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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-2020-0055-0003

Comment from Sara Sass

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General Comment

This comment is in response to request #7 regarding PTAB's use of discretion in deciding whether to institute an AIA trial. As a former patent examiner, whenever PTAB made a change, patent examiners were subject to very in-depth training on legal analysis. This training slowed down patent examination, as patent examiners then had less time for actual examination, and the trainings were confusing. Trainings hosted by PTAB judges were not clear in how they related to the examiner's performance appraisal plan --- would the examiner be punished if he / she did not follow the legal analysis according to a PTAB judge, for example. There is no requirement for patent examiners to be versed in legal analysis and the USPTO website emphasizes the need for patent examiners with a scientific / engineering background. The USPTO website does not indicate that a patent examiner should have a legal background. Patent examiners already lack clarity regarding their current performance appraisal plans ("PAPs"), which have been delayed several times. My concern is that with trials instituted before PTAB, with any new standard, the brunt of work will fall on patent examiners who are already overburdened. Any new burden on the patent examiner will slow patent examination.