Addressing whether standing to appeal an unfavorable *inter partes* review (IPR) decision could be based on the competitor standing doctrine, the US Court of Appeals for the Federal Circuit held that the IPR petitioner did not establish the required harmful competitive effect. *AVX Corp. v. Presidio Components, Inc.*, Case No. 18-1106 (Fed. Cir. May 13, 2019) (Taranto, J).

In late 2014, AVX filed a three-patent infringement case against Presidio, its competitor in the capacitors market. Presidio subsequently filed IPRs against all three AVX patents, and AVX responded by filing its own IPR against all the claims of an unasserted Presidio patent. The Patent Trial and Appeal Board (PTAB) instituted review of the claims challenged by AVX, but ultimately found only five claims unpatentable and upheld the remaining 16 claims. AVX appealed.

On appeal, the threshold question was whether AVX had standing to appeal despite not being accused or threatened with infringement of the challenged patent. AVX first argued that it had appellate standing because it faced injury from IPR estoppel that arose from its failed challenge. Following its earlier decision in *JTEKT v. GKN*, the Federal Circuit found that estoppel is an insufficient basis for standing and further noted that it had not yet been decided whether IPR estoppel applies in situations where no appeal is available. AVX also argued that standing could be
found under the competitor standing doctrine given its status as Presidio’s competitor in the market for capacitors. On this issue, the Court concluded that the requisite harm based on competitive effect (for the competitor standing doctrine) would only occur in the patent context if the appellant was using the claimed features to compete with the patentee or had a non-speculative plan to do so. Because that was not the case here, the Court dismissed the appeal for lack of standing.

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