

INTEL CORP. v. QUALCOMM INC., Appeal No. 2020-1664 (Fed. Cir. December 28, 2021).  
Before Prost, Taranto, and Hughes. Appealed from the PTAB.

### Background:

Qualcomm owns a patent directed to a receiver for a radio frequency communication system that down-converts a frequency transmitted over the air to a lower frequency. The receiver achieves a high signal-to-noise ratio over a large gain range.

Intel filed an *inter partes* review (IPR) challenging the claims of Qualcomm's patent. Intel proved some of the claims at issue unpatentable, but not all of them. Intel appealed to the Federal Circuit to dispute the Board's conclusion regarding the surviving claims. Qualcomm argued that the appeal should be dismissed for lack of standing.

In a prior and separate matter, Qualcomm sued Apple for infringement of the patent at issue. In this prior litigation, Qualcomm mapped the claims of the patent to an Intel product, even though Intel was not a party to this litigation. This suit between Qualcomm and Apple later settled. Intel filed the present IPR after this suit was settled.

### Issue/Holding:

Did Intel have standing under Article III for appeal purposes? Yes.

### Discussion:

The issue of standing was not present at the PTAB because Article III jurisdiction does not apply to executive branch agencies, and furthermore any party other than the patent owner can file an IPR. *See* 35 U.S.C. §111(a). In other words, the issue of standing only arises when a party appeals from the PTAB to the Federal Circuit.

Standing requires (1) an "injury in fact" (2) "fairly traceable" to the defendant's challenged conduct and (3) "likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). The injury in fact must be "concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 339.

Applying this test to the present situation, the Federal Circuit concluded that Intel had standing. Even though the prior lawsuit between Qualcomm and Apple regarding the patent settled, Intel was not a party to that lawsuit and was thus still at risk of an infringement suit.

Additionally, Intel stated that it still sells the corresponding product to Apple and other customers.

Lastly, Apple acquired a "majority" of Intel's smartphone modem business in 2019. The court stated in a footnote that this acquisition did not negate Intel's standing, presumably because Intel continued to sell corresponding products to its customers after the acquisition.

The court thus concluded that the risks faced by Intel "transcend mere conjecture or hypothesis" and that Intel had sufficiently demonstrated a particular injury in fact (potential infringement liability), and standing to appeal from the PTAB under Article III.