

PUBLIC SUBMISSION

As of: 11/13/20 7:17 PM
Received: November 12, 2020
Status: Posted
Posted: November 13, 2020
Tracking No. 1k4-9k1u-vznm
Comments Due: November 19, 2020
Submission Type: API

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-2020-0055-0122

Comment from Judy Kosovich

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General Comment

It is my impression that it is easier to get a patent than it was 30 years ago but it is easier to have it declared invalid as well. This places an unfair burden on inventors and investors and gives an unfair advantage to infringers. The issues of novelty and obviousness should be better addressed at an early stage. Perhaps the PTAB should institute a process by which people would be allowed to comment on or otherwise oppose the issuance of a patent. This process could be initiated by the patent applicant, a competitor, or a potential licensee. Notices of patents about to be issued would be given in advance, perhaps as long as 90 days. People could opt to use this notice process for an extra fee. The notice itself would be inexpensive and the process could be abandoned if someone registers an objection and the inventor or investor decides not to fight it. Those who challenge a patent would be presumed to know of the notice, thereby encouraging diligence.

I am a retired federal employee, patent attorney, and long time policy analyst. I would be happy to help implement this idea for modest compensation.