

# GIBSON DUNN

Appellate & Constitutional Law and  
Intellectual Property Update

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## Federal Circuit Update

*This edition of Gibson Dunn's Federal Circuit Update for November summarizes the current status of petitions pending before the Supreme Court and recent Federal Circuit decisions concerning institution decisions in inter partes review (IPR) proceedings, judicial correction of claim terms, doctrine of equivalents, and written description.*

## Federal Circuit News

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

There was a potentially impactful petition filed before the Supreme Court in November 2025:

- [\*\*Agilent Technologies, Inc. v. Synthego Corp.\*\*](#) (US No. 25-570): The questions presented are: (1) "Should printed publications be presumed to be enabling when a party challenging the validity of issued patent claims asserts that a printed publication is anticipatory prior art, such that the burden of proving that the printed publication is nonenabling lies with the patentee?" (2) "Should the holding in *Rasmusson v. SmithKline Beecham Corp.*, 413 F.3d 1318, 1326 (Fed. Cir. 2005), that 'proof of efficacy is not required in order for a reference to be enabled for purposes of anticipation,' be vacated or significantly narrowed?" The respondent waived its right to file a response. The Court will consider this petition at its January 9, 2026 conference.

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

- In ***Percipient.ai, Inc. v. United States*** (US No. 25-428), five amicus briefs have been filed. The response brief was filed on December 8, 2025, and the reply brief was filed on December 22, 2025.
- 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 February 2, 2026. Five amicus briefs have been filed.
- The Court denied the petitions in ***Recentive Analytics, Inc. v. Fox Corp.*** (US No. 25-505) and ***MSN Pharmaceuticals, Inc. v. Novartis Pharmaceuticals Corp.*** (US No. 25-225).

### **Other Federal Circuit News:**

**New Federal Circuit Rules and Court Forms.** The Federal Circuit has published amendments to the Federal Circuit Rules of Practice and Court forms available here: <https://www.ca9.uscourts.gov/notice-of-new-federal-circuit-rules-and-court-forms/>. They went into effect on December 1, 2025.

## **Upcoming Oral Argument Calendar**

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

## **Key Case Summaries (November 2025)**

***In re Motorola Solutions, Inc.***, No. 25-134 (Fed. Cir. Nov. 6, 2025): Stellar, LLC sued Motorola for patent infringement, prompting Motorola to file IPR petitions challenging Stellar's patents. The Board initially instituted proceedings on Motorola's petitions, and Stellar sought Director review. In the interim, following a change in Presidential administrations, the Acting Director rescinded a memorandum announcing interim guidance to the Board regarding discretionary denials that had been issued by the previous Director. In response to Stellar's request for Director review, the Acting Director deinstitutioned the petitions concluding that the Board did not give enough weight to the investment in the parallel district court litigations, which would have resulted in an inefficient use of agency resources, and too much weight to Motorola's *Sotera* stipulation. Motorola moved for reconsideration arguing that the deinstitution was a violation of the Administrative Procedure Act (APA) and its due process rights. The Acting Director denied the motion for reconsideration. Motorola sought mandamus relief.

The Federal Circuit (Linn, J., joined by Dyk and Cunningham, JJ.) [denied the petition](#). The Court explained that Congress committed institution decisions to the discretion of the Director, and therefore, institution decisions are final and nonappealable. The Court acknowledged an

exception for “colorable constitutional claims,” but concluded that was not present here. Specifically, Motorola’s due process claim failed because its request for relief was based on the argument that the interim procedures announced by the prior Director created a constitutionally protected interest. However, the Court held that “expectation of receiving certain process is not, without more, an interest protected by the Due Process Clause.” Motorola’s APA violation argument based on the Acting Director’s improper rescission of the interim procedures also failed, because the argument amounted to nothing more than a challenge of “the Director’s exercise of discretion to deny institution,” which is final and not appealable.

***Canatex Completion Solutions, Inc. v. Wellmatics, LLC et al.***, No. 24-1466 (Fed. Cir. Nov. 12, 2025): Canatex sued Wellmatics for infringement of its patent directed to a device used in oil and gas wells. The device comprises a first part with a “connection profile” and a second part with a “releasable engagement profile.” The claim later refers to “the connection profile of the *second* part,” creating an antecedent basis problem. The district court therefore held the claims indefinite for lacking antecedent basis.

