

Supreme Court's Cuozzo Decision Signals PTO Invalidity Proceedings Here to Stay

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The Supreme Court issued a decision this week that is significant for all companies that operate in patent-intensive industries.

In *Cuozzo Speed Technologies, LLC v. Lee*, — S.Ct. — (2016), the Supreme Court considered the rules governing the adjudication by the Patent Office of challenges to the validity of issued patents. The proceedings, including *inter partes* review (IPR), covered business method review (CBM), and post-grant review (PGR), became available in fall 2012 as a result of The America Invents Act patent reform legislation.

Since 2012, post-grant proceedings have been widely used because they are fast (18 months to a final decision), cheaper than litigating patent validity in federal court, and the burden of proof on the party challenging validity is lower than in federal court.

Cuozzo affirmed that, absent a Constitutional violation or clear abuse of discretion involving the Patent Office exceeding its statutory authority, the Patent Act prohibits appeals of decisions to institute (or not institute) post-grant proceedings. Barring parties from challenging the Patent Office's initial decision to institute (or not institute) in all but the most egregious cases ensures that post-grant proceedings will remain faster and cheaper than federal court litigation. On the other hand, parties have no recourse if the Patent Office misapplies the law or facts when deciding whether to institute a post-grant proceeding.

The Supreme Court also decided that the Patent Office may continue using the "broadest reasonable interpretation" (BRI) standard for interpreting the meaning of patent claims subject to post-grant proceedings. This holding rejected arguments that the Patent Office should use the narrower "plain and ordinary meaning" standard for claim interpretation that is used in federal court. Application of the "broadest reasonable interpretation" claim construction standard makes it easier to prove invalidity in post-grant proceedings than in federal court. The broader a claim's scope, the easier it is to find invalidating prior art that reads on it.

Since 2012, post-grant proceedings have revolutionized patent law by changing where and how patent validity is litigated. In most cases, post-grant proceedings are now presumed to be the best mechanism for challenging the validity of an issued patent. District courts commonly stay litigation until post-grant proceedings conclude, so most patent infringement lawsuits do not proceed unless the asserted patents first survive an IPR or other post-grant proceeding. By approving two of the most contentious aspects of how post-grant proceedings are adjudicated, the Supreme Court ensured that post-grant proceedings will remain a widely-used mechanism for challenging patent validity.

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