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Discretion to Institute Trials Before the Patent Trial and Appeal Board

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Comment from Anatoly Mayburd

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General Comment

As a professional working in the field since 2007, I strongly object to any proposals that can result in canceling of patent invalidation.

In my experience, > 95% of issued patents have some flaws which can be discovered based on rigorous invalidation searches.

The main concern is the lack of novelty and obviousness in light of neglected and overlooked prior art.

While the motive for eliminating invalidation procedure is justice to small businesses and individual inventors, who cannot compete with better funded peers at the litigation stage, cancelation of invalidation procedure will be a huge injustice to the rest of society.

Namely, the patents will be granted despite the presence of prior art and lack of novelty/inventive step, which means dilution of the very idea. The patents are "metes and

bounds" of the field where the inventor has exclusive rights. Murky boundaries will increase litigation by other channels, such as infringement. This will not help small business and individuals.

Patents are legal documents, same as diplomas to practice medicine or engineering or certificates to operate machinery. The only qualification acceptable to the society is the correspondence to the professional standards by the owner of the document. Why the millions of other business-minded individuals should be excluded from the field by an improperly granted patent?

Diplomas and professional certificates are not granted charitably, based on the shortage of funds to complete the required training. Neither patents should be relieved from the post-grant scrutiny based on the shortage of funds by the inventors and assignees. More "doctors" with incomplete diplomas would not mean better medicine and justice for more, likewise prolific lower quality patents will not mean faster progress and justice for the society.