

(10.29.13) Former PTO Director Kappos Quote:

At the outset of considering further changes to our patent system, we must recognize that the time constant of the patent system – the period between new patent application and court decision on a patent infringement claim – is very long. Many years. As such, the impact of Congress' very recent major change to our patent system has barely begun to be felt. In such long time constant situations, every engineering instinct and every leadership instinct tells me: proceed with caution.

Moreover, in long time constant systems such as our patent system, over-correction is a major danger. By the time an over-correction is apparent, it will be years after the system is badly damaged. And we are not tinkering with just any system here; we are reworking the greatest innovation engine the world has ever known, almost instantly after it has just been significantly overhauled. If there were ever a case where caution is called for, this is it.

Caution in turn calls for a deliberative process that takes the time to reach out and listen to all stakeholders, including those who will not be the fastest ones off the mark. Many small innovators – today's Edisons – have not had time to make their views heard. Others having various levels of dependence on strong IP rights are just now beginning to consider the prospect of further changes to our patent system. We need to allow these important stakeholders their time to participate.

Caution also calls for us to ask: is the building on fire? Do we have an emergency that requires immediate action? No. The building is not on fire. As the recent Government Accountability Office report found, patent assertion entities (also known as nonpracticing entities) are **not** driving patent litigation, and broad new legislation to constrain patent assertion entities is not needed. And why the much-cited spike in patent litigation in recent years? In fact, it is entirely attributable to the joinder restrictions included in the AIA. When normalized for the effects of the AIA, patent litigation rates show no significant change in recent years. And what of those dire reports from some scholars claiming fantastical losses of hundreds of billions of dollars to the US economy attributable to "patent trolls"? Other equally credible scholars deeply question the methodology used and the applicability of the economics. Simply put, there is no fire.