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Supreme Court Confirms Constitutionality of *Inter Partes* Reviews

Inter partes reviews are alive and well. On April 24, 2018, the Supreme Court issued its long-awaited decision in *Oil States Energy Services, LLC v. Greene's Energy Group, LLC, et al.*, 584 U.S. ____ (2018), relating to the constitutionality of *inter partes* reviews. The Court held that the practice of conducting *inter partes* reviews does not violate Article III of the constitution or the Seventh Amendment.

The *Oil States* case arose out of an *inter partes* review in which the Patent Trial & Appeal Board (PTAB) found the claims at issue unpatentable. The Federal Circuit affirmed that decision without issuing a written opinion. *Oil States* argued to the Federal Circuit, and again to the Supreme Court, that “actions to revoke a patent must be tried in an Article III court before a jury,” rendering the PTAB’s *inter partes* reviews unconstitutional. *Oil States*, Slip Op. at 5. *Oil States* further argued that *inter partes* reviews violated the Seventh Amendment. The majority opinion of the Supreme Court, delivered by Justice Thomas, joined by Justices Kennedy, Ginsburg, Breyer, Alito, Sotomayor, and Kagan, reaffirmed its historical decisions that the grant of a patent is a public, not a private right. *Oil States*, Slip Op. at 6-7. Because revoking a grant of a public right “need not be adjudicated in Article III court,” the Court found that *inter partes* reviews do not violate Article III. *Oil States*, Slip Op. at 8-10. Further, the Court confirmed its precedent that, when a matter is properly assigned to a non-Article III tribunal, the Seventh Amendment is not an “independent bar” to the adjudication of the matter by a non-jury factfinder. *Oil States*, Slip Op. at 17. The majority explicitly emphasized the narrowness of its holding, noting that it “address[ed] the constitutionality of *inter partes* review only” and did “not address whether other patent matters, such as infringement actions, can be heard in a non-Article III forum,” such as the PTAB. *Oil States*, Slip Op. at 16. Justice Breyer filed a one-paragraph concurring opinion, joined by Justices

Ginsburg and Sotomayor, further emphasizing that “the Court’s opinion should not be read to say that matters involving private rights may never be adjudicated other than by Article III courts.” *Oil States*, Slip Op. (conurrence). Justice Gorsuch filed a dissenting opinion, joined by Chief Justice Roberts. The dissent suggests that patents should be treated as private, rather than public rights, and raises concerns that the majority decision “signals a retreat from Article III’s guarantees” relating to adjudication by independent judges. *Oil States*, Slip Op. (dissent) at 4-12.

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