



Competing Policy Interests Cause PTAB to Deny Request to Vacate Final Written Decision in View of Settlement

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In the final written decision, which issued on January 30, 2017, the PTAB entered an adverse judgment against the patent owner as to three claims and found the remaining two claims anticipated. The patent owner appealed the PTAB's final written decision to the Federal Circuit. Before receiving a decision on appeal, however, the parties settled their dispute. Following settlement, the patent owner filed an unopposed motion requesting that the Federal Circuit dismiss the appeal and remand the case to the PTAB to allow the patent owner to file a motion to vacate the final written decision. The Federal Circuit granted the motion, but took "no position as to whether the Board should grant the motion to vacate."

In its unopposed motion to vacate, the patent owner argued that vacating the final written decision is appropriate because the law and sound public policy favor and encourage settlements. If the PTAB refused to vacate the final written decision, thereby requiring the parties to endure a full appeal, the patent owner argued that there would be no incentive for parties to settle their disputes after a final written decision has been entered.

The PTAB disagreed. Citing 37 CFR § 42.74(a), the PTAB emphasized its authority to independently determine questions of patentability, even after parties settle, in order to promote the public policy favoring the cancellation of any claim that has been shown to be unpatentable on the merits. Recognizing the competing public policy interests that are inherent in the IPR statutes and regulations, the PTAB held that it would be against the public interest to vacate the final written decision simply because the parties settled after the decision issued.

Importantly, the PTAB highlighted several times that the settlement occurred **after** the issuance of the final written decision. This ruling reinforces the PTAB's continued reluctance to terminate or nullify proceedings that have reached the final written decision stage.

Dish Network Corporation v. TQ Beta LLC, IPR2015-01756 (PTAB)

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