IP Alert: U.S. Supreme Court Hears Oral Arguments in Cuozzo Speed Technologies v. Lee



U.S. SUPREME COURT HEARS ORAL ARGUMENTS IN *CUOZZO SPEED TECHNOLOGIES V. LEE*

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Today, the Supreme Court heard oral argument in *Cuozzo Speed Technologies, LLC v. Lee*. Two important issues are presented to the Court:

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.

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.

The case involves the first final written decision on the merits by the Patent Trial and Appeal Board (PTAB) in an *inter partes* review (IPR) proceeding under the America Invents Act (AIA). Cuozzo filed a petition for writ of certiorari after the Court of Appeals for the Federal Circuit affirmed the PTAB's decision that Cuozzo's patent claims were invalid over prior art. In re Cuozzo Speed Techs., LLC , 793 F.3d 1273-74 (Fed. Cir. 2015), *aff'g*, Garmin Int'l v. Cuozzo Speed Techs., LLC , 108 USPQ2d 1852 (PTAB 2013), IPR2012-00001, Paper 59.

Issue 1 – Backdrop: Claim Interpretation – Broadest Reasonable Interpretation or Ordinary Meaning?

In its briefs to the Supreme Court, Cuozzo argues that in an IPR, the PTAB is performing the same adjudicatory function on validity as district courts in litigation, and that unlike examination, inventors have a very limited ability to amend claims in IPRs. Cuozzo argues that since Congress created IPRs to be adjudicatory proceedings as a substitute or surrogate for district court litigations, the PTAB should use the same standard as the district courts, i.e., the plain and ordinary meaning standard.

The U.S. government argues that the Patent and Trademark Office (PTO) has long applied the broadest reasonable interpretation (BRI) in all agency proceedings. The U.S. government further argues that by authorizing the patentee to file a motion to amend its claims during IPRs, Congress incorporated the principal feature that had long justified use of the BRI construction standard. Further, the U.S. government argues that IPRs were not intended to simply replicate the results of hypothetical district court litigation. The U.S. government argues that the legislative history does not suggest Congressional intent to preclude the use of the BRI approach in IPRs.

Issue 1 – Oral Argument Highlights

The justices took a keen interest in the BRI vs. ordinary meaning issue. Both counsel for Cuozzo and the PTO were the subject of substantial scrutiny by the Court, with the latter getting the lion's share of the questions. In particular, both Justice Ginsburg and Chief Justice Roberts seemed skeptical of endorsing the PTAB's use of BRI in IPR proceedings to interpret the meaning of "property rights," (i.e. patent claims), while courts use the usually narrower ordinary meaning standard to interpret those same rights. At one point Justice Roberts called this an "extraordinary" scheme that could to lead to "bizarre" results.

Issue 2 – Backdrop: Decision to Institute – Appealable or Not?

In its briefs to the Supreme Court, Cuozzo argues that the AIA only prohibits interlocutory appeals of the PTAB's institution upon issuance, but does not preclude review of the institution decision

until the final written decision after trial. Cuozzo also argues that the PTAB cannot violate the AIA's limits without judicial oversight.

The U.S. government argues that the PTO's threshold decision to institute IPR is not ever subject to review by the court of appeals. The U.S. government argues that the statute bars all judicial review of the PTO's decision to institute. The U.S. government further argues that the statute limits review to the agency's final decision about patentability, and that limit is consistent with the AIA's purposes.

Issue 2 – Oral Argument Highlights

The appeal issue took a back seat to the claim interpretation issue. Cuozzo's counsel only briefly argued the second issue at the very end of his principal argument. Additionally, after the government fielded nearly three dozen questions from the Court on the BRI issue, Justice Ginsburg only asked a few more questions on the appealability issue. Overall, the justices did not seem as concerned by the PTO's position on the appealability issue as they did with the fundamental claim construction question presented to them.

A reversal by the Court on either or both questions will have a dramatic impact on IPR proceedings, both substantively and procedurally. If the BRI standard is abandoned, it is likely that more patents will withstand IPR review and the number of IPR proceedings may decline as a result. On the other hand, if Cuozzo wins on the appealability issue, the Federal Circuit will likely see a large increase in appeal arguments that the PTAB exceeded its statutory authority, e.g., in instituting IPR for at least certain claims as argued by Cuozzo in its case. A decision by the Court is expected before it recesses in June.

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