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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-2020-0055-0289
Comment from HutchinSolutions LLC

Submitter Information

Name: Christy Hutchins
Address:
545 Selfridge Road
Gansevoort, NY, 12831
Email: czhutch@roadrunner.com
Phone: 5187430807
Fax: 5187430807
Organization: HutchinSolutions LLC

General Comment

I am Christy Z Hutchins, a solopreneur/inventor who has 1 issued patent which took 8 LONG years through various filings, office actions, filings, an won appeal to achieve.
Going into the process, I knew about 'Patent Trolls', which was a terrible loop hole that nefarious people were using to harass businesses and extort fees vs going into litigation; it was easier to pay the troll than to defend. The original legislation was formed to combat this (as I understand). However, the PTAB, as I understand it can just invalidate an inventor's patent without the original examiner's involved and is often reviewed by people with no knowledge in the area. I would loose my faith in America if my patent was just 'invalidated' because a big business decided they wanted to make my product or infringe on my patent and it was easier (than partnering with the inventor through licensing and paying royalties) to get their legal team to go to the PTAB to do it! All well intended fixes can be manipulated and this appears to be what is happening now. If not corrected, No inventor without partnerships who have deep legal pockets will invent; knowing what I do now about what has been happening at the PTAB, I would never have invested to file/work to get my invention patented. If there is no financial

incentive for an inventor, why would they spend thousands of hard earned money (made in their day job) to submit their inventions for a patent? If this is not fixed, this will KILL American Innovation & the Inventor/Entrepreneurial spirt on which Americas' success has been built. Big business with deep legal pockets should NOT be allowed to steal inventor's years of work, investment, and ingenuity. Protect the individual inventor/small business and correct these injustices!

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.
Best Regards,