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Appellate & Constitutional Law and Intellectual Property Update

October 16, 2025

Federal Circuit Update

This edition of Gibson Dunn's Federal Circuit Update for September summarizes the current status of petitions pending before the Supreme Court and recent Federal Circuit decisions concerning the definition of a prevailing party for purposes of 35 U.S.C. § 285, the patentability of functionally unrelated claim language, burden of proof for infringement, and untimely venue objections.

Federal Circuit News

Supreme Court:

The Supreme Court granted one petition originating in the Federal Circuit.

Trump v. V.O.S. Selections, Inc. (US Nos. 24-1287, 25-250): As we summarized in our August 2025 update, the en banc Federal Circuit held that the International Emergency Economic Powers Act (IEEPA) did not give the President the authority to impose the tariffs he ordered, and the Government's reading of the term "regulate . . . importation" contained in the statute was too broad. Briefing before the Supreme Court will be completed by October 30, 2025, and argument has been set for November 5, 2025. So far, six amicus briefs have been filed in support of the President, one amicus brief has been filed in support of neither party, and two amicus briefs have been filed in support of the Federal Circuit's holding.

***Noteworthy Petitions for a Writ of Certiorari*:**

There were a few potentially impactful petitions filed before the Supreme Court in September 2025:

- ***MSN Pharmaceuticals, Inc. v. Novartis Pharmaceuticals Corp.*** (US No. 25-225): The question presented is: "Whether, in a patent-infringement suit, a court may consider after-arising technology to hold that the patent is invalid under § 112(a) of the Patent Act." After respondent waived its right to file a response, the Court requested a response, which is due November 7, 2025. Six amicus briefs have been filed.

- ***Lynk Labs, Inc. v. Samsung Electronics Co.*** (US No. 25-308): The question presented is: "Whether patent applications that became publicly accessible only after the challenged patent's critical date are 'prior art . . . printed publications' within the meaning of 35 U.S.C. §311(b)." The response brief is due November 17, 2025.

- ***EcoFactor, Inc. v. Google, LLC*** (US No. 25-341): The questions presented are: (1) "Whether the Federal Circuit violated the Seventh Amendment by overturning the jury's damages award . . . substituting its judgment for the jury's on a question of fact." (2) "Whether the Federal Circuit is permitted to apply a different, more stringent standard for the admission of expert testimony . . . [under] Federal Rule of Evidence 702." (3) "Whether the Federal Circuit violated EcoFactor's due process rights under the Fifth Amendment by deciding the appeal on a contract interpretation issue that was not raised in the district court, was not briefed by the parties on appeal, and was outside the scope of the en banc proceeding." Google waived its right to file a response. The Court will consider this petition at its October 17, 2025 conference.

We provide an update below of the petitions pending before the Supreme Court, which were summarized in our August 2025 update:

- In ***Gesture Technology Partners, LLC v. Unified Patents, LLC*** (US No. 24-1281), after one of the respondents waived its right to respond, the Court requested a response. The response was filed on September 26, 2025. The Court will consider this petition at its November 7, 2025 conference. The Court will consider this petition at its November 7, 2025 conference.

- The Court denied the petitions in ***Lowe v. ShieldMark, Inc.*** (US No. 25-169), ***J. Reynolds Vapor Co. v. Altria Client Services LLC*** (US No. 25-158), ***D R Burton Healthcare, LLC v. Trudell Medical International Inc.*** (US No. 25-17), and ***Purdue Pharma L.P. v. Accord Healthcare, Inc.*** (US No. 24-1132).

***Other Federal Circuit News*:**

Notice of Proposed Amendments to Federal Circuit Rules of Practice. The Federal Circuit has published proposed amendments to the Federal Circuit Rules of Practice available here: https://www.cafc.uscourts.gov/notice-of-proposed-amendments-to-the-federal-circuit-rules-of-practice-4/. Here is a summary of some of the proposed amendments:

- Various rules have been updated to modify or clarify Federal Circuit procedures, including but not limited to, submission of documents by electronic filers, the hours of operation of the Federal Circuit's night box, personally identifiable information, and page limits for appendix to briefs.
- Rule 46 regarding attorneys has been amended to add a subsection on law student practice.
- Practice Notes to Rule 50 has been amended to discuss the use of the cases pending list that a former court employee may not participate in or assist with.

Public comments must be received on or before October 16, 2025.

Upcoming Oral Argument Calendar

The list of upcoming arguments at the Federal Circuit is available on the court's website.

