IN THE Supreme Court of the United States

INTEL CORPORATION,

Petitioner,

v.

VLSI TECHNOLOGY LLC, ET AL.

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF OF UNIFIED PATENTS, LLC, THE ALLIANCE FOR AUTOMOTIVE INNOVATION, AND CABLE TELEVISION LABORATORIES, INC. AS AMICI CURIAE
IN SUPPORT OF PETITIONER

JONATHAN STROUD JUNG HAHM

WILLIAM G. JENKS

Counsel of Record

UNIFIED PATENTS LLC 4445 Willard Avenue Suite 600 Chevy Chase, MD 20815 (202) 805-8931 JENKS IP LAW PLLC 1629 K ST., NW Suite 300 Washington, D.C. 20006 wjenks@jenksiplaw.com

 $(202)\ 412-7964$

Counsel for Amici Curiae



TABLE OF CONTENTS

INTER	ESTS OF AMICI CURIAE1
SUMM	ARY OF ARGUMENT4
ARGUN	MENT6
I.	THE QUESTION PRESENTED AFFECTS THE MAJORITY OF CASES IN THE NATION'S BUSIEST PATENT VENUE
	A. The PTAB's use of discretion to deny meritorious petitions has exploded8
	B. Nonstatutory factors are driving this growth in discretionary denials10
	C. The Court should not rely on the stale "process" proffered by the Government to rein in agency discretion
II.	THE PTAB PRECEDENTIAL DECISIONS ABUSE STATUTORY DISCRETION
III.	CONGRESS GRANTED THE DIRECTOR A SAFETY VALVE TO CONTROL THE PTAB'S BACKLOG, NOT A TOOL FOR MAKING POLICY21
IV.	THE FEDERAL CIRCUIT MAY ADDRESS THIS ABUSE
CONCI	LUSION27



TABLE OF AUTHORITIES

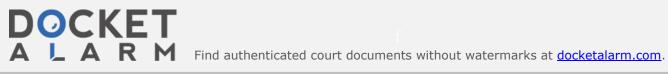
Cases
Apple Inc. v. Fintiv, Inc., IPR2020-00019,
2020 WL 2126495 (PTAB Mar. 20,
2020)
Cardinal Chem. Co. v. Morton Int'l, Inc.,
508 U.S. 83 (1993)6
Chevron, U.S.A., Inc. v. Nat. Res. Def.
Council, Inc., 467 U.S. 837 (1984)15
Cooper Techs. Co. v. Dudas, 536 F.3d 1330
(Fed. Cir. 2008)21
Cuozzo Speed Techs., LLC v. Lee, 579 U.S.
261 (2016)
Flight Attendants v. Zipes, 491 U.S. 754
(1989)16
Halo Elecs., Inc., v. Pulse Elecs., Inc., 579
U.S. 93 (2016)16
Martin v. Franklin Cap. Corp., 546 U.S.
132 (2005)16
NHK Spring Co. v. Intri-Plex
Technologies, Inc., No. IPR2018-00752,
2018 WL 4373643 (PTAB. Sept. 12,
2018)
Petrella v. Metro-Goldwyn-Mayer, Inc.,
572 U.S. 663 (2014)
SAS Inst., Inc. v. Iancu, 138 S. Ct. 1348
(2018)
SCA Hygiene Prod. Aktiebolag v. First
Quality Baby Prod., LLC, 137 S. Ct. 954
(2017)
SCA Hygiene Prod. Aktiebolag v. First
Quality Baby Prod., LLC, 767 F.3d
1339 (Fed. Cir. 2014)



SCA Hygiene Prod. Aktiebolag v. First		
Quality Baby Prod., LLC, 807 F.3d		
1311 (Fed. Cir. 2015) (en banc)		.18
Thryv, Inc. v. Click-to-Call Techs., LP, 140		
S. Ct. 1367 (2020)		26
Unified Patents, LLC. v. Uniloc USA, Inc.		
et al., IPR2018-00199 (PTAB May 31,		
2019)		2
United States v. Arthrex, Inc., 141 S. Ct.		
1970 (2021)		.25
Whitman v. Am. Trucking Associations,		
531 U.S. 457 (2001)		.16
Chatutan		
Statutes 28 U.S.C. § 1295(a)		c
•		
35 U.S.C. § 2(b)(2)(B)		
•	,	
35 U.S.C. § 312(a) (2010)		
35 U.S.C. § 313 (2010)		
35 U.S.C. § 314(a)		
35 U.S.C. § 314(d)	,	
35 U.S.C. § 315(b)		
35 U.S.C. § 315(c)		
35 U.S.C. § 316(a)(11)		
35 U.S.C. § 316(a)(2)		
35 U.S.C. § 316(b)		
35 U.S.C. § 325(d)		
35 U.S.C. § 6(a)	•••••	.26
Leahy-Smith America Invents Act sec.		
6(c)(2)(B), Pub. L. No. 112-29, 125 Stat.		00
284, 304 (2011)	•••••	.22
Other Authorities		
157 Cong. Rec. S1376 (daily ed. Mar. 8,		
2011)		23



157 Cong. Rec. S1377 (daily ed. Mar. 8,	
2011)	22
H.R. Rep. No. 112-98, pt. 1 (2011)	26
James Donald Smith, Patent Trial and	
Appeal Board Update 20 (Nov. 21,	
2013) available at	
https://www.uspto.gov/sites/default/file	
s/documents/20131121_PPAC_PTABU	
pdate.pdf	23
Joe Matal, A Guide to the Legislative	
History of the America Invents Act:	
Part II of II, 21 Fed. Cir. B. J. 539	
(2012)	22
John O. Curry, Comment, Avoiding	
Responsibility: The Case for Amending	
the Duty to Disclose Prior Art in Patent	
Law, 95 Wash. L. Rev. 1031 (2020)	14
Request for Comments on Discretion To	
Institute Trials Before the Patent Trial	
and Appeal Board, 85 Fed. Reg. 66,502	
(Oct. 20, 2020)	13, 14, 15
Ryan Davis, Iancu Leaves Pro-Patentee	
Legacy As USPTO Director, Law360	
(Jan. 21, 2021)	14
Unified Patents, 2020 Patent Dispute	
Report: Year in Review, (Jan. 1, 2021)	
available at	
https://www.unifiedpatents.com/insigh	
ts/2020-patent-dispute-report-year-in-	
review ("2020 Patent Year in Review")	8
Unified Patents, 2021 Patent Dispute	
Report: Third Quarter in Review (Sept.	
30, 2021) available at	
https://www.unifiedpatents.com/insigh	
ts/2021-patent-dispute-report-third-	



DOCKET

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.

