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Appellate & Constitutional Law and Intellectual Property Update

May 26, 2026

Federal Circuit Update

This edition of Gibson Dunn's Federal Circuit Update for April 2026 summarizes the current status of petitions pending before the Supreme Court, Federal Circuit news, and recent Federal Circuit decisions concerning inventorship, the on-sale bar, written description and enablement, and patent-eligible subject matter.

Federal Circuit News

Supreme Court:

As we summarized in our March 2026 update, the Supreme Court granted the certiorari petition in ***Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc.*** (US No. 24-889). It was argued on April 29, 2026.

Noteworthy Petitions for a Writ of Certiorari:

There were a few potentially impactful petitions filed before the Supreme Court since our last update:

- ***Polar Electro Oy v. Firstbeat Technologies Oy*** (US No. 25-1268): The questions presented are: "Whether a court may create its own invalidity argument . . . or whether doing so violates the party-presentation principle. . . . ." 2. "Whether a claimed process that takes a real world physiological input from the body and uses that input within a specific, improved process to produce a more accurate technological result . . . is patent eligible under § 101 . . . ." 3. "Whether the judicially created exceptions to 35 U.S.C. § 101 for abstract ideas, laws of nature, and natural phenomena . . . constitute impermissible judicial legislation . . . ." The response brief is due June 8, 2026.

- ***Google LLC v. VirtaMove, Corp.*** (US No. 25-1230): The questions presented are: "Whether the PTO lacks statutory authority to deny institution based on 'settled expectations' where the patent statutes allow for administrative review at any time during the life of a patent." 2. "Whether courts have power to review a PTO decision denying inter partes review on grounds that are contrary to statute." The response brief is due May 29, 2026.

We provide an update below of the petitions pending before the Supreme Court, which were summarized in our March 2026 update:

- In ***Hyatt v. Squires*** (US No. 25-1049) and ***Dolby Laboratories Licensing Corp. v. Unified Patents, LLC*** (US No. 25-1011, the response briefs are due on May 26, 2026. Four amicus briefs have been filed in ***Hyatt***, and one amicus brief has been filed in ***Dolby***. In ***Finesse Wireless LLC v. AT&T Mobility LLC*** (US No. 25-953), after one of the respondents waived its right to file a response, the Court requested a response. The response brief is due May 26, 2026.

- The Court denied the petitions in ***Rideshare Displays, Inc. v. Lyft, Inc.*** (US No. 25-1132), ***United Services Automobile Association v. PNC Bank N.A.*** (US No. 25-853), and ***EscapeX IP, LLC v. Google LLC*** (US No. 25-1114).

Federal Circuit News:

On May 18, 2026, the Federal Circuit announced the Federal Circuit Center for Innovation & Law would be opening its doors to the public for a one-day America250 program. The full article is here.

Key Case Summaries (April 2026)

Fortress Iron, LP v. Digger Specialties, Inc., No. 24-2313 (Fed. Cir. Apr. 2, 2026): Fortress sued Digger for infringement of two patents directed to a vertical cable railing used in the construction of outdoor living spaces. The claimed invention incorporated aspects of the original idea of Mr. Sherstad (owner of Fortress), early designs of Mr. Burt (Fortress employee), and suggestions from Messrs. Lin and Huang (two employees at a Chinese manufacturer of the cable railing) as to the final cable and rail designs. However, the patent only names Sherstad and Burt as inventors. During discovery, Digger learned that the patents did not list Lin and Huang. Fortress acknowledged they were co-inventors and successfully added Lin as a co-inventor pursuant to 35 U.S.C. § 256(a), but was unable to locate Huang to add him using the

same procedure. Fortress therefore attempted to add Huang as a co-inventor under § 256(b). Digger moved for summary judgment of invalidity due to incorrect inventorship, and the district court granted the motion.

The Federal Circuit (Lourie, J., joined by Hughes and Kleeh (district judge sitting by designation), JJ.) affirmed. Under 35 U.S.C. § 256(b), a district court may order correction of omitted inventors on a patent upon "notice and hearing of all parties concerned." The Court held that a co-inventor is a "party concerned" entitled to notice and opportunity to be heard prior to any correction of inventorship. Because Fortress was unable to locate Huang to provide him notice, Fortress could not avail itself of § 256(b) to correct inventorship of the patents. The Court rejected Fortress's argument that repeal of § 102(f) means joinder of all inventors is not necessary for validity. The Court reasoned that courts have long held, even prior to the enactment of § 102(f), that nonjoinder of an inventor invalidates a patent. Thus, the Court held that as a matter of law that "a patent that incorrectly lists its inventor(s) and cannot be corrected according to law is invalid."

