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Federal Circuit Update

This edition of Gibson Dunn's Federal Circuit Update for October summarizes the current status of petitions pending before the Supreme Court and recent Federal Circuit decisions concerning standing, jurisdiction, recusal, and the meaning of "by another" under pre-AIA 35 U.S.C. § 102.

Federal Circuit News

Supreme Court:

The Supreme Court granted the petition in ***Trump v. V.O.S. Selections, Inc.*** (US No. 25-250) as we summarized in our [September 2025 update](#). Oral arguments were heard on November 5, 2025.

Noteworthy Petitions for a Writ of Certiorari:

There were a couple potentially impactful petitions filed before the Supreme Court in October 2025:

- [***Percipient.ai, Inc. v. United States***](#) (US No. 25-428): *The question presented is:* "Did the *en banc* Federal Circuit err in holding that a person must meet the requirements for challenging a solicitation or contract award under the first two prongs of 28 U.S.C. § 1491(b)(1) to qualify as an 'interested party' who can challenge violations under the

broader third prong?” The response brief is due on December 8, 2025, and to date, five amicus briefs have been filed.

- [**Recentive Analytics, Inc. v. Fox Corp.**](#) (US No. 25-505): *The questions presented are: (1) “Whether the Federal Circuit’s approach to patent eligibility under 35 U.S.C. § 101 flouts this Court’s instruction to consider preemption, as discussed in *Alice Corp. v. CLS Bank International* and *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*” (2) “Whether the Federal Circuit erred in holding that claims directed to the application of machine-learning techniques to new data environments are categorically ineligible for patent protection under Section 101, absent a showing of improvement to the underlying machine-learning model itself.”* The respondent waived its right to file a response. The Court will consider this petition at its December 5, 2025 conference.

We provide an update below of the petitions pending before the Supreme Court, which were summarized in our [September 2025 update](#):

- In ***MSN Pharmaceuticals, Inc. v. Novartis Pharmaceuticals Corp.*** (US No. 25-225), a response brief was filed on November 7, 2025, and six amicus briefs have been filed.
- In ***Lynk Labs, Inc. v. Samsung Electronics Co.*** (US No. 25-308), after the respondent waived its right to file a response, the Court requested a response, which is due January 2, 2026. Two amicus briefs have been filed.
- The Court denied the petitions in ***EcoFactor, Inc. v. Google, LLC*** (US No. 25-341) and ***Gesture Technology Partners, LLC v. Unified Patents, LLC*** (US No. 24-1281).

Upcoming Oral Argument Calendar

The list of upcoming arguments at the Federal Circuit is available on the court’s [website](#).

Key Case Summaries (October 2025)

US Inventor, Inc. et al. v. PTO, No. 24-1396 (Fed. Cir. Oct. 3, 2025): US Inventor filed a petition for rulemaking proposing certain limitations on the Patent and Trademark Office (PTO)’s authority to institute *inter partes* review (IPR) and post grant review (PGR). The PTO denied the petition, reasoning that it overlapped with a then-pending request for comments on a rule regarding the PTO’s discretion to institute IPR and PGR. US Inventor sued the PTO for violating the Administrative Procedure Act (APA) and America Invents Act (AIA) by denying its rulemaking petition without sufficiently explaining its denial and without promulgating notice-and-comment rulemaking. The district court dismissed the complaint for lack of associational standing because US Inventor’s theory of injury was too speculative.

The Federal Circuit (Reyna, J., joined by Lourie and Stark, JJ.) [affirmed](#). The Court explained that “[a]dvocacy organizations like appellants have associational standing if . . . [*inter alia*] ‘at least one of their members would have standing to sue.’” The Court determined that US Inventor failed to allege that at least one of its members had standing to sue because none of its members suffered a non-speculative injury-in-fact from the PTO’s denial of the petition for rulemaking. Specifically, the Court determined that US Inventor’s alleged harm based on the PTO’s institution of a third party’s petition, which would result in potential cancellation of appellants’ members’ patent claims, was speculative and insufficient for standing.

