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Appellate & Constitutional Law and Intellectual Property Update

November 12, 2026

Federal Circuit Update

This edition of Gibson Dunn's Federal Circuit Update for August/September 2026 summarizes the current status of petitions pending before the Supreme Court, Federal Circuit news, and recent Federal Circuit decisions concerning the status of prior art under AIA 35 U.S.C. § 102, attorneys' fees under 35 U.S.C. § 285, jurisdictional issues in the district court, and standing.

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:

- ***Oasis Tooling, Inc. v. Seimens Industry Software Inc.*** (US No. 26-504): The question presented is: "Whether a specific, multi-step computer-implemented process is patent eligible under 35 U.S.C. § 101 when it performs a task in a way fundamentally different from how people previously did it—or whether such a claim is necessarily directed to an unpatentable abstract idea merely because a person could perform a similar task through

a different and inferior mental process." The respondents waived their right to file a response brief. The Court will consider this petition at its November 13, 2026 conference.

- ***Fortress Iron, LP v. Digger Specialties, Inc.*** (US No. 26-362): The questions presented are: (1) "Whether [a] . . . co-inventor whose patent rights have been entirely assigned to the patent owner but who could not be found to receive notice is a 'party concerned' entitled to notice and hearing under 35 U.S.C. § 256(b) . . . ." (2) "Whether a patent . . . can be held invalid for the omission of one co-inventor after Congress repealed 35 U.S.C. § 102(f) in the America Invents Act . . . ." (3) "Whether the Federal Circuit's . . . holding that inventorship errors render patents permanently invalid when a co-inventor cannot be located undermines the harmonization of United States patent law with international patent standards that Congress intended to advance through the America Invents Act . . . ." The respondent filed its response brief on October 19, 2026. The Court will consider this petition at its December 4, 2026 conference.

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

- In ***Federal Express Corp. v. Qualcomm, Inc.*** (US No. 26-170), after the respondents waived their right to respond, the Court requested a response. Qualcomm filed its response brief on September 28, 2026. The Solicitor General requested an extension, which the Court granted, and filed its response brief on October 28, 2026.

- In ***Kahoot! AS v. Intersteller Inc.*** (US No. 26-198), the response brief was filed on October 16, 2026. Six amicus briefs have been filed. In ***Intel Corp. v. Squires*** (US No. 26-73), the response brief was filed on October 14, 2026, and the reply brief was filed on October 27, 2026. Seven amicus briefs have been filed. The Court will consider this petition at its December 4, 2026 conference.

- The Court denied the petitions in ***Sunoco Partners Marketing & Terminals L.P. v. Powder Springs Logistics, LLC*** (US No. 25-1387) and ***Google LLC v. VirtaMove, Corp.*** (US No. 25-1230).

Federal Circuit News:

The Federal Circuit Held Oral Arguments in Chicago. The Federal Circuit's schedule for the October session included sittings in Chicago: https://www.cafc.uscourts.gov/wp-content/uploads/Announcements/PublicNotices/Notice-PressReleaseOctober2026Session-09292026.pdf.

The Honorable Raymond C. Clevenger III Retires from the Federal Circuit. The Federal Circuit announced that Judge Clevenger retired from judicial service on October 2, 2026 after more than 36 years on the Federal Circuit. The announcement is here: https://www.cafc.uscourts.gov/the-honorable-raymond-c-clevenger-iii-retires-from-the-federal-circuit/.

Key Case Summaries (August/September 2026)

Dental Monitoring SAS v. Align Technology, Inc., No. 25-1752 (Fed. Cir. Aug. 10, 2026): Align filed an *inter partes* review (IPR) petition against Dental Monitoring's patent directed to a method for acquiring and analyzing an image of a patient's dental arch. The Patent Trial and Appeal Board (Board) concluded that the challenged claims were unpatentable as obvious, after determining that one reference, Carrier, qualified as prior art because it was entitled to the filing date of its provisional application.

