November 16, 2020

Reference: Comments Regarding US PTO PTAB

To Whom It May Concern:

I am a Mechanical Engineer, 1974 Kansas State University, with an MBA, 1985 University of Texas at San Antonio, Texas. I have worked as an engineer since 1974 for John Deere (1974-1980 with 6 patents) and for Southwest Research Institute (1980-2007 with 5 patents). I have been a consulting engineer since 2008 and would not consider pursuing a patents because it would be a waste of money.

Innovation is being hindered in the United States because only large corporations can afford to protect patent rights. What is needed is a patent system that grants patents only for true inventions and a judicial system that protects the rights that should stem from patents. Once issued, patents should not be able to be voided unless prior art is discovered. No arguments for obviousness should be allowed once a patent is issued. Infringement should be able to be immediately stopped by injunction without cost to the patent holder with damages paid to the patent holder through court litigation.

The PTAB should review all patents BEFORE THEY ARE ISSUED.

Only when the USPTO makes inventing and getting a patent much more difficult than defending a patent will broad based innovation once again contribute to the economic development of the United States.

I also support the following suggestions developed by the US Inventor organization.

PREDICTABILITY
Regulations must provide predictability. Stakeholders must be able to know in advance whether a petition is to be permitted or denied for policy reasons. To this end regulations should favor objective analysis and eschew subjectivity, balancing, weighing, holistic viewing, and individual discretion. The decision-making should be procedural based on clear rules. Presence or absence of discrete factors should be determinative, at least in ordinary circumstances. If compounded or weighted factors are absolutely necessary, the number of possible combinations must be minimized and the rubric must be published in the Code of Federal Regulations.

II: MULTIPLE PETITIONS
a) A petitioner, real party in interest, and privy of the petitioner should be jointly limited to one petition per patent.
b) Each patent should be subject to no more than one instituted AIA trial.
c) A petitioner seeking to challenge a patent under the AIA should be required to file their petition within 90 days of an earlier petition against that patent (i.e., prior to a preliminary response). Petitions filed more than 90 days after an earlier petition should be denied.
d) Petitioners filing within 90 days of a first petition against the same patent should be permitted to join an instituted trial.
e) These provisions should govern all petitions absent a showing of extraordinary circumstances approved by the Director, Commissioner, and Chief Judge.

III: PROCEEDINGS IN OTHER TRIBUNALS
a) The PTAB should not institute duplicative proceedings.

b) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner and the court has neither stayed the case nor issued any order that is contingent on institution of review.
c) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner with a trial is scheduled to occur within 18 months of the filing date of the petition.
d) A petition should be denied when the challenged patent has been held not invalid in a final determination of the ITC involving the petitioner, real party in interest, or privy of the petitioner.

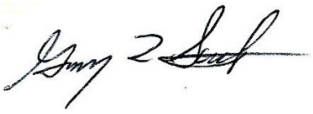
IV: PRIVY

a) An entity who benefits from invalidation of a patent and pays money to a petitioner challenging that patent should be considered a privy subject to the estoppel provisions of the AIA.
b) Privy should be interpreted to include a party to an agreement with the petitioner or real party of interest related to the validity or infringement of the patent where at least one of the parties to the agreement would benefit from a finding of unpatentability.

V: ECONOMIC IMPACT

Regulations should account for the proportionally greater harm to independent inventors and small businesses posed by institution of an AIA trial, to the extent it harms the economy and integrity of the patent system, including their financial resources and access to effective legal representation.

Respectfully submitted,



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