Definitive Holdings, LLC v. Powerteq LLC, No. 24-1761 (Fed. Cir. Apr. 14, 2026): Definitive sued Powerteq for infringement of a patent directed to methods and apparatuses for upgrading software in an engine controller. Powerteq moved for summary judgment of invalidity under pre-AIA 35 U.S.C. § 102(b), contending that non-party Hypertech Inc. had sold a device called the Hypertech Power Programmer III (PP3) embodying every asserted claim by 1996—well before the March 30, 2000 critical date. The district court granted summary judgment.

The Federal Circuit (Cunningham, J., joined by Moore, C.J. and Dyk, J.) affirmed. The Court clarified that the pre-AIA on-sale bar does not require that the product sold to *disclose* the invention's details to the public, but that it must *embody* the claimed invention. Thus, because the PP3 embodied the claimed methods and apparatuses, it is prior art under § 102(b).

Teva Pharmaceuticals International Gmbh v. Eli Lilly & Co., No. 24-1094 (Fed. Cir. April 16, 2026): Teva sued Eli Lilly for infringement of patents directed to using humanized anti-CGRP antagonist antibodies to treat headache. CGRP is a protein found in humans. When it binds to receptors on certain cells, the cells expand increasing blood flow, causing headaches. Anti-CGRP antagonist antibodies bind to CGRP to antagonize (i.e., inhibit) CGRP from binding to receptors that result in headaches. These antibodies exist in mice, and the process of converting a murine antibody into a form that the human body will accept is called humanization, resulting in "humanized" antibodies. The patents claim using humanized anti-CGRP antagonist antibodies to treat headaches. At trial, the jury returned a verdict finding willful infringement and that the patents were not invalid for lack of written description or enablement. Eli Lilly moved for judgment as a matter of law (JMOL) of invalidity due to lack of written description and enablement, which the district court granted.

The Federal Circuit (Prost, J., joined by Cunningham and Andrews (district judge sitting by designation), JJ.) reversed and remanded. The Court first made clear that the patents were directed to the use of anti-CGRP antagonist antibodies to treat headaches—not to the antibodies themselves. Therefore, even though the specification only disclosed one species of humanized anti-CGRP antagonist antibody, the genus of anti-CGRP antagaonist anitbodies were already well known in the art. Furthermore, the specification disclosed several murine versions and disclosed that humanization was a routine procedure. The Court thus held that disclosure of a representative number of species of humanized anti-CGRP antagonist antibodies was sufficient

for a skilled artisan to understand that the patent disclosed that all humanized anti-CGRP antagonist antibodies treat headaches rendering JMOL of no written description improper. Similarly, the disclosure that all anti-CGRP antagonist antibodies could treat headaches meant there was no undue experimentation. The Court therefore held that JMOL of no enablement was also improper.

Constellation Designs, LLC v. LG Electronics Inc., No. 24-1822 (Fed. Cir. Apr. 28, 2026): Constellation sued LG for willful infringement of multiple patents relating to digital communication systems that use non-uniform signal constellations to improve performance in over-the-air television broadcasts. At summary judgment, the district court held all asserted claims were patent eligible under 35 U.S.C. § 101.

The Federal Circuit (Stoll, J., joined by Lourie and Oetken (district judge sitting by designation), JJ.) vacated-in-part, affirmed-in-part, and remanded. Constellation had divided the asserted claims into two categories: (1) the "optimization claims," which recite a geometrically spaced symbol constellations optimized for capacity, and (2) the "constellation claims," which recite specific non-uniform constellations. The Court held that the optimization claims were directed to the abstract, results-oriented idea of optimizing a constellation for capacity, without reciting a specific technical means for achieving that result. Because the claims also lacked an inventive concept, the Court held the optimization claims were patent ineligible and vacated the summary judgment of eligibility as to those claims. By contrast, the Court affirmed the district court's eligibility ruling for the constellation claims, because those claims were directed to a concrete technological solution to a technological problem in improving capacity and coding gains in digital communications. Because the constellation claims were not directed to an abstract idea, the Court did not reach whether the claims recited an inventive concept.

The following Gibson Dunn lawyers prepared this update: Blaine Evanson, Jaysen Chung, Audrey Yang, Al Suarez, Hannah Bedard, and Michelle Zhu.

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