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Discretion to Institute Trials Before the Patent Trial and Appeal Board

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Comment from SnugglyCat Inc.

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General Comment

I want to thank Director Iancu and The USPTO for affording me the opportunity to comment.

When the PTAB was established, it promised to be a faster, cheaper alternative to district Courts. However, larger deep-pocketed organizations are able to use PTAB IPRs as a weapon against independent inventors in order to drain their limited resources and to take away their hard-earned patents.

As a small business owner and inventor with three US Patents: 10,070,623, 10,334,824, 10,701,898. I have seen and witnessed first-hand how large companies, with infinite resources are able to use the legal system as a means of crushing the small inventor. While the AIA was established to put an end to patent trolls, it has been re-purposed as a tool of patent invalidation. To be clear, independent small entities, AKA American Inventors are not patent trolls.

I was fortunate to attend a 2019 AIPLA event, Director Iancu addressed the audience: “This is what American inventors do—from Oliver Evans to Townes and Schaulow, from Thomas Edison to those currently tinkering on the inventions of the future. With their creations, inventors help us march to the highest civilization. We owe them and the public a system of laws that they can understand, that they can predict, and that they can rely upon”.

I agree, inventors are owed a system of laws they can understand, predict and rely upon. Here

are my suggestions:

1. Patent examiners are skilled, intelligent, diligent, hard-working individuals, who take pride in their work. They spend numerous hours, over many months, even years, and careful consideration before awarding a patent. Any inventor, who has been awarded a patent knows: patents are not distributed as freely as candy at a 4th July Parade. Conversely APJs, that serve on the PTAB, do not have the technical experience to assess complex patents, nor are they given the time to assess the patent in question. APJs are not 'judges' in the true sense of the word, that they do not Require Senate Approval. The awarding patent examiner should be consulted on the validity of said patent, should the PTAB be presented with an objection from a 3rd party. Final decisions should be made by a federally appointed judge.

2. I ask for clear rules that will eliminate duplicative conflicting validity trials and other injustices that aid large corporations who 'kidnap' inventions. Recently PTAB has declined to consider a few challenges, on the basis that a duplicate case was underway in a regular court, with a jury trial scheduled to conclude before the PTAB could reach its decision. Duplicate trials place a huge financial and emotional burden on the independent inventor, who already has to use strapped budgets to bring their invention to market and compete against massive networks of well-funded home-grown and overseas counterfeiters. Today, various scenarios play out in favor of large corporations, that permit them to: use multiple petitions challenging the same patent, rehash prior art that the USPTO has already ruled on, and use the PTAB to interfere with on-going Article III court cases.

3. The process should allow for a clearly illustrated and predictable process. One that allows stakeholders to know in advance whether a petition is to going to be allowed or refused because of specific policy reasons. Decision-making should be based on clear rules and a transparent framework, ultimately these should be published in the Code of Federal Regulations.

4. Entities that pay a 3rd-party, to act as a 'petitioner' to challenge a patent, and that benefit from patent invalidation should be subject to the estoppel provisions of the AIA. Where the 3rd party is considered someone with an interest in the invalidation or infringing of a patent that could benefit from a finding of 'un-patentability'.

5. Small entities & independent inventors face a huge financial burden in trying to fund legal representation for an AIA trial. Ultimately it harms everyone, not only the inventor, but also those who stand to benefit from those inventions. Regulations need to take into account the size of the 'small' entity and the detrimental impact it may cause.

To quote from Iancu's AIPLA talk: "…we had occasion to celebrate the patent system's contributions to the human condition, when the USPTO issued U.S. Patent Number 10 Million. As it happens, patent 10 million was on LIDAR technology…" he continues: "Beyond the specific technology, though, patent 10 million was a significant milestone for the United States. It marked, in a way, the unprecedented innovation that has taken place in this country since our founding."

We must strive to maintain the innovation that Director Iancu references. We must create rules that embrace the American Inventor dreams' to help improve lives of others through innovation. Rules must encourage and allow Inventors to compete in a level playing field, not one driven by large-entities with packed coffers.

Thank you.