

PUBLIC SUBMISSION

As of: 11/16/20 10:41 AM
Received: November 12, 2020
Status: Posted
Posted: November 16, 2020
Tracking No. 1k4-9k1y-hz3t
Comments Due: November 19, 2020
Submission Type: 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-2020-0055-0152

Comment from Lawrence Glaser.

Submitter Information

Name: Lawrence Glaser

Address:

2208 Race Street

Needles, CA, 92363

Email: Larryglaser@aol.com

Phone: 571-235-2435

Submitter's Representative: N/A

Organization: Self

General Comment

Greetings.

My name is Lawrence F. Glaser. I am a sole, private inventor. I happen to be disabled and elder under State Law, so it is more important to me now, more than ever before, to be treated fairly and not to be abused or retaliated against in any given process of regulation, law or commercial transaction.

Public Policy and Federal Government procurement systems, procurement law and regulation, speak loudly to the subject of big business and large organizations suppressing and taking opportunity from small concerns. These regulations and laws spawned a whole agency, the Small Business Administration, and strict guidelines on how the biggest buyer in the world spends its money and solicits its bids. No such vehicle exists within the USPTO and I wish the Agency would consider some protection(s) for the individual inventor.

Much of our Nation invents at the individual level, the smallest concern possible.

Looking at our history and the history of the world, many great discoveries and inventions are in truth, individual accomplishments. Gaming the system of US Patents and plotting regulations, procedures and reviews of an individual's life work should be very carefully considered. Never forget that a Patent is an idea and an idea is and always will be property. Our Nation was founded to attract property holders to improve the Public body of knowledge, which has collectively raised us from poverty and disease.

(See Benjamin Franklin, Patent Act of 1790. This is our heritage. This is the meaning of the light emanating from the lamp on the Statute of Liberty)

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.

If a change is to be considered here and below, provide examples before making it a rule. Allow the many minds to comment and take the reasonable suggestions to further favor our system.

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.