The Federal Circuit (Taranto, J., joined by Moore, C.J. and Prost, J.) [reversed](#). The Court explained that while there is a very demanding standard for judicial correction of a claim term, courts may correct a minor clerical or typographical mistakes where (1) the error is evident from the face of the patent, and (2) the correction is not subject to reasonable debate. Here, the Court held that the patent’s claims and figures repeatedly attributed a “connection profile” to the first part of the claimed two-piece device. The Court therefore concluded that reading “second” as “first” in the phrase “the connection profile of the second part” was evident from the face of the patent and the only correction that fit the intrinsic record.

***Smartrend Manufacturing Group (SMG), Inc. v. Opti-Luxx Inc.***, No. 24-1616, 24-1650 (Fed. Cir. Nov. 13, 2025): SMG sued Opti-Luxx for infringement of its patents directed to illuminated bus signs. In particular, the claims require that the bus sign comprise a “frame,” which the district court construed to require a “separate and distinct” component. Because the accused product does not have a separate frame, the district court granted summary judgment in Opti-Luxx’s favor as to literal infringement, but denied summary judgment as to infringement under the doctrine of equivalents. At trial, SMG’s expert admitted that the accused sign did not perform certain functions of the frame as discussed in the patent. Opti-Luxx contended this was fatal to SMG’s infringement theory; however, the district court rejected this contention and determined that the required function was an issue for the jury. The jury found infringement, and the court denied Opti-Luxx’s motion for judgment as a matter of law (JMOL).

The Federal Circuit (Dyk, J., joined by Linn and Stark, JJ.) [reversed-in-part, vacated-in-part, and remanded](#). In particular, as to the doctrine of equivalents issue, the Court explained that the patent disclosed that the frame in the claimed invention can “removably receive the sign” so that the signs can be exchanged, customized, or serviced without removing the entire installation. SMG’s expert conceded the accused product is “not capable of doing that.” Therefore, the Court held that no reasonable jury could have found that the accused product infringed the patent under the doctrine of equivalents, which requires, in part, that the accused product perform the same function as the claimed invention. The Court therefore reversed the district court’s denial of JMOL.

***Duke University v. Sandoz Inc.***, No. 24-1078 (Fed. Cir. Nov. 18, 2025): Duke University and Allergan Sales (collectively, Allergan) sued Sandoz for infringement of a patent directed to treating hair loss using compositions containing prostaglandin F (PGF) analogs, which are molecules that bind to certain receptors on cells and change how cells function. Allergan markets Latisse®, a topical solution for treatment of eyelash hair loss by stimulating hair growth consisting of PGF analogs, and Sandoz sells a generic version of Latisse. Sandoz stipulated to infringement, but challenged the asserted claim as invalid for lack of adequate written description. A jury found that Sandoz failed to prove that the asserted claim was invalid. The district court then denied Sandoz's motions for JMOL.

The Federal Circuit (Stark, J., joined by Dyk and Stoll, JJ.) [reversed](#). The Court reasoned that the asserted claim covered only a specific subgenus of a couple thousand PGF analogs, but the specification was written so broadly as to encompass billions of compounds. The Court held that the specification therefore failed to show a skilled artisan how to identify the specific subgenus claimed nor did it provide the necessary "blaze marks" or structural commonalities to lead a skilled artisan to the claimed subgenus. Thus, the Court reversed the district court's judgment that the asserted claim is not invalid for lack of written description.

**The following Gibson Dunn lawyers assisted in preparing this update: Blaine Evanson, Jaysen Chung, Audrey Yang, Al Suarez, 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:

[Blaine H. Evanson](#) – Orange County (+1 949.451.3805, [bevanson@gibsondunn.com](mailto:bevanson@gibsondunn.com))

[Audrey Yang](#) – Dallas (+1 214.698.3215, [ayang@gibsondunn.com](mailto:ayang@gibsondunn.com))

**Appellate and Constitutional Law:**

[Thomas H. Dupree Jr.](#) – Washington, D.C. (+1 202.955.8547, [tdupree@gibsondunn.com](mailto:tdupree@gibsondunn.com))

[Allyson N. Ho](#) – Dallas (+1 214.698.3233, [aho@gibsondunn.com](mailto:aho@gibsondunn.com))

[Julian W. Poon](#) – Los Angeles (+ 213.229.7758, [jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com))

**Intellectual Property:**

[Kate Dominguez](#) – New York (+1 212.351.2338, [kdominguez@gibsondunn.com](mailto:kdominguez@gibsondunn.com))

[Josh Krevitt](#) – New York (+1 212.351.4000, [jkrevitt@gibsondunn.com](mailto:jkrevitt@gibsondunn.com))

[Jane M. Love, Ph.D.](#) – New York (+1 212.351.3922, [jlove@gibsondunn.com](mailto:jlove@gibsondunn.com))

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