

## ALERTS

# Intellectual Property Law Alert - Supreme Court To Review PTAB's Claim Construction Standard And Whether The Board's Decisions To Institute IPR Proceedings Are Judicially Unreviewable

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The U.S. Supreme Court has granted *certiorari* in the *inter partes* review (IPR) challenge of *Cuozzo Speed Tech v. Lee*, Docket No. 15-446. The high Court's review will be the first of an American Invents Act (AIA) proceeding.

The Supreme Court will be presented with two important questions:

1. Whether the court of appeals erred in holding that, in IPR proceedings, the [Patent Trial and Appeal] Board may construe claims in an issued patent according to their broadest reasonable interpretation rather than their plain and ordinary meaning.
2. Whether the court of appeals erred in holding that, even if the [Patent Trial and Appeal] Board exceeds its statutory authority in instituting an IPR proceeding, the Board's decision whether to institute an IPR proceeding is judicially unreviewable.

Cuozzo owns United States Patent 6,778,074, directed to a speed limit indicator and method for displaying speed and the relevant speed limit, which was the subject of an IPR filed by Garmin International, Inc. and Garmin USA, Inc. The Patent Trial and Appeal Board (PTAB) held that claims 10, 14 and 17 were obvious and denied Cuozzo's petition to amend the patent.

On appeal, the Federal Circuit ruled on whether the "broadest reasonable interpretation" standard of claim construction should be applied by the PTAB as opposed to the narrower standard of the "plain and ordinary meaning" district courts employ. *In re: Cuozzo Speed Technologies, LLC, Docket. No. 2014-1301*. Holding that the broader standard was applicable, Judge Timothy B. Dyk stated, "There is no indication that the AIA was designed to change the claim construction standard that the PTO has applied for more than 100 years." The Court also stated, based on Congress's knowledge of the broadest reasonable interpretation standard when enacting the AIA, "It can therefore be inferred that Congress impliedly approved the existing rule of adopting the broadest reasonable construction."

IPR's have become a popular alternative to district court litigation for challenges to patent claim validity prompting Judge Pauline Newman to note in her dissent that the U.S. Patent and Trademark Office (USPTO) cannot "serve as a surrogate for district court litigation if the PTAB does not apply the same law to the same evidence."

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Cuozzo stated in its [petition for certiorari](#), “Since the inception of IPR . . . nearly 85% of the IPR proceedings to date have resulted in the cancellation of some or all claims in the patent under review.” Cuozzo then opined, “A primary reason for the high cancellation rate is that, although IPR was expressly designed to be a surrogate for litigation, the Board does not use the same claim construction.” Cuozzo noted that the broader standard enlarges the realm of prior art, and thus, increases the chances of a claim to be held invalid.

The Federal Circuit further considered Cuozzo’s request to review whether the decision to grant the IPR by the USPTO was proper. The Court held that the USPTO’s decision could not be challenged even after a final IPR decision, noting that §314(d) “is written to exclude all review of the decision to institute IPR.” Judge Newman wrote in her dissent, “The ruling appears to impede full judicial review of the PTAB’s final decision,” and interpreted §314(d) to only prevent interlocutory appeals and not review of completed proceedings.

The Supreme Court will have the opportunity to settle the debate on the claim construction standard that should apply in IPR proceedings and whether PTAB decisions’ to institute IPR are reviewable.

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