IPWatchdog
Can the Federal Circuit Refuse an Appeal by a Non-defendant Petitioner in an IPR?

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On Tuesday, September 18, 2018, Askeladden L.L.C. (“Askeladden”) filed an amicus brief supporting Appellant’s Petition for Rehearing and Rehearing En Banc in JTEKT Corp. v. GKN Automotive Ltd., No. 2017-1828 (Fed. Cir. 2018). See Patent Quality Initiative’s website for the full brief. This case raises the important question of whether the Court of Appeals for the Federal Circuit (“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, when Congress has statutorily created the right for “dissatisfied” parties to appeal to the Federal Circuit.

Askeladden supported the merits of JTEKT Corp.’s (“JTEKT”) underlying petition, including JTEKT’s argument that the Court should grant rehearing *en banc* to address injuries beyond patent-inflicted injuries. Specifically, Askeladden agreed with JTEKT’s assertions that the estoppel provisions of the IPR statute independently constitute a real and substantial injury sufficient to establish standing between competitors and that the panel’s decision is contrary to statute and precedent. Askeladden argued that it believes that the Federal Circuit should rehear the issues presented *en banc* to clarify the law of standing for petitioners on appeal from an adverse finestoppejh;hjg’lhk;glkh;hgal written decisions of the PTAB in IPRs.

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 PTAB later issued a final written decision, holding the challenged claims of the patent not unpatentable.

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