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Appellate & Constitutional Law and Intellectual Property Update

July 2, 2026

Federal Circuit Update

This edition of Gibson Dunn's Federal Circuit Update for May 2026 summarizes the current status of a recent decision and petitions pending before the Supreme Court, Federal Circuit news, and recent Federal Circuit decisions concerning indefiniteness, attorneys' fees, and standing.

Federal Circuit News

Supreme Court:

Hikma Pharmaceuticals USA Inc. v. Amarin Pharma, Inc. (US No. 24-889): The Supreme Court held that Amarin failed to state a claim for active inducement in violation of 35 U.S.C. § 271(b) and reversed and remanded the case to the Federal Circuit. The original Federal Circuit opinion was summarized in our June 2024 update.

Amarin develops a drug called Vascepa®, which was approved for the treatment of severe hypertriglyceridemia, a condition of very high blood triglyceride levels ("the SH indication"). Amarin then obtained approval for a second use—to treat cardiovascular risk in hypertriglyceridemia patients ("the CV indication") and obtained two method-of-use patents for the CV indication. Hikma, a generic drug manufacturer, then sought approval of a skinny label that included the SH indication and removed the CV limitation of use that had been included when Vascepa® was only approved for the SH indication. Hikma also issued several press

releases advertising its product as a generic version of Vascepa® and touting Vascepa®'s sales, which included sales for all uses of Vascepa® including the CV indication. Amarin filed suit alleging Hikma actively induced others to infringe Amarin's patents. The district court granted Hikma's motion to dismiss and explained that none of Hikma's statements amounted to active steps to encourage infringement. The Federal Circuit reversed reasoning that while the label alone does not induce infringement, a physician could read the label, website, and press releases as encouragement to prescribe Hikma's generic for any of its approved uses.

The Supreme Court (9-0) reversed. The Court held that "inducement cannot be based on 'vague' language 'combined with how others may act.'" While there could be "active inducement through implicit encouragement," "the necessary inducement must be 'clear' to the relevant audience and 'affirmative.'" The Court determined that Amarin's complaint fell short of this, alleging no more than "sheer possibility" that "Hikma actively induced infringement of Amarin's CV-indication patents." The Court therefore held that Amarin failed to state a claim for active inducement under § 271(b) and therefore its complaint cannot withstand Hikma's motion to dismiss.

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

There was a potentially impactful petition filed before the Supreme Court since our last update:

- ***Sunoco Partners Marketing & Terminals L.P. v. Powder Springs Logistics, LLC*** (US No. 25-1387): The questions presented are: (1) "Whether the Federal Circuit's standard for recovery of lost profits damages violates 35 U.S.C. § 284." (2) "Whether Rule 702 requires courts to exclude expert testimony when record evidence is contrary to a critical fact upon which the expert relied, as the Federal Circuit holds, or whether juries should determine whether facts upon which an expert relied are true, as all other Circuits have held." The response brief is due July 16, 2026.

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

- In ***Google LLC v. VirtaMove, Corp.*** (US No. 25-1230), after the respondent waived its right to file a response, the Court requested a response. The response brief is due July 13, 2026. Seven amicus briefs have been filed.

- The Court denied the petitions in ***Polar Electro Oy v. Firstbeat Technologies Oy*** (US No. 25-1268), ***Hyatt v. Squires*** (US No. 25-1049), ***Dolby Laboratories Licensing Corp. v. Unified Patents, LLC*** (US No. 25-1011), and ***Finesse Wireless LLC v. AT&T Mobility LLC*** (US No. 25-953).

Federal Circuit News:

Judge Bryson receives the 2026 American Inns of Court Professionalism Award. On May 27, 2026, the Federal Circuit announced that Judge Bryson received the 2026 American Inns of Court Professionalism Award. The full article is here.

Federal Circuit Center Innovation & Law's America250 Event. On June 29, 2026, the Federal Circuit announced it has released the final wave of free timed-entry tickets to the event being held on July 3, 2026. The full article is here.

Key Case Summaries (May 2026)

Enviro Tech Chemical Services, Inc. v. Safe Foods Corp., No. 24-2160 (Fed. Cir. May 4, 2026): Enviro sued Safe Foods asserting infringement of Enviro's patent directed to methods for treating poultry for increasing the weight of poultry using peracetic acid. Specifically, claim 1 recites a method, including "altering the pH of the peracetic acid-containing water to a pH of *about* 7.6 to *about* 10 by adding an alkaline source." The district court determined that the intrinsic evidence did not inform a skilled artisan as to the scope of the term "about" with reasonable certainty and held that the claims were indefinite

The Federal Circuit (Lourie, J., joined by Prost and Burroughs (district court judge sitting by designation), JJ.) affirmed. The Court reasoned that words like "about" and "approximately" may be used to avoid strict numerical boundaries and are not inherently indefinite. However, when those words are used, the parameter's range must be "reasonably certain" based on the technical facts of the particular case. The Court then held that nothing in the claims, the specification, or the prosecution history provided any guidance as to the boundaries of "about" or explain what it means and therefore rendered the claims indefinite.

mCom IP, LLC et al. v. City National Bank of Florida, No. 24-2089 (Fed Cir. May 15, 2026): mCom sued City National, asserting infringement of its patent directed to unifying a financial institution's e-banking touch points into a common point of control. mCom had previously sued an entity named NRC Corporation, and during that litigation, Unified Patents had filed *inter partes* review (IPR) petitions challenging most of the claims of mCom's patent. The Patent Trial and Appeal Board (Board) ultimately held that all the challenged claims were unpatentable as obvious. mCom then sued City National asserting the few claims that had not been challenged in the IPR. The district court granted City National's motion to dismiss, which argued that the remaining claims were invalid because they were not patentably distinct from the claims invalidated by the IPRs. City National then moved for attorneys' fees under 35 U.S.C. § 285 and 28 U.S.C. § 1927, which the district court also granted.

The Federal Circuit (Taranto, J., joined by Dyk and Mayer, JJ.) affirmed-in-part and reversed-in-part . The Court first held that the district court correctly concluded the claims were invalid based on the same obviousness grounds as those the Board relied upon in the IPR. The Court reversed the award of fees, holding that it was not unreasonable for mCom to bring the case given the higher burden of persuasion of invalidity before the district court than before the Board.

A.L.M. Holding Company v. Zydex Industries Private Ltd., No. 25-1317 (Fed. Cir. May 19, 2026): ALM owns patents directed to warm-mix asphalt paving methods and compositions. ALM licensed certain limited rights to Ingevity, such as the ability to sublicense subject to ALM's approval, for a minimum annual royalty. ALM retained certain rights, such as use of the patents and the right to sue. When ALM sued Zydex for patent infringement, Zydex moved to dismiss for lack of standing. The district court granted the motion.

The Federal Circuit (Chen, J., joined by Cunningham and Stark, JJ.) reversed and remanded. The Court held that ALM retained a right to sue as well as a right to royalties. Moreover, the Court also held that ALM retained a sublicensing veto that prevents Invenvity from granting sublicenses without ALM's approval. These rights together confirm that ALM retains an exclusionary right, establishing that it has retained a concrete stake in excluding unauthorized practice of the patents and a mechanism to enforce that interest. The Court held that ALM therefore demonstrated a concrete injury in fact sufficient to confer constitutional standing.

The following Gibson Dunn lawyers prepared this update: Blaine Evanson, Jaysen Chung, Audrey Yang, and Julia Tabat.

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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