

To: OMB

September 23, 2020

President Donald J. Trump

Mark Meadows, White House Chief of Staff

Rep. Thom Tillis

Cal Cunningham

Rep. Charlie Crist

Anna Paulina Luna

Andrei Iancu, Director USPTO

From: Ray Perkins, former Inventor.

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*"The PTAB rules give these patent bandits a path to steal technology and ultimately the rules themselves kill incentive for small inventors to innovate. In the case of my client World Source Enterprises, LLC, those innovations can cure Red Tides, Algae bloom outbreaks and hypoxia in the Chesapeake Bay and Gulf of Mexico. It is bad for all Americans, bad for American Business and worse for the American Dream" ... Ray Perkins, Perkins Consulting*

'Patent Bandits':

The unintended consequence  
of the America Inventors Act

If you look at this lengthy read and ask yourself "why should I care and why should I read this", I offer this. As an inventor that speaks with other inventors every day, they (like myself) are unmotivated and disincentivized to invent things that may cure cancer, stop Alzheimer's, eliminate Red Tide, allow you to safely lock your deadbolt remotely preventing you from walking into a dangerous situation, or "keep up with China" through innovation.....by not caring you lose your right to care when the cure for Cancer, Covid, or Alzheimer's comes a day too late to save your child, your parent or your loved one. That is why you should care.

There is a new term introduced here and it is far more accurate than the use of the term "patent trolls" to pass the AIA the lack of clear PTAB rules has been used to weaponize the PTAB process for "Patent Bandits". Patent Bandits were incentivized and created by the AIA and specifically the PTAB process. The lack of clear rules for implementation of trial is the primary causation when you drill down to the finite details. And Americans will see the truth in those finite details eventually.

One other issue is killing the "American Dream". That issue is within the political hierarchy and the White House, these patent Bandits wield far more influence than "Americans". The lack of rulemaking has allowed Patent Bandits to weaponize the PTAB process, not to protect from "Patent trolls" to allow legal Intellectual Property theft. Only this problem is costing American Billions of dollars due to deferred innovation or even innovations that will never happen. These are innovations that drive down costs. Those "costs" can also be defined as "Patent Bandit Profit

dollars". We "worry" about China stealing IP and Border security.... yet incentivize theft within our own borders.

The patent system was designed to motivate incentivize, and encourage invention that make the American Dream possible. It has been stolen .... like the "American Dream".

I have lost numerous family members to wars in Europe, Southeast Asia and my father himself served 23 years. His American Dream was to serve his country with dignity and honor. A simple dream. He ascended from a depression era, High School Dropout from rural Kentucky, to a reliable confidant of General Lyman L. Lemnitzer in Europe when he was head of the Joint Chiefs of Staff. He served in Vietnam and was awarded the Vietnamese Honor medal for saving multiple Vietnamese and American lives in an incident in Bhan Me Thout, Vietnam. My father did not sacrifice all he did for HIS country to see his son work his entire life for American Dream to have his government incentive the theft of his son's property by Patent Bandits. But Patent Bandits have gained control of the light that shines on "a shining star on hill". This theft is directly caused by a lack of clarity from PTAB rules.

The patent system has been hijacked by many differing interests over the years including patent trolls, and has evolved into a current system that disincentivizes individual innovation and created patent bandits.

Motivations are speculative, results are factual. So, giving the motivation the benefit of the doubt, there have clearly been unforeseen consequences of the American Inventors Act. Big business has hijacked the system through their weaponized use of rule changes brought about by the American Inventors Act<sup>1</sup>.

In January 2011, Patrick Leahy introduced a bill that just 10 short months later was signed into law and eventually became the American Inventors Act. The bill was aimed at "Patent trolls" or so it seemed.

"Patent trolls" are loosely defined as a person or company that does not practice their patents, hoards patents, and attempts to enforce patent rights against accused infringers far beyond the patent's actual value. That is not us.

This all seemed like a good idea that American could get behind at the time. Small inventors certainly can.

As with many government programs rules and legislation, Business reacts, incentives change, people adjust, and issues manifest themselves in different ways. Patent Bandits saw a weapon and surprising to no one, chose to use it to their advantage.