IQE, PLC v. Newport Fab, LLC et al., No. 24-1124 (Fed. Cir. Oct. 15, 2025): IQE makes wafer products used in semiconductors. Newport et al. (collectively referred to as Tower) are semiconductor manufacturers that make specialized integrated circuits that utilize said wafers. IQE shared information with Tower under a mutually binding non-disclosure agreement when the parties began discussing a potential collaboration. While discussions were ongoing, Tower filed patent applications directed to porous semiconductor technology that IQE alleges it developed. IQE sued Tower asserting several state and federal causes of action relating to the alleged theft of trade secrets and a claim for correction of inventorship on the patents. Tower moved to dismiss and filed an anti-SLAPP (Strategic Lawsuit Against Public Participation)[\[1\]](#) motion to strike several of IQE’s claims, arguing that Tower’s use of confidential information to file the patent applications was petitioning activity protected by the First Amendment. The district court denied the motion.

The Federal Circuit (Hughes, J., joined by Stark and Wang (district judge sitting by designation), JJ.) [remanded the case for further proceedings](#). Because there was not yet a final judgment from the district court, the Court first had to decide whether the denial of Tower’s anti-SLAPP motion was immediately appealable. The Court explained that the collateral order doctrine is an exception to the rule of finality, and an interlocutory appeal is allowed when a trial court’s order affects rights that will be irretrievably lost in the absence of an immediate appeal. The Court then determined that Federal Circuit law, and not Ninth Circuit law, applied in this case because it was a question of the Federal Circuit’s jurisdiction. The Court concluded that the denial of an anti-SLAPP motion to strike under California law is immediately appealable under the collateral order doctrine in part because the denial of an anti-SLAPP motion would be unreviewable on appeal after final judgment as Tower would already have had to litigate the case.

Centripetal Networks LLC v. Palo Alto Networks Inc., No. 23-2027 (Fed. Cir. Oct. 18, 2025): Palo Alto Networks filed an IPR challenging claims of Centripetal’s patent directed to technology for detecting network threats in encrypted communications. A Patent Trial and Appeal Board (Board) panel, including Administrative Patent Judge McNamara, instituted the IPR. After the Board instituted IPR, Cisco joined the proceeding. Centripetal later learned that Judge McNamara owned Cisco stock and filed a motion requesting recusal of the entire panel and vacatur of the institution decision, asserting that Judge McNamara’s stock ownership cast a shadow over the whole panel. Judge McNamara disagreed that regulations required his recusal, but he nonetheless withdrew as did one of the other judges on the panel. They were replaced by two new judges and the new panel denied Centripetal’s motion to vacate, calling the arguments frivolous and finding the request untimely.

The Federal Circuit (Cunningham, J., joined by Moore, C.J. and Hughes, J.) [vacated and remanded](#). The Court held that the Board did not abuse its discretion in finding the recusal motion untimely. The Court explained that Centripetal was aware of Judge McNamara's stock holdings, but sat on the conflict for more than three months and only raised recusal concerns after it received unfavorable decisions. The Court also noted that the unique setup of the Board and the compressed timeline "heightens the need to raise conflicts at the first opportunity."

Merck Sorono S.A. v. Hopewell Pharma Ventures, Inc., Nos. 25-1210, 25-1211 (Fed. Cir. Oct. 30, 2025): Hopewell filed IPR petitions challenging Merck's patents directed to methods for treating multiple sclerosis (MS) by orally administering cladribine. The Board determined that all challenged claims were unpatentable as obvious over prior art references, Bodor and Stelmasiak. The Board rejected Merck's argument that Bodor did not qualify as prior art because it had one inventor in common with the patent at issue, and therefore, was not a publication "by another" as required under 35 U.S.C. § 102.

The Federal Circuit (Linn, J., joined by Hughes and Cunningham, JJ.) [affirmed](#). The Court explained that "for a reference not to be 'by another,' and thus unavailable as prior art under pre-AIA § 102(e), the disclosure in the reference must reflect the work of the inventor of the patent in question." The Court explained that when the patented invention is the result of the work of joint inventors, the disclosure must reflect the collective work of the "same inventive entity" to be excluded as prior art. The Court further stated that "[a]ny incongruity in the inventive entity between the inventors of a prior reference and the inventors of a patent claim renders the prior disclosure 'by another,' regardless of whether inventors are subtracted from or added to the patent."

[\[1\]](#) Under California's anti-SLAPP statute, if a cause of action "aris[es] from any act . . . in furtherance of [a] person's right of petition or free speech," the court shall strike the cause of action unless "the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

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