Key Case Summaries (September 2025)

Future Link Systems, LLC v. Realtek Semiconductor Corp., No. 23-1056, 23-1057 (Fed. Cir. Sept. 9, 2025): Future Link sued Realtek in two separate suits over patents related to improvements of electronic circuitry and integrated circuits with power-saving features. Several months into the litigation, Future Link entered into a licensing agreement that covered Realtek's products. Future Link then voluntarily dismissed both cases without prejudice. Realtek sought attorneys' fees asserting Future Link had filed objectively baseless suits. The district court denied the motion for attorneys' fees; however, it awarded sanctions by ordering that the dismissals be with prejudice.

The Federal Circuit (Stoll, J., joined by Reyna and Bryson, JJ.) vacated-in-part, affirmed-in-part, and remanded. The Court held that Realtek was the prevailing party because the district court "awarded sanctions" to Realtek and "converted the voluntary dismissal to a dismissal with prejudice." The Court explained that this conclusion applied even if "[p]erhaps the district court did not intend to make Realtek a prevailing party." The Court accordingly vacated the district court's § 285 decision and remanded for the district court to consider whether this case is exceptional and whether fees are appropriate.

Bayer Pharma Atkiengesellschaft v. Mylan Pharmaceuticals Inc. et al., No. 23-2434 (Fed. Cir. Sept. 23, 2025): Mylan petitioned for *inter partes* review (IPR) of Bayer's patent claiming methods of reducing the risk of cardiovascular events in patients with coronary artery disease and/or peripheral artery disease by administering "clinically proven effective" amounts of rivaroxaban and aspirin. The Board concluded that "clinically proven effective" was non-limiting, and in the alternative, the claims were anticipated. Bayer appealed the Board's final written decision, including the Board's construction of "clinically proven effective."

The Federal Circuit (Moore, C.J., joined by Cunningham and Scarsi (district judge sitting by designation), JJ.) affirmed-in-part, vacated-in-part, and remanded for further proceedings. The Court stated that it did not need to decide whether or not "clinically proven effective" was limiting, because it concluded that even if it were limiting, the term was functionally unrelated to the claimed method and therefore failed to make the claims patentable. As the Court explained, an "otherwise anticipated method of treatment was not made patentable simply by adding a limitation of 'informing the patient' about the benefits of the anticipated method." Similarly, the Court "found it equally troubling that one could claw back from the public domain an anticipated method of treatment merely by adding a limitation that the method subsequently performed well in a clinical trial." The Court therefore concluded that "clinically proven effective" was a functionally unrelated limitation that did not make the challenged claims patentable. The Court accordingly did not reach whether "clinically proven effective" was anticipated.

Finesse Wireless LLC v. AT&T Mobility LLC, No. 24-1039 (Fed. Cir. Sept. 24, 2025): Finesse owns patents related to methods for mitigating interference in radios. Following a jury trial, the jury found that AT&T and Nokia (defendants) infringed awarded Finesse over $166 million in damages. The district court then denied the defendants' motion for judgment as a matter of law (JMOL) of noninfringement and motion for a new trial on damages.

The Federal Circuit (Moore, C.J., joined by Linn and Cunningham, JJ.) reversed the district court's denial of judgment of a matter of law and vacated the damages award, holding that substantial evidence did not support the jury's finding of infringement. In particular, for one of the patents, the Court concluded that Finesse's technical expert offered self-contradictory testimony on which signals in the accused radios corresponded to the two claimed signals, which was insufficient to support a finding that the accused radios practiced the asserted claims. The Court held that "[w]hen the party with the burden of proof, such as Finesse, rests its case on an expert's self-contradictory testimony, we may conclude the evidence is insufficient to satisfy that standard."

Focus Products Group International, LLC v. Katri Sales Co., Inc., Nos. 23-1446, 23-1450, 23-2148, 23-2149 (Fed. Cir. Sept. 30, 2025): Focus sued Katri for infringement of patents related to hookless shower curtains. The district court denied Katri's motion to transfer venue because it was not timely raised. It then granted summary judgment of infringement and awarded damages and attorneys' fees to Focus.

The Federal Circuit (Chen, J., joined by Moore, C.J. and Clevenger, J.) affirmed-in-part, reversed-in-part, vacated-in-part, and remanded. *TC Heartland* was published on May 22, 2017, but Katri waited until September 18, 2017 to raise any venue objections. The Court therefore held that the district court did not abuse its discretion in holding that Katri forfeited its venue objection and denying its motion to transfer venue.

The following Gibson Dunn lawyers assisted in preparing this update: Blaine Evanson, Jaysen Chung, Audrey Yang, Evan Kratzer, and Michelle Zhu.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Federal Circuit. Please contact the Gibson Dunn lawyer with whom you usually work, any leader or member of the firm's Appellate and Constitutional Law or Intellectual Property practice groups, or the following authors:

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