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SUPREME COURT

U.S. Top Court to Examine How Government Agency Reviews Patents

(Reuters) – The U.S. Supreme Court will consider whether a federal agency's procedures have made it too easy to successfully cancel patents after agreeing Jan. 15 to decide a case involving a vehicle speedometer that alerts drivers if they are speeding.

Cuozzo Speed Technologies LLC v. Lee, No. 15-466, cert. petition granted (U.S. Jan. 15, 2016).

The nine justices will hear an appeal filed by Cuozzo Speed Technologies LLC, whose speedometer patent was invalidated in a U.S. Patent and Trademark Office review procedure after being challenged by GPS device maker Garmin Ltd. in 2012.

Companies that are frequent targets of patent suits, including Apple Inc. and Google Inc., have taken advantage of the patent office procedure, known as "inter partes" review, or IPR, in unexpectedly high numbers since it was put in place in 2012.

These reviews allow anyone to challenge the validity of a patent far more cheaply and quickly than in a U.S. federal court.

The high court justices will now consider whether the patent office is improperly interpreting the patents that come before it in the reviews. Critics say this leads to a high rate of patent cancellations.

New Jersey-based Cuozzo told the Supreme Court the procedure was "surprisingly lethal," noting that in nearly 85 percent of cases some or all of the patent claims challenged have been canceled.

If the patent office does not change course, it would allow hundreds or even thousands of additional patent claims to be "invalidated under the wrong standard," Cuozzo said in court papers.

Jeffrey Wall, an attorney for Cuozzo, said he was pleased the high court will examine the case.

> "The debate over the standard for claim construction is one the most controversial and provocative areas in patent law, given the impact that it can have in the outcome of inter partes review proceedings before the PTO and district court litigation.
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> Claim construction is a fundamental issue in every patent case. The current state of the law is that validity of the same patent claim is assessed one way by the PTO and another way for traditional litigation. Given the exponential growth of IPR proceedings and their intended purpose of serving as a streamlined alternative to traditional litigation, consistency in the standard for claim construction between IPRs and district court litigation may help to eliminate forum shopping and allow the PTO to weed out truly invalid patents."
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> — *Baldassare Vinti, a partner at Proskauer in New York, commenting on the importance of the* Cuozzo *case that the U.S. Supreme Court has agreed to decide.*

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The agency had asked the court not to hear Cuozzo's appeal, saying in court papers any changes to its procedures should be made by Congress.

A ruling is due by the end of June.

Cuozzo was supported by several industry groups and companies, which urged the justices to take the case.

One friend-of-the-court brief on behalf of 3M Co., Caterpillar Inc., Eli Lilly & Co. and Qualcomm Inc. said the patent office reviews and litigation in district court needed to be streamlined for the "proper functioning of the patent system as a whole." *Cuozzo Speed Techs. v. Lee*, No. 15-446, *amici curiae brief filed* (U.S. Nov. 9, 2015).

The cancellation of Cuozzo's patent came in the first-ever petition for an IPR. Garmin's action was in response to a lawsuit filed by Cuozzo in federal court in 2012. Garmin is no longer involved in the case.

A spokesman for the patent office declined to comment.

(*By Andrew Chung; editing by Alexia Garamfalvi and Will Dunham*)