## Intellectual Asset Management

## **International reports**

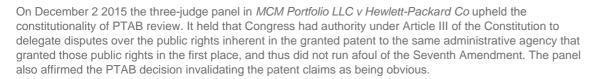


PTAB proceedings are constitutional Baker Donelson - USA W Edward Ramage

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The Federal Circuit has rejected a challenge to the constitutionality of the new *inter partes* review proceedings conducted by the US Patent and Trademark Office Patent Trial and Appeals Board (PTAB). *Inter partes* review proceedings and the related post-grant review and covered business method proceedings, which were introduced as part of patent reform under the America Invents Act, have proven to be a popular route for attacking the validity of issued patents.

MCM Portfolio LLC had appealed the PTAB final decision invalidating a flash memory patent, in an *inter* partes review initiated by Hewlett-Packard Co. MCM argued that the new PTAB review proceedings were unconstitutional because they deprived owners of the right to a jury trial on the issue of the validity of their patent.



The decision effectively removes one possible, albeit unlikely, defence that patent owners may have had to fight off *inter partes* review or other proceedings before the PTAB. These proceedings have proven to be a powerful and popular tool for patent infringement defendants to use against claims of patent infringement, and their use is expected to increase.

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