

The Supreme Court - April 24, 2018

The Supreme Court of the United States issued three decisions today:

Oil States Energy Services, LLC v. Greene's Energy Group, LLC, No. 16-712: The Leahy-Smith America Invents Act, 35 U.S.C. §100 *et seq.*, went into effect in 2012, and established the “inter partes review” process, under which the United States Patent and Trademark Office is authorized to reconsider and to cancel an issued patent claim in limited circumstances. Here, petitioner Oil States Energy Services obtained a patent in 2001, and sued respondent Greene's Energy Group in 2012, in Federal District Court, for patent infringement. Greene's Energy also petitioned the Patent Trial and Appeal Board (“Board”) to institute inter partes review, which the Board initiated after finding a reasonable likelihood that two claims were unpatentable, as Greene's Energy had argued. Proceedings before the District Court and Board both moved forward. The District Court's claim construction ruling construed the claims in a manner that foreclosed Greene's Energy's arguments to the Board, but months later, the Board issued a final written decision concluding the claims were unpatentable. On appeal to the Federal Circuit, Oil States challenged inter partes review's constitutionality, arguing a right to a jury trial in an Article III court. The Federal Circuit affirmed the Board's decision. Today, the Court affirmed, holding inter partes review does not violate Article III or the Seventh Amendment right to a jury trial.

The Court's decision is available [here](#).

SAS Institute Inc. v. Iancu, No. 16-969: In another case concerning “inter partes review” under the Leahy-Smith America Invents Act, 35 U.S.C. §100 *et seq.*, the Court addressed whether, when the Patent Trial and Appeal Board institutes an inter partes review based on the determination “that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition,” 35 U.S.C. §314(a), the Board must resolve all of the claims raised in the petition, or may choose to limit its review to only some of them. Here, petitioner SAS sought inter partes review of a software patent, alleging all 16 of the patent's claims were unpatentable. The

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Board concluded SAS was likely to succeed on at least one of the claims, and thus proceeded with inter partes review, but limited its review to only some of the 16 claims raised. SAS appealed to the Federal Circuit, which rejected SAS's challenge. The Court today reversed, holding that the statute requires that the Patent Office must "issue a final written decision with respect to the patentability of *any* patent claim challenged by the petitioner," 35 U.S.C. §318(a) (emphasis added), and thus must decide all the claims at issue.

The Court's decision is available [here](#).

Jesner v. Arab Bank, PLC, No. 16-499: Petitioners are plaintiffs who brought suit in five Alien Tort Statute ("ATS") actions against Arab Bank. These plaintiffs allege that they or their family members were injured by terrorist attacks in the Middle East, and that Arab Bank – a Jordanian financial institution with a New York branch – helped finance those terrorist activities. The District Court dismissed the claims, and the Second Circuit affirmed, based on the Second Circuit's prior decision in *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010) that ATS does not extend to suits against corporations. The Supreme Court, for its part, had granted certiorari in *Kiobel*, but affirmed the ruling on the alternative ground that all of the relevant conduct there had occurred outside the United States. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013). Today, the Court affirmed and addressed the issue left unanswered in *Kiobel*, holding that foreign corporations may not be defendants in suits brought under the ATS.

The Court's decision is available [here](#).

Yesterday, the Supreme Court granted certiorari in the following consolidated cases:

United States v. Stitt, No. 17-765 and **United States v. Sims**, No. 17-766: Whether burglary of a nonpermanent or mobile structure that is adapted or used for overnight accommodation can qualify as "burglary" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii).