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To: [successact](#)
Subject: SUCCESS Act Study
Date: Tuesday, June 25, 2019 3:03:52 PM

Dear Director Iancu:

As the USPTO creates a legislative recommendation in relation to women, minorities, and veterans obtaining patents, there are a number of crucial issues to consider, outside of the simple number of patents granted to the aforementioned underrepresented classes. Success is highly unlikely under the current system. Filing for a patent has become a death wish for independent inventors. Any legislative recommendation put forth by the USPTO must include reforms to the patent system that protect independent inventors, or else the lives and livelihood of the very individuals you are seeking to help will be utterly destroyed.

These comments are submitted in support of legislative and rule changes to bring some semblance of reason back to the examination of patents in view of the manner in which the USPTO destroys an alarmingly high number of the patents it grants. Corporate infringers now routinely use procedures such as IPRs and CBM reviews as methods to create confusion regarding the validity of issued patents so that they can take advantage of their huge legal and lobbying budgets to infringe patents, and particularly those held by individual inventors and small companies, with impunity. The system the corporate infringers have created has, as a practical matter, made obtaining patents a worthless endeavor to anyone without the vast resources needed to fight the endless challenges to their validity that are sure to be made by these infringers using these new procedures. The result is simple; large corporate interests can now infringe patents held by individuals and small companies with almost complete impunity-and that is exactly what they do.

1. Patent claim construction should be standardized and uniform.

Simply stated, it is inherently ridiculous to give a patent claim two different meanings depending on who is reading it. A patent claim either does or does not mean the same thing as a prior art disclosure. A patent claim either does or does not cover a product or process. It should not make any difference what venue is analyzing it. This is self-evident and is simple common sense that anyone can easily understand. The two different standards currently being used for construing claims should be standardized and uniform. The Phillips standard of using the patent description (specification) as the key guide for understanding what the claims mean is the most logical approach. Who is better suited to explain the meaning of the invention than the inventor? Just because it is theoretically possible for a claim term to have a broader meaning than "the ordinary meaning in view of the specifications", does not make such a presumption reasonable. Infringers frequently use the broader standard as an excuse to proffer far fetched claim construction theories which may be theoretically possible in a vacuum, but make little sense in view of the actual invention as

described in the patent. This is one of their favorite tricks, and it often works. That's why infringers love the broader standard. It is a great way to create confusion and they know this and capitalize on it routinely. They are always trying to confuse what is possible with what is reasonable. The broader standard helps them do this.

2. The Patent Office should not change its own Pre-Grant or Post-Grant claim construction in subsequent post-grant procedures, or consider the same prior art again after giving it special consideration and dismissing it.

Claim construction used in prior office procedures should obviously be given strong consideration in any subsequent proceeding. Furthermore, disregarding the prosecution history makes a mockery of the entire process. Why should a patent owner need to re-argue the very same issues that were successfully addressed to obtain the patent in the first place? **The current state of affairs makes double jeopardy seem like a stroke of good luck.** Where else but in the USPTO can someone have the same rights challenged and upheld two, three, four, or even 5 times, and still be at risk of having the very same deep-pocketed corporate infringer use the Patent Office as a tool to make the same challenge, based on the same prior art, yet again?

In my case, I was forced to file a second CAFC appeal (having won the first one) of yet another Patent Office ruling of invalidity based on **the very same prior art** which was:

- a) pointed out twice for special consideration prior to my patents being granted,
- b) denied as a basis for a reexamination because it could not meet even the low standard of raising a "substantial new question of patentability",
- c) completely overcome in a total validity victory in a reexamination which resulted after the corporate challenger circumvented the denial decision (which is supposedly not appealable) by lobbying the unit director to reconsider the denial,
- d) denied as a basis for a CBM review, and
- e) later used by the Patent Office as the basis of invalidity in an IPR,

only to have the bizarre new claim construction they used tossed by the CAFC as being completely unreasonable. Yes, that is exactly what happened. If it sounds too ridiculous to believe, that's because it is! So how did the same IPR panel respond upon remand? They resurrected an equally ridiculous claim construction that had been rejected by the Patent Office in every procedure described above, including their own IPR, and decided that is suddenly made sense. It didn't. This time the giant corporate attack machine succeeded in resurrecting the very same issues, which had long since been resolved in my favor, resulting in my patents being invalidated using the same old prior art and discredited claim construction **which had previously been rejected by the Patent Office multiple times.** This is simply ludicrous! **Prior art which has already been given special consideration by the Patent Office should not be allowed to be used later to attack the same patents which were already**

determined to be valid over that prior art. The Patent office might just as well put up a giant sign saying "WE DON'T KNOW WHAT WE'RE DOING".

3. The Patent Office should stand behind its issued patents and not allow itself to be used as a tool for Patent owner harassment by infringers

IPRs and CBM reviews are tools created for and used by large corporate infringers under the false flag of "Patent Reform" to make it prohibitively expensive for inventors and small companies to defend their patents against those corporate infringers. These procedures have served their corporate authors magnificently! IPRs and CBM reviews have become a "killing field" for patents, just as their creators intended. In fact, CBM reviews came into existence, under intense pressure from the bank lobby, to help the banks kill one particular group of patents that they could not defeat in court. They couldn't win under the rules, so they simply pressured Congress to change them; and that is exactly what Congress did.

The infringer lobby has made a mockery of post-grant proceedings and has made the Patent Office look ridiculous. It seems as though the Office spends more time overturning its own patent grants than it does granting patents. What other organization could operate with such inefficiency? **This is wasteful government at its worst!** When should an office determination of validity be final? The answer today is a resounding "never". How many times should the office change its own claim construction? How many times should the same giant corporation be allowed to attack the same patent with the same prior art? The answer for me has been that there is no limit. The present system is an embarrassment.

The present system affords no benefit, and no likelihood of success to women, minorities, veterans, or other independent inventors who attain patents. I strongly support legislative and rule changes to address the gross inequities in the present system which are the product of well-funded lobbyists who get the laws and rules they want regardless of how unfair and unreasonable they are. Make no mistake, the current IPR and CBM laws were not written by Congressmen, they were written by lobbyists for corporate infringers. It is high time to remedy these stunning examples of corporate excesses.

Respectfully submitted,

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