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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-2020-0055-0762
Comment from J Hardin

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General Comment

NOTICE OF PATENT TROLL RHETORIC
As a follow up to my previously provided comment, please note that when reviewing the public comments of others that there exists in them a swarm of patent troll rhetoric. Also notice the dates these patent troll rhetoric comments were submitted and received, which is detailed below.

As opposed to the patent troll rhetoric one may find in the comments, the comments from Inventors are legitimate and can be tracked down to real people.

Recall, our founders wrote the Patent Clause of the U.S. Constitution on the proper belief that the progress of science and useful arts comes from "Inventors". The People believe it is this group -- the Inventors -- who need to have the exclusive right to their discoveries secured. Inventors are not "patent trolls".

Additionally, the People by way of Congress in the America Invents Act enacted legislation to "protect[] the rights of small businesses and inventors from predatory behavior that could result in the cutting off of innovation." Sec. 30. Sense of Congress, Pub. L. No. 112-29, 125 Stat. 284 (2011). This Act additionally provides the Director the means and authority to create rules and regulations to do exactly that -- protect the rights of small businesses and inventors from predatory behavior. Not from "patent trolls" and from fairy tales of scary monsters, but from "predatory

behavior". Such behavior exists today in the gaming of the IPR system, and, as the Inventors have expressed here, we demand predictable objective regulations.

- The original deadline for submitting comments pursuant to 85 FR 66502 was November 19.

- On November 13, the USPTO provided a bulletin stating that the deadline to submit comments was extended to December 3. See
https://content.govdelivery.com/accounts/USPTO/bulletins/2ac6bc1 .
(See attached: 20201113_USPTO_Bulletin_Deadline_Extended.pdf)

- Interestingly, on November 12, just one day prior to this bulletin, an article was posted on the Electronic Frontier Foundation's ("EFF") website. That article proclaimed the patent troll narrative and invited its readers to submit comments against the USPTO's proposed rule changes.
See EFF Article:
https://web.archive.org/web/20201112220202/https://www.eff.org/deeplinks/2020/11/tell-trumps-patent-office-director-dont-make-permanent-rule-changes-now
(See attached: 20201112_EFF_Article_Tell_Director_Dont_Make_Permanent_Rule_Changes.pdf)

- Also interestingly, if one a) searches the public comments for the word "troll", b) sorts those search results by posted date, and then c) checks the actual "Received Date" on each comment, one will find that the swarm of "patent troll" rhetoric began showing up in the comments on November 12 and thereafter. Prior to this date, the patent troll rhetoric was absent.

This is not the first time hijacking of public comments on a government site has occurred. A similar event occurred in 2017 with net neutrality, and although the EFF created a tool for submitting comments directly from their website and were pinned for enabling the fake comments and still denied ownership, those comments indeed did occur nonetheless.

These links provide some insight as to that 2017 website comment hijacking event:
http://web.archive.org/web/20170608000024/http://nlpc.org/wp-content/uploads/2017/05/Fake-pro-net-neutrality-comments-0530.pdf
http://web.archive.org/web/20170605020040/http://nlpc.org/2017/05/31/analysis-one-fifth-pro-net-neutrality-fcc-public-comments-fake/
See attached:
- Analysis_One-Fifth_of_Pro-Net_Neutrality_FCC_Public_Comments_Are_Fake.pdf
- Fake-pro-net-neutrality-comments-0530.pdf

With respect to the comments here pursuant to 85 FR 66502, most of these "post-original-deadline" comments that preach the patent troll narrative are either single sentence/paragraph comments, or they use the "Sample Comment" language provided in the EFF article referenced above. Many of these comments are anonymous, many do not even include their city/state along with their comment, and all of them rail against "patent trolls".

I remind the USPTO of the proper stance on the patent troll narrative, as USPTO Director Andrei Iancu advanced here:
https://www.ipwatchdog.com/2018/10/19/iancu-risk-takers-patent-troll-narrative-orwellian-doublespeak/id=102474/
and as discussed here:

https://www.ipwatchdog.com/2019/03/20/cta-preaches-patent-troll-fairy-tale-chat-iancu-sxsw/id=107539/

See attached:
- 20181119_IPWatchDog_Iancu_lauds_risk_takers_calls_patent_troll_narrative_Orwellian doublespeak.pdf
-
20190320_IPWatchDog_CTA_Preaches_Patent_Troll_Fairy_Tale_in_Chat_with_Iancu_at_SXSW.pdf

Sincerely,
Jeff Hardin

Attachments

20201113_USPTO_Bulletin_Deadline_Extended

20201112_EFF_Article_Tell_Director_Dont_Make_Permanent_Rule_Changes

Analysis_One-Fifth_of_Pro-Net_Neutrality_FCC_Public_Comments_Are_Fake

Fake-pro-net-neutrality-comments-0530

20181119_IPWatchDog_Iancu_lauds_risk_takers_calls_patent_troll_narrative_Orwellian doublespeak

20190320_IPWatchDog_CTA_Preaches_Patent_Troll_Fairy_Tale_in_Chat_with_Iancu_at_SXSW

Director Andrei Iancu lauds risk takers, calls patent troll narrative 'Orwellian doublespeak'

By Gene Quinn
October 19, 2018

Print Ar

EDITORIAL NOTE: What follows are the remarks as prepared for delivery by USPTO Director Andrei Iancu at the Eastern District of Texas Bar Association Inaugural Texas Dinner on October 18, 2018. During his speech, one of his best to date, Iancu discusses how the patent system is currently suppressing risk taking, and how in his opinion the patent troll narrative is simply Orwellian doublespeak. Director Iancu's speech is reproduced below in its entirety.

"Remarkably, in what I believe amounts to Orwellian 'doublespeak,' those who've been advancing the patent troll narrative argue that they do so because they are actually pro-innovation. That by their highlighting, relentlessly, the dangers in the patent system, they actually encourage innovation. Right!"

I'd like to thank the Eastern District of Texas Bar Association for inviting me to speak with all of you tonight. It's such an honor for me to be here. Over the years, I had many cases—and so many great memories—in this district, in its courts, in front of its judges, and alongside (and adverse to) its local lawyers.

And it is especially great to be here in the heart of “Cowboy Country,” in this amazing venue. Having gone to UCLA as an undergrad in the 1980s, at a time when we were led by Troy Aikman, the Dallas Cowboys have a special place in my heart. Us Bruins will always take pride in getting him ready for his career with the Cowboys!

But frankly, no matter what your favorite team is, I suspect it would be very hard to tour this magnificent stadium, as many of us did earlier, and not leave tonight a fan. Just look at where we are sitting right now. How many people can say that they had dinner right here, in this world-class, state-of-the-art-facility that serves as a venue for many of our nation’s largest sports and entertainment events?

This is a real-life fairy tale.

But tonight, I’d like to tell you another fairy tale. A darker tale! And because this is such a fun venue, and because it is a bit late in the evening, we will try something slightly different—yet critically important to our patent system.

You all know this tale:

Once upon a time, in a land far, far away… There was a lovely little girl. She lived in a peaceful village at the edge of a scary forest. Everyone loved the little girl, and she was especially close to her grandmother.

Her grandmother made her a red cape, and, as you all know, the little girl loved it and wore it so much that she became known as “Little Red Riding Hood.”

One day, Little Red Riding Hood decided to go visit Grandma. But Grandma did not live in the peaceful village. Instead, she lived in a small cottage in the scary woods. So, as Little Red Riding Hood set on her way, her mother cautioned: “Go straight to Grandma’s house. Don’t

dawdle along the way, and—whatever you do—do NOT go off the path! The woods are dangerous."

But after entering the woods and noticing some flowers along the way, Little Red Riding Hood made a big mistake in forgetting her mother's admonition. She left the path and picked a few flowers, watched butterflies, listened to the frogs croaking and then picked a few more.

And then she encounters a stranger. At this point, Little Red Riding Hood makes her second big mistake: she begins to speak with the stranger, who just happens to be a Big Bad Wolf.

Then she makes a third big mistake: she reveals Grandma's address. So the Big Bad Wolf runs ahead of her, goes to Grandma's house, pretends to be a friend, gets into the house, then eats Grandma.

When the little girl arrives at Grandma's house, she sees the wolf but thinks it's Grandma because he disguised himself.

And the little girl says—as you all know—"Why Grandma, what big eyes you have!"

"All the better to see you with, my dear!"

And, "What big ears…"

And, "Why Grandma, what big teeth you have!"

"All the better to eat you with, my dear!"

Then, the Big Bad Wolf proceeds to eat Little Red Riding Hood.

It's a tragic, horrible story.

In medieval times, before the Brothers Grimm retold it with a happy ending, the story ended there, with both Little Red Riding Hood and Grandma eaten. A complete tragedy, and absolute disaster.

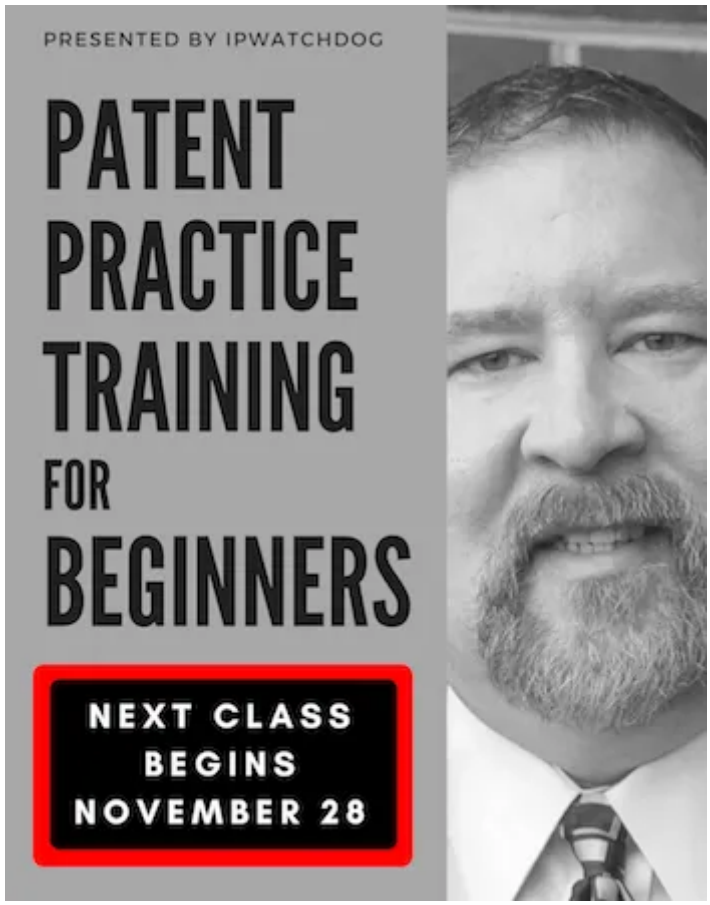
Still, to this day, this remains a very popular fairy tale. But what's the real meaning of it?

There are actually many meanings that people banter about, but the crux of the story, in my view, is that little children growing up in medieval villages must stay in the village. Do not venture into the woods, and if you do, for Heaven's sake, don't take any risks. Don't speak with strangers. And most importantly, don't wander off the path! Keep your head down, and stay in

your lane! Because if you don't, all disaster breaks loose and you might get devoured by the Big Bad Wolf.

Now, this may have been an appropriate lesson for Europeans in the Middle Ages, but what's surprising is to witness this type of message being delivered nowadays, in 21st century America, with respect to innovation and intellectual property protection.

As you all know, for many years now the dialogue surrounding IP has devolved into a discussion about—shall we say—scary monsters? You know, the green creatures that dwell under bridges or lurk in the forests and are poised to terrorize anyone who dares take the risk of venturing out into the innovation ecosystem.



The goal of this narrative is the same as that of stories such as Little Red Riding Hood: don't leave the village. Don't take risks. Stay in your lane! Because if you do take risks, if you do have the gall to get out of your lane, you may encounter big bad wolves or other scary monsters. And horror of horrors, you may encounter "patent trolls!"

What an odd message to deliver in the 21st century. What an odd message to deliver in America in particular, a country of risk-takers, entrepreneurs and inventors. An odd message indeed, especially given the incredible success of the American patent system over time.

Think about it. This past June, the USPTO issued patent number 10 million and celebrated that milestone with a signing ceremony at the White House with President Trump. This is only the second patent signed by a sitting president since John Quincy Adams, and represents the importance IP has achieved in today's economy.

This is 10 million patents in just over 200 years. And this is not just a number. Though sure enough, 10 million is a nice, round number. But more importantly, 10 million is the accumulation of creativity of such magnitude and concentration the likes of which humanity has never seen.

Human civilization has existed for thousands and thousands of years. Greeks, Romans, Hebrews, Ancient Chinese, Egyptians, Aztecs, and countless other societies across the world and across time. And despite millennia of human existence, just a couple of hundred years ago, we would have arrived here by horse and buggy, just like they were doing thousands of years ago. We would be having this dinner by candlelight or moonlight, just like they were doing thousands of years ago. And anesthesia for surgery was still just a shot of whiskey. Or two.

Despite millennia of human existence, the state of the human condition when our country was founded was about the same as it was in ancient Rome. The tremendous progress we take for granted today has mostly been made over the past 200 years, and mostly with American innovation.

Lots of factors go into that success, obviously, and we cannot trivialize any of them. But I believe that the uniquely important and history-defining factor is the United States Constitution, and the inclusion in it of IP rights.

