

October 20, 2015

Via Electronic Mail

PTABTrialPilot@uspto.gov

Attention: Scott R. Boalick
Vice Chief Administrative Patent Judge
Patent Trial and Appeal Board

Re: IBM Corporation Comments on "Request for Comments on a Proposed Pilot Program Exploring an Alternative Approach to Institution Decisions in Post Grant Administrative Reviews," 80 Fed. Reg. 164 (August 25, 2015)

IBM thanks the United States Patent and Trademark Office (Office) for the opportunity to comment on the proposed pilot program pertaining to the institution and conduct of Inter Partes Review (IPR) trials provided for in the Leahy-Smith America Invents Act (AIA). Currently, the Office has a panel of three APJs decide whether to institute a trial and then usually the same three APJs conduct the trial if instituted. With the proposed pilot program, a single APJ would decide whether to institute an IPR and with two additional APJs would conduct the trial if instituted.

IBM understands that the proposed pilot would reduce workload for the APJs, however it is unclear how much impact the proposed single APJ panel would have on the substance or timing of decisions. It would be helpful if the Office published statistics indicating the number of instances when institution decisions were split versus unanimous under the current program. It would be further helpful if the Office published statistics indicating the time to decide to institute a trial and time until the outcome of the AIA trial under the current program versus the anticipated time to decide to institute a trial and time until the outcome of the AIA trial under the proposed pilot program. After the pilot is completed, it would be helpful to have the actual data for proceedings under the program to help the public evaluate its effectiveness.

IBM thanks the Office for providing an opportunity to submit comments regarding the proposed pilot program that reduces the number of APJs deciding whether to institute an IPR. We support the Office's continuing commitment to work with the patent community to ensure these post grant proceedings work well and provide a fair opportunity to review issued patents in a manner that promotes patent quality and certainty for the public and patent owners.

Respectfully Submitted,

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