

International reports

Preliminary injunction affirmed despite initiation of PTAB post-grant review proceeding **[Baker Donelson - USA](#)** **[W Edward Ramage](#)**

01 Feb 2017

On January 24 2017 the Federal Circuit in *Tinnus Enterprises v Telebrands Corporation* affirmed a district court's granting of a preliminary injunction barring the alleged infringer from selling its Balloon Bonanza product. The Federal Circuit affirmed the preliminary injunction despite the Patent Trial and Appeal Board (PTAB) granting a petition seeking post-grant review on the grounds of indefiniteness and obviousness.

The Tinnus patent is directed to a toy, the Bunch O Balloons, for filling multiple water balloons at once. Tinnus sued Telebrands Corporation and Bed Bath & Beyond for selling its competing Balloon Bonanza product. Tinnus sought a preliminary injunction, which the district court granted, despite the defendants' argument that the patent was invalid due to indefiniteness and obviousness.

The defendants filed a petition to initiate post-grant review, asserting that the Tinnus patent was indefinite and obvious. The PTAB granted the petition and initiated the post-grant review proceeding, finding that the claims were likely invalid as obvious and indefinite. The defendants then appealed the district court's grant of the preliminary injunction to the Federal Circuit.

The Federal Circuit affirmed the district court using a straightforward analysis under the traditional four-factor test for granting a preliminary injunction, noting that, based on the record, the district court did not abuse its discretion in granting the preliminary injunction. The Federal Circuit gave little consideration to the PTAB's actions.

In fact, in a footnote the Federal Circuit stated that it was aware that the PTAB had issued a final written decision in the post-grant review proceeding concluding that the patent claims were indefinite. The court noted that it was not bound by the PTAB final decision and that it was not persuaded that the district court had abused its discretion. It indicated that the parties were free to ask the district court to reconsider its preliminary injunction decision in light of the PTAB final written decision.

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