In fact, in the body of the Constitution itself (without the Amendments), the word “right” appears only once. It is in Article 1, Section 8, Clause 8, granting the Congress power “to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

The only time the word “right” appears was to secure intellectual property rights. It was that important to our founders. And they were right.

Backed by our patent system came unprecedented development. For the American patent system democratized invention. Anyone could participate. No need to be friends with the Crown. No need to be wealthy or to have a patron or, frankly, any funds at all. Our founders purposefully ensured that our system would be open to all.

Anyone could invent in America and everyone was incentivized by our constitutional patent system to do so. And incentivized they were. And invent they did. And the results have been remarkable.

Our constitutional patent system has given rise to a spark of ingenuity and development the magnitude of which humanity has never before known. Electricity and the telephone; the automobile and the airplane; recombinant DNA and DNA synthesis; the microprocessor, genetics and cancer treatments. And so much more. And all of it done with American patents.

Edison, Bell, and the Wright Brothers; Boyer and Cohen and Caruthers; Ted Hoff and Frances Arnold. These are inventors whose work we should celebrate. And theirs are the stories we should tell. Not scary monster stories.

Repeatedly telling “patent troll” stories is indeed odd, especially when they’re being told to the people who have been responsible for the greatest advances in human history.

The narrative must change. And, at least as far as the USPTO is concerned, it has now changed.

We are now focusing on the brilliance of inventors, the excitement of invention, and the incredible benefits they bring to all Americans and to the world.

Take, for example, Bob Metcalfe, currently a professor of innovation and Murchison Fellow of Free Enterprise at the University of Texas in Austin.

By the age of 10, Bob knew he wanted to become an electrical engineer and attend MIT. He did. And followed that up with a master’s and Ph.D. from Harvard. In 1972, Bob began working at Xerox’s Palo Alto Research Center, where he met electrical and radio engineer D.R. Boggs.

With Boggs, Bob invented what came to be known as the Ethernet, the local area networking (LAN) technology that turns PCs into communication tools by linking them together. Today, more than a billion Ethernet-based devices are shipped every year. And then, in 1979, at the height of his career, Bob took a huge risk and left the comfort of Xerox and founded 3Com Corporation.

An inventor on many U.S. patents, Bob was awarded the National Medal of Technology by President George W. Bush in 2003 for his leadership in the invention, standardization, and commercialization of Ethernet. And in 2007, he was inducted into the National Inventors Hall of Fame.

Bob told us recently: “Rapid execution and patents are probably the two major defense mechanisms against the vicious status quo, which is out to crush you.”

Innovation and IP protection have indeed always been America’s mechanisms for progress in the face of the “vicious status quo.”

Take as another example Susann Keohane, IBM Global Research Leader for the Aging Initiative, another Texas-based inventor. Her inventions combine cognitive technology, the Internet of Things, and other emerging technologies to improve quality of life for people with disabilities and the aging population.

Susann is an IBM Master Inventor who holds 114 U.S. patents. And, importantly, she told me she is working on more!

This is the American patent system. These are the heroes who have taken risks to make something new and to change the world. Theirs are the stories that must drive our patent policies.

Because in this country, we want people to take risks. Like Susann and Bob, we want folks to leave their comfort zones and step into the forests of discovery and innovation. We want folks to step out of their lanes and try big, bold, new things. And scaring them with ugly monster stories does precisely the opposite; it drives towards policies that inhibit innovation.

Remarkably, in what I believe amounts to Orwellian "doublespeak," those who've been advancing the patent troll narrative argue that they do so because they are actually pro-innovation. That by their highlighting, relentlessly, the dangers in the patent system, they actually encourage innovation. Right!

After hearing about the Big Bad Wolf eating Little Red Riding Hood and her Grandma, would kids be more eager to go into the woods and more eager to take risks? Come on! What encourages more innovation? Susann Keohane, Bob Metcalfe, Thomas Edison, the Wright Brothers, Frances Arnold—or scary monster stories?

What encourages more folks to take risks and become entrepreneurs and inventors? Is it stories highlighting the success of risk-taking and the personal and public gratification of invention, or is it stories highlighting green monsters under bridges and the faults in the patent system?

Look, people are free to express any point of view, and they can certainly advocate for weakening our patent system. But they should be up front about it. Those who spend their time and money relentlessly preaching the dangers of monsters lurking under the innovation ecosystem, and who work exclusively to identify only faults in the system, are unconvincing when they argue that they are doing so for purposes of increasing innovation.

Certainly, innovation and entrepreneurship are risky. And certainly every system has faults, and we must be vigilant about identifying and eliminating abuses when they arise. I am personally committed to doing so. But for any system to be successful, it cannot focus exclusively on its faults. Successful systems must focus on their goals, successes, and aspirations.

Focusing exclusively on selected, known problems has damaging consequences.

Focusing exclusively on killing the wolf, for example, can also kill Little Red Riding Hood! If all we care about is getting rid of the wolf, we can drop a bomb on the whole forest, and the wolf is gone. But so, unfortunately, is Little Red Riding Hood. And Grandma too!

Similarly, in our zeal to eliminate "trolls" and "the bad patents" they allegedly use to terrorize society, we have over-corrected and risk throwing out the baby with the bathwater. This must now end, and we must restore balance to our system.

So instead of focusing exclusively on policies that highlight dangers in the system, we should focus on policies that encourage inventors and entrepreneurs. And when we do encounter abuses, we should address them promptly and with narrowly tailored solutions.

So, tonight, I have a message for these storytellers: scaring our inventors and our entrepreneurs is harmful. And scaring our government officials drives towards over-broad policies that, on balance, inhibit innovation.

Born of our Constitution and steeped in our glorious history, the American patent system is a crown jewel; a gold standard. Stop attacking it.

Instead, let's work together to find narrowly tailored measures to eliminate only the faults in the system, while promoting the vast amounts of amazing innovation America is capable of.

Let's work together towards policies that help our inventors and entrepreneurs navigate our system to maximize their potential—to invest, to invent, to start new companies, to grow old ones, to create jobs, and to change the world. These are our heroes and they are the ones we should be telling our kids about.

I also have some messages for all of you here tonight: stay engaged. Pay careful attention to the impact any one policy has on the entire innovation ecosystem. Advocate for policies that advance the great work of American inventors and American innovation. Challenge harmful rhetoric. And most importantly, seek balance, consistency, predictability, and reliability in our IP systems.

Together, we can change the dialogue. And together, we can ensure that our innovation ecosystem remains the best in the world. Because that is what our founders created, and that is what has been the constant engine behind America's prominence to date.

And when you hear some people argue that they tell scary monster stories because they are "pro-innovation," you may want to look at them quizzically and say, "Why grandma, what big eyes you have!"

Thank you.

Tags: Brother's Grimm, Director Andrei Iancu, Eastern District of Texas Bar Association, EDTX, Iancu, Little Red Riding Hood, patent, patent office, patent troll, Patent Trolls, patents, USPTO

Posted In: Government, IP News, IPWatchdog Articles, Patents, USPTO

There are currently **49 Comments** comments.

Night Writer October 19, 2018 11:18 am

Wow. Seems like a dream that finally someone is saying these things.

Valuationguy October 19, 2018 11:46 am

BRAVO!!!!!!!

Understand that Iancu had a pretty favorable audience here (EDTX) but his sentiment needs to be played out in front of the spineless Congresscritters who signed (and support) the AIA as an instrument to destroy the “impediments” that our Silicon Valley corporate tech oligopoly saw as a result of patents held by others.

Few of those corporations are actually tech innovators…..but they are good product manufacturers and marketers (and rich enough to bribe to money-seeking politicians).

concerned October 19, 2018 11:51 am

Bravo. This Director seems to good to be true! Yet he is only talking about fairness and a constitutional right, not gaming the system this way or that way. Fairness to all, not just to the people who want to steal our ideas. Double bravo!

Hey Litig8or: Why what big eyes you have!

BP October 19, 2018 12:03 pm

Thank you Gene! What a fresh contrast to Dir. Lee. I remember listening to the grand farce called “roundtables” where Lee’s agenda was that of her handlers.

@2 valuationguy – right on. The SV collusive oligopoly’s tales as to H1B visas and trolls are unraveling; not so veiled policies for wage control (profit maximization) and market control (profit

maximization), regardless of the cost to the public. That their greed destroys democracy comes at no surprise.

Paul Morinville October 19, 2018 12:07 pm

Iancu got a standing ovation from a table of inventors.

Concerned October 19, 2018 12:17 pm

Who is this person Lancu?
Change the laws for the little entrepreneur instead of telling ignorant storytelling.
Push congress to roll back the patent system for entrepreneur's who have nothing but an idea.
Stop using examples of entrepreneurs who work for the republic and not themselves.
My 2 cents.

Anon October 19, 2018 1:26 pm

As there has been a number of comments on "that other site" recently to the effect that there is no such thing as being "anti-patent," may this address by Iancu stifle such nonsense.

The only addition that I would make is that there are in fact more than one group of people that are anti-patent, and that there is more than one animating philosophy for being anti-patent.

Quite in fact, there are several.

But I like to point out two main types, in what I call the "Right" and "Left" of attacks. Mind you, this is an imperfect analogy to a purely political "Right" and "Left," even as my use does overlap some political viewpoints.

On the Left then are those that tend to seek to diminish, denigrate, or despise *personal* property. This would be the general view of political left of social or commune (communistic) tendencies, wherein personal is viewed as taking from the commune or shared aspects. Like it or not, many of the lemming types in the tech world may fall to this "shared/for the commune" tendency. Also, another large (but certainly not uniform) group that belongs to this philosophical bent are the academics. It really is not a controversial view that the world of academia is NOT a meritocracy, and instead is a system wherein advancement comes from touting the "party line" of those entrenched, and the Left have certainly entrenched themselves in academia.

On the Right (and admittedly, this has less than perfect overlap), we have the Efficient Infringer group, typically larger multi-national Big Corp who may hold the view that while "personal property" may not be "bad" (and certainly not "bad" if it is owned BY the Big Corp), what **is bad** is ANY property (private personal or public franchise) that is held by anyone else than the Big Corp, and certainly (and directly on point as to the Tr011 myth) that property held by those who may be immune to the tactic of Patent Armageddon. After all, the entire thrust of making the "Patent Tr011" narrative INTO a weapon of business was directly this very type of Big Corp. Make no mistake there – they were not doing that for any "public benefit," and were doing so solely for their own benefit.

The words here by Iancu — it should be noted by such as "litig8or" and other "naysayers" reflect views long expressed by me and by those of like mind; those, seeking a strong patent system to protect and foster innovation.

David Stein October 19, 2018 1:34 pm

> "Remarkably, in what I believe amounts to Orwellian 'doublespeak,' those who've been advancing the patent troll narrative argue that they do so because they are actually pro-innovation. That by their highlighting, relentlessly, the dangers in the patent system, they actually encourage innovation. Right!"

Exquisitely well-put.

One of the more surreal aspects of the big picture in the "patent reform" story is the lack of connection between the narrative – patent trolls, and shakedowns, and poor decisions by the PTO – and the "reform" measures that were instituted because of that narrative.

First: The narrative is all about *who* is getting patents – non-practicing entities who have no interest in protecting their own products – and yet, the "reform" is all about *what* is getting patented.

Consider the following companies:

* Aatrix Software

* Amdocs

* Ameranth Wireless

* BASCOM

* BuySAFE

* Credit Acceptance Corp.

* Exergen

* Open Text

* Rovi

* Solutran

* Synopsys

* Tranxition

* Two-Way Media

Every one of these companies is a business with actual products and services and customers. And yet, every one of these companies has had its patents bitten by § 101 – CBM, IPR, and a trip through the federal courts. And they're hardly the only ones: *every* company that produces software is struggling with the overblown application of Alice by the examining corps.

Second: If proponents actually wanted the USPTO to issue higher-quality patents, they would have advocated for fundamental changes to patent examination – namely: (a) giving examiners more time and better tools to search, and (b) holding examiners to account for making technically correct decisions. On the contrary, instead of a stricter standard, proponents pushed for a looser standard: granting judges, and by extension examiners, subjective license to flush patents at their whim.

The consequence is that obtaining patent protection is more expensive, and patent litigation is *way* more expensive. Some parties are more able to bear the added expense than others. I believe that's the actual objective – tilting the patent system toward some interests and away from others.

Ternary October 19, 2018 1:37 pm

Bravo, Director Iancu. It is time America is reminded of the enormous contributions made by inventors (independent inventors included) under protection of our patent system.

Unfortunately, until further steps are taken, this may remain a "feel good" presentation with little impact.

One of the most Orwellian terms currently in use at the USPTO is "directed to an abstract idea." The Big Bad Wolf in this is the USPTO itself, which under almost no circumstances is willing to find the technological improvements in applications that are staring Examiners in the face, but remain stubbornly unrecognized by Examiners under systematic internal pressure.

I know of only one case, wherein an Examiner noted that under current rules, claims would be considered being “directed to an abstract idea” but that the claimed invention offered significant improvement over prior art and thus the claimed invention was patent eligible.

One step in the right direction is to instruct Examiners to identify technical improvements that would render claims patent eligible. Berkheimer was a good first step, but more steps are required to restore sanity to the system. You cannot expect independent inventors to take the risk of telling their secrets to the USPTO, only to be utterly demolished. My advice to independent inventors who file only in the USA: do not have your applications published and make sure you mark that box on your ADS and where possible file a copyright registration. For now, our patent system may not be the way to obtain protection for your IP.

