

Adidas AG v. Nike, Inc., 963 F.3d 1355 (Fed. Cir. 2020)

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Adidas petitioned for *inter partes* reviews (IPR) of two Nike patents. The Patent Trial and Appeal Board concluded that Adidas had not met its burden to show that the challenged claims in Nike's patents were obvious. Adidas appealed.

As a threshold issue, the Federal Circuit addressed Adidas's Article III standing to appeal. Nike asserted that Adidas lacked standing because it had not suffered an injury in fact; Nike had not sued or threatened to sue Adidas for infringement of either of the two patents. The court rejected Nike's argument, reasoning that Adidas "has engaged in, is engaging in, or will likely engage in activity that would give rise to a possible infringement suit." The court explained that Adidas and Nike were direct competitors and Nike had accused Adidas of infringing another of Nike's patents on similar technology. In fact, Nike had expressed to Adidas its intent to protect its intellectual property rights globally "against further infringing acts." In addition, Nike had asserted one of the patents-at-issue against a third-party product "similar" to Adidas's products. The court also gave weight to the fact that Nike refused to grant Adidas a covenant not to sue, "confirming that Adidas' risk of infringement is concrete and substantial." Accordingly, the court held Adidas had constitutional standing to appeal.

Having decided the threshold issue of standing, the court concluded that there was substantial evidence to support the Board's finding and affirmed.

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