



August 2017

Follow @Paul_Hastings



No Article III Standing Requirement for Appellees in Appeals From IPR Proceedings

By [Daniel Zeilberger](#), [Joseph Palys](#) & [Naveen Modi](#)

In a precedential decision issued August 7, 2017, *Personal Audio, LLC v. Electronic Frontier Foundation*, No. 2016-1123 (Fed. Cir. Aug. 7, 2017), the Federal Circuit considered the implications of *Consumer Watchdog v. Wisconsin Alumni Research Foundation*, 753 F.3d 1258 (Fed. Cir. 2014), on the question of whether a party lacking Article III standing may nonetheless participate in an appeal as an appellee. In *Consumer Watchdog*, the Federal Circuit held that a PTAB petitioner that does not meet the Article III case-or-controversy requirement does not have standing to appeal from a PTAB decision in an *inter partes* reexamination (and earlier this year, the holding in *Consumer Watchdog* was extended to the IPR context in *Phigenix, Inc. v. ImmunoGen, Inc.*, 845 F.3d 1168 (Fed. Cir. 2017)).

In *Personal Audio*, EFF had filed an IPR petition challenging claims of a patent owned by Personal Audio. The PTAB ultimately found the challenged claims to be unpatentable in its Final Decision, thus ruling in EFF's favor. After Personal Audio appealed, the Federal Circuit asked the parties to brief the question of whether EFF has standing to participate in the appeal at all. In a decision authored by Judge Newman (and joined by Judges Clevenger and O'Malley), the Federal Circuit held that EFF was allowed to "appear[] in court to defend the PTAB decision in its favor." Slip op. at 7.

The Federal Circuit explained that the critical question raised in *Consumer Watchdog* is whether the party invoking judicial review, i.e., the appellant (in this case Personal Audio), has Article III standing. Slip op. at 6-7 (citing *ASARCO Inc. v. Kadish*, 490 U.S. 605, 618 (1989)). Here, it was "apparent that Personal Audio, on cancellation of its patent claims by the PTAB, [had] experienced an alteration of 'tangible legal rights . . . that is sufficiently distinct and palpable to confer standing under Article III.'" Slip op. at 7 (quoting *Virginia v. Hicks*, 539 U.S. 113, 121 (2003)). Thus, the Federal Circuit held, "[w]ith Article III satisfied as to the appellant, EFF is not constitutionally excluded from appearing in court to defend the PTAB decision in its favor." Slip op. at 7. The Federal Circuit then went on to affirm the PTAB's holding as to the unpatentability of the claims at issue.

◇ ◇ ◇

STAY CURRENT



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings Washington D.C. lawyers:

Naveen Modi
1.202.551.1990

naveenmodi@paulhastings.com

Joseph Palys
1.202.551.1996

josephpalys@paulhastings.com

Daniel Zeilberger
1.202.551.1993

danielzeilberger@paulhastings.com

Paul Hastings LLP

Stay Current is published solely for the interests of friends and clients of Paul Hastings LLP and should in no way be relied upon or construed as legal advice. The views expressed in this publication reflect those of the authors and not necessarily the views of Paul Hastings. For specific information on recent developments or particular factual situations, the opinion of legal counsel should be sought. These materials may be considered ATTORNEY ADVERTISING in some jurisdictions. Paul Hastings is a limited liability partnership. Copyright © 2017 Paul Hastings LLP.