

Insights



Michael Ng Quoted in Bloomberg Article Addressing Changes in Patent Enforcement Litigation Strategies

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Kobre & Kim's Michael Ng was quoted by Bloomberg Law in an article addressing changes in patent enforcement litigation strategies, in particular new views on inter partes reviews ("IPRs") at the U.S Patent and Trademark Office.

Since their creation in 2012, IPRs have been a nearly automatic response to patent infringement actions in the United States. While IPRs have historically been favorable to defendants, recent trends in patent holders' favor have forced them to shift strategy. For example, the PTO is increasingly reluctant to grant review when a district court case is already well underway, as illustrated by the firm's recent case on behalf of Spanish R&D company Fractus, S.A. against the major U.S. cellular carriers.

In the article, Ng warned that accused infringers can't reflexively file for IPRs, but need to think through the potential impact on "the trial as a whole and what that looks like after an IPR." Because defendants may be preempted from reasserting invalidity defenses brought in IPR, increasing numbers are forgoing IPRs entirely, as was the case in the firm's successful trial on behalf of the Australian national science agency CSIRO, in which opponents BASF and Cargill did not file pre-trial IPRs challenging CSIRO's patent portfolio covering Omega-3 producing canola oil.

[Read the full article here.](#)