EG October 19, 2018 1:54 pm

Hey Gene,

So Iancu calls (literally and figuratively) the “patent troll” narrative a “fairy tale.” What a difference from the prior Director! And you should see MM’s (aka Malcolm Mooney’s) head “explode” on Patently-O over what Iancu said.

JPM October 19, 2018 3:07 pm

Bravo! director Iancu, bravo!

Concerned October 19, 2018 3:11 pm

The Concerned @6 is not the real concerned.

Please post under a different name. Thank you.

Jason Lee October 19, 2018 3:16 pm

I feel Nikola Tesla’s pain when he invented the AC and Edison was trying to block him. Silicon Valley elites are doing the same by using the patent system to their benefit by keeping other inventors locked out by paying off and passing bills from restricting small IP holders from getting paid for their

inventions and from growing their business like Amazon, Apple and Google did. The USPTO director is doing a good job so far but there is much more that needs to be done to make patents great again.

Jimmy October 19, 2018 3:49 pm

I believe the scary tale is a little skewed somewhat as it is the Pro Se inventors and the small entrepreneurs who have to be afraid of the big bad wolf. It's the big bad wolf like Xerox, IBM, Microsoft, Apple, Google, Amazon, etc. that makes walking into the forest a nightmare for inventors.

Once little red riding hood is granted the patent from the USPTO and finds out that the big bad wolf is infringing on the patent, this is the moment that little red riding hood realized that she has stepped in a pile of s**t left behind from the big bad wolf, as there is nothing that she can do. The big bad wolf spends all day and night infringing on patents and there is nothing little red riding hood can do, as she is just a Pro Se inventor. The big bad wolf files IPR numerous of times on poor little red riding hood and before you know it, the patent only true use now is to be used a toilet paper to wipe off the big bad wolf s**t.

Over all, not a bad fairy tale….. Maybe the USPTO needs to look at supporting the Pro Se/entrepreneurs inventors a little more against the big bad wolf. Maybe the USPTO should implement a "shelter" for the Pro Se/entrepreneurs of the world and if a Pro Se/entrepreneur (non corporate) is still the original owner of the granted patent (or original owner but include the transfer of the patent to a holding company controlled by original inventor), then they are excluded from IPR. Or maybe for Pro Se/entrepreneurs inventors are allow to try arbitration first against the big bad wolf to see if something could be worked out.

If the USPTO doesn't really want to help the Pro Se/entrepreneurs inventors, then maybe there is a deal to be made with the forest trolls who aren't afraid of the big bad wolf.……

Joe Allen October 19, 2018 5:30 pm

U/S Iancu made similar remarks to kick off the Licensing Executives Society meeting on Monday. The audience was electrified to hear him telling it like it is. We're lucky to have him at the PTO in our hour of need. He's not only talking the talk but walking the walk. He deserves our strong support.

Night Writer October 19, 2018 5:34 pm

We should not get too excited. Remember that Lee did everything she could to burn the system down and didn't really get all that much done. The director really doesn't have that much authority. Probably the best thing he could do is get Congress to act. Absent Congressional action, I don't think too much will change and we might be in for a 180 if Trump loses the election. If Biden is elected, then we might be right back to another Lee and the stacking of the CAFC.

Gene Quinn October 19, 2018 5:51 pm

Night Writer-

I disagree that Michelle Lee did everything she could to burn the system down. I won't disagree that her speeches and rhetoric was not helpful (except for one or two speeches, particularly her MIT speech). But it was really her inaction that was the problem. She allowed the PTAB to do whatever the PTAB wanted to do. She didn't use any of her power to bring about reforms of any kind — good or bad. So it isn't fair to compare Lee with Iancu as you have done.

The next Congress will be telling. He will have at least 2 years to push an agenda. Whether those in the industry stand up and get behind him will matter greatly (in my opinion). He seems to have great latitude under Secretary Ross and President Trump. I think good things are going to happen over the next 2 years, more if President Trump gets reelected.

Paul Morinville October 19, 2018 5:53 pm

While Iancu is restricted to the powers of his office, he is getting as much done as he can as fast as possible. If you asked me a year ago if we would be get rid of BRI and would be looking at new guidance on 101, I would have have said no way. But he's getting things done.

There were 6 inventors at the EDTX Bar conference at a table on the 20 yard line of the ATT field in Dallas where he made this speech. We gave him a standing ovation from our table while the rest of the audience remained seated clapping politely.

I guess you cannot cheer him if you work for huge tech companies. Which means he needs full support from those of us who are not conflicted (bought) by big tech.

Look for the new 101 guidance soon. His comments today at SMU lead me to believe that that he will draw a line on 101 that interprets the mess of Supreme Court decisions (legislation) narrowly and will

go to war with the courts over the meaning of it. My bet is that he will force the courts to stabilize their incredibly harmful 101 jurisprudence by doing this.

Iancu has my support – 100%.

Night Writer October 19, 2018 6:34 pm

@17 Gene

I know one thing that Lee was doing. She was trying to propagate the same 101 procedures that were being used in AU 3600's into the other AUs.
That would have burnt the system down. I am not sure why that stopped, but I remember many conversations with people at the PTO about this and had to deal with some nasty 101 rejections outside the 3600's. But, for some reason the 101 rejections stopped and the talk of the 3600's being a template for the other AUs stopped as well.

@18 Paul I agree. I support him 100% too, but I am not too optimistic. I lived through Dudas and despite his best efforts not much happened under him.

I will say that Iancu is a real patent attorney. He has the type of experience that should be required to sit on the CAFC. If we had the CAFC filled with people like him, then many of problems would be gone. I hope he stays active either in the CAFC or in some other capacity to set IP policies in the US for a long time.

Pro Say October 19, 2018 7:20 pm

From eBay to Alice, the biggest innovation Bad Wolf of all is … SCOTUS.

MPGA! (Make Patents Great Again!)

Curious October 19, 2018 11:15 pm

As great as Iancu's comments are, they will have little real impact so long as the Federal Circuit continues to bless the decimation of patents rights under 35 USC 101. The technology of tomorrow is found in biotechnology and computers yet these is the technology that has been deemed "abstract" by the courts time and time and time and time again.

Getting more patents issued out of the USPTO means nothing if that patents get dashed on the rocks of the Federal Circuit.

As for legislative changes, while we'll be losing some of the roadblocks to progress (I'm looking at you D. Issa) in Congress, I would be shocked to find bi-partisan support for a bill that returns sanity to the patent system. The big high-tech companies having a lot of money to spend, and those in Congress are addicted to campaign contributions, so I don't see the narrative changing.

The "troll" bogeyman will continue to haunt the halls of Congress so I doubt anything will get done. I really wish I was wrong, but these are the tea leaves I'm reading.

Night Writer October 20, 2018 6:09 am

@21 Curious

Could not agree more with you.

IMHO, the path forward is to turn the PTAB into a DC. We should advocate for the patent judges to become ALJs as a first step and expand the PTAB as much as possible.

Jason Lee October 20, 2018 10:07 am

@Paul

"Look for the new 101 guidance soon. His comments today at SMU lead me to believe that that he will draw a line on 101 that interprets the mess of Supreme Court decisions (legislation) narrowly and will go to war with the courts over the meaning of it. My bet is that he will force the courts to stabilize their incredibly harmful 101 jurisprudence by doing this."

If he can fix 101, and help fix EBay and Alice, Patent holders will have a reason to invent again. The Silicon Valley estoppel has slammed the door shut from anyone else joining the party and from getting paid for their inventions. The Silicon Valley Mofia must be controlled and there needs to be a balanced playing field. We do not need big business to thrive, its always been the guy in the basement or the garage that has created the next great new thing. Government brought in Standard Oil when the got too big and Google Apple Amazon FB have gotten way to big and they need to start paying for the IP they have stolen. These companies are worth Trillions of Dollars all on the backs of small IP inventors, it ridiculous, its long over due they start giving back some of that money that they own to Patent Holders. Shut down those loopholes they helped create, educate the SCOTUS on why patents need to be protected and write to your congress person. Its a shame to see IP's getting

bulldozed by the ones that benefited off of a strong patent system. The United states use to be #1 in the world for patents, now they are #12. Change could not come soon enough.

Night Writer October 20, 2018 12:57 pm

It would be interesting if people like Mark Lemley would participate in a moderated debate about some of these issues. Frankly—from what I've seen–the problem is that Lemley would just make things up and there is no accountability. A debate just doesn't have meaning if there are not consequences for unethical behavior.

Perkins October 20, 2018 2:26 pm

Director Iancu's is to be commended for pointing out that "right" only appears in the Constitution Article 1, Section 8, Clause 8, granting the Congress power "to promote the Progress of Science and Useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Bravo to Director Iancu for reminding us and defending the USPTO's purpose, and indeed obligation, to preserve this right.

But, do not forget that the same clause also recognizes that the respective Writings and Discoveries are theirs, that is, the personal, private, property owned by the the Authors and Inventors from the instant they are conceived. The Inventions and Discoveries are not the public's, not the U.S. Government's and not the efficient infringers'. Despite what the big, bad wolf and the SOCTUS say, I believe Article 1, Section 8, Clause 8 is a constitutional guarantee, granting payment of another personal, private property, the Patent, to the Inventor in exchange for the transfer of the Inventor's invention to the public.

I would also go so far as to argue that theft of the inventor's invention, patented or not, is as much a crime as the theft of any other of the Inventor's property.

Paul Morinville October 20, 2018 2:46 pm

Perkins, Yes it is the only time the word "Right" is used, but it is important to note that it is also capitalized. Capitalized words in the Constitution were capitalized for a reason. It has specific meaning and that is it is a Right.

Eric Berend October 21, 2018 9:43 am

@ 22., 'Night Writer':

Interesting that you are advocating for another change I had identified (and I'm sure, others well before me):

If there is to be an administrative court – not that I am in any agreement with this notion – then, it should be according to the same standard established throughout the Federal system: that of ALJs with true quasi-judicial qualifications and oversight.

Ramy October 21, 2018 11:09 am

Bravo, great leadership by director Iancu. corrupt large corporations blinded by greed, have corrupted the Patent system and are destroying inventors lives. These corporations corrupted many at the USPTO and have turned the USPTO into the U.S Patent prostitution office. How can you give inventors patents and then take them away after years of ownership, only because some corrupt corporation makes a request for review.
The system is whorish and must change. We have inventions that can protect our country from another 9/11 attack and are afraid to patent these inventions until the patent system is made great again. This is tragic and congress must get involved to reverse the tragedy that corrupted the patent system.

Night Writer October 21, 2018 1:16 pm

@26 Eric

I have been saying this for a long, long time. Basically, the idea is if we can't get rid of the PTAB, then let's transform it into some where patent owners get a fair shake. The way forward is to make it as much like a DC as possible.

Dan Perman October 22, 2018 4:10 am

As long as juries and judges who don't know anything about patents decide about their fate, no small inventor (and for that matter no average size firm either) can afford to sue for infringement or defend against it. An example is a recent case in a northeastern district court regarding a submarine patent on a molecular biology patent. Neither the judge nor the jury understood the subject matter. The

outcome was wrong, and to add insult to injury, the judge decided to overturn all of the jury's findings, all for the wrong reasons. The only solution is the creation a federal patent court with professional judges that understand patents and also have scientific and/or engineering background!

Curious October 22, 2018 9:18 am

Basically, the idea is if we can't get rid of the PTAB, then let's transform it into some where patent owners get a fair shake. The way forward is to make it as much like a DC as possible.
Some questions. Who is going to do the transforming? Also, if it can be transformed one way, cannot it also be transformed the other way? Who/what is going to keep it from being transformed back to what it is today?

Also, the DC is no great place to be an inventor these days either. The laundry list of Federal Circuit cases affirming 101 invalidity determinations is because there is a whole slew of DCs that are punting their patent dockets down the road.

Finally, regardless of whether the PTAB is fixed, there still lies the problem of enforcement — again dealing with the patent-unfriendly Federal Courts (all levels)

Paul Morinville October 22, 2018 10:36 am

Curious, "Basically, the idea is if we can't get rid of the PTAB, then let's transform it into some where patent owners get a fair shake."

Just look at what is happening with Iancu and compare that to Michelle Lee. There have been no legislative changes, yet Iancu gets so much done to strengthen patent rights.

That is the very reason that nobody can fix the PTAB. Whatever laws are passed to correct it (like the STRONGER Patent Act would like to do), the PTO Director can change the rules and patents will become weak or strong. This is far too much power to put in the hands of one person.

The PTAB must be eliminated. Congress cannot pass a law for every possible rule that forms the basis of the PTAB.

Every four years, there is a presidential election and with it, a strong likelihood that the PTO director will change. If you are looking at investing your hard earned money in a patent or a startup dependent on patents, you have to know that there is no way to know if the patent right will be strong or weak after the next presidential election.

But it will be very hard to convince Congress to kill the PTAB. If you want to influence the patent system, just give massive money to the campaigns. You will buy the favor of the president and you can decide who becomes the next PTO director. The politicians will never give up that money machine.

litig8or October 22, 2018 2:19 pm

Having a “strong” patent system is consistent with weeding out weak patents (that should not have issued) quickly and efficiently. The strength of a patent is determined in the marketplace (if people pay $$ for a license) or in the courtroom when things are disputed. A patent is not weak or strong on paper. That means nothing. The proof is in the pudding. And as LL Cool J said, “the pudding is delicious.”

