

APPENDIX A

NOTE: This order is nonprecedential.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Nos. 2021-1614, -1616, -1617

INTEL CORPORATION,

Appellant,

v.

VLSI TECHNOLOGY LLC,

Appellee.

ANDREW HIRSHFELD, Performing the Functions and
Duties of the Under Secretary of Commerce for Intel-
lectual Property and Director of the United States
Patent and Trademark Office,

Intervenor

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
00106, IPR2020-00158, and IPR2020-00498.

Nos. 2021-1673, -1674, -1675

INTEL CORPORATION,

Appellant,

v.

VLSI TECHNOLOGY LLC,

Appellee.

2a

ANDREW HIRSHFELD, Performing the Functions and
Duties of the Under Secretary of Commerce for Intel-
lectual Property and Director of the United States
Patent and Trademark Office,

Intervenor

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
00112, IPR2020-00113, and IPR2020-00114.

Nos. 2021-1676, -1677

INTEL CORPORATION,

Appellant,

v.

VLSI TECHNOLOGY LLC,

Appellee.

ANDREW HIRSHFELD, Performing the Functions and
Duties of the Under Secretary of Commerce for Intel-
lectual Property and Director of the United States
Patent and Trademark Office,

Intervenor

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
00141 and IPR2020-00142.

Nos. 2021-1738, -1739

INTEL CORPORATION,

Appellant,

v.

VLSI TECHNOLOGY LLC,

Appellee.

ANDREW HIRSHFELD, Performing the Functions and
Duties of the Under Secretary of Commerce for Intel-
lectual Property and Director of the United States Pa-
tent and Trademark Office,

Intervenor

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
00526 and IPR2020-00527.

Nos. 2021-1740, -1741

INTEL CORPORATION,

Appellant,

v.

VLSI TECHNOLOGY LLC,

Appellee.

ANDREW HIRSHFELD, Performing the Functions and
Duties of the Under Secretary of Commerce for Intel-
lectual Property and Director of the United States
Patent and Trademark Office,

Intervenor

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
00582 and IPR2020-00583.

Filed May 5, 2021

ON MOTION AND PETITION

Before Prost, *Chief Judge*, O'Malley and Wallach, *Circuit Judges*.

Prost, *Chief Judge*.

ORDER

Intel Corporation directly appeals from the Patent Trial and Appeal Board's decisions denying institution of *inter partes* review proceedings. VLSI Technology LLC moves to dismiss. Intel opposes the motions and alternatively seeks writs of mandamus to review the Board's decisions. The United States Patent and Trademark Office ("Patent Office") responds, urging dismissal.

Intel here challenges the Board's application of the so-called *Fintiv* factors, which are used to assess whether instituting Patent Office review would be an inefficient use of resources given parallel district court proceedings. Intel contends that the use of those factors in assessing institution exceeds the Patent Office's authority and that the "rule" encompassing those factors was adopted without the notice-and-comment rulemaking required under the Administrative Procedure Act. *See Intel's Resp. in Appeal Nos. 2021-1614 et al.* at 2.

In *Mylan Laboratories Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F. 3d 1375, 1379 (Fed. Cir. 2021), we recently confirmed that 35 U.S.C. § 314(d) bars the availability of jurisdiction under 28 U.S.C. § 1295(a)(4) to hear appeals from non-institution decisions. *Mylan* furthermore concluded that a petitioner raising the same *ultra vires* challenges that Intel raises has failed to establish the high standard necessary for mandamus relief. *Id.* at 1382-83. *Mylan* clearly controls this case.

For the same reasons, this court dismisses Intel's appeals for lack of jurisdiction and denies its requests for mandamus relief.

Accordingly,

IT IS ORDERED THAT:

- (1) The motions are granted. The appeals are dismissed.
- (2) The requests for mandamus are denied.
- (3) Each side shall bear its own costs.

FOR THE COURT

May 05, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

s32

ISSUED AS A MANDATE: May 05, 2021