

October 8, 2021

The Honorable John Cornyn
United States Senate
Washington, D.C. 20510

Subject: Concerns with the Restoring the America Invents Act

Dear Senator Cornyn:

We are 200 of the 17,000 Texas small business inventors. The undersigned hold more than 1,100 patents and have invested in excess of \$50 million dollars in research, development, and commercialization of our technologies. We have created thousands of jobs in the state of Texas.

Together, we have substantial experience defending our hard-earned intellectual property rights at the Patent Trial and Appeal Board (PTAB). Together we have been subjected to 210 AIA proceedings. Each of these proceedings costs an average of \$450,000 and usually end up in favor of the large corporations that stole our technology.

We are not patent trolls. We are problem solvers, creators, builders, competitors, and job creators.

The PTAB has destroyed the integrity of our patents. Large corporations, including many controlled by the Chinese Communist Party are easily having them declared obvious and revoked by their friends at the USPTO. Indeed, the representative from Volkswagen at Senator Leahy's celebration last month explained that he had the utmost confidence in the PTAB judges because they were his friends. It has been revealed that another judge represented Apple in litigation, joined the PTAB as a high ranking judge to rule in favor of Apple in 23 out of 24 matters, and returned to Apple where he appears on their behalf at the PTAB. These large corporations have total control over management of the PTAB – without regard to who is confirmed as Undersecretary nominally in charge of the agency. Just recently we discovered that these judges are paid substantial salaries and bonuses tied to the number of patents they invalidate. Corruption, incompetence, and violations of core principles of jurisprudence are rampant. The legality of the PTAB is constantly challenged in the courts because it is a radical departure from our nation's principles of jurisprudence that have guaranteed equal justice under the law for individuals.

We have ZERO desire to file suits or collect licensing fees for technology that we didn't create. We have no interest in owning or asserting patents we didn't earn. We want to invent, develop, and commercialized our discoveries to make society better.

Under the AIA that has become impossible. We have easily overcome challenges to the validity of our patents in a real court with an independent judge and jury. In one example, an infringer's contention that a patent was invalid because a person of ordinary skill doesn't know if a balloon is substantially filled with water elicited scornful laughter from the bench of the Federal Circuit

and a sanction for attorney fees by the district court. Yet this argument persuaded the PTAB to invalidate the same patent. In another instance, the PTAB construed a plasma metal film deposition without arcing to cover prior art that produced poor quality films with some arcing. In another case a Texas inventor's optical leak detector for invisible gas was held obvious in light of prior art infrared device that could image jet engine exhaust.

The AIA has failed its intended purpose on all accounts. It is not faster – it adds nearly 3 years when inventors are forced into litigation by recalcitrant infringers. It is not cheaper – it adds millions of dollars in expense. It is not an alternative to district court – it is duplicative and results in outcomes that are 2 to 3 times more favorable for infringers. It doesn't help small businesses on either side. It doesn't stop patent trolls.

If it is possible to make the patent system any worse, the Leahy-Cornyn Restoring the America Invents Act will do so. It will only add complexity and cost and uncertainty. It will lock the door that has already been slammed shut on inventors and entrepreneurs. Rather than restoring integrity and encouraging innovation, it signals to large corporations and China that they can continue stealing technology from entrepreneurs without any risk, and the U.S. Congress and the USPTO have their back.

We respectfully ask that you withdraw this bill and refrain from legislating on patent matters until you have conferred with Texas inventors who have experience with the AIA and PTAB.

Sincerely,

John Almeida <i>Plano</i>	Biff Bigbie <i>Lindale</i>	Peter Brown <i>Austin</i>	Stacey Castillo <i>Houston</i>
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Cc:

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Senate Judiciary Committee

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House Judiciary Committee

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