

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

DIRTT ENVIRONMENTAL SOLUTIONS LTD,
Appellant

v.

ALLSTEEL INC.,
Appellee

2017-1797

Appeal from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in No. IPR2015-
01691.

Decided: July 23, 2018

CHAD EDWARD NYDEGGER, Workman Nydegger, Salt
Lake City, UT, argued for appellant. Also represented by
MICHAEL J. FRODSHAM, DAVID R. TODD.

R. TREVOR CARTER, Faegre Baker Daniels LLP, Indi-
anapolis, IN, argued for appellee. Also represented by
NICHOLAS M. ANDERSON, VICTOR P. JONAS, TIMOTHY M.
SULLIVAN, Minneapolis, MN; JOEL SAYRES, Denver, CO.

2

DIRTT ENVIRONMENTAL SOLUTIONS v. ALLSTEEL INC.

Before O'MALLEY, CLEVINGER, and REYNA, *Circuit Judges*.

O'MALLEY, *Circuit Judge*.

DIRTT Environmental Solutions, Ltd. appeals from a final written decision of the Patent Trial and Appeal Board ("Board") in an inter-partes review proceeding, finding that Allsteel Inc. ("Allsteel") had shown by a preponderance of the evidence that claims 1, 4–7, 9, 10, 14–20, and 25 of U.S. Patent No. 8,024,901 are unpatentable under 35 U.S.C. § 103. *Allsteel Inc. v. DIRTT Envtl. Sols. Ltd.*, No. IPR2015-01691, 2017 WL 379367 (P.T.A.B. Jan. 19, 2017). Because the Board's final written decision addresses fewer than all claims challenged in Allsteel's petition to institute inter-partes review, and the parties have not waived their objections to the Board's failure to address the non-instituted claims, we *vacate* and *remand* to allow the Board to issue a final written decision consistent with *SAS Institute Inc. v. Iancu*, 138 S. Ct. 1348 (2018).

VACATED AND REMANDED

COSTS

No costs.

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**NOTICE OF ENTRY OF
JUDGMENT ACCOMPANIED BY OPINION**

OPINION FILED AND JUDGMENT ENTERED: 07/23/2018

The attached opinion announcing the judgment of the court in your case was filed and judgment was entered on the date indicated above. The mandate will be issued in due course.

Information is also provided about petitions for rehearing and suggestions for rehearing en banc. The questions and answers are those frequently asked and answered by the Clerk's Office.

No costs were taxed in this appeal.

Regarding exhibits and visual aids: Your attention is directed Fed. R. App. P. 34(g) which states that the clerk may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the clerk gives notice to remove them. (The clerk deems a reasonable time to be 15 days from the date the final mandate is issued.)

FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner
Clerk of Court

17-1797 - DIRTT Environmental Solutions v. Allsteel Inc.
United States Patent and Trademark Office, Case No. IPR2015-01691

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20439

PETER R. MARKSTEINER
CLERK OF COURT

202-275-8000

Information Sheet

Petitions for Rehearing and Petitions for Hearing and Rehearing En Banc

1. When is a petition for rehearing appropriate?

The Federal Circuit grants few petitions for rehearing each year. These petitions for rehearing are rarely successful because they typically fail to articulate sufficient grounds upon which to grant them. Of note, petitions for rehearing should not be used to reargue issues previously presented that were not accepted by the merits panel during initial consideration of the appeal. This is especially so when the court has entered a judgment of affirmance without opinion under Fed. Cir. R. 36. Such dispositions are entered if the court determines the judgment of the trial court is based on findings that are not clearly erroneous, the evidence supporting the jury verdict is sufficient, the record supports the trial court's ruling, the decision of the administrative agency warrants affirmance under the appropriate standard of review, or the judgment or decision is without an error of law.

2. When is a petition for hearing/rehearing en banc appropriate?

En banc consideration is rare. Each three-judge merits panel is charged with deciding individual appeals under existing Federal Circuit law as established in precedential opinions. Because each merits panel may enter precedential opinions, a party seeking en banc consideration must typically show that either the merits panel has (1) failed to follow existing decisions of the U.S. Supreme Court or Federal Circuit precedent or (2) followed Federal Circuit precedent that the petitioning party now seeks to have overruled by the court en banc. Federal Circuit Internal Operating Procedure #13 identifies several reasons when the Federal Circuit may opt to hear a matter en banc.

3. Is it necessary to file either of these petitions before filing a petition for a writ certiorari in the U.S. Supreme Court?

No. A petition for a writ of certiorari may be filed once the court has issued a final judgment in a case.

For additional information and filing requirements, please refer to Fed. Cir. R. 40 (Petitions for Rehearing) and Fed. Cir. R. 35 (Petitions for Hearing or Rehearing En Banc).

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Information Sheet

Filing a Petition for a Writ of Certiorari

There is no automatic right of appeal to the Supreme Court of the United States from judgments of the Federal Circuit. Instead, a party must file a petition for a writ of certiorari which the Supreme Court will grant only when there are compelling reasons. See Supreme Court Rule 10.

Time. The petition must be filed in the Supreme Court of the United States within 90 days of the entry of judgment in this Court or within 90 days of the denial of a timely petition for rehearing. The judgment is entered on the day the Federal Circuit issues a final decision in your case. The time does not run from the issuance of the mandate. See Supreme Court Rule 13.

Fees. Either the \$300 docketing fee or a motion for leave to proceed in forma pauperis with an affidavit in support thereof must accompany the petition. See Supreme Court Rules 38 and 39.

Authorized Filer. The petition must be filed by a member of the bar of the Supreme Court of the United States or by the petitioner as a self-represented individual.

Format of a Petition. The Supreme Court Rules are very specific about the content and formatting of petitions. See Supreme Court Rules 14, 33, 34. Additional information is available at https://www.supremecourt.gov/filingandrules/rules_guidance.aspx.

Number of Copies. Forty copies of a petition must be filed unless the petitioner is proceeding in forma pauperis, in which case an original and ten copies of both the petition for writ of certiorari and the motion for leave to proceed in forma pauperis must be filed. See Supreme Court Rule 12.

Filing. Petitions are filed in paper at *Clerk, Supreme Court of the United States, 1 First Street, NE, Washington, DC 20543*.

Effective November 13, 2017, electronic filing is also required for filings submitted by parties represented by counsel. See Supreme Court Rule 29.7. **Additional information about electronic filing at the Supreme Court is available at <https://www.supremecourt.gov/filingandrules/electronicfiling.aspx>.**

No documents are filed at the Federal Circuit and the Federal Circuit provides no information to the Supreme Court unless the Supreme Court asks for the information.