The Federal Circuit (Lourie, J., joined by Schall and Taranto, JJ.) vacated and remanded. The Court determined that the Board erred in concluding that Carrier was entitled to the filing date of its provisional application without performing the appropriate analysis. Specifically, the Court held that, under the plain language of the statute, AIA 35 U.S.C. § 102(d)(2) provides that a patent or published application is prior art as of an earlier effective filing date only if the § 112 written description requirement is satisfied for at least one of the prior art patent's published claims. Because the Board did not make any factual findings as to whether Carrier's provisional application provided written description support for at least one of the claims in the Carrier patent, the Court vacated and remanded for further proceedings.

VDPP, LLC v. Volkswagen Group of America, Inc., No. 24-2226 (Fed. Cir. Aug. 19, 2026): VDPP sued Volkswagen, alleging infringement of its patent directed to electrically controlled spectacles. The district court granted Volkswagen's motion to dismiss for failure to state a claim and denied VDPP's motion for leave to amend after concluding the proposed amended complaint was futile. The district court subsequently denied VDPP's motion to amend the judgment, awarded Volkswagen attorneys' fees under 35 U.S.C. § 285, and sanctioned VDPP's attorney under 28 U.S.C. § 1927 and the court's inherent power.

The Federal Circuit (Moore, C.J., joined by Lourie and Cunningham, J.J.) affirmed-in-part and dismissed-in-part. In particular, the Court affirmed the district court's award of attorney fees under 35 U.S.C. § 285, holding that the district court did not err in determining that this was an exceptional case. The Court determined that the district court had ample justification for awarding attorneys' fees under § 285, including VDPP's frivolous and objectively unreasonable positions such as seeking future damages on an expired patent, VDPP's "sloppy errors" such as "obviously incorrect venue allegations to initial disclosures about an inrelated patent," and VDPP's pattern of filing a large number of patent infringement lawsuits and low-value settlement offers "unrelated to any damages theory."

AML IP LLC v. Bath & Body Works Direct, Inc., No. 25-1280 (Fed. Cir. Aug. 28, 2026): AML sued Bath & Body Works in the Eastern District of Texas for infringing a patent related to facilitating interactions between different service providers. Bath & Body Works filed a motion to dismiss for improper venue and failure to state a claim because the patent claimed ineligible subject matter. The district court granted the motion on both grounds.

The Federal Circuit (Prost, J., joined by Bryson and Reyna, JJ.) affirmed. AML argued that it was improper for the district court to reach the issue of patent ineligibility after having concluded that venue was improper. The Court held that the district court had the power to reach the question of patent eligibility because, unlike subject-matter jurisdiction, venue does not implicate a court's power to act. The Court further held that the principle that district courts should give "top priority" to venue motions did not render the district court's ineligibility ruling an abuse of discretion; that principle does not address what to do after concluding venue is improper. Rather, the Court observed that ruling on both venue and eligibility promoted judicial economy by allowing both issues to be addressed on appeal, if necessary.

TexasLDPC Inc. v. Broadcom Inc., No. 25-1074 (Fed. Cir. Sept. 14, 2026): TexasLDPC sued Broadcom for patent infringement. TexasLDPC is the exclusive licensee of the patent owned by Texas A&M University. The district court granted dismissal on the basis that TexasLDPC failed to join Texas A&M.

The Federal Circuit (Chen, J., joined by Moore, C.J. and Bissoon (district court judge sitting by designation), J.) reversed. "A patent owner may transfer all substantial rights in the patents-in-suit, in which case the transfer is tantamount to an assignment of those patents to the exclusive licensee, conferring standing to sue solely on the licensee." *Alfred E. Mann Found. for Sci. Rsch. v. Cochlear Corp.*, 604 F.3d 1354, 1358–59 (Fed. Cir. 2010). The Court explained that the "all substantial rights" inquiry is performed under a totality of circumstances review. The Court determined that TexasLDPC was granted an exclusive license, including the ability to sue and collect infringement damages without Texas A&M's approval or control. The Court held that the district court therefore erred in dismissing the suit under Rule 12(b)(7).

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

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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