Eric Berend October 22, 2018 3:52 pm

Having a genuinely strong patent system starts with investing in and maintaining robust support for original patent examination.

With all the passion and hoopla about the issue, notice that anti-patent zealots such as ‘litig8or’, ‘Tiburon’, the odious “MM” (Malcolm Mooney) and “6” on ‘that other patent blog’, continue to obsessively advocate for the flawed REVIEW process that cancels patents and illicitly destroys the Inventor’s Constitutional *Right* to a secure property “for a limited time”, rather than addressing the core of the so-called ‘patent quality problem’, where any substantive changes can be the most effective.

Paul Morinville October 22, 2018 4:46 pm

litig8or “The strength of a patent is determined in the marketplace (if people pay $$ for a license) or in the courtroom when things are disputed.”

Sorry, bud, you don’t understand much. The strength of a patent can only be determined in litigation. Values derived from litigation are used to set the value of other similar pre-litigation patents.

Since a patent is either valid or invalid, the first step of any valuation is to determine the risk level of surviving a validity challenge in litigation (PTAB or Article III). To figure that out, one must look at historic validity challenges in similar technology areas. If patents in a particular area of technology (software for example) are easily invalidated, it doesn’t matter if a patent is a “good” or “bad” patent

(whatever that means). It only matters that a patent in that technology area will likely be invalidated and therefore has no value. This causes collateral damage to all patents in that technology area. None can be reasonably valued because of the litigation results of related patents.

So “the strength of a patent is” not “determined in the marketplace”. It is only determined “in the courtroom when things are disputed”.

Ternary October 22, 2018 5:05 pm

A strong patent system is one that adequately protects novel and nonobvious inventions and thus incentivizes an inventor (the risk-taker) to do (more) inventions. Furthermore, a strong patent system would issue strong patents. The strength of a patent is currently determined in the PTAB and the Courts and not in the marketplace, nor by the USPTO Examiners.

Nowadays the patent system lets the value of a patent collapse after its value has been established in an infringement case. Double-speak about: let the marketplace determine the value of a patent. That is absolutely the last thing infringers want as proven by the “delicious pudding.”.

Concerned October 22, 2018 7:33 pm

My strong patent system review tossed 2 university studies, tossed documentation from every possible end user, tossed official USPTO memos, and tossed documents from the Administrating Agency to arrive at the desired finding of routine, well understood and conventional.

The only thing routine, well understood and conventional is that if your invention uses software, it is dead on arrival.

A strong patent system starts with rule of law, not kindergarten playground rules that are made up as we go and have the strong appearance of impropriety.

While I receive congratulations from colleagues on my accomplishment, I get a kick in the teeth from the USPTO.

What a shame.

Anon October 23, 2018 10:59 am

litig8or @ 33,

You clearly do not “get” the point of the article, as your comment of “*Having a “strong” patent system is consistent with weeding out weak patents (that should not have issued) quickly and efficiently.*” engages directly in the type of thing that is ‘Orwellian doublespeak.’

You show an amazing lack of appreciation for patent fundamentals in wanting a granted right to be so easily nixed.

From a real-world product manufacturing analogy, the answer to a processing problem is not a recall answer (untethered to the processing to begin with).

In that manufacturing scenario, yes, recalls may happen. But the manufacturer would pay for the recall. Given the ‘takeaway’ from the *Oil States* case, and given that the Public Franchis**or** is the US Government, any such “recall” would necessarily** involve remuneration of those so affected (the Franchis**ee**).

** If you want to be “fair” about things, and not simply want to be anti-patent.

SVI October 23, 2018 2:18 pm

Risk taking is really so much of what this is about, and relates patents to the spirit of the Constitution, the country, and its FFs in a unique way. The FAMGA companies and other big boys that have played the role of grandma in this analogy know they can lure the most talented software engineers and pay for the best manufacturing. There is simply no way for an inventor or new startup to compete in those spheres of production. Such was the genius of the US patent system for an inventor to hit above his weight and create value by the sheer act of invention. Not code writing. Not manufacturing. Invention. The enemies of patent protections (who are therefore also enemies of the US Constitution, FFs and spirit of America) want to confound these issues.

Night Writer October 23, 2018 9:27 pm

litig8or >>The strength of a patent is determined in the marketplace (if people pay $$ for a license)

The strength of a patent is determined based on the strength of the legal framework within which it was granted.

litig8or is clearly an anti-patent judicial activists and just like all of them he/she is unethical.

concerned October 24, 2018 4:06 am

Night Writer:

Litig8or is not registered to represent clients with the USPTO. His law firm does not list patents as a field of practice.

Gene Quinn October 24, 2018 10:54 am

concerned @41-

I don't know how you think you know who litig8or is in real life, but based on the information I can see — and without revealing any private information — I will say that it appears to me that your information is incorrect. I'll leave it to litig8or to say more if desired.

-Gene

Concerned October 24, 2018 11:53 am

I do not want to reveal his private information either. The basis of my info looked to be accurate.

And when I gave him a hint as to his identity on another post, he did not refute the same.

litig8or October 24, 2018 11:57 am

My credentials are not at all relevant but anyway the speculation that i am not registered with the USPTO and work at a law firm that is not working in IP law is entirely incorrect. I haven't commented previously because it's sort of comical.

staff October 24, 2018 6:19 pm

'Do not venture into the woods'

But that is what the prior Congress, White House, PTO and some courts did by talking with and taking the counsel of large multinational infringers (wolves) and how we ended up where we are now -in a

patent system where for all but few inventors it is too hard, expensive and slow for us to get, keep and enforce our patents. That is why our large multinational competitors now easily rob and crush us. Without a patent system that secures our property rights we simply have no realistic expectation we will ever be able to commercialize our inventions.

The Director makes excellent points in his address. True, at the founding of our patent system little had changed in the course of human history. Our prime means of transportation, housing, medicine, and overall the way we lived had undergone little change since the beginning of recorded history and often advances were temporary as the discoveries were taken by their inventors to their graves in secret. President Jefferson remarked about the need for a patent system by saying that without it we would be forced to 'live like savages'.

The changes since the creation of the American patent system have been astounding. But that rate of advance is not sustainable and we argue it has in fact stalled. The reason is simple. Based on our earlier study small entity issued patents have collapsed to only about 10% of their historical shares. Without us pushing them our large competitors have no reason to invest in technological advances. They are happy to sell the dusty models of yesteryear so long as the public has no other alternative. We largely can no longer get patents and when we do we can't keep or enforce them. When we have to fight at any stage we go out of business. In the end, we end up working for our large competitors - for free, because they can steal our inventions with impunity knowing we have scant chance of ever stopping them. This is justice?

We have great hopes for Director Iancu. What a stark change in message from prior recent Directors. One we warmly welcome.

Now that Director Iancu is hiring a new Chief Judge for PTAB we believe this is an important time to set the tone for the direction of the Board. When the America Invents Act was passed into law, the drafters and promoters of the bill stated the IPR component of it would be a faster and cheaper alternative to settling patent disputes than through the courts with juries: in short, they would be better. But administrative reviews can only be better if all other factors are no worse -such as if inventors are secured the same rights they enjoy in court. Considering that in court we have access to trial by jury with Article 3 Judges and in an administrative review there is no such access, already inventors have lost crucial rights. Therefore, clearly administrative reviews without our consent are not and cannot be better for inventors than to take our patent disputes to court. Nevertheless, here we are until such time as the question about administrative reviews is more finally settled such as with the bill we are now drafting with the help and direction of our friends in Congress.

Meanwhile, we believe that in order to at least better safeguard our remaining rights at PTAB that it is crucial that the next Chief Judge of PTAB have substantial experience in the courts either as counsel for inventors and small business clients, or as a Judge with substantial experience with patent cases.

Only then do we believe our remaining rights will be protected from further encroachment until a final solution is obtained.

Further, we believe the next PTAB Chief Judge would ideally also:

• Be a current member of the USPTO patent bar.
• Have 3+ years of work experience as a scientist, engineer, or programmer.
• Have Post-secondary course work in Computer Science, or work experience in software development so that we have a person who doesn't trivialize the importance of software. We will materially benefit from someone who has personal first-hand experience in software to understand its inventiveness, value and the toil involved in creating it. We live in a world in which software provides a large of amount of added value and economic value, and reducing patents on software-enabled processes and apparatus gives America's competitors a huge opportunity to steal some of our most valuable property from its inventors and companies.

Exclude anyone who has:

• been sanctioned by a trial judge
• represented a Petitioner in an IPR
• routinely represented entities in court that have been found to infringe patents
• worked in the Solicitors Office of the USPTO
• worked in any supervisory position at the USPTO, or
• worked as an employee of a company that has been a defendant more often than plaintiff in patent suits.

We applaud Director Iancu for his efforts at reversing the direction of the PTO and welcome his help and support in restoring our patent system and in turn offer him ours.

For our position and the changes we advocate (the rest of the truth) to restore the patent system, or to join our effort, please visit us at https://aminventorsforjustice.wordpress.com/category/our-position/
or, contact us at aifj@mail.com

Anon October 24, 2018 6:57 pm

"*My credentials are not at all relevant*"

I agree. See my previous explications (and defenses of) anonymous and pseudonymous posting (in contrast to the **choice** of using one's actual name and any type of "borrowed" authority therefrom. If someone *wants* to have their identity associated with the "black and white" of their post, that is their

decision (and does not — in and of itself — increase or decrease the validity of what IS in “black and white).

What matters is the content on the page.

concerned October 25, 2018 5:26 am

Staff:

As a first time inventor, the current state of affairs with the patent system was a complete shock. I had no idea how slanted the rules are against an inventor. I appreciate your efforts and the efforts of IP Watchdog.

I would have no problem with a jury of my peers deciding my invention’s fate. None of my friends can even begin to understand how I was rejected on a patent. We are not attorneys, we do understand right from wrong. And how a solution that solves a problem professionals and experts could not solve for 62 years (documented) was rejected is beyond our comprehension.

I think a potential infringer or entity that steals my unprotected idea (in appeal) would be afraid of any jury looking at the evidence and trying to make sense of how could the patent system could allow this situation to happen. It is not only un-American, it is flat out wrong morally: Thou shall not steal (#8).

Night Writer October 26, 2018 6:29 am

@45 staff

You should add not worked in the DOJ. The DOJ has created some of the most anti-patent judicial activists in history. Benson came from the DOJ. People like Taranto who are very smart, but unethical and immoral in that he cares nothing of the application of the law, but only of how he can bend the law to his ends.

The DOJ is without question the biggest breeder of judicial activists that want to burn down the patent system.

Night Writer October 26, 2018 6:33 am

@44 litig8or

Litig8or is an artifact of what the Scotus has created. We now have these people running about yapping their little heads off about psychotic realities that are based on simply what a justice has proclaimed as natural law.

A person that seeks power and feels the power of flattering the justices off by propagating their manufactured realities.

Boy (or girl) keep telling the justices that the Sun revolves around the Earth. I am sure you are making money doing so and I am sure you care about little else than what makes you powerful and rich. The lack of integrity drips from every one of your posts.

/

Consumer Technology Association Preaches Patent Troll Fairy Tale to Crowd During Fireside Chat with Iancu at SXSW

By **Jeff Hardin**
March 20, 2019

Print Ar

"What the CTA fails to recognize in their patent troll mischaracterization is that the particular design of the American patent system in its early beginnings is what has enabled it to do what no other patent system in the world has before—to energize the inventive spirit and genius of the private citizen."

USPTO Director Andrei Iancu participated in a fireside chat, titled "The Crossroads of Technology and Innovation," hosted by the Consumer Technology Association (CTA) at its sixth annual Innovation Policy Day on Tuesday, March 12 at SXSW in Austin, Texas. Sitting with Director Iancu was host Michael Hayes, Sr. Manager of Government Affairs for the CTA. The chat was quite short and briefly touched on topics such as celebrating the 10 millionth-issued patent, the preparedness of the patent system for the future, artificial intelligence and patent eligibility,

and the availability of patenting for all peoples. Then, in what some may consider to be an unscrupulous move, Hayes introduced the narrative of patent trolls:

Hayes (CTA host):

> *"Time being limited, I would be remiss if I didn't bring up patent trolls. We have an audience full of tech entrepreneurs and people who work at tech companies. Unfortunately, a lot of them have personal experience with this, right? They may be named inventors on patents, but they're spending their time and their legal team's time fighting these junk lawsuits. And for those of you that haven't experienced this, when I say "patent trolls", I'm talking about entities that use patents simply as a weapon in litigation. They are trying to use them for a quick shakedown."*

The CTA is a trade association that markets itself on its website as an advocate for technologists and encourages companies to become paying members. For the CTA to preach the "patent troll" narrative to the crowd, and right in front of Director Iancu at that, was rather striking, but it was not entirely unexpected given that the CEO of the CTA is Gary Shapiro, who has been exposed for taking a self-righteous stand against patent trolls despite having an obvious bias in favor of infringers. At least the CTA's attempt to goad the audience into a troll frenzy fell flat, as not one person in the crowd indicated they had any such experience.

