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Request for Comments on Discretion to Institute Trials Before the Patent Trial and Appeal Board

Comment On: PTO-C-2020-0055-0001
Discretion to Institute Trials Before the Patent Trial and Appeal Board

Document: PTO-C-2020-0055-0086
Comment from Zond LLC

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General Comment

Zond LLC is a small tech company located in Massachusetts building plasma generators for the advanced thin-film market. Zond's technology was infringed by many OEMs and End Users. We exercised our legal rights against a few tech giants after many failed attempts to seeks a fair licensing deal. Instead of having a fair trial in district court with jury deciding whether we are entitled to a licensing deal, we ended up having to stay all our cases in the district court and defending our patents in the PTAB. Despite what I was reading in the news about the PTAB, I still had faith in the system that we will prevail after a fair examination of our patents. We ended up having to defend all 10 patents with 371 claims against 124 IPRs. After an extremely expensive and exhaustive journey attempting to defend our issued patents, the PTAB determined all claims in all 10 patents are invalid. Resulting in 100% invalidation of all claims keeping in mind that these patents were examined by 6 different examiners. The fact the the USPTO did not stand up to defend us or even defend their own work against these IPRs is a travesty and shamefull. I do believe that the USPTO should protect and defend the rights of all small inventor in the US. Innovation that could shape our future can only come from small inventors with disruptive technology and not big tech. Therefore, the USPTO must protect the rights of small inventors to ensure that the USA continues to lead the world with innovation and creativity in the next millennium. To ensure that the small inventor has a chance; I propose the

following:

I: 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.