

Tom King in Law360 on SCOTUS Review of IPR Constitutionality

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Law360 quoted Haynes Boone Partner Tom King on the U.S. Supreme Court's review of cases argued Nov. 27 involving the Patent Trial and Appeal Board and its processes.

Law360 [reported](#) that the case of *Oil States Energy Services v. Greene's Energy Group*, in which the justices heard argument over the constitutionality of *inter partes* reviews held at the PTAB, "has the patent world holding its breath."

Congress established IPRs in the 2011 America Invents Act to provide businesses accused of patent infringement with a speedy way to challenge the validity of the patent, rather than going through protracted district court litigation, *Law360* reported. The proceedings have been incredibly popular for patent challengers. Since the law was enacted, the PTAB has received more than 7,000 petitions challenging patents and has issued over 1,300 decisions invalidating patent claims, according to statistics compiled by the board.

But as accused infringers have celebrated a quick way to defeat patent lawsuits, many patent owners have complained that the new system that all but eviscerates intellectual property rights, *Law360* reported. ... *Oil States*, whose hydraulic fracturing patent was found invalid in an AIA *inter partes* review requested by Greene's, has argued that patents are private property rights that can only be revoked by an Article III court and that the PTAB violates the Constitution's separation of powers.

"This question has implications that go well beyond the narrow patent law issue of whether IPRs are unconstitutional," said King of Haynes Boone. "That said, if IPRs are unconstitutional, patent litigation will at least temporarily revert back the way things were before the AIA, at least until Congress steps in and addresses the problem again."

Excerpted from *Law360*. To read the full article, click [here](#).