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PTAB Designates Two of Its Earlier Decisions as Precedential

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The second decision, *Westlake Services LLC v. Credit Acceptance Corp.,* clarified that estoppel under 35 USC § 325(e) applies on a claim-by-claim basis. Petitioner Westlake, who had been sued by CAC, sought CBM review of all 42 claims of the CAC's financing method patent. The Board instituted review as to only 19 claims and found them unpatentable under § 101 in its final written decision. Westlake filed a second CBM petition on the same patent seeking review of the remaining 23 claims. CAC sought to terminate the second proceeding, arguing that estoppel under § 325(e)(1) applies to all claims challenged by a petitioner, not just the instituted ones, and that a contrary reading of the statute would allow serial challenges to a patent. The Board rejected that argument, finding that the statute plainly applies to claims that "result in a final written decision." It noted that its prior final written decision did not in any way incorporate portions of its institution decision relating to claims for which trial was not instituted. The Board therefore denied CAC's motion, and in its final written decision in the second proceeding, found the remaining 23 claims also unpatentable under § 101.

LG Electronics v. Mondis Technology, No. IPR2015-00937 (PTAB Sept. 17, 2015).

Westlake Services v. Credit Acceptance Corp., No. CBM2014-00176 (PTAB May 14, 2015).

Categories

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§ 101 Analysis under Alice | Technology | Inter Partes Review