



Vidal to Review Institution of Cases Against VLSI Under Interim Director Review Process

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United States Patent and Trademark Office (USPTO) Director Kathi Vidal [has intervened](#) in two Patent Trial and Appeal Board (PTAB) cases that have caused much controversy in the patent world. Vidal yesterday granted Director Review in both [OpenSky Industries, LLC v. VLSI Technology LLC](#), IPR2021-01064 and [Patent Quality Assurance, LLC v. VLSI Technology LLC](#), IPR2021-01229, both of which have been the subject of [scrutiny by members of Congress](#) and patent practitioners, since the petitioners involved were incorporated after Intel was found to have infringed VLSI's patents in district court and have no discernable business operations beyond challenging VLSI's patent claims. The two entities' petitions were also nearly identical to inter partes review (IPR) petitions previously filed by Intel that had been rejected by the USPTO.

Vidal explained in yesterday's Orders that VLSI's requests for rehearing and Precedential Opinion Panel (POP) review have been denied and instead she will *sua sponte* review the Institution Decisions because the cases "[raise] novel issues of law and policy, as well as issues of particular importance to the Office and the patent community."

In late April, Senators Mazie Hirono (D-HI) and Thom Tillis (R-NC) [sent a letter](#) to Vidal to express their concern over the PTAB decisions to institute in the two cases. "The facts and circumstances around these proceedings suggest petitioners OpenSky Industries, LLC (OpenSky) and Patent Quality Assurance, LLC (PQA) brought the proceedings to manipulate the U.S. Patent and Trademark Office (USPTO) for their own financial gain," explained the letter.

VLSI has faced [a total of 39 petitions](#) for IPR proceedings at the PTAB. The senators' April letter charged that the OpenSky and PQA challenges of U.S. Patent Nos. [7,523,373](#) and [7,725,759](#) were "an apparent attempt to extort money" from VLSI and noted five examples that suggest this was the motive:

- The companies were formed shortly before filing their petitions.
- The companies did not make, use, sell, or import any products, let alone any products that could subject them to claims of infringement.
- The companies filed their petitions only after VLSI had secured a \$2.2 billion infringement judgment against Intel.
- And, most egregiously, the petitions filed by the companies were near "carbon copies" of petitions previously filed by Intel that had been rejected by the USPTO.

Separately, in [IPR2022-00645](#), OpenSky attorneys [attempted](#) to secretly come to an agreement with VLSI wherein OpenSky would refuse to pay their expert, guaranteeing that the expert would not appear for the scheduled deposition. After the expert did not appear, OpenSky explained that it would join the patent owner in a motion to dismiss, presumably based on the understanding that, without an expert, OpenSky would not prevail. See [Paper 8, Exhibit 2029](#) (VLSI's [Opposition to OpenSky's Motion for Joinder](#)). The attorney then proposed cash payment in exchange for what IPWatchdog Founder and CEO Gene Quinn called a "sham manipulation of the PTAB process," and the possibility of an additional payment if the PTAB were to nevertheless order joinder and the proceeding ultimately resulted in claims being affirmed.

Vidal has said she plans to focus on curbing PTAB abuses. In her [recent response](#) to the letter from Tillis and Hirono, while declining to comment on the *OpenSky* or *PQA* cases specifically, she said: "We are aligned in our goal to ensure that the IPR process—a process for challenging patents after they issue—is not abused by parties filing petitions in bad faith and for reasons outside the intent of the America Invents Act."

[Nick Matich](#) of McKool Smith said in a statement sent to IPWatchdog that Vidal's decision to review the cases is a positive development. He added:

“Petitions from uninterested third-parties, particularly when coupled with explicit demands for payment from patent holders undermine the integrity of the patent system. Oversight of important PTAB decisions, like this one, from the Director is critical to maintaining the integrity of the patent system. APJs are dedicated career civil servants, but only the Director is politically accountable to the President and Senate.”