Supreme Court snub of Apple and Broadcom clarifies IPR estoppel tactics

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Thomas Fisher was quoted in *World Intellectual Property Review* discussing SCOTUS' decision not to hear Apple and Broadcom's petition for a writ of *certiorari* of a ruling by the US Court of Appeals for the Federal Circuit. The decision upheld a district court's decision to apply estoppel under Section 315(e)(2) of the America Invents Act. Tom believes that the decision provides reassurance for patent owners. "Under Apple's interpretation, the scope of the estoppel would be very limited, as petitioners are not permitted to raise new grounds during an IPR proceeding and have only limited ability to introduce new prior art as background information. The Supreme Court invited a briefing on the issue from the solicitor general, who agreed with the Federal Circuit that Section 315(e)(2) should be read broadly. The solicitor general argued that the Federal Circuit's interpretation of Section 315(e)(2) is consistent with Congress's intent that grounds not asserted in an IPR petition — but which reasonably could have been raised by the petitioner — cannot be later raised in district court," he said.

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