

Rothwell Figg Client CBS Prevails in \$90 Million Podcasting Patent Suit

The “podcasting patent” case is finally over, after the Supreme Court denied Personal Audio LLC’s writ of certiorari.

Personal Audio originally asserted U.S. Pat. No. 8,112,504 (“the ‘504 patent”) against Rothwell Figg clients CBS Corporation, NBCUniversal Media, LLC, and Fox Broadcasting Company in 2013, seeking in excess of \$90 million. A jury in the Eastern District of Texas found in favor of Personal Audio, but awarded damages of only \$1.3 million. Before post-trial briefing was complete, the Patent Trial and Appeal Board (PTAB) issued a Final Written Decision in an IPR proceeding, finding the ‘504 patent unpatentable. Personal Audio then agreed to stay the District Court litigation while Personal Audio appealed the PTAB’s decision to the Federal Circuit. The Federal Circuit affirmed the PTAB’s decision, rejecting Personal Audio’s arguments on the merits as well as Personal Audio’s arguments challenging the constitutionality of the IPR process.

Following the invalidation of the patent, the District Court vacated the jury’s verdict and entered judgment in favor of CBS. Personal Audio then appealed that decision to the Federal Circuit as well. The Federal Circuit affirmed, holding that the PTAB’s decision, and the Federal Circuit’s subsequent affirmance, precluded Personal Audio from continuing to assert its now-invalid patent claims against CBS. The Federal Circuit also held that Personal Audio was not entitled to a second bite at the apple to collaterally attack the constitutionality of the IPR process. The Federal Circuit denied Personal Audio LLC’s request for rehearing and rehearing en banc of the decision.

Personal Audio filed a petition for a writ of *certiorari*, which the United States Supreme Court denied.

The case is significant both for the widespread reach of the patent holder in asserting its claims against podcast hosts, including Adam Corolla, as well as for solidifying Federal Circuit precedent on the procedural interplay between IPRs and federal court litigation. It has been covered by IP Law360 numerous times: April 12, 2013; April 21, 2014; August 7, 2017; January 10, 2020; April 1, 2020; and November 9, 2020.

Key Contacts

Sharon L. Davis
Steven Lieberman
Jennifer B. Maisel
Brian S. Rosenbloom

Related Areas of Practice

Appellate Litigation
Media and Constitutional Law
Patent Litigation

Technologies

Media

CBS is represented by Rothwell Figg attorneys Steven Lieberman, Sharon Davis, Brian Rosenbloom, and Jennifer Maisel.

The case is Personal Audio LLC v. CBS Corp., case number 20-260, before the U.S. Supreme Court.