

## The AIA Precludes Judicial Review of the PTAB's Real-Party-in-Interest Determination Because Such a Challenge "Raises an Ordinary Dispute About the Application of an Institution-Related Statute"

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*ESIP Series 2, LLC v. Puzen Life USA, LLC*, No. 2019-1659 (Fed. Cir. May 19, 2020)

The patentee appealed the Patent Trial and Appeal Board (PTAB) decision that certain claims of its patent were invalid as obvious. The patentee also argued that the PTAB should not have instituted an *inter partes* review because the petitioner did not identify all real parties in interest as required under 35 U.S.C. § 312(a). The PTAB found that the two entities that the patentee alleged should have been named were not real parties in interest, and that therefore, the petition was not barred from institution.

The Federal Circuit affirmed the obviousness determination, and found that judicial review of the real-party-in-interest challenge was precluded. The Federal Circuit affirmed the factual underpinnings of the PTAB's obviousness determination because they were supported by substantial evidence. Notably, the Federal Circuit refused to reweigh expert testimony where the PTAB elected to credit the opinion of one expert over another.

With regard to the real-parties-in-interest challenge, the Federal Circuit held that the PTAB's determination "is final and non-appealable" because 35 U.S.C. § 314(d) precludes judicial review. Applying two recent Supreme Court decisions (*Cuozzo Speed Techs., LLC v. Lee* and *Thryv, Inc. v. Click-To-Call Techs., LP*), the Federal Circuit explained that § 314(d) bars appellate review of "questions that are closely tied to the application and interpretation of statutes related to the Patent Office's decision to initiate inter partes review." The Federal Circuit concluded that there was "no principled reason why preclusion of judicial review" did not also extend to the "real parties in interest" requirement, given that such a challenge "raises an ordinary dispute about the application of an institution-related statute."

A copy of the opinion can be found [here](#).

1 Min Read

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