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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-2020-0055-0131
Comment from John Gross.

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General Comment

I am inventor on more than 100 patents, including US 6782510, which covers content/spam filtering has been cited by the PTO more than 200 times, including in prosecutions by Apple, IBM, Microsoft, Google, etc. In 2010, when I attempted to license the patent, I was met with industry-wide hostility and aggressive legal tactics to deprive me of the benefits of the patent grant from the PTO. I was only through litigation that I was finally able to achieve meaningful recovery from the very large, deep pocketed defendants.

The IPR regime/era has turned everything upside down, and made it far too easy for big companies and their hourly work hungry lawyers to attack patents, often using the same prior cited in the file history. All they have to do is speculate that if the Examiner did not write about it in the file history, it was not "considered" by him/her. This creates a never ending cycle of petitions that are too easy to grant because of clever draftsmanship, and not because they are meritorious on the technical or legal aspects of the case.

The PTO should continue to retain some discretion about denying these kinds of cases that are clearly trying to get second/third bites at the apple by attacking the original examination

process. In addition the PTAB should start considering whether it is equitable to allow IPRs when the petitioner was put on notice of infringement, and not just whether they were actually sued. Many small inventors can't get funding or representation, and large companies should not be allowed to sit on a challenge for 3-4 years, only to trot it out when it suits them.