

# 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-2020-0055-0301

Comment from Tampa Bay Inventors Council.

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## Submitter Information

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## General Comment

As a person responsible for helping inventors gain the information and skills they need to turn their ideas into a business practice for over 15 years, I'm concerned when the tools of government are used to snuff out their ability to succeed. We are a non-profit organization, unpaid and largely free for those seeking knowledge and advice in becoming successful entrepreneurs.

Although some rule changes were meant to help serve our independent inventor community, some have been exploited by large organizations to cancel intellectual property rights and destroy everything inventors have invested their lives and life savings to develop.

It is more than tragic for individuals, that the Patent Appeals Trial Board may decide the fate of an inventor without the ability for the inventor to plead their case and argue for the rights they were previously granted. With limited funds, individual inventors can't withstand all of the challenges that a large tech firm or corporation can throw at them and they know it. It is like cutting off the water so the garden can't grow and then stealing the land to exploit for their own purposes. This is not justice, this is theft. For these reasons, American inventors demand a redress to insure that those who devise a unique, novel and useful solution are able to capitalize

on their ideas as the founding fathers of America detailed in our constitution.

We request actions to insure:

#### I: PREDICTABILITY

Inventors must know that regulations shall favor objective analysis and eschew subjectivity. The decision-making must be procedural, based on clear rules and the presence or absence of discrete factors should be determinative in ordinary circumstances. If compounded or weighted factors are absolutely necessary, the number of possible combinations must be minimized and the rubric must be published in the Code of Federal Regulations.

#### II: MULTIPLE PETITIONS

- a) A petitioner should be jointly limited to one petition per patent.
- b) Each patent should be subject to no more than one instituted AIA trial.
- c) A petitioner seeking to challenge a patent under the AIA should be required to file their petition within 90 days of an earlier petition against that patent (i.e., prior to a preliminary response). Petitions filed more than 90 days after an earlier petition should be denied.
- d) Petitioners filing within 90 days of a first petition against the same patent should be permitted to join an instituted trial.
- e) These provisions should govern all petitions absent a showing of extraordinary circumstances approved by the Director, Commissioner, and Chief Judge.

#### III: PROCEEDINGS IN OTHER TRIBUNALS

- a) The PTAB should not institute duplicative proceedings, no double indemnity.
- b) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner and the court has neither stayed the case nor issued any order that is contingent on institution of review.
- c) A petition should be denied when the challenged patent is concurrently asserted in a district court against the petitioner, real party in interest, or privy of the petitioner with a trial is scheduled to occur within 18 months of the filing date of the petition.
- d) A petition should be denied when the challenged patent has been held not invalid in a final determination of the ITC involving the petitioner, real party in interest, or privy of the petitioner.

#### IV: PRIVY

- a) An entity who benefits from invalidation of a patent and pays money to a petitioner challenging that patent should be considered a privy subject to the estoppel provisions of the AIA.
- b) Privy should be interpreted to include a party to an agreement with the petitioner or real party of interest related to the validity or infringement of the patent where at least one of the parties to the agreement would benefit from a finding of unpatentability.

#### V: ECONOMIC IMPACT

Regulations should account for the proportionally greater harm to independent inventors and small businesses posed by institution of an AIA trial, to the extent it harms the economy and integrity of the patent system, including their financial resources and access to effective legal representation.

Large corporations have used their deep pockets to pay for lobbying and to lie to the American public about patents and patent trolls. We must level the playing field for small inventors and this must be the priority for the USPTO. It is the individual inventor who develops ideas outside of the norm that has the biggest impact on advancing the innovative process. They must be nurtured to grow, not uprooted and destroyed.

Thank you for your kind attention into the plight of individual inventors.

Sincerely,

Wayne Rasanen

President, Tampa Bay Inventors Council