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# Patent 'Death Squad' Rules Draw U.S. Supreme Court Scrutiny

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The U.S. Supreme Court will scrutinize a new system that helps technology companies like Google Inc. and Apple Inc. eliminate troublesome patent disputes without going to court.

Taking up a case involving a device that alerts drivers when they are speeding, the justices agreed to decide whether an administrative board set up by Congress in 2011 is being too quick to invalidate patents.

The reviews by the board in the U.S. Patent and Trademark Office have been described by former federal appellate Judge Randall Rader as “death squads” for patents. The board has invalidated at least part of a disputed patent 87 percent of the time, compared with a 42 percent success rate for challenges in federal court, according to a brief by the pharmaceutical industry, which opposes the board review system.

The review board has become the most popular forum for resolving patent disputes, with 1,897 review petitions filed with the agency in fiscal 2015.

Technology companies in particular have embraced the proceedings because they are seen as faster and less expensive than traditional litigation in courts -- and one ruling against a patent owner can wipe out dozens of lawsuits.

At issue before the Supreme Court is the board’s practice of interpreting a patent in the broadest way reasonably possible. That’s the standard used during the patent office’s initial review of patent applications, and it makes it easier to find information that could prove a patent doesn’t cover anything new.

Opponents of the reviews say the board should instead use the same standard as federal judges, who interpret each patent according to the ordinary meaning of its words.

The Obama administration, in defending the board, says its standard encourages those seeking patents to tailor their applications to closely track what they have actually invented.

Hedge Funds

The pharmaceutical industry has been pushing to limit cases against drug patents ever since hedge fund manager Kyle Bass began filing petitions targeting their medicines. Drugmakers argue the hedge funds are trying to manipulate markets by creating uncertainty about when generic medicines will enter the market.

The patent office has said that it doesn't matter who files a challenge because the goal is to ensure that only valid patents are in force.

The U.S. Court of Appeals for the Federal Circuit, which handles all patent appeals, has generally backed the agency's decisions, often without even issuing formal opinions.

The case before the Supreme Court involves a speed-limit indicator patent owned by Cuozzo Speed Technologies LLC, which had sued companies including Garmin Ltd., General Motors Co. and TomTom NV. Garmin was the first to file a review petition after the law took effect in 2012, and successfully argued the Cuozzo patent was invalid because it was an obvious variation of earlier inventions.

In a 2-1 decision, the Federal Circuit backed Garmin's position and the patent board's review. The court said that the patent office acted within its authority when it decided to use the same review standard it uses in other proceedings involving unexpired patents.

The case is Cuozzo Speed Technologies v. Lee, 15-446.