

# PUBLIC SUBMISSION

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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-2020-0055-0412

Comment from Stacey Miller

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## Submitter Information

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## General Comment

I am a senior citizen and a new inventor. I have spent the last 4 years of my life trying to bring this product to market. I had sleepless nights and insurmountable time and money spent learning the "ropes" and doing my research. I have taken my life savings!!! I have done everything in my power to keep this product out of China for fear of being eaten up alive.

How is it that we, in the U.S. have to fight for our rights? How shameful that I grew up thinking the Govt would protect us. We learned fast in the past 4 years, that is far from true. Government and Politics turned out to be a self serving entity for the personal gain of power and money. I pray that you are not in line with that ideology.

Why on earth would an inventor have to beg for your agency to protect us? I put my heart and soul and last dollar into my product, and not for a larger company to copy my blood sweat and tears and enrich themselves with just a snap of a finger.

Please put yourself in our shoes and realize that the American Dream is nothing but a bad dream if your agency doesn't protect us. The U.S. was known to look out for the little guys 'rights'. Inventors will stop inventing if you let big corporations or China or anyone who has more money than we little guys do to sabotage our dream.

Please invoke these laws to protect us: You never know if one of your children/grandchildren would become an inventor someday.

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.

It is financially impossible for inventors to protect their patents from these thieves!

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