

IN THE
Supreme Court of the United States

INTEL CORPORATION,

Applicant,

v.

VLSI TECHNOLOGY LLC,

Respondent.

**APPLICATION FOR EXTENSION OF TIME
TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES
AND CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT:

1. Pursuant to Supreme Court Rule 13.5, Intel Corporation respectfully requests a 30-day extension of time, to and including December 24, 2021, to file a petition for a writ of certiorari in this case. Intel has not previously requested an extension. The United States Court of Appeals for the Federal Circuit issued its decision on May 5, 2021, *see* App. A, and denied Intel's timely rehearing petition on August 26, 2021, *see* App. B. Absent an extension of time, therefore, the time to petition for a writ of certiorari expires on November 24, 2021. This application complies with Rules 13.5 and 30.2 because it is being filed more than ten days before the petition is due. This Court would have jurisdiction over Intel's case pursuant to 28 U.S.C. §1254(1).

2. Intel timely filed petitions for the Patent Trial and Appeal Board of the United States Patent and Trademark Office to conduct inter partes review (“IPR”) of patent claims that respondent VLSI Technology LLC had asserted in infringement litigation against Intel. *See VLSI Tech. LLC v. Intel Corp.*, Nos. 19-cv-254, 19-cv-255, 19-cv-256, 19-cv-977 (W.D. Tex.). The Board denied twelve of those IPR petitions based on a rule (the “*NHK-Fintiv* Rule”) adopted by the Director of the Office when he designated as “precedential” the Board’s decisions in *NHK Spring Co. v. Intri-Plex Technologies, Inc.*, No. IPR2018-00752, 2018 WL 4373643 (P.T.A.B. Sept. 12, 2018), and *Apple Inc. v. Fintiv, Inc.*, No. IPR2020-00019, 2020 WL 2126495 (Mar. 20, 2020). The *NHK-Fintiv* Rule directs the Board to deny IPR petitions whenever it determines that conducting IPR would be inefficient in light of pending overlapping infringement litigation.

3. Intel appealed the denials to the Federal Circuit and alternatively requested mandamus, arguing that the *NHK-Fintiv* Rule exceeds the Director’s statutory authority and violates the Administrative Procedure Act. Relying on its decision in *Mylan Laboratories Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375 (Fed. Cir. 2021), the Federal Circuit dismissed the appeals as it has done in several recent cases on the ground that 35 U.S.C. §314(d) bars judicial review of decisions denying IPR petitions pursuant to the *NHK-Fintiv* Rule and denied mandamus relief. App. A at 5 (dismissing “[f]or the same reasons” stated in *Mylan*)); *see also Mylan*, 989 F.3d at 1378, 1382.

4. Two petitions for certiorari have recently been filed seeking review of Federal Circuit decisions that are substantially identical to the decision here, including

in *Mylan* itself. See *Apple Inc. v. Optis Cellular Technology, LLC*, No. 21-118 (petition docketed July 28, 2021); *Mylan Laboratories Ltd. v. Janssen Pharmaceutica, N.V.*, No. 21-202 (petition docketed Aug. 12, 2021). This Court’s review is warranted because, among other reasons, the Federal Circuit’s decision conflicts with this Court’s precedent. See *Cuozzo Speed Technologies, LLC v. Lee*, 136 S. Ct. 2131, 2141-2142 (2016); *SAS Institute, Inc. v. Iancu*, 138 S. Ct. 1348, 1359 (2018).

5. Intel requests a 30-day extension of time to file a petition for certiorari because counsel for Intel have other pressing obligations in the period surrounding the current deadline, some of which also involve Intel. These obligations include participating in the trial in *VLSI Technology LLC v. Intel Corp.*, No. 19-cv-0256 (W.D. Tex.), which begins on December 6, 2021; participating in the pre-trial conference for that trial on November 22, 2021; and participating in post-trial hearings in *VLSI Technology LLC v. Intel Corp.*, No. 19-cv-0254 (W.D. Tex.), and *VLSI Technology LLC v. Intel Corp.*, No. 19-cv-0255 (W.D. Tex.), on November 23, 2021. Counsel’s obligations also include presenting oral argument in this Court in *FBI v. Fazaga*, No. 20-828 (U.S.), on November 8, 2021; presenting argument in a *Markman* hearing in *United Services Automobile Ass’n v. PNC Bank N.A.*, No. 2:20-cv-00319 (E.D. Tex.), on November 10, 2021; filing the reply in support of certiorari in *Apple Inc. v. Optis Cellular Technology, LLC*, No. 21-118 (U.S.), on November 15, 2021; and filing the reply in support of certiorari in *NC Financial Solutions v. Virginia*, No. 21-111 (U.S.), on November 16, 2021.