The Rule changes in the form of AIA driven by Senator Leahy were no exception and gave big business a path to steal technology, without the significant investment or risk of failure. The investment and risk are all absorbed by small inventors and the AIA gave Big business, Big Tech



and Big Pharma a path to theft. The AIA had 'inadvertently' created "Patent Bandits" and incentivized theft.

The primary path to theft for these "Patent Bandits" is the use of Inter-partes review ("IPR") and post grant review ("PGR") of patents. This is a system many small inventors make the mistake of trusting. Less will make that mistake in the future without the rules being made significantly more clear.

The process for challenging bad patents that were granted, and for Infringement had for years been Federal Court or a post grant review process known as Ex-parte review.

The AIA process added a manner of challenging patents controlled by the USPTO. AIA added IPR's and PGR's. Under the guise of protecting against patent trolls, and to successfully complete the absurdity, Patent Bandits (Big Tech and Big Pharma) needed a method to invalidate "dominant patents" in order to either quash cost lowering innovation and keep their profitability (since Innovation drives down costs), or to acquire a patent that had large margin so that they could market without paying on going royalties to the small inventor. So....tadda....

Enter the PTAB court. In its infinite wisdom it was decided that three judges. Usually unqualified in the art they were judging, would be the absolute final word on patent validity rather than a Federal Court or an exparte review.

To put the proverbial tent on top of the circus, a method to incentivize these unqualified judges to invalidate patents was needed. In terms of "ya just can't make this stuff up", PTAB judges are actually given bonuses for invalidating patents. Not surprisingly 83% of all cases are invalidated. One question comes to mind: Why are my tax dollars paying for such inadequate examiners?

Let's take a textbook example of a IPR and PGR. WSE is a small company with primary Operations in High Point North Carolina. WSE's efforts are primarily in making Nitrogen Fertilizer better and their inventions can solve problems like Red Tide, Gulf of Mexico Hypoxia, and Algae Blooms in waterways all over the world.

WSE is basically five people inventing products and marketing them through license agreements. In 2014, a multi-Billion-dollar Belgian multinational Company known as "Solvay" had attempted to "partner" with WSE to use WSE patents. Ultimately, the partnership was not consummated.

Since that failed partnership and since 2015 Solvay has filed no less than 14 patents seeking patents in the same technology as WSE. But there is a problem for Solvay. WSE has dominant patents and their patents predate Solvay's patents. But alas, the multibillion-dollar patent Bandit Solvay now has a path to steal the technology known as PTAB courts.

So, in a move used quite often by similar Patent Bandits, Solvay filed a PGR and an IPR. At this point it all becomes an enigma, wrapped in a riddle, in a box within a labyrinth. The implementation of PTAB trial is governed by rules which can best be described by my daughters'





But in the case of WSE it becomes even more absurd and confusing. WSE will appeal the PTAB decision. However, Solvay has filed yet ANOTHER IPR. This IPR has a case pending also in Iowa Federal Court.

WSE has ZERO...ZERO idea of what the rules are about judicial economy or the grounds for implementation of this IPR....but imagine this...you are WSE and you win Iowa in Federal Court, but also lose a PTAB decision.....who is right and who has jurisdiction? Does WSE have to actually pay for ANOTHER appeal to be decided by Federal Court that has ALREADY ruled on the validity of the patent in Iowa? The lack of clear rules is absolutely ABSURD.

Worse what if WSE patent is upheld by PTAB and ruled invalid in Federal Court? What estoppel is created and when?

Small inventors will play within the rules...but how is that possible when nobody knows the rules?

The lack of PTAB rules is a crisis. **Be very clear on that point...it is a CRISIS.** The lack of rules is destroying an entire generation of inventors every day as the wheels of the PTAB courts grind them into tools to be used by patent bandits.

Yes, I think you should care about this highly technical legislative process that created and supports patent bandits. Patents and innovation prolong lives...so yes this is truly a "death squad".

**You should care because no one wants the cure to be one day late. The lack of rules makes those responsible to American citizens implicit in the destruction of the American Dream.**

Sincerely

A handwritten signature in blue ink, appearing to read 'Ray Perkins', written over a horizontal line.

Ray Perkins  
President  
Perkins Consulting,