

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 June 2026 summarizes the current status of petitions pending before the Supreme Court, Federal Circuit news, and recent Federal Circuit decisions concerning attorney's fees under 35 U.S.C. § 285, verdict forms, estoppel under 35 U.S.C. § 351(e)(2), and claiming priority to a provisional application.

Federal Circuit News

Noteworthy Petitions for a Writ of Certiorari:

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

- [*Intel Corp. v. Squires*](#) (US No. 26-73): The question presented is “whether 35 U.S.C. § 314(d), which bars judicial review of ‘[t]he determination . . . whether to institute an *inter partes* review,’ applies even when no institution decision is challenged to preclude review of PTO rules that set standards governing institution decisions, particularly when those rules are based on a misinterpretation of § 314(a) to supposedly confer unlimited discretion on the Director to deny institution for any reason.” The response brief is due August 17, 2026.

We provide an update below of the petitions pending before the Supreme Court, which were summarized in our [May 2026 update](#):

- In ***Sunoco Partners Marketing & Terminals L.P. v. Powder Springs Logistics, LLC*** (US No. 25-1387), the respondents waived their right to respond. The Court will consider this petition at its September 28, 2026 conference.
- In ***Google LLC v. VirtaMove, Corp.*** (US No. 25-1230), after the respondents waived their right to file a response, the Court requested a response. VirtaMove filed its response brief on July 13, 2026. The USPTO requested an extension and its response brief is due September 11, 2026. Seven amicus briefs have been filed.

Federal Circuit News:

Notice of Proposed Amendments to the Federal Circuit Rules of Practice. The Federal Circuit announced proposed amendments to Federal Circuit Rules of Practice 32 (eliminating the use of *passim*) and the Practice Note to Rule 32 (incorporation by reference cannot be used to exceed word count). The full article is [here](#).

Federal Circuit Schedules October 2026 Session for Chicago. The Federal Circuit announced that it intends to sit in Chicago, Illinois as part of its October 2026 session. The announcement is [here](#).

Key Case Summaries (June 2026)

AGI SureTrack LLC v. Farmers Edge Inc., Nos. 24-1730, 24-1830 (Fed. Cir. June 2, 2026): AGI sued Farmers Edge for infringing patents relating to automated systems for capturing, processing, and sharing farming data. At summary judgment, the district court held the asserted patents were directed to patent-ineligible subject matter under 35 U.S.C. § 101 and held that the case was not exceptional for purposes of awarding attorney's fees under 35 U.S.C. § 285.

The Federal Circuit (Mayer, J., joined by Moore, C.J. and Lourie, J.) [affirmed-in-part, vacated-in-part, and remanded](#). The Court affirmed the district court's determination that the patents were patent ineligible under § 101, because the claims were directed to the abstract idea of collecting, analyzing, and transmitting "farming data" and there was no inventive concept in "automation to speed up the process of collecting and decoding data," a feature inherent with applying an abstract idea on a computer. Regarding exceptionality, Farmers Edge argued that the district court erred in entering a no exceptionality judgment without providing any explanation for its ruling and that it should have been afforded an opportunity to present argument and

evidence. The Court agreed and vacated the district court's no exceptionality ruling because "there was nothing" in "the record on appeal which would" allow the Court to "appropriately review whether the court abused its discretion in concluding that the case was not exceptional." The Court remanded with instructions to reassess exceptionality and determine if attorney's fees under § 285 is appropriate after giving both parties an adequate opportunity to present argument on the issue.

Ollnova Technologies Ltd. v. ecobee Technologies ULC, Nos. 25-1045, 25-1046 (Fed. Cir. Jun. 4, 2026): Ollnova sued ecobee for infringement of four patents directed to an integrated system of components that automates a process control within a building, such as components used to manage HVAC in a building. The district court held a jury trial, and despite the parties' agreement to require separate questions on the verdict form for each patent as to infringement, included only a single infringement question covering all the asserted patents. The jury found at least one of the patents infringed and awarded \$11.5 million. Additionally, even though the district court held that one of the patents was directed to an abstract idea, it held that factual disputes remained at *Alice* step two. However, the jury was not instructed so and the verdict form did not specify that the claims were directed to an abstract idea. The jury ultimately found the claims were not directed only to well understood, routine, and conventional technology at *Alice* step two.

The Federal Circuit (Chen, J., joined by Cunningham and Stark, JJ.) [affirmed-in-part, dismissed-in-part, and vacated and remanded](#). First, the Court held that the single combined infringement question on the verdict form was an abuse of discretion because it violated "the defendant's right to a unanimous verdict on each legal claim against it as it relates to infringement," and therefore vacated the infringement verdict and the damages award. The Court also held that the § 101 instructions for the one patent that the district court held was directed to an abstract idea were erroneous and not harmless because, by failing to identify the abstract idea, it permitted the jury to treat the abstract idea itself as supplying the inventive concept. The Court nonetheless affirmed the denial of judgment as a matter of law of ineligibility for that patent, finding sufficient evidence from which a reasonable jury could have found that the claimed dual-network architecture was not well-understood, routine, or conventional.