Iancu Calls Out Patent Troll Fairy Tale

One may recall that, during his previous visit to the Lone Star State, Director Iancu called out the patent troll narrative as a fairy tale and "Orwellian 'doublespeak'," saying that those who advance the narrative do so deceitfully; they argue that they support innovation, yet by their "highlighting, relentlessly, the dangers in the patent system," do otherwise. He stated that the zeal to eliminate "trolls" and "the bad patents" has resulted in an over-correction and risks throwing out the baby with the bathwater, and he voiced his stance against preaching the fairy tale of patent trolls. "This must now end, and we must restore balance to our system," Director Iancu emphasized in October.

Now, with Director Iancu's statements still ringing in the air, Hayes nevertheless decided to double down on the CTA's position and preach the "patent troll" fairy tale to the audience. He then posited his question to Director Iancu:

> *"What can we do to make sure that, moving forward, our patent system gets back into the hands of inventors, that it is really for the inventor, and it's not for their patent lawyer, right? We prevent people from weaponizing these things, and we get back to making sure at their core that a patent is about inventing something and then creating something wonderful – something that really benefits people."*

It should be noted that the view expressed by the CTA here is incorrect as far as what a patent actually does provide to those holding its title. With such an incorrect view, it is evident why one might believe in the patent troll fairy tale. Any informed inventor or patent practitioner will tell you that a patent does not grant the right for its owner to create anything. Rather, a United States patent is an exclusionary right, and, as per the statement provided by the USPTO on the face of an issued patent, "grants to the person(s) having [its title] the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States … ." Regarding an inventor's right to exclude others being recently trampled by the Supreme Court in its 2006 *eBay* decision, that is a separate issue, but nowhere in the law does a patent grant to a person having its title the right to create or produce something, as suggested by the CTA. Accordingly, asserting one's patent rights, even without creating something, is not weaponizing, but merely enforcing the rights of the entity holding its title to exclude others. Failing to recognize this fact—and failing to recognize that many individual inventors do hold title to their patents and are incentivized by licensing their work product—does indeed risk over-correction that throws out the baby with the bathwater, as Director Iancu said, and actions that take rights away from these inventors discourage innovation all the more.

Rightly so, Director Iancu focused his response on support of the original innovation of the inventor and the need for balance:

> *"A patent, and the patent system in general, needs to be carefully balanced. We want to make sure we have a system that incentivizes that original innovation, that gives the inventors the right to their original innovations, that allows investments to be made in such innovation with a level confidence that, if successful, the benefits of that investment can be recouped."*

Director Iancu said that Hayes was referring to a particular kind of abuse, and the Patent Office wants "to identify, surface, and deal with *any* abuses in the system."

One hopes that Iancu recognizes that the practice of efficient infringement—an identified abuse of the patent system that was interestingly, and perhaps strategically, omitted by the CTA in this fireside chat—is more dangerous to our innovation system than the mythical patent trolls ever were. One example of efficient infringement occurs when a company chooses to use (i.e. infringe upon) patented technology without seeking a licensing arrangement with the rightful patent owner in hopes that the owner cannot bear the financial gauntlet of litigation to defend his patent rights.

Preaching Fiction to Weaken the System

Now, follow the business logic here. The CTA offers different member programs to its paying members, one program being the Disruptive Innovation Council. Its members include such "disruptive" businesses such as Airbnb, Boingo, Facebook, Google, Pandora, Snapchat, Uber, etc. The CTA promotes "provid[ing] support and advocacy to help [these] disruptive innovation companies navigate market and policy challenges" as one of its key initiatives. Any observer to this arrangement may reasonably ask, "So what happens when one of these 'disruptive' companies has a product that relies on technology patented by a non-CTA member, and thus the policy challenge becomes patent law?" Well, if one of these companies owns patents themselves, it might very well make business sense in this instance for it to view its patents as weapons in litigation for a quick shakedown, as mentioned by Hayes, because it can use its patents to attack the innovators (or their licensees) whose technology it wants to use.

But perhaps it makes even *more* sense for these companies, once they reach the top of the ladder, to pull up the ladder by weakening the patent system entirely so that innovators cannot afford to enforce their patents when these companies decide to engage in efficient infringement. And what is one way to accomplish the goal of weakening the patent system? Preaching the patent troll fairy tale, as Director Iancu wisely pointed out.

It then goes without saying that not only was the patent troll narrative unilaterally pushed by the CTA in this fireside chat, but the CTA's support for post grant reviews was made clear. When Director Iancu mentioned the existence of post grant review proceedings put into place by the America Invents Act (AIA) to address the abuse the CTA was concerned about, Hayes smiled and said, while pointing to the back of the room, "I can see some companies that have actually used those proceedings over there, so, yeah, they are enormously important."

However, given that some independent inventors were also present in the audience, and that none of them were on the panel to challenge the CTA's position, one might ask, "Are these so-called 'enormously important' post grant reviews supported by everyone in the room? Could it

be the case that the CTA here is merely trying to cater to their paying member companies with such a comment?" Director Iancu stressed that the purpose of the statute that created post grant review proceedings was to create a less expensive, faster alternative to district court litigation. At least Director Iancu wants to stay true to that congressional intent, stating his desire to provide standards that do provide these efficiencies, and the record shows that he has indeed worked diligently to provide harmonizing standards. However, given the testimony of Josh Malone and the staggering costs he has endured in the fight for his patent rights, one may legitimately question whether or not these reviews, at their core, do indeed provide a better alternative to private citizens.

Private Citizen Stands Up

In fact, during the Q&A following the panel discussion, I personally stood and announced myself as an independent inventor, holding my patents in hand, and Director Iancu's face immediately lit up with joy. An independent inventor was in the room! I thanked him for signing my last patent, and I then challenged these post grant reviews held against private citizens, asking Director Iancu if he found it fair that no inventor who entered into the patent bargain and disclosed his invention to the public prior to the AIA subscribed to the substantial rule changes that were retroactively applied by the AIA to patents having priority dates that predated the law. I reminded Director Iancu that he has the power to deny institution of an IPR, and I asked whether he would consider first his oath to defend and support the Constitution— in which the Takings, Due Process, and Ex Post Facto Clauses are immediately present—as a way to protect the patent grant on which the inventors who never entered into the AIA "patent bargain" so dearly rely.

Director Iancu responded by saying that, although the Supreme Court in *Oil States* (2018) did not address this, he could not comment on whether he found retroactive application of IPRs fair because this question was currently being litigated. He did say that currently, "as an administrative agency, we are going to enforce the laws that are on the books."

Indeed, retroactive application of IPRs is unfair to all inventors holding patents having priority dates prior to the AIA, as these inventors did not subject themselves, nor did they agree, to the provisions of the AIA title when their inventions were disclosed. One need to look no further than Federalist No. 44 to see that our founders understood that laws such as the AIA applied retroactively "are contrary to the first principles of the social compact, and to every principle of sound legislation." Had I known, for example, that the rules were going to be so drastically changed in the middle of the game by way of the AIA's new rules and procedures, I would have never disclosed my inventions to the public in the first place. All I can do now is hope that the

courts will ultimately favor justice and fairness for innovative individuals holding such patents with respect to the original patent bargain and social contract into which they entered and the patent property rights they have been granted.

America, Standing Out

Now, what the CTA fails to recognize in their patent troll mischaracterization is that the particular design of the American patent system in its early beginnings is what has enabled it to do what no other patent system in the world has before—to energize the inventive spirit and genius of the private citizen. At the birth of our nation, our founders were pressed with creating political stability and the growth of American industry for the nation's economic survival. The construction of our Constitution was intentional and careful, and what blossomed was an intellectual property clause crafted to stimulate innovation. As a result, for the first time in history, a private citizen—an individual, the common person—could specialize fully in inventive work, and the result of that innovation was treated the same as a property right.

Make no mistake about it; what made the United States the leader in innovation and the most prosperous nation on earth was its unbiased and meritorious patent system that enabled ordinary private citizens, even those without large financial resources, to innovate and publish their inventions in return for a patent grant, and denigrating any independent inventors as "patent trolls" for protecting their work product not only raises questions as to one's motive, it's anti-American.

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Tags: aia, America Invents Act, Andrei Iancu, Apple, Consumer Technology Association, Facebook, Gary Shapiro, Google, Guest Contributor, independent inventor, independent inventors, innovation, intellectual property, inter partes review, inventor, IPR, Jeff Hardin, Josh Malone, Michael Hayes, patent, patent infringement, Patent Litigation, patent office, Patent Reform, Patent Trial and Appeal Board, patent troll, patents, post grant procedures, PTAB, SCOTUS, SXSW, technology, US Supreme Court, USPTO

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There are currently **20 Comments** comments.

Josh Malone March 20, 2019 7:05 pm

Great job standing up and speaking out Jeff!. With respect to your 5th Amendment question, it is unfortunate but the USPTO does not get to advance the proper view on that. In fact the Justice Department is advancing the position in recent weeks that if the government takes away your patent it means you never had a patent so they didn't take anything. The value of a revoked patent is $0 and it was always $0 according to the DoJ. The hijacking of the American patent system and basic rule of law is occurring right in front of us.

Jim March 20, 2019 8:56 pm

As an independent inventor and a member of CTA, I disagree with the stated view of the CTA on patents (and patent trolls) as stated at SXSW. While the CTA does a good job on promoting entrepreneurs (including inventors), they do tend to be controlled by those larger corporations or those who have deep pockets (CES should be a good indication).

So we have big corporate who controls the inept congress on any patent reform and then the SC who are clueless – not sure any inventor is safe for a patent in the U.S.

Pro Say March 20, 2019 9:15 pm

Great article — thanks Jeff for publicly standing up and speaking out for the rights — and the wrongs committed against — inventors.

Jason Lee March 20, 2019 10:00 pm

"Patent Troll" was invented and created by Silicon Valley. They invented the Boogeyman so they could push through the anti patent bills so they would not have to pay a IP holder. The gig is up and the pro patent bill could not come soon enough. It's been hell for IP holders, it's time patent holders get paid.

mike March 21, 2019 12:03 am

Hear, hear!

To Josh's point, if the Justice Department says a patent holder never had a patent if the government later takes it away, then what was the thing that was granted? A mere 'promise' in something that

only becomes a real, enforceable thing if it passes all future validity challenges? This makes no sense. What happened to “patents shall have the attributes of personal property”?

If what the Justice Department says is true, we best start using/”inventing” some new words when we speak and/or the PTO needs to include a lot of asterisks on the face of the patent when it is issued. All patent holders should be receiving a Notice of Correction in the mail as to what they actually possess: a mere “promise” to a property title only enforceable upon survival of all possible challenges, aka, “nothing real”.

As I’ve said on this blog before, the words “grant”, “right”, “exclude others”, and “private property” have no meaning anymore. Not only is there no trust in the patent grant, but we cannot even rely on the meaning of words. God help us

Benny March 21, 2019 6:03 am

“…the practice of efficient infringement—an identified abuse of the patent system…”

I was under the impression that enforcement of patent rights was not the responsibility of the USPTO.

Anon2 March 21, 2019 9:06 am

CTA: “…we get back to making sure at their core that a patent is about inventing something and then creating something wonderful – something that really benefits people.”

This is backwards and completely inverts the point of individual rights in a free country.

Rights are not “permissions” given by the State as a diktat of social engineering to achieve the goals of the State or for the benefit of anyone else (the Collective)… not in a truly free country which respects individual rights at any rate.

Rights are inalienable possessions of each individual, and the rights to the fruits of one’s own creation (even time limited rights) recognizes the most basic and fundamental right to property, i.e. ownership, in that creation, it is not merely some social engineering incentive to effect the distribution of an inventor’s higher intellect to benefit the public at large … patent rights are a recognition of the property of the creator.

As for the graceful mischaracterization of inventors as bleeding heart philanthropists out to make the world the world a better place or to benefit others, that there is a socialist-altruist flavor in this is clear…. whether that is used merely as an attempt to persuade or is genuine is another issue.

Make no mistake, inventors HAVE a right to their invention, they have a right to exploit their inventions and act in voluntary trade in a free market to profit as much as the free market dictates. They have a right to their own life and the pursuit of their own happiness… and that is only fair.

The core of inventing something is being able to own the value of one's own creation as a property right, and all that entails.

Steve Hoffberg March 21, 2019 9:45 am

I believe the next frontier is a request for refund of all fees paid for patents that were not appropriately granted. If the government believes it made a mistake, it should gladly refund the fees it collected based on its own error. With interest? If it wants to keep the fees, it should defend the correctness of its actions. Ever see a response to a petition for exercise of supervisory authority? The Examiner is always right… [If the patent office is now really open to considering its own errors, why not do so BEFORE the patent issues? Did the presumption of administrative correctness evaporate?]

And, perhaps the solicitor's office should have a counsel ready, willing and able to defend the correctness of the prior administrative proceeding, especially for pro se patentees. Would this not enhance the integrity of the process? I can think of no other area of government where there is a special branch that makes a profit on undoing what another part of the same organization does. Talk about perverse incentives…

It's time to turn the world upside down, and call out the mumbo jumbo verbiage, and recycle the false logic back from where it came.

Finally, perhaps we need to consider whether the grant of a later determined "defective" or "invalid" patent is actually a "mistake", or an intentional government policy. If intentional, then this clearly represents a taking violative of the 5th amendment, regardless of whether one can get a 7th amendment jury to hear the case.

I think Iancu is _great_ [without equivocation]. Given the constraints of his role, he is doing a remarkable job of continually taking definitive steps to address and fix problems. But, that it not to say that there are not many existing problems, that need to be called out.

Paul Morinville March 21, 2019 10:18 am

If a patent can be taken as if it never existed, then no patents exist.

