

Raghav Bajaj in WIPR on Appeals of PTAB Actions

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World Intellectual Property Review quoted Haynes Boone Associate Raghav Bajaj on an en banc ruling by the U.S. Court of Appeals for the Federal Circuit that parties can challenge determinations by the Patent Trial and Appeal Board (PTAB) on whether *inter partes* review petitions are timely.

The 9-4 decision in *Wi-Fi One v. Broadcom Corporation*, on Jan. 8, recognized the “strong presumption in favor of judicial review of agency actions,” finding that the time-bar determinations under section 315(b) are appealable, *WIPR* [reported](#).

Under 35 USC, section 315(b), an IPR can’t be instituted if the petition is filed more than one year after the date on which the petitioner is served with a patent infringement complaint. ...

The report said the court explained that to overcome the presumption that agency actions should be reviewed, Congress must “clearly and convincingly indicate its intent to prohibit judicial review.” The Federal Circuit found no such indication and held that the time-bar determinations are appealable. ...

Raghav Bajaj, an associate at Haynes Boone, expects the number of appeals to increase slightly, although not significantly, because appeals of issues under section 315(b) generally accompany an appeal of the PTAB’s substantive patentability findings.

“Because parties can only appeal a final written decision, a patent owner who receives an adverse final written decision from the board, but wins at the Federal Circuit on a section 315(b) issue, may only have a pyrrhic victory, as the claims of its patent were still held to be anticipated or obvious by the board,” cautioned Bajaj.

Excerpted from *World Intellectual Property Review*. To read the full article, click [here](#).