

# PUBLIC SUBMISSION

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**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-2020-0055-0496

Comment from Anonymous Anonymous

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## Submitter Information

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## General Comment

I work for a company in the tech sector. We are deeply concerned about the increased use by the Patent Trial and Appeal Board (“PTAB”) of discretionary denials that leave invalid patents in force to be asserted in litigation. Shielding invalid patents from cancellation on policy grounds is the opposite of what the PTAB was created to do.

Denying challenges divorced from the merits means that invalid patents remain in force and must be litigated at significant cost in district court infringement suits. This failure to consider and cancel invalid patents is one of the primary causes of the significant increase in litigation by non-practicing entities in recent months. Data shows the USPTO now favors these denials and is increasingly using this rule to deny institution of patent challenges, and the denials primarily benefit litigation-funded NPEs that file in the Eastern or Western Districts of Texas.

Congress and the rest of the federal government should be doing everything within their power to prevent unnecessary and abusive litigation against U.S. companies and employers, NOT inventing new ways to prevent those threatened with suit from preventing needless litigation.

Thank you very much for taking our concerns into consideration.