Patent in China. Forget the US. It is set up to create a false sense of protection to encourage you to disclose your invention allowing big corps to take it. It is a devious game dependent on suckers who mistakenly trust the US government.

The US patent system is a disgraceful sham.

PTO-Indentured March 21, 2019 11:15 am

U.S. Patent Issuance Disclaimer: This contract, made between the applicant and the United States Patent and Trademark Office, incudes terminology, which upon issuance of this U.S. patent, in accordance with terms of eloquent simplicity promulgated in the U.S. Constitution, while seemingly appearing on this day to be clear, evident and straightforward to both parties, shall be subject to change, at any time within the life of this issuing patent. More particularly, the applicant understands and agrees, henceforth, that any constitutionally assured property right appearing to be in effect on this day — however memorialized in plain language — shall be subject to such interpretation, at any future time, even absent judicial authority, to an extent that: no property right shall exist; the patent issuing today shall not exist; or, such that the patent, and/or any claim thereof is so weakened that one or more, or serial, challengers thereof shall easily prevail in invalidating, or in increasing a cost of defending the patent, such that the inventor e.g., if having claimed a small-entity status, loses the patent, faces bankruptcy and/or is forced to give up the profession of inventing altogether.

Perhaps the CTA and its steward of dubious intentions, might like to help lobby for the above disclaimer. So that the realities of 'efficient infringement' can continue to thrive, while the myth of the still-unproven 'patent troll' fairly tale goes on, and on and on…

anony March 21, 2019 11:43 am

Before the AIA and Alice, small and midsize (and large) businesses could be harassed by attorneys suing over patents that would merely survive a motion for summary judgment in a plaintiff friendly court, but that would have a low overall chance of being successfully litigated. These suits could be settled for a fraction of the price of litigating the first set of motions. This activity led to the patent troll narrative, the AIA, and the decision in Alice, i.e., the current dismantling of the patent system.

To fix the patent system by merely winding the clock back to before the AIA and Alice would likely trigger a repeat of the previous narrative and another call to dismantle the patent system and, thus, not create a truly sustainable solution. What's needed are solutions that (1) address the needs of small under capitalized inventors to obtain enforceable patents that allow them to monetize their

intellectual property and that (2) address the needs of small, medium, and large businesses to provide products and services without being harassed by excessively expensive and uncertain litigation over patents that may not even be infringed.

It does not seem like either side is willing to consider creative solutions that have a chance at addressing the needs of both sides. The pro patent side wants to remake the patent system as it was before the AIA and Alice at exorbitant cost to small and midsize businesses and the anti patent side wants to continue the status quo of a system where patents are invalidated over sophistic trivialities at exorbitant cost to the inventor.

Creative solutions are available, yet the only ideas being discussed are reactionary responses that promulgate the current status quo or call for returning to the previous status quo.

mike March 21, 2019 2:33 pm

@Benny:

>> "…the practice of efficient infringement—an identified abuse of the patent system…"
>> I was under the impression that enforcement of patent rights was not the responsibility of the USPTO.

Enforcement of patent rights is not the responsibility of the USPTO. But the practice of efficient infringement definitely includes abusing the patent system. For example, serial challenges at the PTAB — which is part of the efficient infringement calculation — presents hardship for small patent owners, bringing the intent of the AIA patent system into question. If you can bleed the small patent owner dry, then do it from all angles possible.

mike March 21, 2019 3:19 pm

Steve Hoffberg:

>> I can think of no other area of government where there is a special branch that makes a profit on undoing what another part of the same organization does. Talk about perverse incentives…

>> It's time to turn the world upside down, and call out the mumbo jumbo verbiage, and recycle the false logic back from where it came.

I'm quoting you here for emphasis. Your statements here are so true.

>> I believe the next frontier is a request for refund of all fees paid for patents that were not appropriately granted. If the government believes it made a mistake, it should gladly refund the fees it collected based on its own error. With interest?

But what determines just compensation? I don't believe a simple refund of fees and interest will be sufficient. There is attorney time and inventor time, development, and investments made by investors, etc.

Plus, we also must consider what it is that is being taken here. The government is taking an issued patent upon which people rely, and giving this thing that provided exclusivity over a claimed invention away to the public. So now the invention is available to all. So if an inventor holds a patent and obtains a license from Google for $10M, and then Apple decides to challenge and the PTAB takes the patent and the claimed invention is now given to the public, what is just compensation for taking this claimed and protected invention away from its rightful owner (with a worth of at least $10M) and giving it away to the public?

Yeah, that whole "patents shall have the attributes of personal property" combined with the Takings clause presents a problem if Congress wants to continue down the path of reconsidering something that has already been granted. My position is that ALL examination from the Patent Office must be done prior to grant. Once a patent has been granted by the PTO, it's job has been done. Reviewing validity should be done in the courts.

PTO-Indentured March 21, 2019 4:07 pm

Anony @11

"…businesses could be harassed by attorneys suing over patents"… "This activity led to the patent troll narrative, the AIA, and the decision in Alice…"

First, your premise could literally read "…businesses (just 2), could be harassed by attorneys (e.g., 2) suing over patents (no more than 3)." That fact that any noun reaches a mere plurality, does not suffice.

Second, the conclusion relying on your generalized premise has never been adequately, objectively or rationally substantiated.

Please substantiate where you allege there is some "pro patent side" that "wants to remake the patent system as it was before AIA and Alice" and that such a change necessarily/only equates to: "at exhorbitant cost to small and midsize businesses" and/or is likely to "repeat of the previous narrative" (i.e., you mean the 'Fairy Tale' one? The 'Kool-Aid' one?).

A. Please then fairly contrast any historically accurate and verifiable record of such a patent system caused “exhorbitant cost” e.g., occurring 3-5 years prior to AIA, against a fair and accurate assessment of the enormous economic losses directly attributable to an AIA patent system that nose-dived to a 12-ranked in the world state (possibly still a hair’s breadth from that rank today). In an accurate USD value or range (and/or win/loss case-outcome ratio).

B. Contrast as accurately as possible the enormous economic losses directly attributable to the “anti-patent side”. For example, accounting fairly for ‘efficient infringement’ consequences; loss of U.S. innovation and investment; a near total stagnation of the U.S. Elite Tech Co.s to bring any Next Big Thing to market **since AIA** (e.g., causing Apple to loose a half trillion dollars in stock value in a single day), and, a near obliteration of the U.S. individual inventor livelihood / profession. In an accurate USD value or range.

C. Now, subtract the A’s accurate USD value or range from that of B’s, and let us all see and decide objectively, where your term: “exorbitant”, truly prevailed.

P.S. Stating — “Creative solutions are available, yet the only ideas being discussed are reactionary responses…” — without sharing any actual **“solution”**, or clarification of what you believe to be such, is not very helpful. Particularly following non-solution, generalized, if not overly-simplified comments.

@DaveBarcelou March 21, 2019 6:34 pm

PTO-Indentured @14 Here’s one solution. When the term “Patent Troll” is determined to be DEFAMATORY, it will help eliminate its weaponized use by pseudo-journalists and front companies for ‘Big Tech’ (such as the EFF), who currently write any-thing about any-body w/o ‘any-substantiation’. The threat of being sued by “inventors” (as a class of patent owners like Jeff & I) for something other than ‘efficient infringement’ may help alleviate much of the pain of being ‘BRANDED’ as EXTORTIONISTS, BLACKMAILERS & SHAKEDOWN ARTISTS!

PTO-Indentured March 21, 2019 7:07 pm

Too Bold @10 — My apologies for undue boldness (typo)
Now of a better ‘type’:

There’s an old saying in the legal profession that goes: “Contracts are only as good as the parties that enter into them.”

Does every new patent now need to come with a truth-in-advertising disclaimer?
For example:

U.S. Patent Issuance Disclaimer: This contract, made between the United States Patent and Trademark Office and the applicant, includes terminology, which — upon issuance of this U.S. patent, was in accord with terms of eloquent simplicity promulgated in the U.S. Constitution. While seemingly appearing so on this day, to be clear, evident and straightforward to both parties — such terminology shall nonetheless be subject to change, at any time within the life of this issuing patent, and then be applicable e.g., even retroactively. More particularly, applicant understands and agrees, henceforth, that any constitutionally assured property right appearing to have been in effect on this day — however memorialized **in plain language** — shall be subject to such interpretation, at any future time, even absent judicial authority, to an extent that: a.) no property right shall exist; b.) the patent issuing today shall no longer exist; c.) the patent is re-construed "a franchise" or, d.) such that the patent, and/or any claim thereof is so weakened that one or more, or even serial, challengers thereof, shall easily prevail in invalidating, or in so increasing a cost of defending the patent, that the inventor e.g., if of a small-entity or 'NPE' class, loses his or her patent, is faced with bankruptcy (and/or is required to pay all attorneys fees); and/or, e.) is forced out of the profession and must give up inventing altogether.

Perhaps the CTA and its steward of dubious intentions, might like to help lobby for acceptance of the above disclaimer. So that the realities of 'efficient infringement' are further perpetuated, while the myth of the still-unproven 'patent troll' fairly tale goes on, and on and on, and …

Peter Kramer March 22, 2019 2:57 am

Since the patent is a sword and not a shield, it's not possible to weaponize – it's already a weapon. One who says "weaponizing a patent" may just as well say "weaponize a knife" or "weaponize a gun."

TheTruth March 22, 2019 10:41 am

@anony:

You confuse 2 separate issues, and mis-categorize pro-patent rights people as having polar opposite views regarding the sending of harassing letters from patent owners (whether practicing or not) that have the sole desire of settling for less than the cost of defending against a lawsuit.

There is a 2 step solution:

1) Restore full patent rights to their pre-AIA / eBay condition

2) pass legislation that specifically targets narrowly defined “abusive legal tactics”.

Trying to roll the conversation into one dialogue/legislation unjustly paints the picture that both “sides” have equal weight and impact. The reality is that it is more like 99% (crushing patent rights) vs. <1% (sending harrowing lettters) in terms of economic impact.

Gary Lauder March 22, 2019 8:19 pm

In a speech that I made 15 months ago, I pointed out that the CTA is the most vocal proponent of the troll narrative due to its membership mainly being asian electronics makers who are not prolific innovators. That is at 11:55 out of this 24-minute presentation: http://bit.ly/AttackOnPatentSystem
I don’t know why their motivations have not been more broadly discussed/exposed since it’s pretty self-evident.

mike March 24, 2019 1:01 am

@Gary Lauder. I just watched your entire presentation. Very informative and eye opening. The information in this presentation — http://bit.ly/AttackOnPatentSystem — needs to be shared to every member of Congress.

EFF TURNS 30 THIS YEAR!

Tell Trump's Patent Office Director: Don't Make Permanent Rule Changes Now

In the final days of the administration, Andre Iancu, President Trump's Director of the U.S. Patent and Trademark Office, is trying to push through permanent rule changes that would destroy the post-grant review system. Iancu is going all out to weaken "inter partes review" proceedings (or IPRs), which are the most effective mechanisms we have for getting the Patent Office to cancel patents it never should have granted in the first place. If these rules are adopted, the weakened IPR system will become a bonanza for patent trolls—and stay that way into the next administration.

We spoke out earlier this year about how the Patent Office was undermining the IPR process through bogus rules the Patent and Trial Appeal Board (PTAB) pushed through last year. Now, the Director is seeking to make these rules even more powerful and permanent. Now, we need EFF supporters to help us stop these dangerous changes.

TAKE ACTION

DEFEND STRONG PATENT REVIEWS

Trump's Patent Office Director, Andre Iancu, has instituted new policies that enable more patent abuse and help patent trolls. In 2018, Iancu claimed that small businesses and individuals who spoke out against patent trolls were spreading "scary monster stories."

Now, Iancu is proposing rule changes that will sabotage the system that lets the Patent Office cancel bad patents. Congress created the IPR system in 2011, as part of the America Invents Act. It allows members of the public to go to the Patent Trial and Appeal Board and present evidence that a patent is invalid.

In the past several years, IPR has become the most important way to get the Patent Office to correct its mistakes. That's crucial because more than 300,000 patents are granted each year, especially in the fields of software and technology; yet more than half of patents that go trial turn out to be invalid. The rate is even higher in IPR cases that go to a final decision: more than 60% of the time, PTAB judges find that all the patent's claims are invalid.

The IPR process is faster and cheaper than fighting patents in a federal district court, which can cost millions of dollars and take years. That's why EFF was able to use the IPR process to knock out the "podcasting patent," whose owner falsely claimed to have invented the basic idea of podcasting—and then moved aggressively to force podcast creators to pay licensing fees.

If Iancu can push through this package of new rules, the PTAB will throw out many IPR petitions before judges even look at the challenger's evidence.

First, the PTAB will be able to deny an IPR challenge anytime there's a related court case against the challenger. This change alone could tear apart the IPR system, because it will let patent owners game the system. Patent trolls will be able to game trial schedules and then use them to get an IPR denied.

Second, the PTAB won't consider more than one petition per patent—even if the petitioners are different with rare exceptions. The PTAB is supposed to consider any petition that satisfies the statute's criteria. If the new rules pass, a patent that survives one IPR may never have to face another—even if the second IPR is based on new and stronger evidence.

Together with allied organizations, we spoke out against Iancu's attempt to undermine the IPR process. But he's pushing ahead anyway.

The best comments will state in your own words how you've been affected by invalid patents, or why you're upset that the Patent Office is considering unfair rules that are harmful to the economy and innovation.

