The Honorable Thom Tillis, Chairman
Subcommittee on Intellectual Property
Committee on the Judiciary
U.S. Senate
224 Dirksen Senate Office Building
Washington, D.C. 20515

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

Dear Senator Tillis and Senator Coons,

Understanding and making the right decisions for our patent system has to be a very difficult part of your jobs. A former member of the Senate from my state, Minnesota, wrote the following in his book regarding his experience with patent issues when serving on the Senate Judiciary Committee:

> "When you're a senator, you're the only one who has to know at least something about everything" …. "And also enough about patent law to not look like an idiot when the President of the University of Minnesota and the CEO of 3M drop by at 10:45 to hear the latest on the very complicated patent reform bill that is somehow the single most frustratingly complex subject the Judiciary Committee deals with"
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> ***Al Franken, excerpt from his book; Giant of the Senate (C-2017)***

Given that the aforementioned reform bill never did pass, Senator Franken's brief statement is a microcosm and tells much about the state of affairs concerning our largely ineffective and anti-inventor patent system. If the system cannot be understood by our lawmakers, then how could it possibly be understood by the inventor and the legal system they depend on to protect it and the rights it grants?

Has the system become overly complicated through big money involvement at the expense of the independent inventor? Note the meetings the Senator mentions, 3M and U of M, and contrast that to the fact that I know of no meetings, ever, to have taken place between the Senator and the independent inventor. And this is not for lack of trying. The members of the Minnesota-based Inventors Network and I have tried tirelessly to meet with the Senator, as well as Senator Klobuchar, only to be continually referred to staff.

Why is it important that lawmakers also hear from the independent inventor? As you know, the founding statements of our patent system are in the US Constitution (1787) , predating the Bill Of Rights (1791). To this day, only an individual can be named as an inventor in a US Patent. However, for all practical purposes, in this current environment, for the most part only the corporate interests seem able to ante up the millions of dollars to enforce their patents against infringers. Are “Midas Rules” in play with those that have the gold making the rules? The answer is yes.

One unfortunate example of “Midas Rules” was the creation of the Patent Trial Appeal Board (PTAB) system formed under the America Invents Act of 2011. The consequences of this provision have been horribly destructive to the rights and motivations of the independent inventor.

When I first started inventing in 2003, I learned that patent rights were sacrosanct, i.e., when a patent is issued that there is a presumption of validity and it would be extremely difficult for it to be invalidated after it was granted. I also learned that if an independent inventor's invention was infringed upon, there were law firms interested in taking on these infringement cases under a contingency arrangement where the attorney would work for a percentage of the future award reducing or nearly eliminating the sometimes millions of dollars the inventor would have to pay up front to address the infringement in court.

These important contingency arrangements do not work under the PTAB system as the trials do not result in monetary awards to the inventor from the infringer. They only result in expenses (sometimes hundreds of thousands of dollars) that the inventor has to pay upfront in the attempt to keep the patent claims valid and often such expense can still result in the actual patent being invalidated (which is completely contrary to the presumption of validity standard that existed prior to the AIA).

In practice this means that it is now cost prohibitive for many independent inventors to pursue the infringer. Losing this ability to pursue the infringer in court corrupts what made our patent system work so well from 1787 until 2011, deflating the value of the patent along with the motivation to innovate and the ability for the inventor to attract the partners and investors they need to take the invention successfully into the marketplace. However, the lack of enforcement tools does improve the odds that an infringer will never be held accountable which works to motivate infringers and exacerbate the inventors plight.

The PTAB cancels claims in 84% of the patents it reviews and has been aptly described as a patent death panel. It has become a form of purgatory for patents that were issued in good faith after substantial review and diligence by the inventor and examiners at the USPTO. There is no standing requirement in PTAB so inventors can be pulled into the process even if they are not pursuing an infringer, there is no limit to how many challenges they can face and no statute of limitations. This conceivably results in a near endless process over the life of a patent never offering the inventor the break (both time and money) that they need to focus on the marketplace and or innovating more.

The PTAB system should be repealed and we should return to the prior process of court trials that do require standing and can result in monetary awards when ones patent rights are unduly assaulted. To this end, please note the following:

Sixties and Seventies- Individual inventors were granted almost 25 percent of all patents. In 2015 it was 5.8 %.

Patent Law Has Changed- Now allows any person (even anonymously) from any place the right to challenge any claim in any post AIA (2011) U.S. patent for the life of that patent.

Invalidation- is now decided by an administrative tribunal and not the constitutionally provided, Article 3 court

Re-examinations - Percent rate where all claims are canceled

Ex Parte - July 81 till Sept 2016	(1.85 /month)	**12%**
Post AIA- 9/15/12 till May 2017	(22.4 /month)	**65 %**

So how did we get to a system that cancels issued patent claims at a monthly rate that is 12 times what it was prior to the AIA? A successful centuries-old system was turned on it's head when the AIA was passed. Yes, there were hearings, but amazingly, none of them included any personal testimony from the independent inventor. The independent inventor, who at the time had no real professional advocate groups, went silent during this period. The result was one-sided legislation carved out with the corporate interests in mind with testimony and input, provided largely through their paid lobbyists.

I am in Washington this week along with the presidents and leaders of inventor groups across the country. Collectively our organizations touch 10,000 or more inventors. We will be meeting with lawmakers and their staffs throughout the week. Regrettably, during the passage of the AIA, these sorts of meetings did not take place. The consequences of that void are painful and have been felt dramatically over the past 8 years, but have given us the resolve to work towards change and to be heard.

The independent inventor has formed a fresh voice through an organic/grass roots self-funded volunteer oriented movement that has worked successfully to stop the anti-inventor/innovation legislation proposed in the 114th congress (HR 9). We have something to say and we are here for you with broad-based input and experiences that can help you get the next round of legislation right. Please take the time to hear us as the future of innovation depends on it.

Thank you very much,

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