

# 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-2020-0055-0762

Comment from J Hardin

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## Submitter Information

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## General Comment

### NOTICE OF PATENT TROLL RHETORIC

As a follow up to my previously provided comment, please note that when reviewing the public comments of others that there exists in them a swarm of patent troll rhetoric. Also notice the dates these patent troll rhetoric comments were submitted and received, which is detailed below.

As opposed to the patent troll rhetoric one may find in the comments, the comments from Inventors are legitimate and can be tracked down to real people.

Recall, our founders wrote the Patent Clause of the U.S. Constitution on the proper belief that the progress of science and useful arts comes from "Inventors". The People believe it is this group -- the Inventors -- who need to have the exclusive right to their discoveries secured. Inventors are not "patent trolls".

Additionally, the People by way of Congress in the America Invents Act enacted legislation to "protect[] the rights of small businesses and inventors from predatory behavior that could result in the cutting off of innovation." Sec. 30. Sense of Congress, Pub. L. No. 112-29, 125 Stat. 284 (2011). This Act additionally provides the Director the means and authority to create rules and regulations to do exactly that -- protect the rights of small businesses and inventors from predatory behavior. Not from "patent trolls" and from fairy tales of scary monsters, but from "predatory

behavior". Such behavior exists today in the gaming of the IPR system, and, as the Inventors have expressed here, we demand predictable objective regulations.

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- The original deadline for submitting comments pursuant to 85 FR 66502 was November 19.

- On November 13, the USPTO provided a bulletin stating that the deadline to submit comments was extended to December 3. See

<https://content.govdelivery.com/accounts/USPTO/bulletins/2ac6bc1> .

(See attached: 20201113\_USPTO\_Bulletin\_Deadline\_Extended.pdf)

- Interestingly, on November 12, just one day prior to this bulletin, an article was posted on the Electronic Frontier Foundation's ("EFF") website. That article proclaimed the patent troll narrative and invited its readers to submit comments against the USPTO's proposed rule changes.

See EFF Article:

<https://web.archive.org/web/2020112220202/https://www.eff.org/deeplinks/2020/11/tell-trumps-patent-office-director-dont-make-permanent-rule-changes-now>

(See attached: 20201112\_EFF\_Article\_Tell\_Director\_Dont\_Make\_Permanent\_Rule\_Changes.pdf)

- Also interestingly, if one a) searches the public comments for the word "troll", b) sorts those search results by posted date, and then c) checks the actual "Received Date" on each comment, one will find that the swarm of "patent troll" rhetoric began showing up in the comments on November 12 and thereafter. Prior to this date, the patent troll rhetoric was absent.

This is not the first time hijacking of public comments on a government site has occurred. A similar event occurred in 2017 with net neutrality, and although the EFF created a tool for submitting comments directly from their website and were pinned for enabling the fake comments and still denied ownership, those comments indeed did occur nonetheless.

These links provide some insight as to that 2017 website comment hijacking event:

<http://web.archive.org/web/20170608000024/http://nlpc.org/wp-content/uploads/2017/05/Fake-pro-net-neutrality-comments-0530.pdf>

<http://web.archive.org/web/20170605020040/http://nlpc.org/2017/05/31/analysis-one-fifth-pro-net-neutrality-fcc-public-comments-fake/>

See attached:

- Analysis\_One-Fifth\_of\_Pro-Net\_Neutrality\_FCC\_Public\_Comments\_Are\_Fake.pdf

- Fake-pro-net-neutrality-comments-0530.pdf

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With respect to the comments here pursuant to 85 FR 66502, most of these "post-original-deadline" comments that preach the patent troll narrative are either single sentence/paragraph comments, or they use the "Sample Comment" language provided in the EFF article referenced above. Many of these comments are anonymous, many do not even include their city/state along with their comment, and all of them rail against "patent trolls".

I remind the USPTO of the proper stance on the patent troll narrative, as USPTO Director Andrei Iancu advanced here:

<https://www.ipwatchdog.com/2018/10/19/iancu-risk-takers-patent-troll-narrative-orwellian-doublespeak/id=102474/>

and as discussed here:

<https://www.ipwatchdog.com/2019/03/20/cta-preaches-patent-troll-fairy-tale-chat-iancu-sxsw/id=107539/>

See attached:

- 20181119\_IPWatchDog\_Iancu\_lauds\_risk\_takers\_calls\_patent\_troll\_narrative\_Orwellian\_doublespeak.pdf

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20190320\_IPWatchDog\_CTA\_Preaches\_Patent\_Troll\_Fairy\_Tale\_in\_Chat\_with\_Iancu\_at\_SXSW.pdf

Sincerely,  
Jeff Hardin

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## Attachments

20201113\_USPTO\_Bulletin\_Deadline\_Extended

20201112\_EFF\_Article\_Tell\_Director\_Dont\_Make\_Permanent\_Rule\_Changes

Analysis\_One-Fifth\_of\_Pro-Net\_Neutrality\_FCC\_Public\_Comments\_Are\_Fake

Fake-pro-net-neutrality-comments-0530

20181119\_IPWatchDog\_Iancu\_lauds\_risk\_takers\_calls\_patent\_troll\_narrative\_Orwellian\_doublespeak

20190320\_IPWatchDog\_CTA\_Preaches\_Patent\_Troll\_Fairy\_Tale\_in\_Chat\_with\_Iancu\_at\_SXSW