
Patent Law—Inter Partes Review

Oil States Energy Services, LLC v. Greene’s Energy Group, LLC, No. 16-712

SAS Institute Inc. v. Iancu, No. 16-969

In *Oil States Energy Services, LLC v. Greene’s Energy Group*, a seven-Justice majority confirmed the constitutionality of *inter partes* review and—by extension—other forms of post-grant administrative review of patent validity. The Court held that “[i]nter partes review” is a quintessential adjudication of a public right because it is a “reconsideration of the Government’s decision to grant a public franchise.” The Court reasoned that the initial grant of a patent is a matter of public right, and “[i]nter partes review involves the same basic matter as the grant of a patent.” Public franchises—whether a patent franchise, or the franchise to operate a railroad or telegraph line—may be qualified, and subject to revocation by later government action. For this reason, the general references in precedent to patents as a kind of “private property” do not compel a different result; that is because “[p]atents convey only a specific form of property right—a public franchise.” The Court emphasized the limited nature of its holding. It expressly noted that Federal Circuit review ensured that this was not a proceeding without any form of judicial involvement. Additionally, the Court observed that other patent-related proceedings, such as infringement actions, were not at issue. Finally, the Court cautioned that its holding “should not be misconstrued as suggesting that patents are not property for purposes of the Due Process Clause or the Takings Clause.” Justice Gorsuch issued a dissenting opinion, which was joined by the Chief Justice.

Separately, in *SAS Institute v. Iancu*, a bare majority of the Court held that, when the U.S. Patent and Trademark Office institutes an *inter partes* review proceeding, it must decide the patentability of all claims challenged by the petitioner. *SAS Institute* thus renders *inter partes* review proceedings yet more attractive for those seeking to challenge patent validity, including in response to patent infringement lawsuits. Justice Ginsburg dissented, joined by Justices Breyer, Sotomayor, and Kagan.