

**Advantages of Challenging ArrivalStar (and other NPE*) Patents
in the USPTO Rather than in Court**

1. **COST** – USPTO processes cost significantly less than litigation (~\$30K-\$75K vs. \$500K-\$1.5M), and can limit or curtail litigation costs.
2. **EXPERTISE** – The patent is reviewed by experts in patent law and the relevant technology, not by a lay jury and judge.
3. **PATENT NOT PRESUMED VALID** – In court, an issued patent is presumed valid. No such presumption exists before the USPTO, therefore, it is . . . (see #4)
4. **EASIER TO PROVE INVALIDITY** – The standard for proving patent invalidity before the USPTO is “Preponderance of the Evidence” (e.g., better than 50%); the standard in court is higher, “Clear and Convincing Evidence.”
5. **HIGH LIKELIHOOD OF SUCCESS** – Historically, ~93% of requests for USPTO reexamination are granted; 77%-89% of reviews result in either complete patent invalidity or narrowing of at least one claim. (USPTO statistics, 1981-2012.)
6. **GAIN LITIGATION CONTROL** – Can frequently stay litigation pending result of USPTO review (if requested early in or before discovery); simplifies or eliminates issues for litigation and provides guidance for court.
7. **ANONYMITY** – At least one USPTO patent review process (*Ex Parte* reexamination) allows requestors to remain anonymous.
8. **ARRIVALSTAR PATENTS ARE VULNERABLE** – Four ArrivalStar patents have already been invalidated in whole or in part, or narrowed in scope, via USPTO review. Substantially all ArrivalStar patents share a common basis and attributes.
9. **EVEN LOSING IN THE USPTO CAN AID YOUR LITIGATION CASE** – To avoid patent invalidation, ArrivalStar generally must argue that their patent scope is narrow rather than broad; those same arguments can injure their infringement claims in court.
10. **ENCOURAGES FAVORABLE SETTLEMENT** – Lost patent scope affects numerous ongoing and future litigation actions, potentially greatly reducing collective damages eligibility and license opportunity incentives for ArrivalStar.

(*NPE = ‘Non-Practicing Entity’ that holds rights to, but does not practice, patented inventions.)

Comparing USPTO Patent Challenge Processes

	USPTO Patent Review Processes			Litigation
	Post-Grant Review	Ex Parte Reexamination	Inter Partes Review	
Timing to File	After patent issues; until nine months after patent issues. Cannot file while civil invalidity action is pending.	After patent issues.	Nine months after patent issues, or after conclusion of Post Grant Review, whichever is later. (But not during pending civil invalidity action.)	After patent issues; until six years after patent expires (for pre-expiration actions).
Requester	Any third party			Plaintiff – controls venue
USPTO Fee	\$35,800 request fee, \$800 for each claim exceeding 20 total.	\$17,700 request fee, plus fees for each ‘excess claim.’	\$27,200 request fee, \$600 for each claim exceeding 20 total.	No USPTO fees, except perhaps for copies of unpublished file histories and other documents.
Threshold for granting request	‘More likely than not’ that at least one challenged claim is unpatentable.	‘Substantial new question of patentability’	‘Reasonable likelihood of prevailing’ on at least one claim.	Survive terminating motions.
Requester Involvement	Throughout	Request only; no further involvement.	Throughout	Throughout
Who decides?	USPTO Patent Trial and Appeal Board (PTAB)	USPTO Examiner	USPTO PTAB	Judge/jury
Anonymity?	No	Yes	No	No
Litigation Estoppel?	Yes – Requestor and all privies; on any ground petitioner “raised or reasonably could have raised.” Broader than IPR.	No	Yes – Requestor and all privies; on any ground petitioner “raised or reasonably could have raised.”	N/A
Duration	Generally 12-18 months; extendable by 6 months for good cause.	Average ~25 months	12-18 months; extendable by 6 months for good cause.	Generally 2+ years, unless terminated by settlement or grant of a motion to terminate.
Bases for challenge	Nearly any patentability basis (except ‘best mode’).	Novelty and obviousness.	Novelty and obviousness.	Generally all, unless precluded by estoppel.
Evidence allowed	Patents and printed publications; discovery directly related to factual assertions by either party.	Patents and printed publications either not previously considered, or considered for a different reason.	Patents and printed publications; limited discovery (depositions of witnesses submitting affidavits, etc.).	Generally all.
Requester’s Burden of Proof	‘Preponderance of the evidence’			‘Clear and convincing evidence’