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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, D.C. 20515

September 9, 2019

Dear Senator Coons,

Having worked extensively in the public and private sectors over my more than six decades-long career, I have witnessed countless changes in American business. I was honored to have served directly under four U.S. Presidents, Richard Nixon, Gerald Ford, Ronald Reagan, and George H.W. Bush. I have seen the creation of many companies and complete industries, as well as the demise of others. However, in all my years, never have I witnessed such a collaborated effort by any single industry to eliminate their competition, monopolize the marketplace, and destroy innovation as I have seen over the better part of the past decade by the giants of Silicon Valley.

The five tech giants, Apple, Google, Amazon, Microsoft, and Facebook have amassed unparalleled wealth with a combined market value of more than four trillion dollars. The “Big Five” monopolies are able to hide behind laws and actions that reduce the incentive to invent. They have attained excessive influence over Washington D.C. through their large political and campaign contributions.¹

My concerns address the Patent and Trademark Appeal Board (PTAB). Created by the Leahy-Smith American Invents Act (AIA), the PTAB is an administrative board within the United States Patent and Trademark Office (USPTO). The AIA was intended by Congress to be a major reform of the USPTO. However, in an attempt to simplify and reduce the time for reviewing patent challenges, it seems to bypass some fundamental constitutional protections and allows the Inter Partes Review (IPR) process to become a tool for large corporations to exploit patented technology with impunity. Federal Circuit Chief Judge Randall Rader described the current USPTO as being able to issue patents and “killing” them via administrative hearings: *“There’s a tension throughout the system ... you’ve got an agency with 7,000 people giving birth to property rights, and then you’ve got, in the same agency, 300 or so people on the back end ... acting as*

¹ <https://www.theguardian.com/technology/2017/sep/03/silicon-valley-politics-lobbying-washington>

death squads, kind of killing property rights."² During an oral argument (WI-FI One v. Broadcom, Fed Cir. 2017), Judge Wallach noted that "on the list of shenanigans" was the Director appointing judges to come out the way that the Director wanted a case to be decided on re-hearing. Judge Wallach continued, "*Aren't there fundamental rule of law questions there...basic things like predictability and uniformity and transparency of judgments and neutrality of decision makers? And don't we review that kind of thing?*"³ (See the Supreme Court's *Cuozzo* decision for more context on the 'shenanigans' reference.) It is clear from these remarks that the USPTO is unjust.

Although I resigned from my position as CEO and Chairman of the Board of Voip-Pal, an innovative technology company, more than 4 years ago, I remain a shareholder. I've watched as this small company has engaged in a lengthy David vs. Goliath fight with the Silicon Valley elite. Unlike most of their counterparts which end up bankrupt and out of business due to the many obstacles they face in trying to defend their legitimate, intellectual property rights, Voip-Pal has so far prevailed against seemingly insurmountable odds. To date, they have successfully defeated eight attacks against the validity of their patents by the likes of Apple, AT&T, and Unified Patents.

Voip-Pal currently has twenty-two (22) issued patents including five parent patents, one of which is foundational and the others which build upon it.⁴ These patents provide the means to integrate VoIP services with Telco systems, creating seamless services with popular VoIP implementations, including nearly every modern telephony system vendor, network supplier, and retail and wholesale carrier.

The estimated cost to acquire and further develop the Voip-Pal patents has been about US\$17 million, and the cost to defend against each IPR is approximately US\$500,000. Prior to the eight IPRs being filed with the USPTO by Apple and AT&T, Voip-Pal conducted a valuation of the company and its patents that resulted in a reputed value of over US\$2 billion, or approximately \$1.25 per outstanding share at the time. On Friday, September 6, 2019, the stock was trading at \$0.01, as reported by the Wall Street Journal. This drop in share price happened despite the fact that the PTAB judges found no evidence of invalidity for any Voip-Pal patent claims, but, after Judge Lucy Koh granted the Defendant's (i.e., Apple Inc., AT&T Corp, Twitter Inc.) Alice 101 motion to dismiss in Case Nos. 18-CV-06177-LHK, 18-cv-06217-LHK, C, 18-cv-04523-LHK, 18-cv-06054-LHK. Voip-Pal will be filing an appeal, adding to the time and cost of defending the company's valid patents.

² Philipp, A. (2014, Aug 20). Is there really a patent death squad? Retrieved from <https://aeonlaw.com/blog/2014/08/20/patent-death-squad/>

³ 717 Madison Place: Oral Arguments and the Federal Circuit (n.d.). Selection process for assigning judges to expanded PTAB panels. Retrieved from <http://www.717madisonplace.com/?p=9143>; and *Cuozzo Speed Technologies, LLC v. Lee* (2015, October Term). Retrieved from https://www.supremecourt.gov/opinions/15pdf/15-446_ihdk.pdf

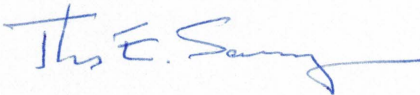
⁴ Retrieved from <https://www.voip-pal.com/technology-overview>

The U.S. patent system has been well recognized as providing significant incentives necessary to promote private investment in scientific research and development of new technologies. Without patents, emerging businesses would be at risk with respect to their ability to obtain needed investment, and ongoing businesses would risk losing their investment in new products, particularly for products vulnerable to easy duplication. Further, the IPR process impairs the patent owner's ability to develop and/or market an invention, particularly for small entities, and disrupts the ongoing business of the patent owner's ability to obtain required capital to develop, manufacture, or market their invention.

It is discouraging to witness the PTAB's own statistics since its formation in 2012, depicting 69 percent of trials resulted in all instituted claims being rendered unpatentable, and 15 percent resulting in some claims rendered unpatentable. Thus, a total of 84 percent of trials resulted in the cancelation of claims.⁵ By PTAB's own published numbers, they are disallowing the vast majority of contested patents that had been properly and carefully reviewed by qualified and very competent examiners.⁶ It seems the sole purpose of the PTAB is to cancel properly issued patents – in favor of large corporations.^{7 8} It is particularly distressing to know that many patent owners cannot continue defending their valid patents against large corporations who use patented technologies with impunity. If challenged, these companies have the financial means to pursue court cases and wait out (beat down) small patent owners who are defending their valid patents.

There is a pressing need to protect the competitive processes that have made our country a distinct and powerful force for innovation and technological achievement. We must ensure fair competition and protect the rights and investments of time and money of inventors. I urge you to take action to safeguard the integrity of American ingenuity.

Sincerely,



Thomas E. Sawyer

⁵ <http://www.ipwatchdog.com/2017/10/30/ptab-patent-trolls-bad-patents-wakeup-aia-apologists/id=89609/>

⁶ PTAB proceedings also deprive inventors of protections including 1) an independent judiciary, 2) a trial by jury on factual allegations, 3) discovery of probative evidence such as copying and commercial success, 4) the right to cross-examine accusers in open court, and 5) the benefit of a clear and convincing standard of proof.

⁷ <http://www.ipwatchdog.com/2017/05/07/more-conflicts-interest-surface-second-ptab-judge/id=83012/>

⁸ <http://www.ipwatchdog.com/2018/03/06/ptab-judges-shockingly-inexperienced/id=94438/>