

15-446 CUOZZO SPEED TECHNOLOGIES, LLC V. LEE

DECISION BELOW: 793 F.3d 1268

LOWER COURT CASE NUMBER: 2014-1301

QUESTION PRESENTED:

In 2011, Congress enacted the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, which established a new post-grant adjudicatory process for challenges to the validity of patents. The Act created a body within the Patent and Trademark Office, called the Patent Trial and Appeal Board (Board), to hear those challenges as a quick and cost effective alternative to litigation. One of the new types of adjudicative proceedings, *inter partes* review (IPR), has been both unexpectedly popular and surprisingly lethal. Since the inception of IPR, patent challengers have filed over 3,400 petitions, and nearly 85% of the IPR proceedings to date have resulted in the cancellation of some or all claims in the patent under review.

A primary reason for the high cancellation rate is that, although IPR was expressly designed to be a surrogate for litigation, the Board does not use the same claim construction standard as federal courts. Rather than construe the claim in an issued patent according to its plain and ordinary meaning, as a federal court would be required to do, the Board gives the claim its broadest reasonable interpretation, which is a protocol used by examiners in reviewing patent applications. Of course, the broader the interpretation of the claim, the more extensive the array of relevant prior art-and in turn the more likely that the claim will be held invalid in light of that prior art. Consequently, the Board's broad interpretation allows for differing determinations of validity in IPR proceedings and litigation.

Over a dissent by Judge Newman, a divided panel of the Federal Circuit affirmed the Board's use of the broadest-reasonable-interpretation standard for claim construction. The panel majority also held that, even if the Board had exceeded its statutory authority in instituting an IPR proceeding in the first place, the Board's decision to institute was judicially unreviewable. The court of appeals denied rehearing by a vote of 6-5, over a joint dissent by Chief Judge Prost and Judges Newman, Moore, O'Malley, and Reyna, as well as a separate dissent by Judge Newman. The five dissenting judges addressed the merits of, and would have rejected, the Board's claim construction standard.

The questions presented are as follows:

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.

CERT. GRANTED 1/15/2016