

Conservatives for Property Rights, a coalition of public policy organizations that view private property rights as inherent and fundamental to human flourishing, supports VLSI Technology's request for Inter Partes Review of U.S. Patent No. 7,725,759 in the above-referenced case.

CPR urges the Precedential Opinion Panel to review this IPR institution decision and establish precedent on the question, "Whether the Office should exercise its discretion to deny institution of petitions filed substantially for the purpose of harassing patent owners who prevail in Article III courts, such as re-filings of previously rejected petitions by newly formed entities seeking to extract compensation in exchange for withdrawing such abusive challenges." This question is exceptionally important as a matter of property rights, patent system integrity, patent reliability, fairness and due process.

Of concern is IPR institution (1) requested by newly created entities (2) with questionable motives and (3) no stake in the matter, (4) employing hearsay, (5) after a jury trial ruled favorably for the patent owner.

The America Invents Act created PTAB as a faster, cheaper alternative to judicial litigation and vested the discretion to reject IPR petitions based on economic effects, patent system integrity and timely, efficient management of PTO and PTAB. These factors counterbalance the interests of challenging parties. Nor does the AIA subordinate Article III judicial rulings. Thus, PTAB has appropriately denied petitions in precedential opinions such as *General Plastic* and *Fintiv* using this authority in light of court rulings on the same patents.

The issues and the potential consequences at stake in this case are quite significant. If the POP leaves them unaddressed in this case, PTAB will have left open a wide avenue for patent infringers and avaricious opportunists to exploit.

The questionable circumstances demand scrutiny. Patent owner VLSI prevailed against Intel in a jury trial. The court awarded an infringement verdict of \$2.2 billion. Two new LLCs (OpenSky and Patent Quality Assurance) were later formed to challenge the same patents as Intel had. These LLCs faced no infringement themselves. The new entities are said to have filed IPRs in order to extract payments in exchange for dropping the IPRs.

Reportedly, OpenSky and PQA filed "copycat" submissions of Intel's previously rejected petitions with PTAB. OpenSky relied on hearsay—"Intel's expert declarations from Intel's rejected petitions"—that is inadmissible, including for making IPR institution decisions.

Unfortunately, the board granted institution on one of these petitions, finding it "reasonable" for OpenSky "to take an interest in the [patent] after a substantial damages award." This sends a dangerous signal that will attract many IPR petitions from aggressors with no other interest in the matters at issue than extorting payments from patent owners who won in court.

Allowing such unscrupulous IPRs risks undermining the rule of law and Article III court determinations, jeopardizing the patent system, destabilizing patent reliability, promoting unfairness, introducing bias and withholding due process.

The prospects of facilitating gamesmanship of PTAB proceedings are more than sufficient for reviewing this institution decision. CPR asks the board to review this matter, vacate IPR institution and make the denial precedential.