

No. 15-446

---

---

IN THE  
**Supreme Court of the United States**

---

CUOZZO SPEED TECHNOLOGIES, LLC,

*Petitioner,*

*v.*

MICHELLE K. LEE, UNDER SECRETARY OF  
COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR, PATENT AND TRADEMARK OFFICE,

*Respondent.*

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT  
OF APPEALS FOR THE FEDERAL CIRCUIT

---

---

**BRIEF OF *AMICUS CURIAE* UNIFIED  
PATENTS INC. IN SUPPORT OF  
RESPONDENT**

---

---

KEVIN JAKEL  
JONATHAN STROUD  
SHAWN AMBWANI  
UNIFIED PATENTS INC.  
2 North 1st Street, 5<sup>th</sup> Floor  
San Jose, California 95113  
(650) 999-0899

SCOTT A. MCKEOWN  
*Counsel of Record*  
STEPHEN G. KUNIN  
JEFFREY I. FREY  
OBLON, MCCLELLAND, MAIER  
& NEUSTADT, L.L.P.  
1940 Duke Street  
Alexandria, Virginia 22314  
(703) 412-6297  
smckeown@oblon.com

*Counsel for Amicus Curiae*

---

---

265039



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

MemoryWeb Ex. 2059  
Apple v. MemoryWeb - IPR 2022-00031

**TABLE OF CONTENTS**

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES .....	iv
STATEMENT OF INTEREST .....	1
INTRODUCTION.....	2
SUMMARY OF THE ARGUMENT.....	7
ARGUMENT.....	9
I. <i>Inter partes</i> review (IPR) procedures are a refinement of patent examination and reexamination processes all using the BRI standard, which have for more than a century sought to improve patent quality, thus reducing problematic district court patent litigation .....	9
A. IPR is an administrative proceeding not intended to replace litigation in district court .....	9
B. IPR is a refinement of an earlier PTO post-grant procedure, <i>inter partes</i> reexaminations, which construed claims using the broadest reasonable interpretation (BRI) .....	11

*Table of Contents*

	<i>Page</i>
II. Amendment is not more limited in IPRs than in other post-grant procedures, even in other adjudicative proceedings, and post-grant amendment is available by other routes at the U.S. Patent and Trademark Office (PTO) . . . .	14
A. Claims may be modified in reexamination proceedings, which, like IPR, are post-grant proceedings at the PTO that allow limited amendment, and use BRI . . . . .	15
B. Interference proceedings, which are adjudicatory proceedings at the PTO that allow amendment (and on which IPR procedure was based), use BRI . . . . .	17
C. Patent reissue is a post-grant proceeding that likewise allows patentees to amend claims, and uses BRI . . . . .	19
D. Many factors have contributed to the limited number of amendments made to date in IPRs . . . . .	19
III. When properly applied, the standards of construction in the PTO and in the courts are paths to the same result . . . . .	21

*Table of Contents*

	<i>Page</i>
A. Because the PTAB properly applied the BRI standard, Petitioner received the “plain and ordinary” claim interpretation it seeks . . . . .	22
B. The PTO recognizes that BRI and “plain and ordinary meaning” are not alternatives . . . . .	23
C. The U.S. Court of Appeals for the Federal Circuit recognizes that BRI and “plain and ordinary meaning” are not alternatives . . . . .	24
D. Factors other than BRI can result in differences in claim construction in the PTO and in the courts . . . . .	25
E. Claim construction procedures under the PTAB and in the courts differ only inconsequentially . . . . .	27
IV. Congress assumed BRI would continue to be used by the PTO in post-grant patent proceedings, as shown by the specific statute of the AIA it promulgated, to avoid claim-construction gamesmanship by patentees . . . . .	30
CONCLUSION . . . . .	31

TABLE OF CITED AUTHORITIES

	<i>Page</i>
<b>CASES</b>	
<i>American Hoist and Derrick Company v. Sowa &amp; Sons Inc.</i> , 725 F.2d 1350 (Fed. Cir. 1984) . . . . .	6, 25
<i>Bamberg v. Dalvey</i> , No. 2015-1548 (Fed. Cir. March 9, 2016) . . . . .	18
<i>Bamberger v. Cheruvu</i> , 55 U.S.P.Q.2d 1523 (B.P.A.I. 1998). . . . .	17
<i>Blackberry Corp. v. Mobilemedia Ideas LLC</i> , IPR2013-00016, Paper No. 31 (PTAB December 11, 2013). . . . .	10
<i>Blackberry Corp. v. Mobilemedia Ideas LLC</i> , IPR2013-00036, Paper No. 64 (PTAB Jan. 21, 2014) . . . . .	10
<i>Chevron, USA, Inc. v. Natural Resources Defense Council, Inc.</i> , 467 U.S. 837 (1984). . . . .	25, 26
<i>COMMIL USA, LLC v. Cisco Systems, Inc.</i> , 135 S. Ct. 1920 (2015). . . . .	10
<i>eBay Inc. v. MercExchange, L.L.C.</i> , 126 S. Ct. 1837 (2006) . . . . .	10

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.