

Security People, Inc. v. Iancu, 971 F.3d 1355 (Fed. Cir. 2020)

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Security People lost an *inter partes* review (IPR) and appealed to the Federal Circuit. It lost that appeal and was denied certiorari at the Supreme Court. Security People never raised constitutional arguments in any of these proceedings. Security People subsequently filed suit against the Patent and Trademark Office in district court alleging that the application of the IPR proceeding to cancel its patent violated Security People's constitutional right to due process. The district court dismissed the case for lack of subject matter jurisdiction. Security People then appealed to the Federal Circuit.

On appeal, Security People alleged that the district court erred in holding that Security People could only raise its constitutional challenge before the Federal Circuit on direct appeal from the IPR. First, Security People argued that the Board lacked authority to consider constitutional challenges for the first time on appeal because retroactivity challenges raise issues requiring factual resolution. Second, Security People argued that its constitutional challenge was not ripe until the cancellation of its claims, which required Federal Circuit affirmance of the Board's decision.

The Federal Circuit rejected both arguments. First, the court noted that it is "not unusual for an appellate court reviewing the decision of an administrative agency to consider a constitutional challenge to a federal statute that the agency concluded it lacked the authority to decide." The Federal Circuit reasoned its jurisdiction vests regardless of whether there are disputed factual questions because the court can take judicial notice of facts relevant to the constitutional question. The court also noted the Board has broad fact-finding authority that allows it to resolve disputed factual questions, even if it could not decide the legal question for which those factual questions are relevant.

Turning to Security People's second argument, the Federal Circuit noted that the Patent and Trademark Office's "decision-making process in an IPR is complete after issuance of the final written decision (or,

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if parties move for reconsideration, after the Board issues its decision on reconsideration)." Issuance of the certificate of cancellation (which happens after appeals) is a compulsory formality involving no agency decision making. Therefore, the Federal Circuit reasoned that Security People's constitutional challenge was ripe as of the direct appeal from the IPR, whether or not the Board had the authority to decide Security People's constitutional challenges and whether or not the Board had issued a certificate of cancellation for the challenged patent claims.

Additionally, the Federal Circuit agreed with the district court that the statutes providing for exclusive review by the Federal Circuit preclude district courts from exercising APA jurisdiction over constitutional claims related to a final written decision. The Federal Circuit found that the structure of the statutory scheme indicates congressional intent to preclude district court review. And the Federal Circuit noted that the final decision in an IPR is reviewable by statute, "but [only] in the Federal Circuit, not in an APA-based collateral attack in a district court."

RELATED CASES

- *In re Rudy*, 956 F.3d 1379 (Fed. Cir. 2020) (The Federal Circuit applies its law and Supreme Court precedent, not Patent Office guidance, when analyzing subject matter eligibility. And merely applying a patent ineligible abstract idea to a tangible method and conventional physical steps does not render a claim patentable.).
- *Christy, Inc. v. U.S.*, 971 F.3d 1332 (Fed. Cir. 2020) (cancellation of a patent claim in an *inter partes* review is not a Fifth Amendment taking).