Time For High Court To Clarify Standing For IPR Appeals

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In JTEKT Corp. v. GKN Automotive Ltd.,[1] the U.S. Court of Appeals for the Federal Circuit added to a series of decisions, where the Federal Circuit engrafted a patent-inflicted-injury-in-fact requirement for a dissatisfied petitioner in an inter partes review proceeding to appeal an adverse final written decision of the Patent Trial and Appeal Board. JTEKT has filed a petition for writ of certiorari seeking to have the U.S. Supreme Court review the Federal Circuit's standing jurisprudence. In RPX Corp. v. ChanBond LLC,[2] the Supreme Court invited the solicitor general to provide its views on this very important issue. This article explains why the Supreme Court should confirm a "dissatisfied" petitioner's right to challenge on appeal an adverse final written decision of the PTAB in an IPR proceeding, as set forth by Congress in 35 U.S.C. § 319.

The Federal Circuit Applies Too Narrow an Injury-in-Fact Test

JTEKT is the latest in "a series of decisions, [where the Federal Circuit] ha[s] held the statue [35 U.S.C. §141(c)] cannot be read to dispense with the Article III injury-in-fact requirement for appeal to [that] court."[3]

As examples of these decisions, JTEKT cited Phigenix Inc. v. Immunogen Inc.,[4] and Consumer Watchdog v. Wisconsin Alumni Research Foundation.[5] Phigenix required the petitioner/appellant to be "at risk 'of infringing the [patent at issue] ... or [other] action that would implicate the patent."[6] Consumer Watchdog involved an inter partes re-examination by a nonprofit organization which did not conduct research and was not a competitor of the patent owner.[7]

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