

## Party Challenges (Unsuccessfully) Court's Denial of Stay in View of IPR Institution – Mandamus Denied

SEPTEMBER 29, 2020

*In re Sand Revolution LLC*, No. 20-145 (Fed. Cir. Sep. 28, 2020)

Overcoming the fact that there was parallel litigation in the Western District of Texas, plaintiff Sand secured institution of an *inter partes review* (IPR) by stipulating in the Patent Trial and Appeal Board (PTAB) proceedings that Sand would not pursue the same invalidity grounds in the case before Judge Albright. Based on the stipulation, and the trial date in the Western District being pushed back, the PTAB instituted an IPR. Sand promptly sought a stay of the Western District case pending resolution of the IPR. Noting that “[d]enying the stay would allow the Parties to obtain a more timely and complete resolution of infringement, invalidity, and damages issues,” Judge Albright denied the motion. Sand petitioned for mandamus. In the wake of receiving numerous mandamus petitions from the WDTX, the Federal Circuit, noting that “Mandamus is ‘reserved for extraordinary situations,’” denied Sand’s petition. The court held that: “Sand has failed to satisfy this exacting standard. The district court’s ruling was cursory and this court could have benefited from further elaboration based on the traditional stay factors. Nevertheless, we are unable to say that the district court clearly overstepped its authority or that Sand has shown a clear and indisputable right to a stay under the circumstances presented. Moreover, Sand has not shown that it is irreparably harmed by having to face the burden and expense of going through the district court litigation.”

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