

Wi-Fi, One v. Broadcom: En Banc Review of IPR Procedural Issue

Today in *Wi-Fi, One v. Broadcom Corp.*, ___ F.3d ___ (Fed. Cir. 2017)(order)(en banc), the court has granted an *en banc* panel to answer the following question: “Should this court overrule *Achates Reference Publishing, Inc. v. Apple Inc.*, 803 F.3d 652 (Fed. Cir. 2015) and hold that judicial review is available for a patent owner to challenge the PTO’s determination that the petitioner satisfied the timeliness requirement of 35 U.S.C. § 315(b) governing the filing of petitions for inter partes review?”

A copy of the Order is attached.

Regards,
Hal

United States Court of Appeals for the Federal Circuit

WI-FI ONE, LLC,
Appellant

v.

BROADCOM CORPORATION,
Appellee

2015-1944, -1945, -1946

Appeal from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2013-00601, IPR2013-602, IPR2013-00636.

ON PETITION FOR REHEARING

Before PROST, *Chief Judge*, NEWMAN, LOURIE, DYK,
MOORE, O'MALLEY, REYNA, WALLACH, TARANTO, CHEN,
HUGHES, and STOLL, *Circuit Judges*

PER CURIAM.

ORDER

Appellant Wi-Fi One, LLC filed a petition for rehearing and rehearing en banc in all three appeals. A response was invited from the Appellee, Broadcom Corporation, to the three petitions. The petitions and responses were considered by the panel that heard the appeal, *see* Fed.

Cir. R. 35 Practice Notes, and thereafter referred to the circuit judges in regular active service. A poll was requested and taken, and the court decided that the appeal warrants en banc consideration.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The petitions for rehearing en banc filed by Appellant Wi-Fi One, LLC are granted.

(2) The court's opinions in *Wi-Fi One, LLC v. Broadcom Corp.*, 837 F.3d 1329 (Fed. Cir. 2016), *Wi-Fi One, LLC v. Broadcom Corp.*, 2016 WL 4933344 (Fed. Cir. Sept. 16, 2016), and *Wi-Fi One, LLC v. Broadcom Corp.*, 2016 WL 4933418 (Fed. Cir. Sept. 16, 2016) are vacated, and the appeals are reinstated.

(3) The Appellant and Appellee are requested to file supplemental briefs. The briefs should address the following question:

Should this court overrule *Achates Reference Publishing, Inc. v. Apple Inc.*, 803 F.3d 652 (Fed. Cir. 2015) and hold that judicial review is available for a patent owner to challenge the PTO's determination that the petitioner satisfied the timeliness requirement of 35 U.S.C. § 315(b) governing the filing of petitions for inter partes review?

Briefing should be limited to this question.

(4) The supplemental en banc briefs and briefs of any amici curiae shall be electronically filed in the ECF system, and thirty paper copies of each brief shall be filed with the court. Two paper copies of all filings shall be served on opposing counsel. Briefs shall adhere to the type-volume limitations