Haynes and Boone in Law360: Patent Case Against Client FLIR Dismissed

By Russ Emerson, Jason W. Whitney | November 17, 2017

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A Texas federal judge has dismissed a gas leak detection patent suit after the Patent Trial and Appeal Board invalidated the patents, rejecting the patentee's argument that the U.S. Supreme Court could revive the patents in an upcoming case by voiding every past PTAB decision, *Law360* reported.

The high court will hear arguments this month in a case known as *Oil States* on whether *inter partes* reviews by the PTAB are unconstitutional. Judge Barbara M.G. Lynn of the Northern District of Texas said Nov. 13 that Leak Surveys, Inc., "overstates the potential effect" of that case with its request for a stay that argued a decision striking down the reviews would undo all the board's prior decisions.

"Even if the Supreme Court holds that IPRs are unconstitutional, it may choose not to apply the new rule retroactively," she wrote. "Even if the Supreme Court applies the new rule retroactively, it would seemingly only apply to cases still pending on direct review of the PTAB decision."

Since Leak Surveys exhausted all of its appeals of the PTAB's invalidations of its patents when the Supreme Court denied its petition for a writ of certiorari last month, "the outcome of *Oil States* is unlikely to affect the PTAB's judgment here," the judge concluded. She thus dismissed the suit against FLIR Systems Inc. with prejudice. …

Leak Surveys sued FLIR Systems in 2013, alleging that it infringed two patents on using infrared cameras to detect gas leaks. FLIR then challenged the patents in *inter partes* reviews at the PTAB, and Judge Lynn stayed the case pending the outcome of the reviews.

The PTAB found all the asserted claims to be invalid, and the Federal Circuit then affirmed without an opinion. …

Partner Russ Emerson of Haynes Boone, an attorney for FLIR, said Nov. 16 that "we're pleased with the decision and think the judge got it exactly right." …

FLIR also is represented by Haynes Boone Associate Jason Whitney.

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