From: garecpa@aol.com
To: PTABNPR2018
Subject: Proposed New PTAB Rules
Date: Thursday, June 28, 2018 3:26:29 PM

Director Iancu,

I am writing you as a very concerned citizen and an avid investor in technology. The United States has always led the world in innovation. Our inventions and the protections afforded our small inventors, has allowed the United States to lead the world in technology and innovation.

The passage of the AIA by the Congress in late 2011 has changed the way inventors and their inventions are treated in the United States. The AIA, by not requiring the use of the same standard of evidence as used by Article III courts (the Phillips Standard), has allowed the PTAB to choose a lessor evidence standard (the BRI....Broadest Reasonable Interpretation) that has been used by the PTAB to invalidate almost 90% of the patents it reviews. Notable, the vast majority of patents that are invalidated are individual patentees or smaller company patents. These individuals and smaller companies are in many cases not afforded the opportunity to present evidence or lack the capital to fight the IPRs that are filed against them by the biggest US companies (Apple, Google,Microsoft and Amazon). Often , when the inventor does respond, the PTAB (stacked with former employees/legal counsel from these large companies) uses the lesser BRI standard and ignores the patent claims or does not allow evidence supporting the inventor's claims into evidence.

Currently, another serious problem exists when hedge funds can make vast sums of money off smaller inventors/companies by shorting a small company's stock and then filing IPRs to bring the stock price down. These hedge funds know the statistics and /or the panel makeups of the PTAB and make money off the PTAB rulings under the lessor BRI Standard. The passage of the AIA has been used to hurt the smaller companies/inventors instead of helping to level the playing field as the law intended. By requiring the PTAB to use the same Phillips Standard of Evidence as the Federal Courts, you, as the Director of the USPTO, have the power to level the playing field as the law intended.

Finally, under the AIA, the PTAB (a court of administratively appointed judges) is allowed, using the lower BRI standard rather than the Phillips Standard used by Article III Judges, to void a patent. How can there be two standards without creating two different results? Even Chief Justice Roberts noted this disparity in the Cuozzo Supreme Court case. How can judicial review be easier or more streamlined when two different standards are used? Doesn't it make more sense to have the CAFC review the same standard rather than lessor one currently utilized by the PTAB? In some cases, as with a company named VirnetX, having survived five jury trials and validation of their patents by a CAFC panel that included Chief Justice Prost, still had some of their patents invalidated by the PTAB after the fact. How is that possible in the United States? The Rule of Law has been an integral part of our nations history yet the passage of the AIA and the subsequent heinous interpretation of that law, has relegated the United States from #1 in patent innovation to #12 in the world. Once an Article III court has ruled on a patent's validity, why should a lessor court continue to have any jurisdiction over those patents?

Please correct the above travesties by replacing the PTAB standard of using the BRI to the Phillips standard utilized by our Article III courts. Also, once an Article III court has ruled on patent validity, any PTAB action should immediately cease. This will level the playing field and restore Article III courts to their designed intention, that of reviewing their cases without the need to lower their evidence standards. The other proposed change, providing deference to an Article III court findings, interpretations and rulings would streamline the court process and restore order to the Rule of Law.

Thank you for listening to a fellow citizen and investor. Please stand firm in correcting the misuse of the PTAB and the misinterpretation of the AIA.

Sincerely Yours,

Gary R. Repovsch,CPA