

## 18-916 THRYV, INC. V. CLICK-TO-CALL TECHNOLOGIES

DECISION BELOW: 899 F3d 1321

LOWER COURT CASE NUMBER: 2015-1242

QUESTION PRESENTED:

The America Invents Act created "inter partes review" ("IPR"), an agency procedure for challenging a patent before the Patent Trial and Appeal Board ("PTAB"). The statute has two provisions relevant here, each of which was interpreted by a divided Federal Circuit sitting *en banc*. First, 35 U.S.C. § 315(b) provides that "[a]n inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner ... is served with a complaint alleging infringement of the patent." Second, § 314(d) provides that "[t]he determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable."

In a recent case, the *en banc* Federal Circuit held (with four dissenters) that, notwithstanding § 314(d), a PTAB decision to institute an IPR after finding that the § 315(b) time bar did not apply was appealable. The panel applied that ruling in this case. Then, the *en banc* Federal Circuit, again divided (with two dissenters), held in this case that service of a patent infringement complaint that is later dismissed without prejudice triggers the § 315(b) time bar.

The questions presented are:

1. Whether 35 U.S.C. § 314(d) permits appeal of the PTAB's decision to institute an inter partes review upon finding that § 315(b)'s time bar did not apply.
2. Whether 35 U.S.C. § 315(b) bars institution of an inter partes review when the previously served patent infringement complaint, filed more than one year before the IPR petition, had been dismissed without prejudice.

GRANTED LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 6/24/2019