LAW360®

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Interested Party Issues May Play Bigger Role After PTAB Move

By **Ryan Davis**

Law360 (October 2, 2025, 9:34 PM EDT) -- Patent owners have a new way to seek the denial of petitions challenging patents, now that a decision that limited when the Patent Trial and Appeal Board must consider whether a patent challenger named all the interested parties is no longer precedential, attorneys say.

The U.S. Patent and Trademark Office **announced Sept. 26** that a **2020 decision** that the PTAB only needed to analyze the interested parties in a few situations had been de-designated as precedential and is not binding on the board.

The **decision**, SharkNinja Operating v. iRobot , concluded that the board did not need to resolve whether the petitioner named all real parties in interest, unless the patent owner alleged that an unnamed party could result in the petition being time-barred or the petitioner being estopped from proceeding with the case.

"However, disclosure of [real parties in interest] serves purposes other than time-bar and estoppel issues," the USPTO said last week when it announced the removal of the precedential status the decision was given during the first Trump administration. The brief **notice** came about a week after Trump nominee John Squires was confirmed as the office's new director.

Attorneys said it's not clear when the interested party issue might now be found relevant by the board, but the change clears the way for patent owners to argue more often that the inter partes review challenge should be denied because the petitioner didn't name every entity with an interest in the case.

"This is probably going to encourage some patent owners to basically use that as another arrow in their quiver to try to obtain denial of institution," said Alex Yap of Morrison Foerster LLP, a former PTAB judge.

In recent months, the office has placed a strong emphasis on determining whether petitions challenging patents should be denied for discretionary reasons, with USPTO Deputy Director Coke Morgan Stewart making those decisions before the board considers the merits.

Discretionary denials have been issued when a district court trial is scheduled to take place before the board's final decision would be due, and when the patent owner is found to have had "settled expectations" that the patent would not be challenged. If the PTAB more closely scrutinizes who the interested parties are, "that could affect some of the discretionary denial factors," said Jeff Saltman of Cole Schotz PC.

He used the example of an argument from a patent owner that an unnamed party with an interest in the petition had knowledge of the patent for an extended period of time, and that that knowledge is relevant to the patent owner's settled expectations.

The SharkNinja decision noted that while the statute governing inter partes review states that petitioners are required to identify the interested parties in good faith, PTAB precedent holds that if the failure to list an interested party in the petition does not affect the time bar or estoppel, the petitioner can correct that procedural issue by adding the party.

FACETEC EXHIBIT 2089
JUMIO v. FACETEC
IPR2025-00108

Attorneys said that while the office did not announce any changes in that regard, the board has the discretion to take a harder line and deny petitions for omitting an interested party.

The board could decide that "the real party in interest is actually A, not B, and the petitioner didn't name them, so your petition is denied and not instituted," Saltman said. He added that it's too soon to tell if the board will take that approach, but "that is a potential possibility."

With the SharkNinja decision's precedential status removed, the holding is still persuasive, but still the board could issue decisions "in which the real party of interest isn't named, even for inadvertent errors or some kind of incompleteness, and that could be fatal," said Mauricio Uribe of Davis Wright Tremaine LLP.

Interested parties to a patent challenge might include the petitioner's parent company or subsidiaries, or companies with which it has a customer or supplier relationship. Patent owners have also argued, unsuccessfully in many cases, that companies like Unified Patents that often challenge patents must name their member companies as interested parties.

The PTAB has said identifying interested parties is highly fact-dependent, turning on who stands to benefit from the review, and whether another company controls the petitioner's participation in the case. The effort involved in evaluating the issue was part of the reason the SharkNinja decision limited when it needed to be done.

The decision noted that some PTAB panels had gone through the "extensive analysis" even when there was no allegation that not naming an interested party would affect whether the review should be instituted, "or anything else material to the case."

Other panels decided that "such a lengthy exercise is unnecessary" when it doesn't control whether a review should be instituted, the decision said. It concluded that "the latter approach better serves the interest of cost and efficiency."

Removing the decision's precedential status could result in the parties and the board spending more time and resources debating interested party issues that might ultimately not affect the case, Yap said. That could be a particular issue for foreign companies, which often have complex corporate structures.

Yap said the SharkNinja decision was "very well-reasoned" and confirmed that not delving into the interested party issue was the right approach when it wouldn't change the outcome, but "I think this is going to reopen everything again."

Determining if the interested parties were named often involves disputes over requests for additional discovery, and requires challenging evidentiary analysis in a short time frame, which "all creates more work, for both the board and also for the parties," Yap said.

Both petitioners and patent owners should be paying close attention to the real parties in interest going forward, attorneys said.

Most patent challengers are careful about naming the interested parties, so the issue doesn't arise in the majority of cases, Saltman said, but now it is even more important to be diligent about ensuring that there are no omissions that could end up being a stumbling block.

Uribe said the SharkNinja decision provided petitioners with a kind of "safety net," since while they are required to name the interested parties, an omission that was not material wouldn't derail a case. Now petitioners "still have the same burden, it just has to be done right, and perfect," he said.

For patent owners, the message is "if you see this issue, to raise it, even if it doesn't result in a time bar or estoppel issue," because there are now other scenarios in which it could doom the petition, Saltman said.

--Editing by Brian Baresch and Jay Jackson Jr.