

Supreme Court Update: Discretion, Expertise, Gen. L. & Other Themes

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20 15 Term Merits Cases

- ***Halo Elecs. v. Pulse Elecs.* (Roberts, C.J.)**
 - Rejected CAFC’s objective test for enhanced damages eligibility.
 - D.ct. discretion for “egregious cases of misconduct.”
- ***Cuozzo Speed Techs. v. Lee* (Breyer, J.)**
 - Upheld use of BRC in inter partes review.
 - No review of “mine-run” decision on instituting IPR
- **Related Copyright: *Kirtsaeng II* (Kagan, J.)**
 - Totality-of-circs. approach to copyright attorney fees
 - No presumption against granting when losing party’s positions were reasonable

2016 Term Merits Cases

- ***Samsung Elecs. v. Apple* (argued 10/11/16)**
 - QP: “Where a design patent is applied only to a component of a product, should an award of infringer’s profits be limited to those profits attributable to the component?”
- ***SCA Hygiene v. First Quality* (argued 11/1/16)**
 - QP: Room for laches defense within 6-year statutory limitation period
- ***LifeTech v. Promega* (to be argued 12/6/16)**
 - QP: “Whether ... supplying a single, commodity component of a multi-component invention from [U.S.] is an infringing act under 35 U.S.C. § 271(f)(1).”

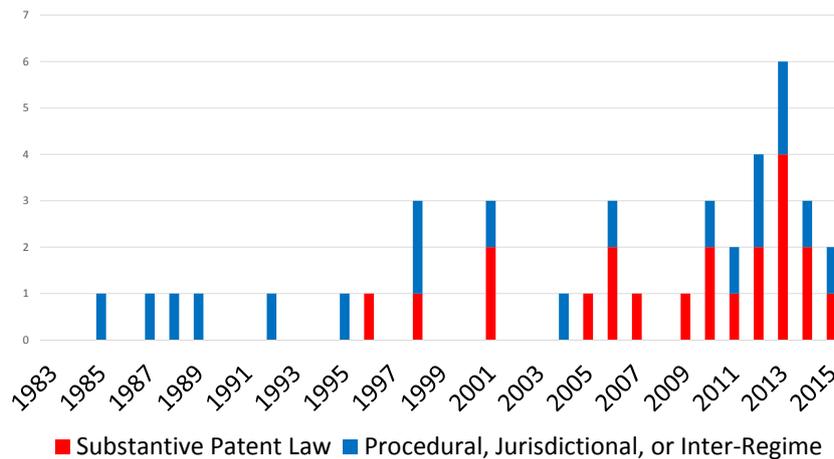
2016 Term Merits Cases

- **Copyright: *Star Athletica* (argued 10/31/16)**
 - QP: “What is the appropriate test [for] whether a feature of a useful article is protectable under § 101 of the Copyright Act?”
- **Trademark: *Lee v. Tam* (argument date TBD)**
 - QP: “Whether [the Lanham Act’s] disparagement provision ... is facially invalid under the Free Speech Clause of the First Amendment.”

Cert Petitions to Watch

- **Exhaustion: *Impression Prods. v. Lexmark***
 - QPs: (1) “Conditional sale” as way to avoid exhaustion; (2) *Kirtsaeng* rule’s applicability to patent
 - SG’s response to CVSG (Oct. 12, 2016) recommends granting cert on both QPs.
 - Distributed for Nov. 22 conference
- **Venue: *TC Heartland v. Kraft Foods***
 - QP (roughly): Has the CAFC understood corporate residence too broadly for purposes of the patent venue?
 - BIO due Nov. 16

S.Ct. Pat. 1983-2014 T's



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