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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-2020-0055-0476

Comment from Kenneth Stanwood

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General Comment

RE: docket number PTOC20200055, Request for Comments on Discretion To Institute Trials Before the Patent Trial and Appeal Board

As a named inventor on more than 150 issued US patents I support Director Iancus actions to stop abuses of the Inter Partes Review process. I respectfully submit the following comments.

Questions 1 and 2:

Q1: Should the Office issue a rule with a case specific analysis, such as in General Plastics, for deciding whether to institute on claims that have previously been challenged in another petition.

Q2: Alternatively, should the Office (a) altogether disregard previous challenges or (b) altogether decline to institute if the claims have been previously challenged?

I recommend yes to question 1. The Office should adopt rules having the goal of limiting the number of times a patent can be challenged, whether in IPR, district court or any other proceeding, such as ex parte reexamination. However, if the director ultimately decides against question 1, I recommend no to question 2(a) and yes to question 2(b).

Questions 3 and 4:

Q3: Should the Office issue a rule with a case specific analysis for deciding whether to institute more than one petition filed at or about the same time on the same patent?

Q4: Alternatively, should the Office (a) altogether disregard the number of petitions filed or (b) altogether decline to institute on more than one petition?

I recommend yes to question 3. The Office should adopt rules having the goal of limiting the number of times a patent can be challenged, whether in IPR, district court or any other proceeding, such as ex parte reexamination. However, if the director ultimately decides against question 3, I recommend no to question 4(a) and yes to question 4(b).

Questions 5 and 6:

Q5: Should the Office issue a rule with a case specific analysis, such as in *Fintiv*, for deciding whether to institute on a patent that is or has been subject to proceedings in district court or the ITC?

Q6: Alternatively, should the Office (a) altogether disregard such other proceedings or (b) altogether decline to institute if the patent is or has been subject to other proceedings unless the district court or ITC has indicated that it will stay the action?

I recommend yes to question 5. The Office should adopt rules having the goal of limiting the number of times a patent can be challenged, whether in IPR, district court or any other proceeding, such as ex parte reexamination. However, if the director ultimately decides against question 5, I recommend no to question 6(a) and yes to question 6(b)

Question 7:

Are there any other modifications the Office should make in its approach to serial and parallel AIA petitions, proceedings in other tribunals, or other use of discretion in deciding whether to institute an AIA trial?

The Office should adopt rules whose effect is to limit the number of times a patent can be challenged, whether in IPR, district court or any other proceeding, such as ex parte reexamination.

Sincerely,
Kenneth Stanwood