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, 5th 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



TABLE OF CONTENTS

	Page
TABLE O	F CONTENTSi
TABLE O	F CITED AUTHORITIESiv
STATEM	ENT OF INTEREST1
INTRODU	UCTION
SUMMAI	RY OF THE ARGUMENT7
ARGUME	NT9
are and the tha qua	er partes review (IPR) procedures a refinement of patent examination d reexamination processes all using BRI standard, which have for more n a century sought to improve patent dity, thus reducing problematic district rt patent litigation
	not intended to replace litigation in district court9
В.	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)



$Table\ of\ Contents$

			Page	
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)			
	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	
	В.	Interference proceedings, which are adjudicatory proceedings at the PTO that allow amendment (and on which IPR procedure was based), use BRI	17	
	С.	Patentreissue 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 result2		21	



iii

$Table\ of\ Contents$

Page			
22	Because the PTAB properly applied the BRI standard, Petitioner received the "plain and ordinary" claim interpretation it seeks	A.	
23	The PTO recognizes that BRI and "plain and ordinary meaning" are not alternatives	В.	
24	The U.S. Court of Appeals for the Federal Circuit recognizes that BRI and "plain and ordinary meaning" are not alternatives	С.	
25	Factors other than BRI can result in differences in claim construction in the PTO and in the courts	D.	
27	Claim construction procedures under the PTAB and in the courts differ only inconsequentially	Ε.	
30	ngress assumed BRI would continue to used by the PTO in post-grant patent occedings, as shown by the specific tute of the AIA it promulgated, to id claim-construction gamesmanship patentees	be pro sta avo	IV.
31	SION	ICLU	CONC



TABLE OF CITED AUTHORITIES

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



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.

