

## Christian Hines for Inside Counsel: Will the Supreme Court Give Us Clear Direction on Inter Partes Reviews'

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

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The Supreme Court heard oral arguments on April 25 in the much anticipated *Cuozzo Speed Technologies LLC v. Lee*. The case concerns the Patent Office's administration of Inter Partes Review (IPR) proceedings.

Briefly, the Leahy-Smith America Invents Act (AIA) established new, post-grant adjudicatory proceedings that allow for challenges to the validity of patents. With enactment of the Act, a Patent Trial and Appeal Board (Board) was created that can conduct such proceedings, including IPR. At present, the Board employs the broadest, reasonable interpretation (BRI) of a claim when determining its validity. Per the statute, the Board institution (determination that it will consider validity) of an IPR, is not reviewable. See 35 U.S.C. § 314(d) ("The determination . . . whether to institute . . . shall be final and nonappealable.").

*Cuozzo* is the first IPR proceeding to reach the Supreme Court, and has the potential to be a landmark decision. The two issues before the Court were:

- (1) Whether the court of appeals erred in holding that, in IPR proceedings the Board may construe claims in an issued patent according to their broadest reasonable interpretation rather than their plain and ordinary meaning; and
- (2) Whether the court of appeals erred in holding that, even if the Board exceeds its statutory authority in instituting an IPR proceeding, the Board's decision whether to institute an IPR proceeding is judicially unreviewable.

A firm ruling on either issue will either vindicate the Patent Office's current practices, or will impact the outcome of hundreds, if not thousands, of pending IPR decisions. A firm ruling will also call into question already decided IPRs. This article reports on the oral hearing; a final decision is expected in June 2016 towards the end of the term.

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