Haynes and Boone Patent Lawyers Discuss SCOTUS IPR Rulings

May 1, 2018 Clint Wilkins

PRACTICES Patent Litigation, Patent Office Trials, Patents, Intellectual Property

Lawyers from Haynes Boone's Intellectual Property Practice Group were quoted by multiple media outlets on the U.S. Supreme Court's April 24 decisions in two closely watched cases involving *inter partes* review in patent disputes.

In *Oil States Energy Services v Greene's Energy Group*, the justices ruled that the *inter partes* review procedure created by the 2012 America Invents Act does not violate the U.S. Constitution. In a separate case, *SAS Institute Inc. v. Iancu*, the court said that the Patent Trial and Appeal Board, which conducts *inter partes* reviews, must institute as to all claims challenged in a petition or none, rather than choosing which ones to institute, as was done in the past.

Here are excerpts from the reports quoting Haynes Boone lawyers:

World Intellectual Property Review reported that Oil States Energy Services had argued that the IPR process violates the right to a jury trial in an Article III federal court and that although non-Article III tribunals sometimes can decide disputes involving "public rights," IPRs involve "private rights."

Justice Neil Gorsuch, who dissented from the court's holding that patents are "public," not "private" rights, warned against a "retreat from the promise of judicial independence."

WIPR reported that Haynes Boone Partner Phillip Philbin called Gorsuch "quite protective of the need for an independent judiciary to provide independent review."

Interestingly, Philbin said, Gorsuch invoked the Declaration of Independence and made references to the Federalist Papers (including those authored by Alexander Hamilton), while noting that the USPTO's director is a political appointee who "serves at the pleasure of the President."

Philbin added: "In light of the potential for abuse from such a powerful political appointee, the dissent invokes Hamilton's warning that the judiciary take 'all possible care … to defend itself against' intrusions by the other branches."

The *Daily Journal* quoted Partner Phil Woo, who said the narrow ruling in *Oil States* is consistent with the court's handling of patent issues.

"It leaves open the door for other challenges. The holding is very narrow and addresses precise constitutional challenges raised," he said. "The Supreme Court's been very consistent in recent in years in its treatment of patents to not say much and issue narrow opinions."

Managing Intellectual Property wrote that the court's narrow focus, combined with language in the majority opinion, invites future constitutional challenges to the IPR process under the Constitution's due process or takings clauses.

© 2026 Haynes Boone

Managing Intellectual Property reported that Haynes Boone Associate Raghav Bajaj says "the due process argument is generally that the PTAB allows the late presentation of evidence. … The petitioner gets the last word in IPRs because they bear the burden, so it's a frequent complaint." ...

As a short-term consequence of the decision, Bajaj notes that many cases currently at the Federal Circuit have made the argument that IPRs are unconstitutional, so "*Oil States* will take some of those off the table."

A *Law360* report on the Patent Trial and Appeal Board's new procedures for handling of IPRs in light of *SAS Institute* said that a memo issued April 24 did not make clear whether the board still plans to continue its practice of issuing lengthy and detailed decisions.

Law360 reported that if the PTAB started issuing shorter decisions, "neither party would get insight into the strengths and weaknesses of their petition the way they do now," said Clint Wilkins, a partner at Haynes Boone. "The trial could become more complex."

To read the full articles, click on the links below.

Daily Journal (Subscription required)

Law360 (Subscription required)

Managing Intellectual Property (Subscription required)

World Intellectual Property Review

© 2026 Haynes Boone