



June 23, 2020

**RE: PTAB Rules of Practice for Instituting on All Challenged Patent Claims and All Grounds and Eliminating the Presumption at Institution Favoring Petition as to Testimonial Evidence, Docket No. PTO-P-2019-0024**

To whom it may concern:

Consumer Action for a Strong Economy, Inc. (CASE), a non-profit, non-partisan consumer advocacy organization, submits these comments in strong support of the USPTO's Notice of Proposed Rulemaking (NPRM) for the rules regarding all challenged claims or none in *inter partes* review (IPR) and post-grant review (PGR), and the transitional program for covered business method patents (CBM) processes before the Patent Trial and Appeal Board (PTAB) to be in alignment with the United States Supreme Court decision in *SAS Institute Inc. V. Iancu* (SAS).

We further applaud proposed rule changes that eliminate the presumption that a "genuine issue of material fact created by the patent owner's testimonial evidence filed with a preliminary response will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute a review." The current presumption in favor of a petitioner is arbitrary and not rationally based, and creates inequitable burdens on the respondent unrelated to the weight and credibility of the evidentiary record. A neutral presumption is not only best in the interest of fairness; it errs on the side of caution and reduces the risk that innovators will be deprived of the rightful rewards of their innovations.

These rule changes will help clarify the accepted practices and standards in the patent review process and create more equitable and consistent outcomes in patent challenge petition proceedings.

Innovation is the lifeblood of our consumer economy, and for too long inventors and innovators toiling to create new and better products and processes have seen their sizable investment of time and financial resources stripped away by an arbitrary patent review process that too frequently rewards frivolous patent challenges that undermine economic progress. The NPRM at issue will help right this ship and help eliminate the obstacles that discourage innovation, and put inventors on a fair playing field in defending their creations.

This rule change will further assist the USPTO in returning to its intended function as articulated in its creation by Congress, which is to provide the United States with a governing court to ensure that patents receive the full protection they deserve. This can only be achieved by trials and review standards that weigh the facts equitably and without prejudice, and place evidentiary burdens where they rightfully belong.

Sincerely,

**Consumer Action for a Strong Economy (CASE)**

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