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Request for Comments on Discretion to Institute Trials Before the Patent Trial and Appeal Board

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Discretion to Institute Trials Before the Patent Trial and Appeal Board

Document: PTO-C-2020-0055-0479

Comment from Inventors Network and Stephen Lyon

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Organization: Inventors Network - but also Individually

General Comment

Dear Director Iancu,

Inventors Network is a Minnesota based non-profit organization that has helped hundreds of Inventors pursue their creative dreams. I and many of the members remain concerned about PTAB and the undue burden it places on innovation, especially small and micro-entity inventors. I understand that the Director has the ability to review and make some changes to the current process. Believing such a review is long overdue it is welcomed as such and believe the current Director is the best individual to complete the process to the point of implementing actual changes prior to any future leadership change (which would likely place this process in a delayed purgatory like state)

Where possible, I am urging the Director to make fair common sense changes that will put the process more in line with how the balance of the US legal system works and what it represents. Please consider the following:

1. Standing- The current PTAB system, provides little to no limitation on who can petition it. This is at great odds to the principle of standing that is a bedrock of our legal system and the PTAB process should be revised accordingly.
2. Multiple Challenges- The current PTAB system allows multiple and repeated challenges from the same party. This is also at great odds to comparable principles such as "double jeopardy", another bedrock of our legal system and the PTAB process should be revised accordingly.
3. Choice of Venue- The PTAB provides no venue options to the inventor that gets petitioned. Our members are almost entirely small/micro-entity and given the only option for them when petitioned is the very expensive and cumbersome process of PTAB puts them at great risk to lose their patent status (just due to cost alone). Additionally the nature of PTAB makes contingency style legal representation impractical. The Director should allow the option for the type of venue to be changed, much like the current legal system allows for movement between small claim and district court venues as well as recognizing arbitration and mediation options.
4. Time Limits- In keeping with long standing principles of our legal system such as "Statute of Limitations", there should be a time limit of 2 to 4 years that bars petitions after the date of patent issue.
5. Warranty and Indemnification- The USPTO needs to provide a warranty and indemnification for its work as it is the USPTO's work that is being challenged by the petitioner at the PTAB, but the office takes no responsibility for this and when a patent is invalidated provides no fee refund. Since the USPTO issued the patent they should provide the inventor (if requested) with a defense to the action. They could adjust the fee upwards to the petitioner to cover the anticipated expense of this to the USPTO.
6. Claim Revisions Should be Allowed through PTAB- Completely inconsistent with the established ability to adjust supported claim wording during the examination process the PTAB process should be revised to permit this as well.

Lastly, I urge the department to consider these changes in the context of the most important legal principle of our system and that is "Equal Protection Under the Law and along these lines, I remained completely puzzled with the differences between creator friendly rules and regulations that exist for copyright versus the comparably speaking abuser friendly rules and the undue defense burdens and options placed on inventors for patent related IP. My points here will be limited, as I feel that the Director and USPTO have a solid understanding of all areas of IP and hopefully ask themselves daily why does the FBI criminally enforce copyright, while no similar or statutorily defined non-litigation protections exist for patents?

Realizing the Director's powers are limited by statute please give these points and recommendations your fullest consideration and go to work quickly and every place you can for the small and micro entity inventor who has been essential and loyal for centuries to the Nation and USPTO in spite of having been dealt a deck of litigation and legislation options that are at great odds with the bedrock principles of our justice system which increasingly jeopardizes our existence.

Thank you very much,

Steve Lyon
President
Inventors Network