

Thomas P. Riederer
Santa Barbara, California

SUCCESS Act Public Comment

June 25, 2019

In The United States Patent and Trademark Office, Department of Commerce:

My name is Thomas Riederer and I am the inventor of several patented digital stereoscopic (3D) cameras, systems and their methods of use. I am the co-founder of TrueVision 3D Surgical, a company which has revolutionized brain- and eye-surgery through the use of these inventions. As a Vietnam-era veteran and patent holder, the SUCCESS Act is very meaningful to me.

I support increasing the number of women, minorities, and veterans who hold patents, but that action must be coupled with actions that strengthen those patents. Patents have become liabilities for independent inventors thanks to the PTAB and lack of strong enforcement in court. If the recommended legislation does not include increased protection of patents, the lives of women, veterans, and minorities will be ruined by attaining patents.

As an independent inventor I have written, prosecuted and obtained several patents entirely on my own, due to the significant costs involved should professional patent attorneys be utilized. Due to passage of the America Invents Act (AIA), with its provisions of the Patent Trial and Appeals Board (PTAB) and post-grant Inter-Partes Review (IPR) process, my business model has been made nearly obsolete. The IPR process through the PTAB, known informally as the Patent Death Squad with its high invalidation rate, is completely unfair to small operations like mine.

According to the 2017 AIPLA Report of the Economic Survey, the estimated mean legal fees of an IPR proceeding through appeal runs nearly half a million dollars. If a patent is challenged and the patent owner loses, his patent is invalidated and his investment is lost. If he wins, he effectively “wins” nothing, since he still has a patent but there is no consequence to the challenger, often a large infringing company. A business such as mine could be ruined by a single IPR.

In order to retain some capital from my investment in my patents, I have sold the bulk of them. The only sale I could execute was for far less than previously appraised. Instead of pouring the capital back into further developing my technology, I am instead exploring endeavors such as the real estate business. The rights given by the government in real estate are not easily taken away, as is a patent “right”, now referred to as a “franchise” due to recent SCOTUS court decisions.

The purpose of this comment is to change the outlook for independent inventors. For example, a high school STEM student may have an ingenious project for the school Science Fair and is encouraged to file a patent to “protect” it. Once the student’s family finds out about the huge cost of defending a patent in an IPR, encouragement is lost, along with any aspiration for invention, directly contradicting the intent of such Science Fair.

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My legislative recommendations are summarized in the attached Inventor Rights Resolution. The main points are as follows.

- A. The USPTO must stop taking back patents from inventors.
- B. Courts must prohibit use of a patented invention without permission.
- C. Infringers must not profit by using an invention without permission.

Please consider adding these changes to the proposed legislation at the conclusion of the SUCCESS Act Study. If the patents held by underprivileged and underrepresented independent inventors are not protected, their involvement in the patent system will be detrimental.

Sincerely,

A handwritten signature in black ink, appearing to read 'TP Riederer', with a long horizontal flourish extending to the right.

Thomas P. Riederer

INVENTOR RIGHTS RESOLUTION

Our patent system is in crisis. Recent changes to patent laws and Supreme Court decisions have adversely affected inventors such that the requirement in Article I, Section 8 of the Constitution of "securing for limited times to inventors the exclusive right to their discoveries" is no longer achieved. It is nearly impossible to stop an infringer from using an invention without permission, or to make them to pay for the damage caused when they do. The undersigned inventors call on Congress to pass legislation to address these critical issues.

PTAB – The USPTO Must Stop Taking Back Patents From Inventors

Patents that are infringed are often contested in the Patent Trial and Appeal Board (PTAB), which is an administrative tribunal within the USPTO, purported to be an alternative to traditional federal courts, and created by the 2011 America Invents Act. To defend a patent costs the inventor several hundred thousand dollars, and usually cannot persuade the PTAB to uphold the patent. Even if the inventor prevails in the first challenge, others are allowed to challenge the same patent over and over again. This has been devastating to inventors and small businesses that rely on patents to protect investments and build businesses. Participation in PTAB reviews should be voluntary at least while the patent is held by the original inventor. If PTAB reviews become a fair alternative to validity challenges in a traditional federal court, then inventors will participate voluntarily. Otherwise, patents that are believed to be invalid can be contested in a traditional federal court, as has always been the case.

INJUNCTIONS – Courts must prohibit use of a patented invention without permission

In the 2006 *eBay* decision, the Supreme Court held that in most circumstances a patent cannot prevent an infringer from using the invention. For instance when a large corporation can produce the invention faster, cheaper, or in greater quantities, they are allowed to keep selling in perpetual violation of the patent. Thus the inventor has no say in who gets to use the invention and what they do with it. The inventor cannot determine the price, the quality, the brand, the features, the materials, the factory location, the working conditions, environmental sustainability, or any other concern. Indeed, the inventor is compelled to grant the infringer a license for a royalty amount determined by the court. The *eBay* decision should be overturned, and the court should issue an injunction ordering the infringer to stop using the invention until they have obtained a license negotiated in good faith with the inventor.

PROFITS – Infringers must not profit by using an invention without permission

Current law limits most inventors who win in court to only a "reasonable royalty", which in many cases does not cover legal fees and is too little to serve as a deterrent against large corporations with deep pockets. Large corporations simply ignore patents, knowing that few inventors can afford the millions of dollars and many years required to enforce their patents in court. In the rare case that an inventor survives the legal gauntlet, the infringer usually is ordered to share only a small percentage of their profits with the inventor while keeping the rest for themselves. Without penalties infringing is much more profitable as a business strategy than inventing. To restore fairness and respect for patents, infringers should not be allowed to keep their profits made from someone else's invention.