Cuozzo and Inter Partes Review: Are Patents Getting Easier to Invalidate?

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Cuozzo and Inter Partes Review

Recently, the Supreme Court decided the issue of whether the decision of the USPTO to institute an inter partes review (IPR) of claims from which a challenged dependent claim depends is appealable. In the case, Cuozzo Speed Technologies, LLC v. Lee, the Court of Appeals for the Federal Circuit held that claims in a dependency chain "rise and fall together." The Supreme Court agreed, arguing that an IPR reinforces the USPTO's power to ensure patent quality. 35 U.S.C. §314(d) states "the determination . . . whether to institute an inter partes review . . . shall be final and nonappealable." The Court found that overcoming the presumption of judicial review was appropriate based on the text of the statute, the location of the statute in the code, prior interpretation of similar statutes and congressional intent. The dissent argued that review of claims not specifically challenged may cause prejudice to the owner. Both the dissent and the majority made clear that this decision does not cover constitutional questions raised by the challenge.

Additionally, a unanimous Court held that the "broadest reasonable construction" standard of review used by the Patent Trial and Appeals Board (PTAB) was proper, even though the District Courts use an "ordinary meaning" standard of review. Although there are similarities between a PTAB IPR and a District Court case, the differences indicate that Congress intended the IPR to be a reexamination. The differences include: no standing required, the challenger need not remain in the proceeding, the USPTO may intervene in subsequent judicial proceedings, and a differing burden of proof. Because an IPR is different from a court case, the Court held that it is within the discretion of the USPTO to state the standard of review.