

Federal Circuit Confirms the PTAB's Authority to Deinstitution IPR Proceedings

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In [*Sling TV, L.L.C. v. Realtime Adaptive Streaming LLC*](#), Nos. 2020-1601, 1602 (Mar. 16, 2021), the Federal Circuit dismissed in part and denied in part a direct appeal of two IPR institution decisions and two accompanying mandamus petitions.

Sling TV filed two IPR petitions challenging two patents owned by Realtime. The PTAB initially instituted, but later deinstitutioned, both challenges. Sling then appealed the Board's deinstitution decisions and filed petitions for writ of mandamus in the Federal Circuit.

The Federal Circuit dismissed Sling's appeal and mandamus petition challenging the Board's decisions in the first IPR. Because the Board had already determined that the patent was unpatentable, and because Realtime had dismissed its appeal of that decision, the Court held both challenges moot.

The Court then addressed Sling's appeal and mandamus petition challenging the Board's decisions in the second IPR. The Court dismissed Sling's appeal, holding that the Board has inherent authority to reconsider its institution decisions and that all institution (and thus all deinstitution) decisions are "final and nonappealable."

The Court also denied Sling's mandamus petition. In its denial, the Court emphasized an earlier decision, [*Mylan Laboratories LTD. v. Janssen Pharmaceutica, N.V.*](#), in which it held that, absent an accompanying constitutional claim, mandamus petitions challenging the Board's decision to deny institution are unlikely to meet the strict mandamus criteria. Because Sling did not present a colorable constitutional claim, the Court denied its mandamus petition.

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