

# GIBSON DUNN

Appellate & Constitutional Law and  
Intellectual Property Update

March 26, 2026

## Federal Circuit Update

*This edition of Gibson Dunn's Federal Circuit Update for February 2026 summarizes the current status of petitions pending before the Supreme Court and recent Federal Circuit decisions concerning patent misuse under 35 U.S.C. § 271(d), patent eligibility under 35 U.S.C. § 101 and inequitable conduct.*

## Federal Circuit News

### Supreme Court:

As we summarized in our [January 2026 update](#), the Supreme Court granted the certiorari petition in ***Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*** (US No. 24-889) and set oral argument for April 29, 2026. Hikma filed its opening merits brief on February 18, 2026, and Amarin filed its response brief on March 20, 2026. Eleven amicus briefs have been filed.

### Noteworthy Petitions for a Writ of Certiorari:

There were two potentially impactful petitions filed before the Supreme Court in February 2026:

- [Finesse Wireless LLC v. AT&T Mobility LLC](#) (US No. 25-953): The question presented is: “Whether a purported inconsistency in the testimony of an expert witness is an issue of credibility for the jury to resolve, as every regional circuit holds, or whether it instead supplies a basis for a judgment as a matter of law, as the Federal Circuit held below and

routinely holds in other cases.” After one of the respondents waived its right to file a response, the Court requested a response. The response briefs are due April 10, 2026.

- [\*Dolby Laboratories Licensing Corp. v. Unified Patents, LLC\*](#) (US No. 25-1011): The questions presented are: (1) “Whether a patent owner is injured by the Patent Trial and Appeal Board’s refusal to require a petition to identify all real parties in interest.” (2) “Whether § 314(d) bars judicial review of a final decision regarding real parties in interest.” The response brief is due April 27, 2026.

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

- In *United Services Automobile Association v. PNC Bank N.A.* (US No. 25-853), after the respondent waived its right to file a response, the Court requested a response. The response brief is due April 8, 2026. One amicus brief has been filed.
- In *Agilent Technologies, Inc. v. Synthego Corp.* (US No. 25-570), after the respondent waived its right to file a response, the Court requested a response. The response brief was filed on February 20, 2026, and the reply brief was filed on March 6, 2026. The Court will consider this petition at its March 27, 2026 conference.
- The Court denied the petition in *Lynk Labs, Inc. v. Samsung Electronics Co.* (US No. 25-308).

## Key Case Summaries (February 2026)

***REGENXBIO Inc. v. Sarepta Therapeutics, Inc.***, No. 24-1408 (Fed. Cir. Feb. 20, 2026): REGENXBIO sued Sarepta, alleging that Sarepta’s Duchenne muscular dystrophy gene therapy product referred to as SRP-9001 infringed REGENXBIO’s patent. Gene therapy uses modified virus “vectors” to deliver a new therapeutic gene, called a transgene, that replaces defective or missing genes, which may treat or even cure various genetic disorders. The patent covers a cultured host cell containing a recombinant adeno-associated virus (AAV) nucleic acid sequence that includes a heterologous (different-species) genetic segment, which are undisputedly manmade and do not exist in nature. Sarepta moved for summary judgment, arguing that the claims are directed to a natural phenomenon. The district court agreed and held the asserted claims patent ineligible, reasoning that the claimed host cell merely combined two naturally occurring genetic sequences (an AAV capsid gene and a heterologous gene) and put them into a host cell without significantly altering them, similar to taking two strands of bacteria and mixing them together as in *Funk Brothers*. The district court further held that the claims lacked any inventive concept at *Alice* step two, reasoning that the genetic engineering steps were well-understood and routine.

The Federal Circuit (Stoll, J., joined by Dyk and Hughes, JJ.) [reversed](#). The Court held that the claimed genetically engineered host cells were not directed to a product of nature, and thus recited patent-eligible subject matter at *Alice* step one. The Court explained that the asserted claims required a recombinant nucleic acid molecule spliced together from at least two different species and inserted into a host cell—a man-made construct that “does not and cannot exist in nature.” The Court further explained that although the claims utilized naturally derived components, the resulting modified host cell was “markedly different from anything occurring in nature,” akin to the genetically modified bacterium in *Chakrabarty* and the cDNA in *Myriad*. The Court distinguished *Funk Brothers*, noting that unlike merely aggregating existing bacteria with no change to their natural state, REGENXBIO’s invention fundamentally created a new cell containing a molecule that could never form naturally. Having held the claims patent-eligible at *Alice* step one, the Court did not reach *Alice* step two.

***Global Tubing LLC v. Tenaris Coiled Tubes LLC***, Nos. 23-1882, 23-1883 (Fed. Cir. Feb. 26, 2026): Global Tubing sued Tenaris seeking a declaratory judgment of noninfringement of Tenaris’s patent directed to “quenched-and-tempered” coiled tubing, which is a process used in the oil and gas industry that exposes tubing metal to extreme heat before quickly cooling (quenching) and then reheating it (tempering). Tenaris counterclaimed, alleging infringement of additional patents directed to the same subject matter. During discovery, Tenaris inadvertently produced communications between one of its inventors, Martín Valdez, and prosecution counsel regarding documents detailing the manufacturing process of CYMAX, a coiled tubing product manufactured by Tenaris’s predecessor company. The CYMAX documents had not been disclosed to the United States Patent and Trademark Office (PTO) during prosecution of Tenaris’s patents, because in Tenaris’s view, those documents were cumulative of a 1992 conference paper (Chitwood), which had been disclosed to the PTO. Global Tubing amended its complaint to add a claim of inequitable conduct based on Tenaris’s failure to disclose the CYMAX documents to the PTO. Both parties moved for summary judgment on that claim. The district court granted summary judgment to Global Tubing, holding that Dr. Valdez intended to deceive the PTO by withholding the CYMAX documents, which were material to patentability and not cumulative of Chitwood.

The Federal Circuit (Stark, J., joined by Taranto and Hughes, JJ.) [vacated and remanded](#). The Court explained that to prevail on an inequitable conduct claim, a party must prove at least one specified individual acted with “the specific intent to deceive the PTO” by withholding material information. Additionally, the Court held that the district court failed to view the evidence in the light most favorable to the nonmoving party, which it is required to do at the summary judgment stage. First, the Court held that the district court failed to credit Dr. Valdez’s mistaken belief that CYMAX used a different carbon-composition range than the patented invention and thus the CYMAX documents were not material, and instead assumed that Dr. Valdez was lying at his deposition and intended to deceive the PTO. The Court explained that if Dr. Valdez intended to defraud the PTO, he would not have provided the CYMAX documents to prosecution counsel, which he did despite his stated doubts about their materiality. Second, the Court held that a reasonable factfinder could find that the CYMAX documents were cumulative of Chitwood, and therefore, not material based on Dr. Valdez’s explanation that the information from Chitwood could lead a person of ordinary skill in the art to discern the composition of the material that was used despite the publication not expressly disclosing such information. The Court thus vacated the judgment of inequitable conduct on the basis that there were genuine issues of material fact.

The following Gibson Dunn lawyers prepared this update: [Blaine Evanson](#), [Jaysen Chung](#), [Audrey Yang](#), [Al Suarez](#), [Hannah Bedard](#), and [Vincent Zhang](#).

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))

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm, please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists, please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2026 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).