

No.

In the Supreme Court of the United States

CUOZZO SPEED TECHNOLOGIES, LLC, PETITIONER

v.

MICHELLE K. LEE, UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR, PATENT
AND TRADEMARK OFFICE

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 2011, Congress enacted the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, which established a new post-grant adjudicatory process for challenges to the validity of patents. The Act created a body within the Patent and Trademark Office, called the Patent Trial and Appeal Board (Board), to hear those challenges as a quick and cost-effective alternative to litigation. One of the new types of adjudicative proceedings, *inter partes* review (IPR), has been both unexpectedly popular and surprisingly lethal. Since the inception of IPR, patent challengers have filed over 3,400 petitions, and nearly 85% of the IPR proceedings to date have resulted in the cancellation of some or all claims in the patent under review.

A primary reason for the high cancellation rate is that, although IPR was expressly designed to be a surrogate for litigation, the Board does not use the same claim construction standard as federal courts. Rather than construe the claim in an issued patent according to its plain and ordinary meaning, as a federal court would be required to do, the Board gives the claim its broadest reasonable interpretation, which is a protocol used by examiners in reviewing patent applications. Of course, the broader the interpretation of the claim, the more extensive the array of relevant prior art—and in turn the more likely that the claim will be held invalid in light of that prior art. Consequently, the Board's broad interpretation allows for differing determinations of validity in IPR proceedings and litigation.

(I)

II

Over a dissent by Judge Newman, a divided panel of the Federal Circuit affirmed the Board's use of the broadest-reasonable-interpretation standard for claim construction. The panel majority also held that, even if the Board had exceeded its statutory authority in instituting an IPR proceeding in the first place, the Board's decision to institute was judicially unreviewable. The court of appeals denied rehearing by a vote of 6-5, over a joint dissent by Chief Judge Prost and Judges Newman, Moore, O'Malley, and Reyna, as well as a separate dissent by Judge Newman. The five dissenting judges addressed the merits of, and would have rejected, the Board's claim construction standard.

The questions presented are as follows:

1. Whether the court of appeals erred in holding that, in IPR proceedings, the Board may construe claims in an issued patent according to their broadest reasonable interpretation rather than their plain and ordinary meaning.
2. Whether the court of appeals erred in holding that, even if the Board exceeds its statutory authority in instituting an IPR proceeding, the Board's decision whether to institute an IPR proceeding is judicially unreviewable.

PARTIES TO THE PROCEEDINGS

Petitioner is Cuozzo Speed Technologies, LLC. Respondent is Michelle K. Lee, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, who intervened in the court of appeals to defend the decision of the Patent Trial and Appeal Board after Garmin International, Inc. and Garmin USA, Inc. reached a settlement with petitioner and withdrew from the case. Pursuant to Rule 12.6 of this Court, petitioner believes that Garmin International, Inc. and Garmin USA, Inc. have no interest in the outcome of this petition.

(III)

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