

From: ACUS Information nfo@acus.gov
Subject: FW: Small Claims Patent Court Comments
Date: August 26, 2022 at 4:44 PM
To: [REDACTED]

From: Jason Kemmerer [REDACTED]
Sent: Friday, August 26, 2022 4:30 PM
To: ACUS Information <info@acus.gov>
Subject: Small Claims Patent Court Comments

Dear ACUS,

I am an inventor with 15 patents and am extremely concerned with the denial and destruction of intellectual property rights by the USPTO and PTAB.

Not only is the PTAB's 87% invalidation rate and destruction of small entity inventor's rights by the unelected PTAB a travesty, it is a violation of 35 USC 101 and the Constitution. An administrative tribunal cannot adjudicate patent litigation cases, there must be an Article III court remedy.

As a small entity, filing a patent is an extremely expensive and financially risky process. After spending years in the process, an unqualified and uncaring examiner may simply destroy the claims at the end with no recourse for the inventor. Continuing to pour money into responding to office actions or escalating to the patent review board in hopes of challenging the examiner's arbitrary roadblocks is often financially ruinous for most small entities because the outcome is totally unpredictable.

You are probably aware that the examiners within the USPTO are literally financially incentivized with bonuses to cause unnecessary office actions in order to generate more government fees, which also results in huge attorney costs. It seems examiners intentionally cite irrelevant prior art and argue nonsensical challenges to claims simply to cause delays and inflict additional expenses on the inventor. This results in many inventors giving up due to the continually escalating costs. Recently I was forced to abandon a perfectly valid patent simply due to the continuously escalating costs of responding to unnecessary office actions cause by an examiner who was obviously unqualified to judge the relevant technical aspects of the invention.

Even if an inventor eventually receives an issued patent after enormous expense, they are still at grave risk of having a large corporation swoop in and steal their invention just as they attempt to generate investment and commercialize it. This happens either by direct theft of copying the invention or through the PTAB arbitrarily invalidating their patent in favor of the infringer. A patent is only as good as your ability to defend it, and small entities simply cannot afford to defend themselves against the unlimited legal resources of large corporations. This unjust system often causes inventors to go out of business, either by the theft of their property allowing the violator to capitalize on the invention while the true inventor makes nothing, or by legal expenses alone. Many inventors simply never get to enjoy the commercial success they deserved from their novel invention due to the huge costs of being tied up in court for years.

I personally know another inventor that had his patent stolen by a large corporation, yet without spending millions of dollars in legal expenses, it is unlikely he will ever receive injunctive relief or may simply lose it completely if it ends up before the PTAB.

Therefore, I respectfully submit that small entities must have the option to not be reviewed by the PTAB, and instead be allowed to pursue litigation and injunctive relief at their federal district court, not the CAFC. This would fall under new small entity guidelines added to the Federal Rules of Civil Procedure in an actual Article III court functioning as a small claims patent court. Not small in value, but small regarding the size of the entity. Within this FRCP small entity classification, there needs to be a limit on the number of motions, and injunctive relief for the inventor must be the default remedy. Small entities must be treated as a protected class not subject to the whims of an unelected administrative tribunal or CAFC judges that have clearly demonstrated their bias in favor of large corporations. Inventors need representation on any review board, and the focus must be on small entity's intellectual property rights, not huge corporations.

Intellectual property rights and the US patent system is what originally allowed the United States of America to revolutionize industry and prosper unlike any other country in the world. That advantage has been nearly destroyed now, to the point where the American dream is but just a glimmer to most individual inventors. Sure, some small entities can succeed, but only as long as their invention doesn't gain enough interest from large corporations that see their property ripe for the picking. Currently there is little to nothing a small entity can do when the PTAB sides with infringers 87% of the time.

Best regards,

Jason Kemmerer
Kemmtex, Inc.

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