

## Tom King in World IP Review: Supreme Court Tackling IPR Issues Head-On

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**PRACTICES** Patent Litigation, Patents, Patent Prosecution and Counseling, Intellectual Property

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*World Intellectual Property Review* quoted Haynes Boone Partner Tom King in a story examining the arguments before the U.S. Supreme Court over the constitutionality of *inter partes* review by the U.S. Patent and Trademark Board.

*WIPR* [reported](#) that Oil States Energy Services, a provider of services to oil and gas companies, argues that the IPR process violates the right to a jury in an Article III court (a federal court established under Article III of the U.S. Constitution) and that, although in some situations non-Article III tribunals may exercise jurisdiction over disputes involving “public rights,” this doesn’t apply to IPRs.

In April, the USPTO filed a reply brief, arguing that patents are “quintessential public rights” and that Congress is authorized to designate public rights for adjudication in non-Article III tribunals, *WIPR* reported. ...

There are two reasons the Supreme Court granted the petition for certiorari, said King, a partner at Haynes Boone.

“Congress’s authority to reassign decision-making authority to non-Article III courts is an open question, and IPRs are perhaps the most aggressive step that Congress has ever taken in that direction,” said King.

In addition, the separation of powers and the administrative state are hot topics at the U.S.’s highest court.

“Second, during the *Cuozzo Speed Technologies v Lee* case, some members of the Supreme Court expressed discomfort with the notion that non-Article III judges could effectively overrule the decisions of Article III courts on the same issues; Oil States gives the Supreme Court the ability to face that issue head-on.”

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