Again addressing the question of appellate standing for *inter partes* review (IPR) decisions, the US Court of Appeals for the Federal Circuit held that an IPR petitioner did not show a sufficient injury to confer Article III appellate standing where challenged claims that had not been asserted against the petitioner survived IPR. *General Electric Co. v. United Techs. Corp.*, Case No. 17-2497 (Fed. Cir. July 10, 2019) (Reyna, J).

In early 2016, General Electric (GE) filed an IPR petition against a United Technologies patent directed to a geared-fan engine design. GE went on to file 31 other IPR petitions against United Technologies patents over the next three years without any pending district court litigation or other attempt by United Technologies to enforce its patents. In the IPR in issue here, the Patent Trial and Appeal Board instituted review on GE’s petition but ultimately refused to find five of the challenged patent claims unpatentable. GE appealed.

On appeal, the threshold question was whether GE had standing to appeal the decision despite not being accused or threatened with infringement by United Technologies. GE first asserted competitive harm due to an instance where Boeing requested that GE and its competitors submit proposed engine designs and GE chose not to submit a design for a geared-fan engine. The Federal Circuit found this argument unpersuasive because GE did not contend that it decided against submitting a geared-fan engine because of the challenged patent and because GE
did not even say whether it lost that bid. The Court also noted that GE’s status as a competitor to United Technologies was insufficient due to its previous decision on competitor standing in AVX Corp. v. Presidio Components, Inc. (IP Update, Vol. 22, No. 6).

GE separately argued that it had sustained an economic loss due to the increased research and development costs in designing around the challenged patent. The Federal Circuit found this assertion unpersuasive because GE did not articulate any specific costs that it had incurred or explain how any increased research and development costs were related to designing around the challenged patent. The Court consequently dismissed the appeal for lack of Art. III standing.

Judge Hughes wrote a concurring opinion agreeing that the dismissal was required by the Court’s competitor standing decision in AVX Corp. but arguing that that decision was mistaken. Judge Hughes concluded that he would have found standing in this case if he was not bound by that earlier decision.

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