

September 18th, 2020

Committee for,  
Amendments to the Rules for Practice for Trials  
Before the Patent Trial and Appeal Board

Dear Committee,

I appreciate the opportunity to address this committee concerning rule amendments for the Patent Trial & Appeal Board.

I operate my own company and depend on my patents to protect my inventions in the marketplace.

I have witnessed the following abuses at the PTAB as my patents have been submitted there for additional review.

I have been forced to respond to five AIA trial petitions, of which four were instituted and one was denied, on discretionary grounds. These petitions would, respectively, have been denied or not have been brought had the USPTO issued lawful regulations governing discretionary denial prior to the bringing of those petitions. For example, IPR2013-00484 involved a grant of institution even after I requested denial because the same prior art and arguments had been rejected by the USPTO in a prior request for *inter partes* reexamination. Such exposure to double jeopardy should not be tolerated within the judicial system.

My patents had to go through IPRs that should have been discretionarily denied if clear and legal rulemaking had occurred, including at least one in which the USPTO contradicted a prior federal judge decision by issuing a broader claim interpretations for a material claim limitations than the judge did, leading to an invalidation decision that a federal court would never make. The board that reviewed my patents adopted the overly broad claim constructions proposed by the petitioner and which were required by their arguments, even though the same claims had already been more narrowly construed by two federal district courts.

This board also instituted review based on an incorrect understanding of the art. Our response focused on the inadequacy of the art that was used to institute the review. The board did acknowledge the inadequacy of this art in their final decision. However, rather than finding the claims patentable, the board established an entirely new position that contradicted the entire reason for granting *inter partes* review in the first place. They actually reversed a decision that they had made to dismiss certain art in instituting the review and used that purportedly dismissed art to support their final decision.

By raising new issues in their final decision, the board denied us the opportunity to address these new issues, thus denying us the due process that should be provided by the judicial system.

As a patent owner facing a likelihood of future infringers making future challenges through future AIA trial petitions, injury is likely to recur.

In my opinion the PTAB should be made voluntary or else transformed into an Article III Court with independent judges and federal rules of procedure. Restoring to inventors the right to a jury trial would be even better. Fair and just adjudication of patent rights is critical to our economy and ability to compete internationally. Until this situation is rectified, we cannot devote the time or obtain the capital for inventing.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Jarman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Matthew Jarman  
Salt Lake City, Utah