The Federal Circuit has potentially made it easier for patent owners to defend their patents in *inter partes* review proceedings. However, the actual effect has yet to be determined.

Sitting *en banc*, the Court of Appeals for the Federal Circuit yesterday issued a long-awaited opinion in the case of *Aqua Products, Inc. v. Joseph Matal*. In a split 7-to-4 decision, the Federal Circuit held that *inter partes* review “unambiguously requires the petitioner to prove all propositions of unpatentability, including for amended claims.” The court further found that “there is no interpretation of the statute by the Director of the Patent and Trademark Office (‘PTO’) to which this court must defer under *Chevron, U.S.A. Inc v. Natural Resources Defense Council Inc.*” and that “the most reasonable reading of the AIA [America Invents Act] is one that places the burden of persuasion with respect to the patentability of amended claims on the petitioner.” Accordingly, several earlier decisions were overruled “to the extent... [they]... are inconsistent with this conclusion.” The court vacated the decision of the Board and remanded the issue for a final decision assessing the patentability of the proposed substitute claims “without placing the burden of persuasion on the patent owner.”

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