

# PUBLIC SUBMISSION

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**Docket:** PTO-C-2020-0055

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-2020-0055-0423

Comment from Paul Lambert

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## Submitter Information

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## General Comment

Randy Landreneau explains how we can stop unfair patent invalidations by filing official comments In support of regulating the Patent Trial and Appeal Board.

DEADLINE NOVEMBER 19, 2020

At US Inventor we have been fighting and will continue to fight to restore the rights of inventors in America. Our efforts to end the unfair attacks on inventors at the Patent Trial and Appeal Board (PTAB) are bearing fruit. The PTAB is the division of the Patent Office created by the 2011 America Invents Act, which has invalidated 84% of the 3,000 previously issued patents they have reviewed.

The USPTO has opened up an official Request for Comments on regulating the PTAB. They are asking YOU what they should do!

Comments are due by November 19.

If you are an inventor or business owner your participation is crucial. We have worked hard over many years to open up this opportunity - please help us capitalize on it!

Should large corporations be allowed to use the PTAB as a weapon to increase cost and delay justice for independent inventors and small businesses?

Should the PTAB allow multiple attacks against the same patent?

Should the PTAB undermine the regular courts and trial by jury with duplicative proceedings and conflicting outcomes?

## FILE YOUR COMMENT

Please include the below statement when you file your comment. You can copy it verbatim or restate in your own words.

[INSERT HERE ---> your own introduction statement, including your background, business, inventions, patents, etc. ALSO: be sure to enter your company name (if applicable) in the Organization field when you visit the Federal Register site.]

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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.