



PTAB Upholds Stay of IPR Pending Review by Supreme Court

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Following briefing by the Parties, the PTAB upheld the stay for two reasons. First, because this is a consolidated proceeding, the PTAB explained that “[s]hould the Supreme Court grant patent owner’s certiorari petition and vacate the judgment of the Federal Circuit, the mandate to the Board in this proceeding may be recalled.” Second, the certiorari petition challenged the PTAB’s obviousness finding, which was based in part on the Munnekehoff reference. This reference is common to both IPR1 and IPR2. Because the Court could redefine Munnekehoff’s scope, which is relevant to IPR1, the PTAB decided to stay the proceeding “to avoid unnecessary actions or inconsistent results.”

The PTAB further clarified that it has authority under 37 C.F.R. § 42.5(a) to uphold the stay of IPR1. That provision is a “catch-all,” which grants the PTAB authority to “determine a proper course of conduct in a proceeding for any situation not specifically covered by this part.” The PTAB also explained that upholding the stay will not violate the statutory period for IPRs because the Final Written Decision was already issued within one year of institution.

Shaw Indus. Group, Inc. v. Automated Creel Sys., Inc., IPR2013-00132 (PTAB October 14, 2016).
[Cocks, Arbes (opinion), McNamara]

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