Ironburg Inventions Ltd. v. Valve Corp., No. 24-2088 (Fed. Cir. June 18, 2026): After Ironburg sued Valve for infringement of its patent directed to a video game controller, Valve petitioned for *inter partes* review (IPR) of Ironburg's patent. A third-party, Collective Minds Gaming Co. (CMG), subsequently filed an IPR petition on two new grounds of obviousness. Valve then amended its invalidity contentions to include the two CMG grounds. The district court granted Ironburg's motion for IPR estoppel, which Valve appealed. On the first appeal, the Federal Circuit held the district court improperly placed the burden of proof on Valve to show it could not have reasonably raised the CMG grounds in its petition. Instead, the burden of proof rests with Ironburg to prove that these were grounds Valve reasonably could have raised. On remand, the district court permitted additional limited discovery on this issue, after which Ironburg filed a renewed motion for IPR estoppel, which the district court granted.

The Federal Circuit (Hughes, J., joined by Chen and Stark, JJ.) [reversed and remanded](#). Petitioners are estopped from asserting invalidity theories based on any grounds that a skilled searcher conducting a diligent search reasonably could have expected to discover prior to the filing of an IPR petition. The Court held that a classification search that "returns an

unreviewable number of search results” is not enough for estoppel—rather, “something more is required.” Because the record included only the results of the classification search with no further narrowing, the Court found this evidentiary basis insufficient to support a finding of discoverability and reversed the judgment of the district court.

Judge Stark concurred, clarifying that in his view, estoppel under § 315(e)(2) requires both that the prior art reference were findable by a skilled searcher conducting a diligent search and that the skilled searcher would have been expected to discover the invalidity ground at issue. Judge Stark noted that the Court’s opinion only focused on the first step of the analysis as Valve did not separately challenge whether the grounds for invalidity were reasonably discoverable.

Enanta Pharmaceuticals, Inc. v. Pfizer Inc., No. 25-1427 (Fed. Cir. June 23, 2026): Enanta’s patent is directed to compounds and methods of inhibiting coronavirus replication activity. The patent attempts to claim priority from a provisional application filed July 20, 2020. However, while the patent defines a substituent of C₁-C₁₂-alkyl, the provisional recites C₂-C₁₂-alkyl. The subscripted numbers identify the number of carbon atoms in the alkyl group: C₂-C₁₂ denotes alkyl groups containing two to twelve carbon atoms, while C₁-C₁₂ additionally includes a one-carbon alkyl. On April 6, 2021, Pfizer publicly disclosed a protease inhibitor (nirmatrelvir) used in its Paxlovid® product, which has a substituent of a C₁-alkyl group. On July 9, 2021, Enanta contends that it realized its provisional application contained a typographical error and that C₂-C₁₂-alkyl should have been C₁-C₁₂-alkyl. Accordingly, on July 19, 2021, Enanta’s non-provisional application listed the relevant substituent with the C₁-C₁₂-alkyl. Enanta sued Pfizer alleging Paxlovid® infringed its patent. Pfizer moved for summary judgment that Enanta’s patent was invalid as anticipated because Enanta could not claim priority to the provisional as it did not provide written description support for a C₁-alkyl. Enanta argued that the provisional contained an obvious typographical error and no new matter had been added. The district court granted Pfizer’s motion concluding that the change from C₂ to C₁ was not an obvious typographical error, and thus, the patent could not claim priority to the provisional application. Therefore, Pfizer’s disclosure of nirmatrelvir anticipated the asserted claims.

The Federal Circuit (Lourie, J., joined by Bryson and Chen, JJ.) [affirmed](#). The Court distinguished this current case from its line of cases concerning the correction of errors in issued patents. The Court agreed with the district court that there was no obvious typographical error in the provisional. The Court then explained that in order to gain the benefit of the filing date of the provisional, the provisional must comply with the written description requirement. The Court concluded that the provisional does not convey to a skilled artisan that the inventors possessed the C₁-alkyl at the time of the provisional’s filing date, because the provisional’s disclosure of two to twelve carbon atoms (C₂-C₁₂) “notably does not include an alkyl group with one carbon atom” (C₁). Therefore, the provisional provided no written description support for the patent, and the patent could not be afforded the provisional’s priority date. The Court therefore affirmed the district court’s grant of summary judgment that the claims were anticipated by Pfizer’s disclosure of nirmatrelvir.

The following Gibson Dunn lawyers prepared this update: [Blaine Evanson](#), [Jaysen Chung](#), [Audrey Yang](#), [Julia Tabat](#), [Michelle Zhu](#), and [Elmira Adili](#).

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