

**EATEN BY  
PATENT SHARKS**



**360Heross**

All Around You @ [360Heross.com](http://360Heross.com)

**360Heross was recognized for its patented \$10,000 prototype 360 video gear that was eaten by a Great White Shark when filming for Shark week.**

**GoPro, copied 360Heross patented products, made millions, and wanted the 360Heross patents for FREE!**



**360Heross**

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# Big corporations deliberately attack small businesses to destroy inventors' innovations via PTAB abuse.

## Patent, IPR/PTAB Abuse of the USPTO System

360Heros started from its 3-car garage in Western New York. Recognized in the Guinness Book of World Records for Shooting the First HD 360 Video on the Top of Mount Everest, Creating the first 360 video music video concert at Paramount Studios with BECK and Ford Lincoln Mercury and then having its \$10,000 prototype gear accidentally eaten by a Great White Shark when filming for Shark Week.

A family business grown from years of service in aerial blimp photography and videography is being destroyed because GoPro; copied its patented products, made millions, and is now doing whatever it can do via the PTAB and challenging 360Heros brought and paid for patents, which were approved by the USPTO, yet now being destroyed by the same organization, and killing small business innovations. 360Heros paid thousands of dollars thinking its patents were protected yet, in reality, the USPTO and the PTAB doesn't help the inventor survive but to only aids big corporations in destroying American Business Innovation. And here is how...

***A direct written quote from GoPro Lawyers, "even if 360Heros is not paying attorneys' fees in the Delaware litigation, it will soon have to incur and pay costs, including for among other things, experts, and discovery. Likewise, to the extent that its attorneys who has been retained on contingency, will be unlikely to recover on its investment in the case."***

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***The mission has nothing to do with patent innovation but only the means to finds ways to drive up litigation costs, and take advantage of the patent system, so the inventor can never afford to survive. Baseless motions to transfer, motions to stay, IPR/PTAB, anything to drive up litigation costs and extend time to kill the inventor. Is this what the patent office is all about? Why is the patent office helping big business kill American innovation?***

When GoPro filed an IPR/PTAB on 360Heros, they knew the case was past the one-year time bar constraints but filed it anyway. The IPR/PTAB committee granted the request and never took this into consideration. 360Heros then requested a rehearing and won the decision. However, GoPro didn't stop, they appealed the decision then five months later **NEVER** showed up for the appeal. GoPro might have lost the PTAB and the appeal however in the end won because it costed 360Heros thousands to defend and put the original patent case on hold for another 1.5 years.

360Heros has been fighting for 6 years, spent 3.9 million! Everything I own, has been put into this patent lawsuit and it's expected to take another 4 years. Millions of dollars spent by 360Heros (my entire retirement savings) all because the USPTO never fights for the inventor. Why? 360Heros will end up closing its doors. 360Heros loses everything because of corporate greed with no protection from USPTO. So why even get a patent in the first place?

360Heros didn't bring on this fight with GoPro, GoPro started it, and used its vast financial resources to furiously file an IPR/PTAB which the PTAB approved without any real consideration. The attorneys admit that its goal is to delay and run 360Heros out of money and force 360Heros into going out of business, then GoPro walks away with 42 million. Is this what the USPTO is all about? Inventors will never survive this deliberate abuse.

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360Heros recommends rules to govern the institution decision incorporate the following principles:

### **1. 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.

### **2. MULTIPLE PETITIONS**

- 2.1. A petitioner, real party in interest, and privy of the petitioner should be jointly limited to one petition per patent.
- 2.2. Each patent should be subject to no more than one instituted AIA trial.
- 2.3. 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.
- 2.4. Petitioners filing within 90 days of a first petition against the same patent should be permitted to join an instituted trial.
- 2.5. These provisions should govern all petitions absent a showing of extraordinary circumstances approved by the Director, Commissioner, and Chief Judge.

### **3. PROCEEDINGS IN OTHER TRIBUNALS**

- 3.1. The PTAB should not institute duplicative proceedings.
- 3.2. 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.

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- 3.3. 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.
  - 3.4. 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.

#### **4. PRIVY**

- 4.1. 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.
- 4.2. 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.

#### **5. ECONOMIC IMPACT**

- 5.1. 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.

Thank you for reviewing my comments and understanding my support to regulating the PTAB.

**Sincerely,**

*/michaelkintner/ 11-10-2020*

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