We're also including a sample statement that you can cut and paste. If you use the sample, please consider adding some details about your own experience or concerns with poor-quality patents or patent trolls.

Sample Comment:

> I oppose the U.S. Patent and Trademark Office's proposed regulations changing the nature of PTAB trials., Docket No. PTO-C-2020-0055.
>
> [Write why you care about the public's ability to fight low-quality patents. For example, perhaps you work in technology and bad software patents have affected you, your own small business, or your employment.]
>
> First, if the regulations are adopted, people and companies won't 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 it's being asserted aggressively. Different challenges raise different evidence and sometimes address different claims. Congress's 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.

> Overall, PTAB trials must be fair, affordable, and accessible. When petitions are likely to succeed on the merits, they should be granted. What happens in the courts, or to other petitions, shouldn't matter.
>
> These proposed regulations will destroy the U.S. system for post-grant patent challenges. Wrongly granted patents are a major burden on the economy and drain on innovation. Every week, they're used to threaten small businesses with extortionate licensing demands—especially people who make and use technology. To promote innovation, the Patent Office needs to improve the quality of granted patents, and to do that, we need the robust IPR system Congress designed.

This is just a sample; if you want to make changes or write your own comment entirely, that's great! The most important thing is that you send a comment. It doesn't need to sound perfect, and you don't need to be an expert on patents.

At EFF, we speak up for technology users who are victimized by illegitimate patent threats. Today, we need your help.

TAKE ACTION

DEFEND STRONG PATENT REVIEWS

Our "Take Action" button will link you directly to the government's public comment form. You can read the details of the government's proposed rulemaking here on the Federal Register's website. Note that the comments filed with the government in this matter will become public records.

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Deadline to submit input on Request for Comments on Discretion to Institute Trials extended to December 3

United States Patent and Trademark Office sent this bulletin at 11/13/2020 04:48 PM EST

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Patent Trial and Appeal Board

Deadline to submit input on Request for Comments on Discretion to Institute Trials extended to December 3

The USPTO is extending the time to submit comments in response to the Request for Comments on Discretion to Institute Trials Before the Patent Trial and Appeal Board. A notice of extension has been submitted to the Federal Register and the Office anticipates it publishing shortly. The new comment deadline will be Thursday, December 3. This extends the original deadline of Thursday, November 19 by two weeks.

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National Legal and Policy Center
"promoting ethics in public life"

Analysis: One-Fifth of Pro-Net Neutrality FCC Public Comments Are Fake

Posted on May 31, 2017 by Peter Flaherty

Hundreds of thousands of pro-net neutrality comments submitted in recent weeks to the Federal Communications Commission (FCC) website appear to be fake, according to a new analysis released today by the National Legal and Policy Center, a leading government watchdog.

An initial forensic analysis of the FCC's 2.5 million comments shows:

> More than 465,322 pro-net neutrality comment submissions (close to 20% of all pro-net neutrality comments filed) were made in which either the filers' names were being submitted with the email address of an obviously different person or in which the

> Over 100,000 examples of identical comments used language from an Electronic Frontier Foundation letter desk campaign in which the email addresses were generated from a fake email generator program using as many as 10 different email domains. A check of hundreds of the 100,140 comments also revealed that the submissions included fake physical addresses and possibly even fake names.
>
> Comments submitted from multiple filers using various foreign and U.S. email addresses appear to have been culled from spammer and hacker databases available on the public web.

"The full breadth of the fake comments at this point is not known," said National Legal and Policy Center President Peter Flaherty. "But based on an initial forensic analysis, we believe it is massive. Indeed, based on our initial read, almost one fifth (465,322) of all pro-net neutrality comments submitted into the docket appear to have come from email addresses that have made multiple submissions, sometimes with duplicates in the thousands. At least 100,000 more comments from an Electronic Frontier Foundation Net Neutrality comment campaign appear to have been generated using both fake email and fake physical addresses and perhaps even fake names."

One of the more troubling aspects of the deception are comments that are being submitted from thousands of filers using what appear to be other people's private email addresses. Based on NLPC's analysis, the email addresses appear in many cases to have either been culled from spam and hacker databases available on the open web, or from other publicly available files found on the open web such as PDF files – some not even in the U.S. In one case analyzed, an email address that appears to have been pulled from an Islamic hacker database on the public web was associated with seven different individuals submitting comments.

Click here for 9-page pdf with visual evidence of the fakery.

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EFF Confirms 100K Pro-Net Neutrality FCC Public

from spam databases and without their consent falsely submitted comments into the docket," Flaherty continued. "At this point, the full extent of the problem is unclear, but it definitely deserves further investigation."

To get a better understanding of the extent of the fake pro-net neutrality comments, NLPC announced today that they plan to submit the data to a professional data forensics expert in the days ahead to conduct a thorough analysis of the comments.

"We plan to work with a reputable forensics expert and release a full report on the extent of the problem," Flaherty said. "Gaming a regulatory rulemaking in this way is highly deceptive and completely undermines the integrity of the public comment process. More troubling, the potential privacy breach of knowingly using other people's email addresses without their permission to submit comments would be unprecedented," Flaherty continued.

"If our independent forensics analysis confirms that the deception is as extensive as the initial analysis indicates, we will submit our report to Congress and urge them to conduct a full and thorough investigation," Flaherty concluded.

Further Reading

- Google is the Threat to Our Civil Liberties, Not Trump
- Information Tech Corporations and the Left: A Dangerous Liaison
- Facebook Suppresses Story Critical of Black Lives Matter; Censorship Alive and Well Despite Zuckerberg Assurances
- FTC Chair Ramirez Asked About Contradictions in Senate Testimony on Google Antitrust Probe
- Freedom House Challenged On Net Freedom Index; Google Influence Permeates Project
- White House Staffer Who Did Favors for Google Must Resign

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June 1, 2017

The 'Strange' Rebirth of Maxine Waters
May 31, 2017

Analysis: One-Fifth of Pro-Net Neutrality FCC Public Comments Are Fake
May 31, 2017

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[Charged with Embezzlement]

[Union' Scam]

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Analysis of 100,148 comments submitted by the Electronic Frontier Foundation

Comments are submitted through a comment submission platform at www.dearfcc.org. An archive of the site shows that early versions of the EFF site allowed users to pick from several variable words and sentences in constructing their letters. (Archived version available at: https://web.archive.org/web/20170516083335/https://www.dearfcc.org/)

ELECTRONIC FRONTIER FOUNDATION eff.org

The FCC has asked for public comment on new rules about net neutrality.
Use this form to submit a comment to the FCC. Learn more about the FCC rulemaking process.

Dear FCC,

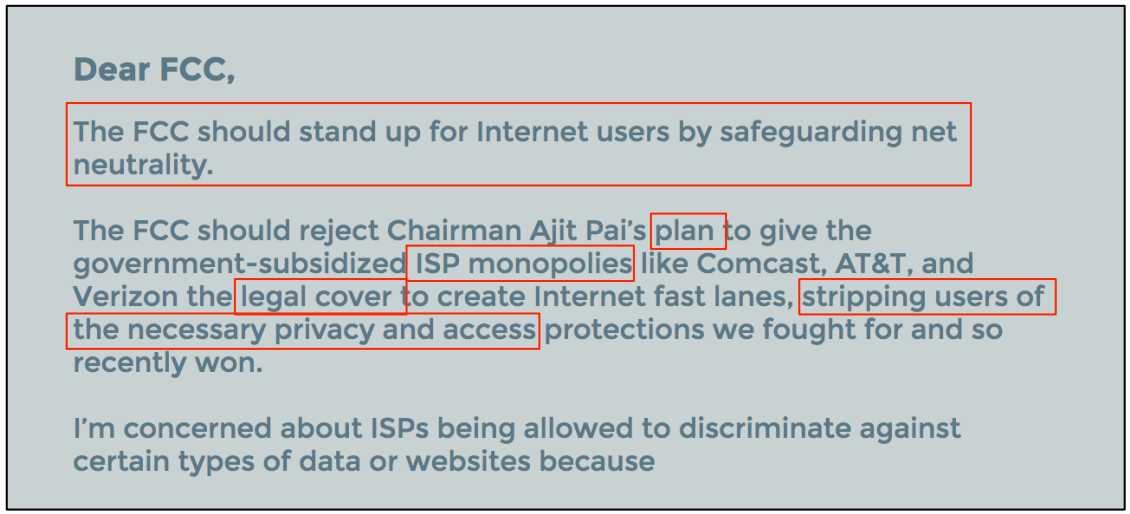
We need the FCC to defend the rights of millions of Internet users by upholding net neutrality protections. The FCC should safeguard Internet freedom by keeping the bright-line net neutrality protections in place and upholding Title II.We need the FCC to defend the rights of millions of Internet users by upholding net neutrality protections.I'm calling on the FCC to stand up for net neutrality and safeguard Title II protections.The FCC should ensure a fair and open Internet for all by opposing efforts to undermine net neutrality.The FCC should stand up for Internet users by safeguarding net neutrality.The FCC must protect the open Internet by maintaining net neutrality protections under Title II.As an Internet user, I'm asking the FCC to protect the net neutrality protections currently in place.The FCC needs to stand up for Internet users like me and keep the net neutrality rules that are already in effect.

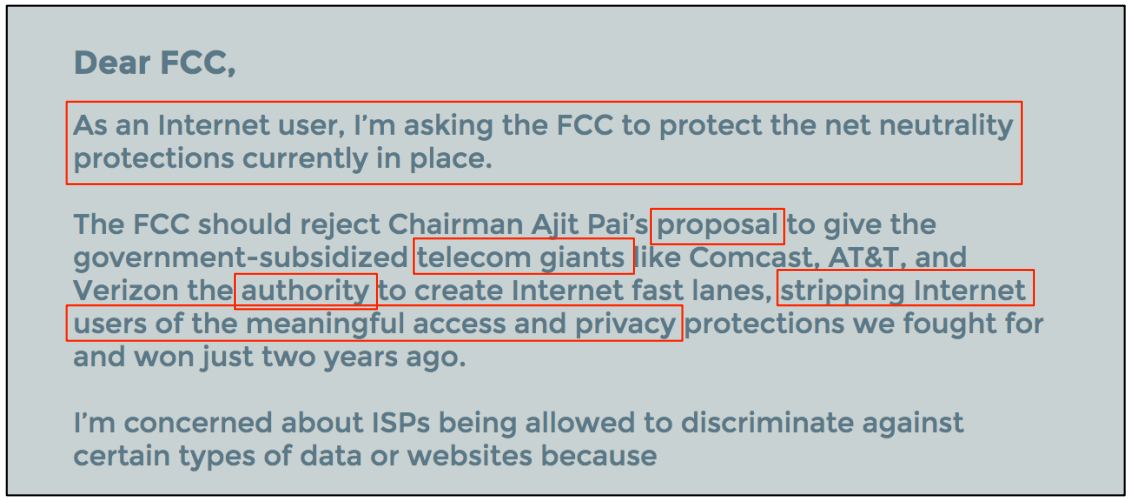
The FCC should reject rejectthrow out
Chairman Ajit Pai's plan planproposal
to give givehand
the thethe government-subsidized
telecom giants telecom giantsISP monopolies
like Comcast, AT&T, and Verizon Comcast, AT&T, and VerizonAT&T, Comcast, and VerizonComcast, Verizon, and AT&TAT&T, Verizon, and ComcastVerizon, AT&T, and ComcastVerizon, Comcast, and AT&T
free rein to free rein tothe authority tothe legal cover to
engage in data discrimination, engage in data discrimination,throttle whatever they please,create Internet fast lanes,
stripping consumers consumersusersInternet users
of the necessary necessarymeaningfulvital
access and privacy access and privacyprivacy and access
protections protectionsrulessafeguards
we fought for fought fordemandedworked for
and won just two years ago. won just two years ago.just recently won.so recently won.

National Legal and Policy Center
"promoting ethics in public life"

Analysis of 100,148 comments submitted by the Electronic Frontier Foundation

Today, EFF's site appears to have automated the rotating variables. A site reload subtly changes the letter text in several places each time as highlighted below (Available at http://www.dearfcc.org).





