

# PUBLIC SUBMISSION

<b>As of:</b> 11/19/20 4:29 PM
<b>Received:</b> November 17, 2020
<b>Status:</b> Posted
<b>Posted:</b> November 19, 2020
<b>Tracking No.</b> khm-h8gw-rdr6
<b>Comments Due:</b> December 03, 2020
<b>Submission Type:</b> Web

**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-2020-0055-0388

Comment from Anonymous Anonymous

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## General Comment

I am the general manager of a software company, although am writing in a personal capacity. One of the major threats to our expansion and ability to employ more people is the vast cost of defending claims from NPEs. We have incurred huge costs on defending ourselves against claims that seem without merit but are simply too expensive to defend in court without risking our entire company. Software patents have moved from 'protecting the little guy' and instead are now a threat to American growth and employment. The current use of patents with NPEs does nothing to encourage innovation, and means that an ever increasing number of people view the Patent System and the USPTO creating an environment that becomes in practice 'anti innovation' and 'discouraging growth', despite the obvious good intent.

The PTAB provides a tool for protecting us from some of the thousands of overbroad patents that get overasserted or threatened based on the ability to demand less than the cost of litigation in licensing fees. We are deeply concerned about the increased and seemingly politically motivated use by the Patent Trial and Appeal Board ("PTAB") of discretionary denials that leave invalid patents in force to be asserted in litigation. Shielding invalid patents from cancellation on policy grounds is the opposite of what the PTAB was created to do.

Denying challenges for an administration's particular policy goals divorced from the merits means that invalid patents remain in force and must be litigated at significant cost in district court infringement suits. This failure to consider and cancel invalid patents is one of the primary

causes of the significant increase in litigation by non-practicing entities in recent months. It is also beyond the statutory authority of the PTAB to craft new rules based on the policy goals of this particular administration. Data shows the USPTO now favors these denials and is increasingly using this rule to deny institution of patent challenges, and the denials primarily benefit litigation-funded NPEs that file in the Eastern or Western Districts of Texas.

Congress and the rest of the federal government should be doing everything within their power to prevent unnecessary and abusive litigation against U.S. companies and employers, NOT inventing new ways to prevent those threatened with suit from preventing needless litigation. These denials favor the interests of speculative litigation by shell company plaintiffs that do not make anything or productively employ anyone to the detriment of the real-world manufacturers and service providers that are the backbone of the U.S. economy. They encourage parties to file first and forum shop for rocket docket to maximize their financial leverage to settle spurious claims. These actions harm the economy and are contrary to the promise of the America Invents Act (“AIA”).

Thank you very much for taking these concerns into consideration,

Katherine Bradbury