High Court Rejects Pleas To Hear 7 Patent Cases

By Ryan Davis and Dani Kass · *Listen to article*

Law360 (October 6, 2024, 10:15 AM EDT) -- The U.S. Supreme Court on Monday turned down seven petitions seeking review of decisions in patent cases, including appeals dealing with double patenting, patent eligibility and Patent Trial and Appeal Board procedures.

Here's a rundown of the patent cases the high court declined to hear.

Unless otherwise stated, counsel for the parties didn't immediately reply to requests for comment.

Cellect v. Vidal

Cellect argued in its May appeal to the Supreme Court that it was "nonsensical" for the Federal Circuit to hold that patents can be invalidated for double patenting when they have been given longer terms due to delays by the patent office.

Cellect said patent term adjustment, which extends the life of patents to compensate for delays during examination, was created by statute, so it cannot be trumped by the judge-made doctrine of obviousness-type double patenting, as the Federal Circuit ruled last year.

The USPTO responded in August that Cellect "vastly overstates the practical importance" of the issue, which the agency said can only arise in a small number of cases, and that the company's arguments were undermined by a recent Federal Circuit decision.

A representative for the USPTO declined to comment Monday.

The patents-in-suit are U.S. Patent Nos. 6,982,742; 6,424,369; 6,452,626; and 7,002,621.

Cellect is represented by Roy T. Englert Jr., Matthew M. Madden, Daniel N. Lerman, Jeffrey

C. Thalhofer, Paul J. Andre, Lisa Kobialka, James R. Hannah, Jonathan Caplan and Jeffrey Price of Kramer Levin Naftalis & Frankel LLP.

The USPTO is represented by Elizabeth Prelogar, Brian Boynton, Joshua Salzman and Weili Shaw of the U.S. Department of Justice.

The case is Cellect LLC v. Katherine K. Vidal, case number 23-1231, in the Supreme Court of the United States.

Eolas Technologies v. Amazon.com

Eolas, a patent licensing company run by a former computer lab director at the University of California, San Francisco, asked the justices in May to review a decision that its online media patent is invalid for claiming only an abstract idea.

The Federal Circuit held in February that Eolas' claimed invention, which involves using multiple computers online to perform tasks like rendering images that would be bandwidth-intensive for a single one, is ineligible for patenting because it is directed to the abstract idea of interacting with data objects on the internet.

Eolas argued to the Supreme Court that at the time of the invention in 1994, the technology was "unmistakably" a patent-eligible improvement in how computers operate, which "falls far outside the realm of 'abstract ideas,'" as that term has been used in other cases.

Amazon, Google and Walmart, which Eolas has accused of infringement, told the justices in July that the patent was correctly invalidated because it covers "only aspirational results without any specific technological solution for achieving them."

Counsel for Walmart declined to comment Monday.

The patent at issue is U.S. Patent No. 9,195,507.

Eolas is represented by John Campbell, Joel L. Thollander, Charles Fowler and Kyle Ryman of McKool Smith.

Amazon is represented by Gabriel K. Bell, Charles S. Dameron, Douglas E. Lumish,

Richard G. Frenkel, Joseph H. Lee and Amit Makker of Latham & Watkins LLP.

Google is represented by David Perlson and Deepa Acharya of Quinn Emanuel Urquhart & Sullivan LLP.

Walmart is represented by Bijal V. Vakil of Allen Overy Shearman Sterling and Mark C. Fleming of WilmerHale.

The case is Eolas Technologies Inc. v. Amazon.com Inc. et al., case number 23-1184, in the Supreme Court of the United States.

United Therapeutics v. Liquidia Technologies

United Therapeutics, maker of the high blood pressure treatment Tyvaso, asked the high court in June to review a decision invalidating a patent on the drug in a challenge by Liquidia Technologies, which is planning a rival drug.

The Federal Circuit in December affirmed a Patent Trial and Appeal Board decision that Liquidia had shown that United's patent is invalid, but United told the justices that the ruling was improperly based on arguments that were not made in Liquidia's petition.

"The board has no statutory authority to consider arguments or publications not raised in the petition," United said, maintaining that the Federal Circuit "regularly betrays this statutory directive by deferring to agency discretion."

Liquidia responded in August that United's petition "is based on a fundamentally false premise" that the Federal Circuit deferred to the PTAB, when the court in fact "did no such thing here" and based its decision on Liquidia's arguments.

The patent-at-issue is U.S. Patent No. 10,716,793.

United Therapeutics is represented by Douglas H. Carsten, Adam William Burrowbridge and Arthur Paul Dykhuis of McDermott Will & Emery LLP, William Covington Jackson of Goodwin Procter LLP and in-house by Shaun R. Snader.

Liquidia is represented by Kathleen R. Hartnett, Sanya Sukduang, Angeline Chen, Patrick J.

Hayden and Thomas Touchie of Cooley LLP.

The case is United Therapeutics Corp. v. Liquidia Technologies Inc., case number 23-1298, in the Supreme Court of the United States.

Provisur Technologies v. Weber Inc.