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Analysis of 100,148 comments submitted by the Electronic Frontier Foundation

An analysis of dozens of submissions appears to show that the comments are coming from fake email addresses and fake physical addresses.

filers	address_line_1	city	state	zip	contact_email	text_data
Aaron A Charley	1324 Orchard Street	Golden Valley	MN	55427	AaronACharley@gustr.com	As an Internet user,
Aaron A Coffey	628 Linda Street	Philadelphia	PA	19108	AaronACoffey@superrito.com	As an Internet user,
Aaron A Giddings	3134 Pooh Bear Lane	**Greenville**	**SC**	**29601**	AaronAGiddings@rhyta.com	As an Internet user,
Aaron A Snow	353 Commerce Boulevard	Omaha	NE	68114	AaronASnow@einrot.com	As an Internet user,
Aaron A Sweet	3569 Willison Street	Crystal	MN	55429	AaronASweet@einrot.com	As an Internet user,
Aaron Alarcon	**3934 Clay Lick Road**	Denver	CO	80239	AaronJAlarcon@rhyta.com	As an Internet user,
Aaron Alvarado	3804 Southern Avenue	Thayer	IA	50254	AaronEAlvarado@superrito.com	As an Internet user,
Aaron Avalos	2071 Elmwood Avenue	Higley	AZ	85236	AaronCAvalos@rhyta.com	As an Internet user,
Aaron B Calaway	**3597 Romines Mill Road**	Dallas	TX	75248	AaronBCalaway@fleckens.hu	As an Internet user,

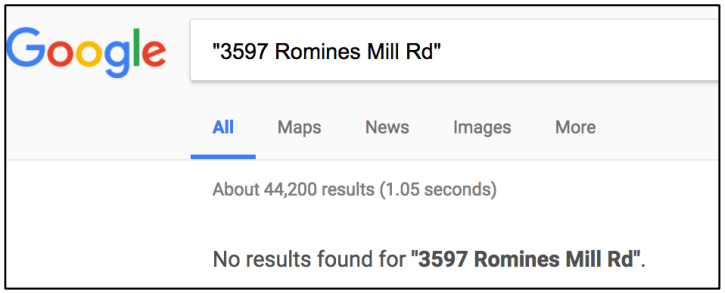
Fake physical addresses

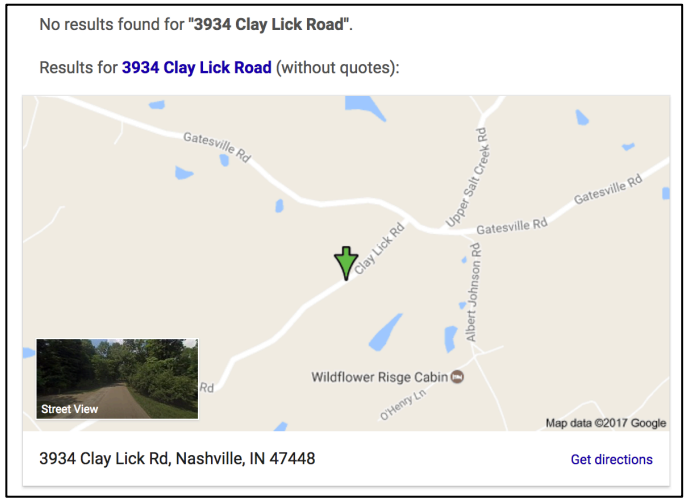
Fake email addresses

EFF Letter Text

Address doesn't exist

Address is in Nashville TN, not Denver





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Analysis of 100,148 comments submitted by the Electronic Frontier Foundation

All 100,148 comments were submitted using only ten different email extensions that appear to have been generated from the website http://www.fakemailgenerator.com.

Ten extensions common to all 100,148 EFF emails:

teleworm.us
fleckens.hu
cuvox.de
armyspy.com
dayrep.com
einrot.com
gustr.com
jourrapide.com
rhyta.com
superrito.com

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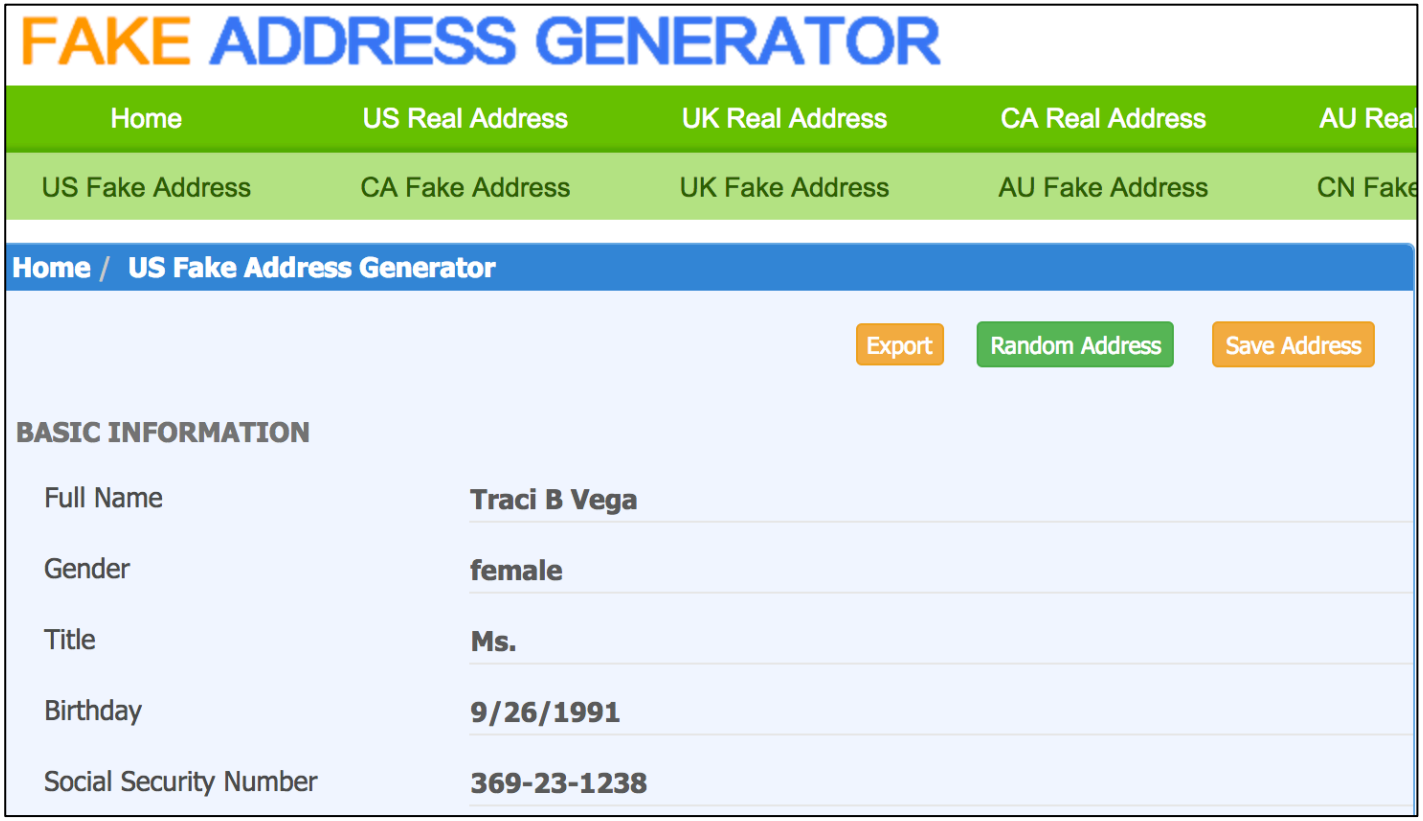
Analysis of 100,148 comments submitted by the Electronic Frontier Foundation

The comments also appear to have been submitted using fake addresses and possibly even fake names generated through sites like http://wwwfakeaddressgenerator.com



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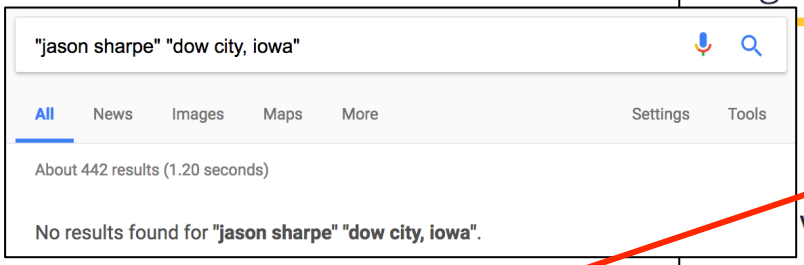
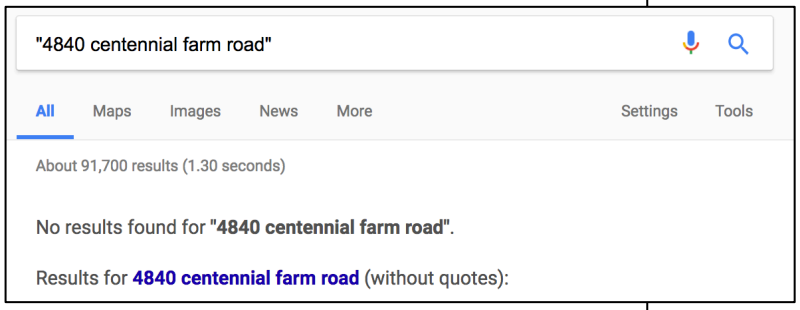
Analysis of 100,148 comments submitted by the Electronic Frontier Foundation

Example of fake EFF comment from dataset of 100,148 submitted into the FCC docket
https://www.fcc.gov/ecfs/filing/1051172731575



No record of Jason Sharpe
In Dow City, IA



Address
doesn't exist

Filing Detail

ID	1051172731575	**Proceeding**	17-108
Name of Filer	Jason Sharpe		
Type of Filing	COMMENT	**Filing Status**	DISSEMINATED
Viewing Status	Unrestricted		
Date Received	May 11, 2017	**Date Posted**	May 15, 2017
Address	4840 Centennial Farm Road	**City**	Dow City
		State	IA
ZIP	51528		

Brief Comment

As an Internet user, I'm asking the FCC to protect the net neutrality protections currently in place. The FCC should throw out Chairman Ajit Pai's proposal to give the ISP monopolies like Comcast, AT&T, and Verizon the authority to create Internet fast lanes, stripping Internet users of the meaningful access and privacy protections we fought for and just recently won. I'm concerned about ISPs being allowed to discriminate against certain types of data or websites, because users will have fewer options and a less diverse Internet. Thankfully, the current net neutrality rules ensure that Internet providers can't slow or block our ability to see certain websites or create Internet "fast lanes" by charging websites and online service money to reach customers faster. That's exactly the right balance to ensure the Internet remains a level playing field that benefits small businesses and Internet users as well as larger players. Pai's proposed repeal of the rules would transform ISPs into Internet gatekeepers with an effective veto right on innovation and expression. That's not the kind of Internet we want to pass on to future generations of technology users. I urge you to keep Title II net neutrality in place, and safeguard Internet users like me. Sincerely, Jason Sharpe

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Analysis of 465,322 comments submitted multiple times from the same email addresses

More than 465,322 pro-net neutrality comments (close to one quarter of all comments submitted) come from email addresses that have submitted comments multiple times. In some cases, thousands of times.

Example: The email address example@example.com submitted the same pro-net neutrality comment almost 7500 times.

contact_email	text_data	COUNT(*)
exacta1217@gmail.com	Net Neutrality, supported by Title II r	10
exalpha2@yahoo.com	Don't kill net neutrality. We deserve	2
example@email.com	FCC Chairman Ajit Paj, I specificall	2
example@email.com	I support strong net neutrality backe	2
example@email.com	Keep net neutrality!	2
example@email.com	Preserve my net neutrality please	4
example@email.com	Preseve net neutrality pllllssss!	3
example@email.com	Stay away from my Internet I'm sure	2
example@example.com	I support Net Neutrality backed by Title II oversite of Internet Service Providers.	7499
example@example.com	I support net neutrality! Keep it free	2
example@gmail.com	I SUPPORT NET NEUTRALITY YO	10

Analysis of 465,322 comments submitted multiple times from the same email addresses

Hundreds and perhaps thousands of other comments appear to be from email addresses not associated with the filer's name or reused multiple times for filings from different individuals.

Example: Seven comments filed either by "Katrin Sippel" or from the email address katrin_sippel@yahoo.es.

Filers name not associated with email address

Niklas Lemcke	katrin_sippel@yahoo.es	Don't kill net neutrality. We des
Monika BERNHARD	katrin_sippel@yahoo.es	Don't kill net neutrality. We des
marion harukaze	katrin_sippel@yahoo.es	Don't kill net neutrality. We des
Franka Lenz	katrin_sippel@yahoo.es	Don't kill net neutrality. We des
Katrin Sippel	obstacle1girl@yahoo.com.mx	Don't kill net neutrality. We des
Katrin Sippel	renya@sabosch.de	Don't kill net neutrality. We des
Katrin Sippel	schnipzel@gmx.de	Don't kill net neutrality. We des
Katrin Sippel	dmartinez@coag.es	Don't kill net neutrality. We des

Same email addresses reused for multiple filings from different individuals

Robyn Aldrick	renya@sabosch.de	Don't kill net neutrality. We des
Antina Schmidt	renya@sabosch.de	Don't kill net neutrality. We des
Katrin Sippel	renya@sabosch.de	Don't kill net neutrality. We des
Gilly Golding	reoverstreet@t-online.de	Don't kill net neutrality. We des
Erika Ranzi	reoverstreet@t-online.de	Don't kill net neutrality. We des
Lena Turhan	reoverstreet@t-online.de	Don't kill net neutrality. We des
Phil Cosgrove	rogermewtehig@yahoo.co.uk	Don't kill net neutrality. We des
Sabine Schneider	rogermewtehig@yahoo.co.uk	Don't kill net neutrality. We des

Analysis of 465,322 comments submitted multiple times from the same email addresses

In the "Katrin Sippel" example from the previous page, the email address appears to have been culled from a spam email database on the open web associated with an Islamic hacker's group (Data source: https://justpaste.it/Fr1234).

بسم الله الرحمن الرحيم

Translation: "In the name of Allah the Merciful

Translation: "French Inn Database"

قاعدة بيانات نزل فرنسي

mail	nom	prenom	telephone
colleen_pearlgirl@hotmail.com			
lhowe@verizon.net			
garynortheast@dolanog.net			
jpierre3333@gmail.com			
Louisexx14@hotmail.com			
shainsu@yahoo.com			
katrin_sippel@yahoo.es			
k.wolfgruber@gmx.at			
fiona.hird@mq.edu.au			

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