

## Raghav Bajaj in Law360: 3 Takeaways From the PTAB Time Bar Decision

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August 27, 2019

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**PRACTICES** Intellectual Property, Patents, Patent Prosecution and Counseling, Patent Office Trials

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Haynes Boone Partner Raghav Bajaj was quoted extensively *Law360* about the Patent Trial and Appeal Board's (PTAB's) ruling that clears up ambiguity about when accused patent infringers must file petitions for *inter partes* review.

Here is an excerpt:

The America Invents Act states that petitions for *inter partes* review of a patent must be filed within one year of the date the petitioner or another interested party "is served with a complaint alleging infringement of the patent." The panel's decision on Friday eliminated virtually all exceptions to that rule, so any entity served with a complaint will need to get cracking on a petition.

"I think this decision pretty much makes clear that it's one year or nothing," said Raghav Bajaj of Haynes Boone. "There doesn't seem to be a lot of wiggle room that would give you an escape valve to go past that one year."

The holding marks a shift for the PTAB, which had previously found exceptions to the one-year window. Earlier panels held that an infringement complaint that is voluntarily dismissed doesn't start the time bar clock, but the Federal Circuit reversed that holding last year in a decision known as *Click-To-Call*, which the POP [Precedential Opinion Panel] cited on Friday.

"In the past, it may have been at least the interpretation of petitioners that the board was going to find a way to hear the case," Bajaj said. "That attitude, coming from *Click-To-Call* and coming from this case, seems to have changed. The board is not going to look for exceptions to the rule. They're going to look to strict adherence to the statute."

Attorneys said it is difficult to imagine what such a scenario would look like, but the footnote does put patent owners on notice that they can't use the holding for gamesmanship aimed at getting petitions denied.

"Patent owners shouldn't just serve complaints, asserting patents that they don't necessarily have all the rights to, because that may cause the board to look twice at that and not just adhere strictly to this decision," Bajaj said.

The ruling was only the POP's second decision, following one in March that parties can join their own petitions. The common theme of the holdings appears to be a desire "to ensure consistency, because that makes things more predictable," Bajaj said.

"The board has been in this mode of trying to provide more guidance to the parties, so that panels aren't taking inconsistent positions, and parties aren't trying to use one panel's decision against another panel," he said.

The case is *GoPro Inc. v. 360Heros Inc.*, case number IPR2018-01754, at the Patent Trial and Appeal Board.

To read the full article, click [here](#).