Provisur asked the high court in June to review a Federal Circuit decision that revived rival Weber Inc.'s challenge to its food slicer patents, saying the ruling flouted evidentiary limits.

Provisur argued that the February appeals court ruling, which vacated a Patent Trial and Appeal Board holding that Weber didn't show that the patents are invalid, "upends ... decades-old precedent."

The appeals court said Weber could use manuals for its own slicers as evidence that Provisur's patents are invalid. Provisur contended to the justices that the manuals are not the type of publicly available document that can be used at the board, because only people who buy the expensive machines can access them.

Weber waived the right to respond to the petition.

Counsel for Weber declined to comment Monday.

The patents at issue are U.S. Patent Nos. 10,639,812 and 10,625,436.

Provisur is represented by Craig C. Martin, Sara Tonnies Horton, Michael G. Babbitt and Matthew Freimuth of Willkie Farr & Gallagher LLP.

Weber is represented by Richard A. Crudo of Sterne Kessler Goldstein & Fox PLLC.

The case is Provisur Technologies Inc. v. Weber Inc., case number 23-1349, in the Supreme Court of the United States.

Valeant Pharmaceuticals v. Silbersher

Valeant Pharmaceuticals asked the Supreme Court in April to rule that information cited in

Patent Trial and Appeal Board reviews cannot later be used by whistleblowers in False Claims Act lawsuits.

The drugmaker appealed a 2023 decision by the Ninth Circuit that revived a whistleblower suit by intellectual property lawyer Zachary Silbersher that is based on information in PTAB filings. Valeant said the holding is in "irreconcilable conflict" with decisions by other circuits barring suits citing public disclosures.

Silbersher, a partner at Kroub Silbersher & Kolmykov PLLC who alleged that Valeant is involved in a kickback scheme, responded in August that Valeant's petition was "a complete nothingburger," and that the issue arises so rarely that it is "plainly not important enough to merit this court's review."

Counsel for Silbersher declined to comment Monday.

Valeant is represented by Moez M. Kaba, Padraic W. Foran and Michael Todisco of Hueston Hennigan LLP and William Peterson of Morgan Lewis & Bockius LLP.

Silbersher is represented by Tejinder Singh of Sparacino PLLC, Bret D. Hembd and Nicomedes S. Herrera of Herrera Kennedy LLP and Warren T. Burns and Christopher J. Cormier of Burns Charest LLP.

The case is Valeant Pharmaceuticals International Inc. et al. v. Silbersher et al., case number 23-1093, in the Supreme Court of the United States.

Surti v. Fleet Engineers

Tarun Surti, who runs a mudflap company called Mudguard Technologies LLC, appealed to the Supreme Court in February, challenging the Federal Circuit's affirmance of a Michigan jury verdict awarding him only $228,000 after Fleet Engineers Inc. was found to infringe his patent.

Surti, who is representing himself, told Law360 last year that the amount of damages he won from the jury after nearly a decade of litigation was a "joke." He urged the justices to rule that the trial court failed to consider key evidence and argued that he was entitled to approximately $4.9 million instead.

In a response in July, Fleet argued that Surti made no arguments that the ruling was based on incorrect legal principles or was unsupported by the evidence. The company said he "rolled the dice on a jury verdict and did not get the outcome he desired and now makes an emotional plea asking this court to intervene."

"We are not surprised by the denial of Mr. Surti's petition for certiorari," Fleet Engineers attorney Tom Williams of McGarry Bair PC said in an email Monday. "From the outset, we have maintained that the case presented no issues significant enough to warrant the Supreme Court's consideration, given the Court's busy and critical docket."

The patent-in-suit is U.S. Patent No. RE44,755.

Surti is representing himself.

Fleet Engineers is represented by G. Thomas Williams III of McGarry Bair PC.

The case is Surti v. Fleet Engineers Inc., case number 23-1142, in the Supreme Court of the United States.

Robinson v. Armin Azod

James G. Robinson, a film producer and investor in the now-defunct chemical technology firm Novoform Technologies, asked the Supreme Court in August to review the Ninth Circuit's use of equitable estoppel when upholding the enforcement of a $5.7 million arbitration award against him.

Novoform's founders, including patent attorney Armin Azod of Steffin Azod LLP, had persuaded an arbitrator that Robinson wrongly stopped paying them after his company, Cecilia LLC, acquired Novoform and its intellectual property.

The founders were also successful when they asked a California federal judge to enforce that award in 2022 and won over a majority of a Ninth Circuit panel in January. The majority applied the doctrine of equitable estoppel, ruling against Robinson for taking inconsistent positions on venue and engaging in gamesmanship.

Robinson is represented by Fred D. Heather and Aaron P. Allan of Glaser Weil Fink Howard Jordan & Shapiro LLP.

The founders and Azod are represented by Armin Azod, William C. Steffin and Amanda Fleming of Steffin Azod LLP.

Counsel for Robinson declined to comment Monday.

The case is Robinson et al. v. Azod et al., case number 24-135, before the U.S. Supreme Court.

—Additional reporting by Ryan Harroff. Editing by Alyssa Miller.