For the foregoing reasons, Intel respectfully requests that the time for filing a petition for a writ of certiorari in this case be extended to and including December 24, 2021.

Respectfully submitted.

/s/ Catherine M.A. Carroll
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OCTOBER 25, 2021

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicant discloses the following. Intel Corporation has no parent and no publicly held company owns 10% or more of Intel Corporation's stock.

APPENDIX A

NOTE: This order is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

INTEL CORPORATION,
Appellant

v.

VLSI TECHNOLOGY LLC,
Appellee

**ANDREW HIRSHFELD, Performing the Functions
and Duties of the Under Secretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office,**
Intervenor

2021-1614, -1616, -1617

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
00106, IPR2020-00158, and IPR2020-00498.

INTEL CORPORATION,
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**ANDREW HIRSHFELD, Performing the Functions
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2021-1673, -1674, -1675

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
00112, IPR2020-00113, and IPR2020-00114.

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2021-1676, -1677

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2020-
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**ANDREW HIRSHFELD, Performing the Functions
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2021-1738, -1739

Appeals from the United States Patent and Trademark
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00526 and IPR2020-00527.

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Intervenor

2021-1740, -1741

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2020-00582 and IPR2020-00583.

ON MOTION AND PETITION

Before PROST, *Chief Judge*, O'MALLEY and WALLACH, *Circuit Judges*.

PROST, *Chief Judge*.

O R D E R

Intel Corporation directly appeals from the Patent Trial and Appeal Board's decisions denying institution of *inter partes* review proceedings. VLSI Technology LLC moves to dismiss. Intel opposes the motions and alternatively seeks writs of mandamus to review the Board's decisions. The United States Patent and Trademark Office ("Patent Office") responds, urging dismissal.

Intel here challenges the Board's application of the so-called *Fintiv* factors, which are used to assess whether instituting Patent Office review would be an inefficient use of resources given parallel district court proceedings. Intel contends that the use of those factors in assessing institution exceeds the Patent Office's authority and that the "rule" encompassing those factors was adopted without the notice-and-comment rulemaking required under the Administrative Procedure Act. *See Intel's Resp. in Appeal Nos. 2021-1614 et al. at 2.*

In *Mylan Laboratories Ltd. v. Janssen Pharmaceutica, N.V.*, 989 F.3d 1375, 1379 (Fed. Cir. 2021), we recently

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confirmed that 35 U.S.C. § 314(d) bars the availability of jurisdiction under 28 U.S.C. § 1295(a)(4) to hear appeals from non-institution decisions. *Mylan* furthermore concluded that a petitioner raising the same *ultra vires* challenges that Intel raises has failed to establish the high standard necessary for mandamus relief. *Id.* at 1382–83. *Mylan* clearly controls this case. For the same reasons, this court dismisses Intel’s appeals for lack of jurisdiction and denies its requests for mandamus relief.

Accordingly,

IT IS ORDERED THAT:

- (1) The motions are granted. The appeals are dismissed.
- (2) The requests for mandamus are denied.
- (3) Each side shall bear its own costs.

FOR THE COURT

May 05, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

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ISSUED AS A MANDATE: May 05, 2021

APPENDIX B

NOTE: This order is nonprecedential.

**United States Court of Appeals
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**ANDREW HIRSHFELD, PERFORMING THE
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2021-1676, 2021-1677

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2021-1740, 2021-1741

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. IPR2020-00582, IPR2020-00583.

**ON PETITION FOR PANEL REHEARING AND
REHEARING EN BANC**

Before MOORE, *Chief Judge*, NEWMAN, LOURIE, DYK, PROST, O'MALLEY, REYNA, WALLACH¹, TARANTO, CHEN, HUGHES, and STOLL, *Circuit Judges*.

PER CURIAM.

O R D E R

¹ Circuit Judge Evan J. Wallach participated only in the decision on the petition for panel rehearing.

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Intel Corporation filed a combined petition for panel rehearing and rehearing en banc. Responses to the petition was invited by the court and filed separately by VLSI Technology LLC and the Director of the United States Patent and Trademark Office. The petition was referred to the panel that heard the appeal, and thereafter the petition for rehearing en banc was referred to the circuit judges who are in regular active service.

Upon consideration thereof,

IT IS ORDERED THAT:

The petition for panel rehearing is denied.

The petition rehearing en banc is denied.

FOR THE COURT

August 26, 2021

Date

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court

CERTIFICATE OF SERVICE

I, Catherine M.A. Carroll, a member of the bar of this Court, hereby certify that on this 25th day of October 2021, all parties required to be served have been served a copy of the Application for an Extension of Time to File Petition for A Writ of Certiorari to the United States Court of Appeals for the Federal Circuit in this matter at the addresses listed below:

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