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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-2020-0055-0284
Comment from Ian Osborn.

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General Comment

I believe that big business should not be allowed to invalidate any patent, individuals as myself whom have had an idea and have gone thru the process of achieving a patent US7976189B2 and spend ones hard earned money to get their shouldn't have to worry that a big business can come in and have the idea (patent) (stolen) invalidated just so that they can reap the rewards of infringing and make the product without any repercussion to them. I am the Inventor and very proud of the fact that My idea in the eyes of the USPTO was granted the patent. which by stating that I am the sole owner of the Idea and that I should be able to make something of it for the world to see and use. Currently my patent is being infringed upon by multiple Very Big Business and trying to get them to stop would subject me to having my Patent Invalidated just so that they can continue to make money and shut me out completely, let alone cost me huge a amount of time and money which I don't Have . I am a single person Businesses man. I believe that America was built on the backs of single inventors and that should remain and be protected, big business should be held accountable for their greed and stopped.

Thank You for your Time in this matter
Ian Osborn.

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.

Congress is protecting big corporations instead of actual innovation.