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To: USPTO Info <usptoInfo@uspto.gov>
Cc: Keith Abouchar <keith.abouchar@mail.house.gov>
Subject: Docket No. PTO-C-2020-0055

Andrei Iancu, Director
United States Patent and Trademark Office (USPTO) USPTO Madison Building
600 Dulany Street
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Re: Docket No. PTO-C-2020-0055

Dear Director:

Opposed is the U.S. Patent and Trademark Office's proposed regulations changing the nature of PTAB trials., Docket No. PTO-C-2020-0055.

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 challenges 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.

The rights of technology developers and users are no less important than the rights of patent owners. When patents are evaluated in federal court, nearly half of them are found to be invalid.

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.

Yours sincerely,
Robert E. Rutkowski

cc:

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