

**From:** [wg\\_tech](#) on behalf of [Webmaster](#)  
**To:** [Precedential Opinion Panel Request](#)  
**Subject:** Precedential Opinion Panel (POP) Amicus Request Form  
**Date:** Wednesday, January 19, 2022 1:56:45 PM

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Name = Kristen Osenga

Affiliation = University of Richmond School of Law

Client represented = none

Case number = IPR2021-01064

Case name = OpenSky Indus. v. VLSI

Paper number = 20

Type of amicus = Supporting POP Review

Brief description = I write to request the Board convene a Precedential Opinion Panel to rehear Case # IPR2021-01064, OpenSky Industries, LLC v. VLSI Technology LLC. In particular, the issue of whether the Office should exercise its discretion to deny institution of certain petitions filed subsequent to a patentee prevailing at district court is of extreme importance and would benefit from precedential guidance.

Since the beginning of the PTAB, the potential for the use of IPR proceedings to harass patent owners has been well-known. To counter this potential, the Office has the ability to exercise its discretion to institute these proceedings. Although significant guidance surrounding this guidance has been issued in cases like Fintiv, there are novel issues in this case that would also benefit from precedential treatment.

Specifically, the Board should issue guidance on whether to institute petitions that are a) filed after the patentee has prevailed at district court and b) filed by a firm that was formed after the patentee's win at the district court. In cases where both of these circumstances are true, the Office should have serious concerns that the petition has been filed merely to harass a successful patentee. Moreover, in these cases, the Office should have even greater concern where the petition that was filed is merely a copy of a petition that had been filed by the company that lost to the patentee at district court. In these circumstances, the most logical explanation is that the newly formed company has filed a repetitive petition to merely harass the patentee. While, perhaps, an institution in these circumstances should not be categorically denied, at the very least, the Office should take seriously the use of the Office and IPRs as a weapon of harassment.

Because of the likelihood that petitions in these circumstances have been filed to harass the successful patentee, the Office should issue guidance via a precedential opinion. Leaving this door open, without guidance, will likely encourage more of these late-formed companies to appear every time a patentee succeeds at district court. The flood of IPR petitions that may follow and the questionable validity of a patent system that allows this type of harassment are both negatives that could be warded off via Office guidance.

Relationship to a party to the proceeding = none

I certify that I am submitting this amicus form within seven business days of entry of the Notification of POP request into the case docket or patent application file = Yes

Signature = /Kristen Osenga/

Troubleshooting information:

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