



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 statute [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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