

## Reshaping IPR Estoppel

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

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Since the June grant of certiorari in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC*, the possibility that the Supreme Court of the U.S. (SCOTUS) might find *inter partes* review (IPR), an adversarial proceeding at the U.S. Patent and Trademark Office (USPTO), to be unconstitutional has cast a shadow over IPR and other similar post-grant proceedings before the Patent Trial and Appeal Board (PTAB).

Notwithstanding the shadow, another case before the court this term may ultimately have greater effect on the interplay between PTAB and district court litigation. This article considers that case, *SAS Institute Inc v. Matal*, in which the court also granted certiorari, just three weeks prior to *Oil States*.

The authors' view is that the court is reasonably likely to decide that the board cannot exclude a subset of challenged claims from its final written decision. Such a decision could significantly affect the interplay between IPR and district court litigation, particularly with respect to estoppels.

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