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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-2020-0055-0133
Comment from Barco Production Co.

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General Comment

My name is Richard Brunner and I have three patents and have started our business, Barco Production Co., to handle the production of the Barco Vac Sander here in Pa.

How are Small Businesses supposed to create jobs here without any Patent Protections against Knock-Offs and Infringement? On addition to this, the America Invents Act of 2011, threw out our Log Books which prove our work, started "First-to-File" which favors Big Business, and started PTAB's "if your competition objects!". The Patent System was founded to "Protect" Inventors and their inventions so we are able to start businesses and create 70% of our jobs. The America Invents Act of 2011 violates our Constitutional Right to a 20 year exclusive Right-to-Produce and destroys patents and jobs. Politicians charged with "Setting the Conditions for Prosperity", have been Tampering with the US Economy and Patent System which is a National Security Issue. Inventors didn't ask for this Act. It was clearly a political hatchet job on innovators.
Short of doing away with this disastrous Meat Grinder of the American Invents Act completely,

PTABs should be shut down. Having your competition object is at the Heart of Disruptive Innovation. You can't protect stuck old companies. Our own small businesses and inventions MUST be Protected, and we need help to do this.
If we can't eliminate this horrible act completely along with PTABs, they must be modified to protect small businesses. Small Businesses can't afford to protect ourselves from this, let alone from Repeated Attacks.
I urge adoption of regulations to govern the discretion to institute PTAB trials consistent with the following principles.
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.

We've got to have Strong Patents and Protections to enable Small Businesses to bring us the new products we need and to create jobs here in the US.
Sincerely,
Richard Brunner
Barco Production Co.