

Left Empty Handed: Value Shut Down on Written Prior Art, Highlighting Importance of System Art

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System art is of increasing importance in patent disputes despite being frequently overlooked or “left for later” in many cases. A recent decision in the [Ironburg Inventions v. Valve Corp.](#) case highlights the importance of system prior art, particularly as IPR success rates have dropped from their high points in 2012-15.

In the Valve dispute, multiple IPRs were filed to invalidate Ironburg’s asserted claims. While some grounds were instituted and others were not, the end result of Valve’s PTAB challenges was the survival of multiple asserted claims.

Ironburg moved on inter partes review estoppel to preclude Valve from continuing to assert written prior art grounds and the court granted the motion, wiping away Valve’s invalidity arguments in the litigation. This was an even more crippling blow given Valve was earlier denied leave to add a system art controller to its invalidity contentions in the case, when the judge ruled Valve had not been diligent.

The recent order is just another example of the importance in developing twin paths for invalidity in patent disputes: (1) uncovering the best written prior art and carefully preparing well-reasoned IPR petitions, and (2) investigating and compiling system prior art that can be used persuasively with a jury and that is immune to any inter partes estoppel preclusion.

While having [top-notch IPR counsel is still critical](#) for quickly and efficiently resolving patent disputes, it is not the only criteria. In the video game (and related systems and controllers) space, the need for investigating and compiling system prior art is even greater than other industries, given functionalities are frequently not discussed in detail in written materials in comparison to actual systems and games. While timely compiling **admissible** system art can be tricky and has tripped up numerous litigation teams (authenticating source code, version controls, historical operating systems and machines), it is more important than ever in video game cases given the possibility that at least one asserted claim may survive PTAB challenges and the level of jury engagement that system art provides.

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