

To: *PTABTrialPilot@uspto.gov*

From: Graham K. Staton (Graham.Staton@gmail.com)

Subject: Comments on the single-APJ institution pilot program.

Docket Number: PTO-P-2015-0055

To whom it may concern:

I appreciate the opportunity to comment on the proposed pilot program. I am a third year student at Rutgers School of Law. These comments are offered solely in my individual capacity. I respectfully submit the following comments regarding the above identified docket. Thank you for your consideration.

Graham K. Staton

JD Candidate 2016

Rutgers School of Law

I. Should the USPTO Conduct the Pilot?

The USPTO should conduct the single-APJ institution pilot program. Shortly following the AIA, there was an increase patent litigation as was expected. However, according to statistics collected by Lex Machina, 2014 saw a substantial decrease in patent litigation.¹ This suggests that PGR proceedings have been successful in weeding out bad patents. Efforts to improve the efficiency of these proceedings are likely to be beneficial.

II. Advantages and Disadvantages:

The single-APJ institution pilot program has the opportunity to increase efficiency and handle more cases through PGR proceedings, while decreasing the need for new APJs. A potential disadvantage is that a decision by one seems feeble compared to a decision by three, providing strong incentive to request rehearing after the first rejection.

¹ <http://www.ipwatchdog.com/2015/03/30/decrease-in-patent-litigation-questions-need-for-patent-reform/id=56159/>

III. Requests for Rehearing:

Requests for rehearing should be handled by a different single-APJ. If the second APJ decides to institute further proceedings, the APJ who initially rejected the request should not be included in the subsequent three judge panel. If the initial request for rehearing is handled by three APJs, the single-APJ's decision will merely become a hoop to jump through before reverting to the prior process.

IV. Information Helpful for Determining the Effectiveness of the Pilot:

It might be useful to report the amount of rejections that each APJ issues during the trial period. Additionally, it would be useful to note how many requests three APJ panels could process in a given timeframe in comparison to how many requests were processed by single APJs in an equal timeframe.

V. Suggestions to Conserve the Judicial Resources of the PTAB:

The AIA contains a provision allowing third-parties to submit prior-art and its relevance to the patent examiner. Encouraging the use of this provision by interested parties could reduce the burden of researching prior art. Interested parties have incentive to be exceptionally diligent in their research. They are also likely to have more time to contribute researching a given patent than would the examiner who can only allot twenty hours. The use of this provision will help insure bad patents are appropriately rejected in the examiner's office, decreasing the amount of patents going to PGR to begin with.