

Comments Patent small claims court

My name is Dan Brown, I am an inventor and entrepreneur. I am also a member of the PPAC at the USPTO. These comments are my personal views, consistent with my independent inventor advocacy, and not comments made in my role as a PPAC member of the USPTO.

I believe that independent inventor-innovators need a system for protecting their patent rights, beyond the current system in place. Currently there is an existing imbalance of power for patent owners seeking to enforce their rights, created by the opportunity to strategically infringe granted patents by larger entities with very little risk. This has created an unfair, inefficient, expensive David vs Goliath legal system. It is my opinion that the existing system to protect patent rights is being gamed by these opportunistic infringers. Absent significant changes to this system, we will never achieve the level of innovation growth that our society seeks.

These opportunists often take no part in developing the innovations they copy. Innovations are rare, and very few patents exhibit commercial viability or competitive advantage. Innovation is the result of intense development, expense and investment risk, and those inventions that demonstrate competitive advantage in the marketplace become the targets of copying their patented advantages by competitors. For the infringer the risk of being held accountable is minimal, and the punishment in those instances where they are found guilty is insufficient to prevent the predatory anti-competitive strategy. We need a fair playing field of checks and balances, specifically a quick, and low cost path to injunction, especially in the most egregious cases of efficient predatory infringement.

While the independent inventors-innovators certainly need a fair, and effective way to fight the opportunistic infringers. It is my opinion that **we do not need another bureaucratic administration** that is populated by administrators and judges who understand matters of law and civil procedure, but who do not have a deep knowledge of the innovation process and how that process creates competitive advantage. The over-focus on the legal aspects of understanding an infringement case, undermines the getting to the facts of the existing knowledge (prior art), knowledge gap (where the prior art is inadequate) and the new knowledge creation of the inventor. There is a pattern of this infringement process that can be observed in the most egregious cases.

We have a system where once an inventor creates a new solution and establishes commercial viability through the newly created competitive advantage. A competitor will copy it and attack the patents validity, calling it unpatentable or obvious, but at the same time aggressively practicing the invention in the marketplace. In the most egregious cases they make this argument, while never having attempted to seek, conceive and create the solution themselves. While they violate the patent owners' rights in their own self-interest, they are allowed to enter the market and directly compete with the inventor. These are often not startups that are infringing, but well established and funded players in the marketplace, acting in an anti-competitive monopolistic behavior to game the system to their advantage.

Today's justice system lacks the expertise to understand the existing knowledge and new knowledge rivalry that researchers must navigate in the design, development, commercialization and invention patenting process. Thus, inventors do not need another court to invalidate their legitimate inventions because the system of current legal thinking cannot understand what innovation is, and more importantly how it is created. An objective system of evaluation is needed in order to bring fact based critical thinking to these cases. Beyond not understanding the invention process, the current administrators of the system are vulnerable to arguments of obviousness that appear relevant to the casual observer of a technology. Often this argument flies in the face of logic and rational thought as the

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case often involves copying of an innovation that has disrupted an existing market, now common or obvious challenge, and following with excuse narratives combining non-representative prior art references that first blush support the excuse narrative of why the patent is believed to be invalid.

If a new court were to be formed, we must include independent proven experts in the design, development and innovation process, and include proven independent experts in technology research and development. Lacking this expertise, I cannot see how a court could develop a process to accurately interpret the state of the prior art, the problem the innovator was addressing, and the patented new knowledge solution across so many technical disciplines. This requires much more than having an undergraduate degree in a STEM field and then proceeding to law school. The judges who decide these cases must be technically versed in the fields they are dealing with, as well as the new knowledge creation process.

Respectfully Submitted

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