proceedings).

VI. Conclusion

Verify supports the proposed rule and urges the Office to adopt it with the refinements above. The Commenter's nine-year record — every page of it public, every adverse ruling acknowledged — stands for a single, modest proposition: identification requirements do their work only when someone is able to check the answer. The Office is asking the right question. Verify respectfully submits its file so the record of this rulemaking contains at least one complete answer.

Respectfully submitted,

VERIFY SMART CORP.

Verified by pdfFiller
08/21/2026

By: Tony Cinotti

Tony Cinotti

President and Chairman of the Board of Directors

Verify Smart Corp.