WINSTON & STRAWN LLP

CLIENT ALERT

Petitioner's Injuries Too Speculative to Give Standing to Appeal PTAB Decision

JULY 11, 2019

General Electric Company. v. United Technologies Corporation, No. 2017-2497 (Fed. Cir. July 10, 2019)
The petitioner requested *inter partes* review (IPR) of a patent directed to a turbofan engine design. The Patent Trial and Appeal Board (PTAB) instituted review, but found that the preponderance of the evidence did not show the challenged claims were invalid. The petitioner timely appealed, and the patent owner moved to dismiss, arguing that the petitioner did not have standing.

A petitioner does not have an automatic right to appeal an adverse PTAB decision in IPR. A party only has standing if they "suffered an injury in fact that has a nexus to the challenged conduct and that can be ameliorated by the court." Likelihood of facing a future infringement suit confers standing, but it "is not the only way an IPR petitioner can show injury-in-fact" for standing.

The petitioner argued it had standing because it had explored a geared-fan engine design for a bid, and the design could implicate the patent. This was too speculative, however, because the petitioner ultimately submitted a different design and there was no evidence that it lost the bid because it did not submit a geared-fan engine. The Federal Circuit also rejected the petitioner's "economic loss" argument because there was no evidence of injury beyond "a broad claim of research and development expenditures." Because there was no imminent injury in fact, the petitioner's appeal was dismissed for lack of standing.
A copy of the opinion can be found here

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