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The Honorable Chris Coons, Ranking Member
Subcommittee on Intellectual Property
Committee on the Judiciary
U.S Senate
152 Dirksen Senate Office Building
Washington, DC. 20515
September 6, 2019

RE: Comments on Inter Partes Reviews before the Patent Trial and Appeal Board

Dear Senator Coons,

I write today to submit comments for the record during the Senate hearing on patents next week. These comments are based on my personal experiences with the Patent Trial and Appeal Board (PTAB), having been the recipient of what I characterize as unintended, and unconstitutional loss of patents and the substantial impact on my R&D business.

First, please allow me to provide a bit of background. I am an electrical engineer, having graduated with a BSEE from Oklahoma State University in 1972. Since that time, I have spent most of my professional career, creating and designing electronic equipment and circuitry for both consumer and professional fields, as well as equipment contributing to national security. Early in my professional career I discovered that I have a knack for problem solving. Many of those solutions are embodied in electronic circuits I have designed; which circuitry is widely utilized in consumer and professional electronic products used worldwide. These are valuable inventions – solutions to problems that the manufacturers couldn't solve and sometimes didn't even know they had. The inventions have increased the manufacturers worldwide sales and profits and those manufacturers were happy to share the profits with me. That money, including hundreds of millions of dollars brought back into the U.S. in the form of royalties paid to U.S. owned and operated licensing companies, has been reinvested in more problem solving and R&D activities here in the U.S. It was used to employ and engage other engineers and other technical and business staff including consultants, contractors, patent and business attorneys, and to pay all manner of vendors and suppliers as well as taxes. In short, the royalties from my inventions have helped to ease the U.S. trade deficit and have contributed to the U.S. economy. That has all been negatively impacted by the AIA and its PTAB.

My inventing business didn't happen overnight. I have worked for over 40 years with high tech companies ranging in size from the Fortune 500 to startups, one of which I founded. I am a named inventor on over 90 U.S. Patents, the first being filed in January 1977 and issued in December 1981 for a video noise reduction circuit. My most recent patent issued last week on

August 27. My noise reduction invention makes the images displayed on TVs look pleasingly clean and sharp. This invention was widely adopted in the television industry and at the time used in many devices including virtually every large screen CRT panel television sold in the world. Even today, over 40 years after my invention and long after the patents expired, it is still found in flat panel HDTV televisions manufactured worldwide, likely including your home TV.

My decades of research, problem solving, development, patent and intellectual property licensing activity has resulted in my inventions being used to improve the quality and performance of products including computers and monitors, laser printers, TV recorders, CRT and HDTV displays, smart phones, and video projectors. My inventions have been licensed to scores of consumer and professional electronics manufactures including most name brand global companies. My inventions have quite literally put hundreds of millions of dollars, much of which has been brought back into the U.S. from overseas, into the U.S. economy. Unfortunately, Congress started a downward spiral in that business and all of the jobs and other economic contributions that it supported, with the passage of the AIA and its PTAB.

In 1994 I solved a problem that was particularly personally annoying. My wallet was full of ID, credit and other plastic cards which caused the wallet thickness to increase to the point where it gave me back pains if I drove with it in my back pocket. I set out to solve the problem and that work resulted in a universal electronic credit card to carry all of the card information in electronic form and then wirelessly transmit that card information to a reader when the card was needed. This invention now resides as an app on many smart phones.

Patent applications were filed and I was subsequently awarded the protection for my invention which is guaranteed by the U.S. Constitution, in Article One, section 8, clause 8, which states: “The Congress shall have power ... To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; ...” (Underlining added.) Note that the constitution recognizes “their ... discoveries” I own the universal credit card invention. The Constitution says Congress is to “secur[e] for limited times ... the exclusive right to [my] discoveries; ...” It’s mine, I own it, and Congress is supposed to protect it! I was awarded a total of 8 patents and one would think that with the 8 patents and the combined hundreds of claims, including claims which specifically cover the invention as used in a smart phone, my invention would have excellent protection. After all, the USPTO has thousands of employees, a huge budget and is charged with and responsible for securing my exclusive right.

My universal credit card invention proved to be successful and I sold the patent family to eCharge Licensing, LLC who started a licensing program. eCharge tried to license the patents to Square, Inc., but by that time the AIA and its PTAB had passed and was being implemented, completely changing the inventor’s rights landscape. eCharge believed Square used the invention and Square and tried to resolve the matter, without success. eCharge then sued Square, as is their right, but the suit was stayed in 2014 when Square filed 3 Inter Partes Review (IPR) requests; IPR2014-00156, IPR2014-00157 and IPR2014-00158 in the PTAB.

It was like I came home after work one evening and found some stranger living in my college student’s bedroom. Imagine that happens to you. The squatter refuses to leave and you call the

police. The police say that you're not using the bedroom and your property title is nothing but a public franchise that can be revoked at any time. You are informed that Congress has created a Title Review Board to review property titles. The fact that titles and their rights have been the backbone of free enterprise for centuries is discarded. You try to get an eviction order from the court and the court tells you your action is stayed pending the Title Review Board decision! Then you find out that despite well over 100 years of precedent, the Title Review Board is free to operate without any of the traditional legal safeguards found in the Constitution and present in Article III courts. Even worse, the Title Review Board declares over 98% of reviewed titles as invalid thus dedicating that property to the public. That sets up an entire new industry of squatters taking over what used to be secure private property.

That is exactly the feeling, and what I viewed as the process in the three IPRs filed against me. My patents rights were taken away by the PTAB. I appealed the decision in the courts but did not prevail. Later, when the PTAB was challenged in the Oil States case, the Supreme Court overturned long standing precedent and declared that patents are not personal property, are not a Constitutional right but a public franchise, and that patents can be taken away without any of the usual constitutional protections afforded by an Article III Court.

IPR's before the PTAB and authorized by the AIA, have virtually eliminated the ability to do R&D work, provide valuable solutions to longstanding problems, provide solutions to problems that companies don't even know they have, provide new products to benefit society and in the process make a reasonable living licensing the patents covering the work. This was one of the few remaining businesses where the U.S. excelled. Now, the AIA has created a new business model for unscrupulous copyists, efficient infringers and others who know that for the price of filing an IPR in the PTAB they have an extremely high probability of having any patent declared invalid, no matter how thoroughly it was examined before it issued.

What if someone could take the title to your car, your house, your valuables, to a Title Review Board without having any of the constitutional rights that now attach to that title? That is what the AIA with its PTAB has created for patent rights. This problem needs to be rectified. I can't imagine that anyone in Congress who voted for the AIA was truly aware of what it contained and would be the results of its passage. But it did pass and now it needs to be fixed.

Finally, doesn't anyone find it incongruous that such a high percentage of patents which are issued by USPTO examiners are found invalid by the USPTO's PTAB? Doesn't anybody find it curious that the very efficient infringers who now benefit from the PTAB and the AIA's destruction of patent rights spent millions of dollars lobbying for the AIA?

Sincerely,

A handwritten signature in black ink, appearing to read "J. Carl Cooper". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

J. Carl Cooper