IPWatchdog
In Support of the Right of Dissatisfied Parties to Appeal Adverse IPR Decisions

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On January 11th, Askeladden LLC (Askeladden) filed an amicus brief in support of the Supreme Court accepting certiorari from JTEKT Corp. v. GKN Automotive Ltd., No. 2017-1828 (Fed. Cir. 2018). This case raises the important question of whether the U.S. Court of Appeals for the Federal Circuit can refuse to hear an appeal by a non-defendant petitioner from an adverse final written decision in an inter partes review (IPR) proceeding on the basis of a lack of a patent-inflicted injury-in-fact, even though Congress has statutorily created the right for "dissatisfied" parties to appeal to the Federal Circuit. 35 U.S.C. § 319.

In the proceedings below, JTEKT filed a petition requesting IPR pursuant to the relevant statutory scheme devised by Congress in the America Invents Act, 35 U.S.C. §§ 311-319. The Patent Trial and Appeal Board (PTAB) later issued a final written decision holding the challenged claims of the patent not unpatentable.

JTEKT then filed to appeal the PTAB's decision to the Federal Circuit, to which GKN Ltd. (GKN) moved to dismiss the appeal for lack of Article III standing. JTEKT had the burden to demonstrate some injury resulting from the PTAB's decision. JTEKT submitted two declarations in support of its standing. Although JTEKT couldn't definitively say whether it would infringe the patent, JTEKT argued that the general features were similar and the "patent posed a risk to future development." JTEKT Corp. v. GKN Auto. Ltd., 898 F.3d 1217, 1221 (Fed. Cir. 2018).

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