

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 July 2026 summarizes the current status of petitions pending before the Supreme Court, Federal Circuit news, and recent Federal Circuit decisions concerning means-plus-function claims under 35 U.S.C. § 112(f), enablement, and the scope of the Federal Circuit's mandate on remand.

Federal Circuit News

Noteworthy Petitions for a Writ of Certiorari:

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

- [**Federal Express Corp. v. Qualcomm, Inc.**](#) (US No. 26-170): The question presented is “Does 35 U.S.C. § 314(d) bar judicial review of the Patent Office’s refusal to determine whether a petition identifies all real parties in interest when § 312(a)(2) authorizes the Office to consider petitions ‘only if’ they identify ‘all’ such parties?” After the respondents

waived their right to respond, the Court requested a response. The response brief is due September 28, 2026.

- [**Kahoot! AS v. Intersteller Inc.**](#) (US No. 26-198): The questions presented are: “Whether the PTO lacks statutory authority to deny inter partes review institution based on ‘settled expectations’ premised on a patent’s age where Congress prescribed express timing limits for inter partes review based on a patent’s minimum age (which is tied to the expiration of the statutory period for seeking post-grant review, a separate type of patent validity challenge) but imposed no *maximum* patent age bar.” 2. “Whether 35 U.S.C. § 314(d) bars judicial review, even by way of mandamus, of whether the PTO exceeded its statutory authority when denying inter partes review institution on grounds that are contrary to the statute.” The response brief is due September 16, 2026.

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

- In **Intel Corp. v. Squires** (US No. 26-73), the response brief is due September 16, 2026. Seven amicus briefs have been filed.
- 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 respondent waived its 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.

Key Case Summaries (July 2026)

Wyeth LLC v. AstraZeneca Pharmaceuticals LP, et al., No. 24-2325 (Fed. Cir. July 9, 2026): Wyeth sued AstraZeneca alleging induced infringement of its patent directed to methods of cancer treatment using irreversible inhibitors to treat a certain type of non-small cell lung cancer (NSCLC), which is associated with overactivity of an epidermal growth factor receptor (EGFR) that regulates cell growth and division. The claims recite “administering daily to the patient” a “unit dosage of an irreversible epidermal growth factor receptor (EGFR).” The specification explained that the claimed “unit dosage” refers to a predetermined quantity of active material calculated to produce “the desired therapeutic effect” in a patient, which depends on various characteristics of the subject to be treated. Thus, due to these variable factors, the

specification notes that the precise amount of active ingredient depends “on the judgment of the practitioner and are peculiar to each individual.” The case proceeded to trial, where a jury concluded that the asserted claims were not invalid and infringed. AstraZeneca moved for judgment as a matter of law (JMOL) that the claims were invalid for lack of enablement, because the patent failed to teach the proper unit dosage without “a tremendous amount of work and experimentation,” and the district court granted the motion.

The Federal Circuit (Lourie, J., joined by Linn and Hughes, JJ.) [affirmed](#). The Court reasoned that “to enable the claims, the specification must provide guidance to allow a skilled artisan to determine a daily unit dosage calculated to produce a therapeutic effect in a patient across the full scope of the claimed compounds without undue experimentation.” However, the specification left the calculation of the claimed “unit dosage” entirely to the knowledge of the skilled artisan. While the specification recited dosage ranges, it provided no further guidance on “how a skilled artisan would select among them for a given compound, or how they related to the claimed dosage unit to produce a therapeutic effect in a patient.” In fact, some of the doses in the disclosed ranges were shown to be toxic. The Court therefore concluded that the district court did not err in granting JMOL of invalidity due to lack of enablement.

Intellectual Pixels Ltd. v. Sony Interactive Entertainment LLC, No. 24-2174 (Fed. Cir. July 10, 2026): Sony filed petitions for *inter partes* review (IPR) of Intellectual Pixels (IPL)’s patents directed to methods for generating digital images. Prior to the date of the patent, many user devices struggled to render complex images on their own, and therefore, the patent purported to address this by outsourcing aspects of the image processing to external servers, which decreased the computational load on the user device. The claims recite (1) generating an “updated image” and (2) “compressing the at least one updated image and transmitting the compressed updated image to the client device.” In the Board’s first final written decision, it concluded that the challenged claims were not unpatentable over the prior art reference, Wiltshire, because Wiltshire only disclosed external servers *selecting* images and not *generating* images.

In the first appeal, the Court vacated that decision and remanded, concluding that the decision was not supported by substantial evidence, because Wiltshire disclosed operating its system in connection with the video game Doom, which required generating a new image. On remand, the Board recognized that Wiltshire in conjunction with a game like Doom, disclosed generating a new image, which met the generating limitation. The Board further found that these updated images were transmitted to the client computers as compressed MPEG streams, which met the compressing limitation. Thus, the Board concluded that the prior art rendered obvious the claim’s generating and compressing limitations. IPL appealed, arguing that the Board’s decision violated the Court’s mandate in the first appeal.

The Federal Circuit (Dyk, J., joined by Stoll and Stark, JJ.) [affirmed](#). The Court explained that the mandate rule “provides that issues actually decided on appeal are foreclosed from further consideration.” But issues that were undecided nor necessary to the disposition of the appeal are open on remand. Sony argued that the Board found in the first decision that Wiltshire was silent as to the compressing limitation, and therefore, did not render obvious the claim. Because the Board’s obviousness decision had been based on the generating limitation in the first decision, any findings of fact as to the compressing limitation were not addressed in the first appeal. Moreover, the Board’s findings with respect to the compressing limitation was implicitly

rejected in the first appeal when the Court determined that Wilshire in the context of Doom taught the generating limitation. The Board therefore correctly reached the logical conclusion that its prior finding that Wilshire was silent as to the compressing limitation had been rejected. Thus, the Board did not err in revisiting the compressing limitation on remand.

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

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)

Audrey Yang – Dallas (+1 214.698.3215, ayang@gibsondunn.com)

Appellate and Constitutional Law:

Thomas H. Dupree Jr. – Washington, D.C. (+1 202.955.8547, tdupree@gibsondunn.com)

Allyson N. Ho – Dallas (+1 214.698.3233, aho@gibsondunn.com)

Julian W. Poon – Los Angeles (+ 213.229.7758, jpoon@gibsondunn.com)

Jeffrey B. Wall – Washington, D.C. (+1 202.955.8533, jwall@gibsondunn.com)

Intellectual Property:

Kate Dominguez – New York (+1 212.351.2338, kdominguez@gibsondunn.com)

Josh Krevitt – New York (+1 212.351.4000, jkrevitt@gibsondunn.com)

Jane M. Love, Ph.D. – New York (+1 212.351.3922, jlove@gibsondunn.com)

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