PUBLIC SUBMISSION

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-2020-0055-0316
Comment from Jeff Hitzler.

Submitter Information

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General Comment

I have been an independent inventor for many years and had several Patents. Two Design Patents, and two Utility Patents 7,178,191 and 10,003,936. I am proud of the work I've done and the work I've done to create these novel devices. I've gone through the challenges of professional searches and having professional Patent Attorneys prepare my applications, and having them reviewed and granted. Having them invalidated would be a travesty.

1) 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.

Another lesson learned for all inventors. Patents can't really protect you against the guys with
more money than you.

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