

To Whom It May Concern:

My name is Gregory Brian Freuler. I am an industrial designer, inventor and entrepreneur. My intellectual property rights are my most valuable assets. It is how I make my living. I create jobs for engineers, sales people, distribution companies and many others with the products I design and market.

Individual inventors like myself are the lifeblood of our nation's economy and it is the individual inventor who has created most of the greatest inventions in history.

I have issued utility patents (US8998740B2, US9931745B2 and US9032580B2), with patents filed and more ready to be filed. I have dozens of products on the market without patents and many of them have been knocked off. Without patent protection, my intellectual property, and essentially my livelihood, is at stake.

My FreeForm paintbrushes, which are included in US9931745B2, will be in over 2000 stores beginning February 2021. I lose sleep thinking about PTAB and having to fight for my life's work at a cost few individuals like me could afford.

The PTAB has overreached their charter and are undermining the years of work and sacrifice made to create the products that are the engine of our economy. What incentive does an inventor have, when their patent, which was granted after vigorous examination and scrutiny by highly-qualified patent examiners, is flippantly dismissed by an unqualified group with no accountability and often having to do it multiple times.

I stand with my other fellow inventors:

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.

Respectfully,

Gregory Brian Freuler