

Inter Parties Review System Proposal

I believe the times demand new invention, innovation, imagination, decision.

Address of Senator John F. Kennedy Accepting the Democratic Party Nomination for the Presidency of the United States at Memorial Coliseum in Los Angeles on July 15, 1960



Inter Parties Review System – A New Proposal

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I am attempting to make an series of three proposals, on how the patents are reviewed by a

PTAB into the future, and how the system could be corrected with an alternative resolution. My three main proposals are:

- Raise the bar from expert witness testimony to define obviousness,
- IPR Fees and inventor's favorable for IPR Reviews, and
- Patent Pools for Inventors

On Expert Witness Testimony

One of the major elements we can see in IPRs is the expert witness testimony, and the abuse of the "Broadest Interpretation" and how elements are "combined" to create an invention making it obvious and unpatentable. In practice, many of the testimonies by some experts may be inaccurate and grossly exaggerated.

The issue is that, we are dealing with experts, PhD's and hands-on people that can showcase a technology combination in a very clear and scientific way. Hence, a patent can be implemented and devices should be available online to demonstrate such combination.

Hence, a new burden of proof should be instantiated:

1. The combination of patents should be implemented in hardware and software,
2. Such combination, must be clear genuine and cannot require a new embodiment or any novel step.

For example, we can review several IPRs that have taken place, and if let's say for instance that a network simulation system combined with a fader will create a wireless emulation system. Then, it must show that:

1. An emulator for network data may usually deal with ethernet frames for example, this ethernet frames are of an MTU or a Minimum Transfer Unit of 1500 bytes,
2. This ethernet data is obviously working in the baseband and using low-voltage elements,
3. Now, if we see a fader, a fader uses RF, which means it requires a carrier frequency, and a modulation technique to apply certain level of attenuation,
4. The RF signal should travel thru coaxial cable, and be fed into a device that will apply delay, and several path to create a multi-path fading effect,
5. However the fader may need a specialized controller,

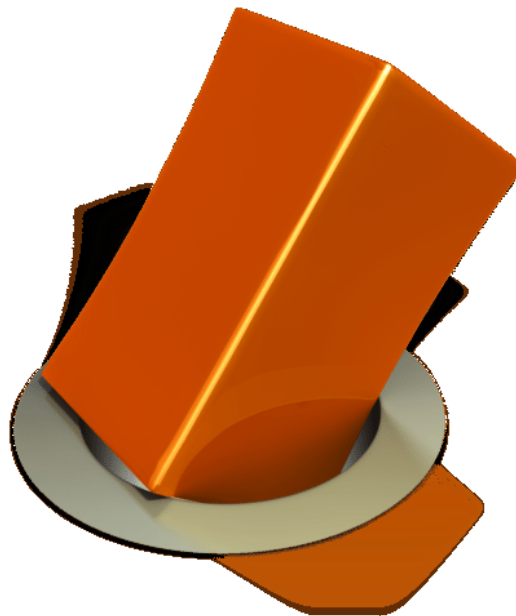
Hence as you can see, it is not that obvious how then the ethernet data will then be fed to a fader, and using a carrier frequency, unless there was an off-the-shelf modulator, when the ethernet port in the fader is used for control only.

In other words, IPRs are analyzed with the "Broadest Interpretations of the Claims" which leads to broadest assumptions, that in practice could not occur, not today and even worse at the time of the disputed patent when it would have required an additional invention to be made possible.

Therefore, the standard for “Combination” of two or more disclosures, and anticipation of an invention, must be detailed and with examples such as how FIG X from patent A will be connected to FIG Y of Patent B and how that is obvious to the expert in the art.

There are numerous things that are simply obvious, for instance, if you combine several legos and patent the resulting lego figure, it’s more than obvious that the resulting lego figure can be created by placing the lego parts together.

It is not obvious in many cases, to connect two distinct patents that use different packet frames for example, and simply would require to add a “Packetetizer” or some sort of device that would for instance sort the packets and decode them in the reverse parts.



Indeed, following many of the IPR logic, no drug would be ever be patentable, because there should be thousands of patents that show that you can turn an aspirin into a headache controller mechanism, and broad assumptions would be made combining several similarly related formulates of chemical components, that any expert would claim to be obvious at the time.

Using this logic, it makes quite easy the work of an expert to find ways to combine two patents that seem to cover the invention, and simply state:

“The combination of the embodiments found in Patent 1 with Patent 2, make Patent 3”

without presenting too much detail.

As the burden of proof, IPR must require:

- An implementation of Patent 1,
- An implementation of Patent 2,
- Clearly demonstrate that Patent 1n with Patent 2, cover all he claims analyses by the invention.

There would be clearly claims that may need to be amended by the inventor, and in many cases it will be shown that it's not obvious that some level of additional novel steps will be required by the expert to combine Patent 1 and Patent 2, with indeed would have require a fictitious device Patent 1-2 to combine them together.

In the event that Patent 1 and Patent 2 are combined, in deed a sequence of patents that can be combined, it should be obvious and shown in the court how Patent 1 and Patent 2 can be connected together without creating a new embodiment.

Self-Respresentation and Fees

In terms of Fees, as IPRs are expensive, my recommendations is the following:

- If a company has no patents in the field of the invention, the company should pay for the IPR, including reimbursement of all fees for filing the IPR for the opposing counsel. That means the companies like Unified Patents will be restricted and would assume all cost of the IPR from both sides,
- If both company has patents in both fields, then IPR should be paid by each party,
- If a company challenges an inventor or an inventor's company where the inventor(s) own more than 50% of the company or will recover 51% of the patent licensing to the Inventors, then in that case the IPR Fees should be able to get reimbursed by the IPR's plaintiff, and
- If a company owns the patents and no inventors involved, and there are no products, etc, when it is simply speculative, and is challenged, then IPRs Fees should be paid by each party. In case of loosing the IPR, then the prevailing party should receive full reimbursement of fees,

Additionally, inventors should be able to file their own expert witness report and be reimbursed according to pre-defined rates.

This will simply discourage disingenuous IPRs and may lower the price paid, or maybe the USPTO could limit the cost to \$50k for instance.

Creation of Fair Patent Pools

Inventors can form several organizations and contribute their patents to pools such as

MPEGLA, VIA Licensing, and others, these pools should be fair to individual inventors and provide anti-dilution mechanisms to inventors that are contribution from academia, small businesses, and others.

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