
From: James Murphy <jpmurphy@polsinelli.com>
Sent: Thursday, February 28, 2019 6:39 PM
To: Precedential_Opinion_Panel_Request
Cc: Matthew R. Frontz; Ryan Murphy; 'mjohnson@rennerotto.com'; 'kfleming@rennerotto.com'; 'lcarrion@rennerotto.com'
Subject: IPR2017-02016, -02018; Request for Precedential Opinion Panel Review
Attachments: IPR2017-02016 Rehearing Request.pdf; IPR2017-02018 Rehearing Request.pdf

Dear Sir/Madam,

Petitioner in the above proceedings requests review of the attached rehearing requests, filed today, by the Precedential Opinion Panel. Based on my professional judgment, I believe this case requires an answer to one or more precedent-setting questions of exceptional importance:

1. Should the Federal Circuit's holding in *Click-to-Call Techs., LP v. Ingenio, Inc.*, 899 F.3d 1321 (Fed. Cir. 2018), which involved interpretation of "served with a complaint" in 35 U.S.C § 315(b), be extended to "filed a civil action" in 35 U.S.C. § 315(a)(1) such that an action for declaratory judgment of invalidity that is dismissed without prejudice prior to filing an *inter partes* review petition would bar a petitioner from seeking *inter partes* review?
2. Does an action for declaratory judgment of invalidity that the Patent Owner has asserted lacks subject matter jurisdiction bar a petitioner from seeking *inter partes* review under 35 U.S.C. § 315(a)(1)?

The Precedential Opinion Panel may be convened to address issues of exceptional importance regarding statutes or issues of broad applicability to the Board. PTAB Standard Operating Procedure 2, Rev. 10 as Section II(A). The resolution of the issues in this case raises both of these concerns. This case involves issues of first impression in the statutory interpretation of 35 U.S.C. § 315(a)(1), particularly in light of the Federal Circuit's holding on 35 U.S.C. § 315(b) in *Click-to-Call*. The resolution of these issues extends beyond the instant IPR proceedings as other pending PTAB cases are examining some of these same issues and there are likely to be many others in the future given the widespread use of declaratory judgments and dismissals without prejudice in district court litigation. *See e.g., Avigilon Corporation et al v. Canon Inc.*, IPR2018-01626, -01627, PTAB Order issued Jan. 9, 2019 (authorizing additional briefing to address the impact of *Click-to-Call* on §315(a)(1)).

Signed,
/James P. Murphy/
ATTORNEY OF RECORD FOR PETITIONER RUIZ FOOD PRODUCTS INC.

Regards,
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