

# PUBLIC SUBMISSION

<b>As of:</b> 11/13/20 1:01 PM <b>Received:</b> November 10, 2020 <b>Status:</b> Posted <b>Posted:</b> November 13, 2020 <b>Tracking No.</b> 1k4-9k0j-lo88 <b>Comments Due:</b> November 19, 2020 <b>Submission Type:</b> API
---

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

Request for Comments on Discretion to Institute Trials Before the Patent Trial and Appeal Board

**Comment On:** PTO-C-2020-0055-0001

Discretion to Institute Trials Before the Patent Trial and Appeal Board

**Document:** PTO-C-2020-0055-0062

Comment from Peter Lablans.

---

## Submitter Information

**Name:** Peter Lablans

**Address:**

Morristown, NJ,

**Email:** ip@ternarylogic.com

**Organization:** Ternarylogic LLC; Spatial Cam LLC

---

## General Comment

I am a prolific inventor and the named inventor on over 50 patents. My inventions relate to two technologies. 1) non-binary computer technology, especially as it relates to cyber-security and cryptography; 2) camera technology as it relates to panoramic imaging and locating and identifying hidden objects with cameras and smartphones. I started inventing around 2005 including obtaining patents. I am supported by angel investors who were "believers" in the US Patent system. But no longer, I am sad to report.

Despite the negative developments in IP protection in the USA, I am still a great believer in the inventive power of the US inventor. I believe some sanity can be restored in future protection of IP for independent inventors, who have been disproportionately affected by anti-patent sentiments in our country.

I urge adoption of regulations to govern the discretion to institute PTAB trials consistent with the following principles.

**I: PREDICTABILITY**

Regulations must provide predictability. Stakeholders must be able to know in advance whether

a petition is to be permitted or denied for policy reasons. To this end regulations should favor objective analysis and eschew subjectivity, balancing, weighing, holistic viewing, and individual discretion. The decision-making should be procedural based on clear rules. Presence or absence of discrete factors should be determinative, at least in ordinary circumstances. If compounded or weighted factors are absolutely necessary, the number of possible combinations must be minimized and the rubric must be published in the Code of Federal Regulations.

## II: MULTIPLE PETITIONS

- a) A petitioner, real party in interest, and privy of the petitioner should be jointly limited to one petition per patent.
- b) Each patent should be subject to no more than one instituted AIA trial.
- c) A petitioner seeking to challenge a patent under the AIA should be required to file their petition within 90 days of an earlier petition against that patent (i.e., prior to a preliminary response). Petitions filed more than 90 days after an earlier petition should be denied.
- d) Petitioners filing within 90 days of a first petition against the same patent should be permitted to join an instituted trial.
- e) These provisions should govern all petitions absent a showing of extraordinary circumstances approved by the Director, Commissioner, and Chief Judge.

## III: PROCEEDINGS IN OTHER TRIBUNALS

- a) The PTAB should not institute duplicative proceedings.
- b) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner and the court has neither stayed the case nor issued any order that is contingent on institution of review.
- c) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner with a trial is scheduled to occur within 18 months of the filing date of the petition.
- d) A petition should be denied when the challenged patent has been held not invalid in a final determination of the ITC involving the petitioner, real party in interest, or privy of the petitioner.

## IV: PRIVY

- a) An entity who benefits from invalidation of a patent and pays money to a petitioner challenging that patent should be considered a privy subject to the estoppel provisions of the AIA.
- b) Privy should be interpreted to include a party to an agreement with the petitioner or real party of interest related to the validity or infringement of the patent where at least one of the parties to the agreement would benefit from a finding of unpatentability.

## V: ECONOMIC IMPACT

Regulations should account for the proportionally greater harm to independent inventors and small businesses posed by institution of an AIA trial, to the extent it harms the economy and integrity of the patent system, including their financial resources and access to effective legal representation.

230 years of patent law and innovation completely changed in an instant! Let's restore some sanity and common sense in what once was the greatest patent system in the world.