

Tom King in Inside Counsel: Questions Arise Over USPTO's Inter Partes Review Methods

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PRACTICES Intellectual Property Litigation, Patent Litigation, Patent Office Trials

Next month the Supreme Court will hear arguments in a case between Cuozzo Speed Technology and US Patent & Trademark Office Director Michelle Lee over the efficiency of the USPTO's patent validity evaluation methods. Since the new inter partes review process was enacted in 2012, almost 85 percent of filed IPR petitions have resulted in several forms of cancellation.

Some think that this is due to the Patent Trial & Appeal Board applying a broader claim of construction—casting a wider net when considering whether the proposed patent utilizes prior art—than federal courts. This, in turn, makes patent approval more difficult, and patent applicants are in favor of the U.S. Court of Appeals for the Federal Circuit handling patent case claims in the same manner as they would a claim in district court. A decision is expected in July.

Considering that with the increase in patent filings each year, the current IPR process will continue to be a point of contention if not modified. To explore this further, Inside Counsel sat down with Haynes Boone's IP attorney Thomas King who shared the effectiveness of the current IPR process and potential improvements.

According to King, there isn't just one reason why such a large percentage of final written decisions have resulted in some form of cancellation in the past few years, but there are a few key points highlights from his perspective...

"In other words, obviousness law is currently biased against patent owners, and the IPR decisions are bearing that out," he explained. "This trend will likely continue until either the Federal Circuit or the Supreme Court takes a second look at KSR. In other words, the 85 percent figure is caused more by the obviousness standard itself more than by the way PTAB is administering the IPR process."

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