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No Article III Appellate Standing Under the Sun

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The US Court of Appeals for the Federal Circuit dismissed Incyte's appeal of a Patent Trial & Appeal Board decision, holding that a disappointed validity challenger lacked appellate standing to challenge the Board's final written decision. *Incyte Corp. v. Sun Pharmaceuticals Industries, Inc.,* Case No. 23-1300 (Fed. Cir. May 7, 2025) (**Moore**, C.J.; Hughes, Cunningham, JJ.) (Hughes, J., concurring).

After the Board upheld the validity of challenged claims of a patent owned by Sun Pharmaceuticals in a post-grant review proceeding (PGR), Incyte appealed and sought a determination that the claims were unpatentable. Sun Pharmaceuticals challenged whether Incyte had Article III standing to support an appeal to the Federal Circuit based on a lack of injury-in-fact.

The Federal Circuit focused on its jurisdiction to hear the appeal as a threshold issue and whether Incyte, as the party seeking review, met its burden of establishing Article III standing at the time it filed its appeal.

As context, the Federal Circuit noted that standing requires a concrete, actual, or imminent injury that is traceable to the challenged conduct and likely to be redressed by the court's decision. Incyte asserted it had standing to appeal based on potential infringement liability and under the competitor standing doctrine.

Addressing potential infringement liability, the Federal Circuit noted Incyte's reliance on a supplemental declaration from an in-house business development leader submitted during briefing. Noting that Incyte's Article III standing was "not self-evident," the Court ruled that Incyte should have presented evidence prior to its reply brief and declined to consider the supplemental evidence. Incyte was on notice that its appellate standing was challenged, and that evidence of its standing should have been submitted at the earliest possible opportunity. Finding no good cause for the delay, the Court declined to exercise its discretion to consider Incyte's supplemental evidence and, based only on earlier submitted evidence, found that Incyte failed to establish that it had "concrete plans for future activity" that would create a "substantial risk of future infringement."

In its discussion of the competitor standing doctrine, which allows competitors to challenge patents that could harm their competitive position, the Federal Circuit found the doctrine inapplicable because Incyte failed to show it would suffer economic harm from the Board's ruling on patent validity. Rather, the Board's ruling upholding specific patent claims "does not, by the operation of ordinary economic forces, naturally harm a [challenger] just because it is a competitor in the same market as the

beneficiary of the government action (the patentee).” As the Court explained, “it is not enough to show a benefit to a competitor to establish injury in fact; the party seeking to establish standing must show a concrete injury to itself.”

The Federal Circuit held that because Incyte had not shown it was currently engaged in or had non-speculative plans to engage in conduct covered by the challenged patent, it was unable to establish injury-in-fact.

In his concurrence, Judge Hughes stated that while Incyte lacked Article III standing, he believed that Federal Circuit precedent was “overly rigid” and “narrow.” It is Judge Hughes’ belief that:

> In the context of appeals from administrative post-grant proceedings generally, and the facts of this case[,] present a circumstance in which I believe our precedent dictates an outcome inconsistent with the spirit of Article III standing. Our precedent on whether parties have standing to appeal to this court from an adverse administrative post-grant review is too restrictive and creates a special standing rule for patent cases. The existence of this narrower special rule is even more pronounced in the pharmaceutical space, where our precedent leads to the (in my opinion, improper) conclusion of no standing for the inventor of the underlying compound.

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