Constitutionality of AIA Reviews Challenged Under Article III

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Earlier this month, in MCM Portfolio LLC v. Hewlett-Packard Company (case number 15-1091), the Federal Circuit heard arguments challenging whether or not AIA reviews are constitutional under Article III of the Constitution. In January, MCM Portfolio LLC (MCM) appealed the final written decision of the Patent Trial and Appeal Board (PTAB) of the inter partes review (IPR) of U.S. patent number 7,162,549 (directed to controller chips for coupling a computer system with a flash storage system).

In the appeal brief, MCM argued, among other things, that any action to cancel or revoke a patent must be tried in an Article III court with access to a jury under the Seventh Amendment to the Constitution. MCM alleged that patents are the property of their owners and even the government must resort to the Courts if there is an issue related to the patent - regardless of who is to blame for any issue. MCM believes that by allowing AIA reviews to decide the validity of patents, Congress has denied patent owners their rightful access to a jury trial in violation of the Seventh Amendment.

The USPTO responded by arguing that Congress has not taken away any rights, but, rather, has merely offered a different path to determine the validity of a patent. The USPTO’s position is that a patent is a public right that can only be granted by the USPTO and thus the PTAB is an appropriate agency to determine the validity of a patent.

The MCM case is another example of a patent owner seeking to find a way to remove adjudicative authority from the PTAB, as the AIA process continues to invalidate patents at an alarming rate. The Court’s decision with respect to this matter could potentially have a huge impact on this process, as a favorable ruling for MCM could essentially strip the PTAB of any AIA petition review power.

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