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

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Discretion to Institute Trials Before the Patent Trial and Appeal Board

Document: PTO-C-2020-0055-0273
Comment from Daphne Hecate

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General Comment

I oppose the U.S. Patent and Trademark Offices proposed regulations changing the nature of PTAB trials., Docket No. PTO-C-2020-0055.

First, if the regulations are adopted, people and companies wont be able to challenge patents through the IPR process when they need to. The PTAB will be able to deny IPRs simply because of the timing of district court cases. This will allow patent holders to game the system and file strategic litigation to avoid IPRs. The PTAB should not give any consideration to the status of court proceedings when deciding whether to initiate an IPR.

Second, the regulations limit the number of petitions that can be filed against the same patent. That makes no sense. There will often be multiple challenge to the same patent, especially if its being asserted aggressively. Different challenges raise different evidence and sometimes address different claims. Congresss intent in the America Invents Act was to reduce the amount of unnecessary patent litigation by allowing the PTAB to weed out invalid patents before a trial takes place. There should be no arbitrary limits on the number of petitions per patent.

The rights of technology developers and users are no less important than the rights of patent owners. When patents are evaluated in federal court, nearly half of them are found to be invalid.