

MCM PORTFOLIO LLC v. HEWLETT-PACKARD COMPANY, Appeal No. 2015-1091 (Fed. Cir. December 2, 2015). Before Dyk, Prost, and Hughes. Appealed from P.T.A.B.

Background:

Hewlett-Packard petitioned for an inter partes review ("IPR") of a patent granted to MCM. MCM responded to the IPR arguing that the IPR proceeding violated Article III and the 7th Amendment right to a jury trial of the United States Constitution. The PTAB rejected each of MCM's arguments and ruled in favor of HP. MCM then appealed.

Issue/Holding:

Whether IPR proceedings instituted by the PTAB unconstitutionally violate Article III and the 7th Amendment right to a jury trial? No, affirmed.

Discussion:

On appeal, MCM argued that the Supreme Court decision in *McCormick Harvesting Machining Co. v. Aultman* (1898), barred the USPTO from invalidating patents in IPR proceedings. In support of this position, MCM pointed to a portion of *McCormick* which stated that "[t]he only authority competent to set a patent aside, or to annul it, or to correct it for any reason whatever, is vested in the courts of the United States, and not in the department which issued the patent....[w]ithout statutory authorization, an attempt [by the Commissioner of Patents] to cancel a patent upon an application for reissue when the first patent is considered invalid by the Examiner...would be to deprive the applicant of his property without due process of law...."

The Federal Circuit stated that *McCormick* did not forbid Congress from granting the USPTO the authority to correct or cancel an issued patent. In fact, the Federal Circuit elaborated by describing how Congress has since provided statutory authorization to the USPTO by creating inter partes review proceedings pursuant to the Patent Reform Act of 2011.

Furthermore, the Federal Circuit noted that a reexamination proceeding was held constitutional in *Patlex Corp. v. Mossinghoff* and saw no basis for distinguishing the constitutional reexamination proceeding in *Patlex* from the IPR proceeding in this case.

MCM's 7th Amendment argument that IPR proceedings are unconstitutional because IPR denies the right to a trial by jury was also rejected by the Federal Circuit. The Federal Circuit pointed to a decision in *Curtis v. Loether* that held that "the Seventh Amendment is generally inapplicable in administrative proceedings..." The Federal Circuit also stated that the "Seventh Amendment poses no barrier to agency adjudication without a jury" since the validity of patent rights are susceptible to review by an administrative agency.

Thus, the Federal Circuit held that an IPR proceeding violates neither Article III nor the 7th Amendment right to a jury trial.