



PANITCH TRAINING ACADEMY
Insights From Leaders In IP Law

Training Academy Session # 41

Intellectual Property Caselaw Update: Significant Court Decisions

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Session Overview

1. Trademark Cases (Slides 3-13)

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- Fuente Mktg. Ltd. v. Vaporous Techs., LLC
- Pa. State Univ. v. Vintage Brand LLC

2. Patent Cases (Slides 14-35)

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- Range of Motion Prods., LLC v. Armaid Co. Inc.
- GoTV Streaming, LLC v. Netflix, Inc.
- Enviro Tech Chemical Servs., Inc. v. Safe Foods Corp.
- Gramm v. Deere & Co.
- Ascendis Pharma A/S v. BioMarin Pharm. Inc. and ironSource Ltd. v. Digital Turbine, Inc.
- Fortress Iron, L.P. v. Digger Specialties, Inc.
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3. Copyright Cases (Slides 36-41)

- Cox Commc'ns, Inc. v. Sony Music Entm't
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4. Trade Secret Case (Slides 42-44)

- Int'l Med. Devices, Inc. v. Cornell

Trademark Cases

Dewberry Eng'rs Inc. v. Dewberry Grp., Inc. (Fourth Circuit)

- Last year, Supreme Court reversed the Fourth Circuit's \$42.9M disgorgement award, holding the Lanham Act's "defendant" covers only the defendants named in the suit, not related parties.
- Parties submitted supplemental briefs to Fourth Circuit. Plaintiff seeks to remand to the district court to pursue the same disgorgement total based on several theories the Supreme Court expressly left undecided:
 - The "just-sum" provision of the statute
 - Whether courts can look beyond a defendant's accounting records to ascertain the defendant's "true financial gain"
 - Whether corporate veil piercing may apply
- Plaintiff's argument based on idea that *entitlement* to disgorgement was not appealed to SCOTUS, only *amount*, and therefore entitlement must stand
- Case had been set for oral argument last week, but was continued at last minute
- Practical pointer: while these issues play out, err on side of caution and sue all related defendants that might receive the profits

Fuente Mktg. Ltd. v. Vaporous Techs., LLC, No. 2024-1460 (Fed. Cir. Apr. 8, 2026)

- **Background**

- Fuente (a Dominican cigar company) owns two standard-character federal trademark registrations for the letter “X” used on cigars, ashtrays, cigar cutters, and lighters
- Vaporous Technologies filed a trademark application for a stylized design depicting an abstract stick figure with a shaded circle above it to be used on oral vaporizers, specifically the “dabX” dab rig concentrate vaporizer
- Fuente opposed the registration under Section 2(d) of the Lanham Act, alleging a likelihood of confusion with its X marks

- **Procedural History**

- TTAB dismissed Fuente’s opposition in December 2023, finding no likelihood of confusion
- Fuente appealed to the Federal Circuit, challenging the Board’s analysis of *DuPont* factor 1 (similarity of the marks) and factor 5 (fame/strength of Fuente’s marks)



Fuentes OpusX Brand



Vaporous dabX

★ THE 13 DU PONT FACTORS ★ TO TRADEMARK LIKELIHOOD OF CONFUSION

What business owners need to know about trademark conflicts and how to avoid costly refusals.

DuPont Factor 1



SIMILARITY
OF THE MARKS



SIMILARITY
OF THE GOODS/SERVICES



TRADE CHANNEL
SIMILARITY



BUYER SOPHISTICATION
FAME OF THE PRIOR MARK



SIMILAR MARKS ALREADY IN USE
EVIDENCE OF ACTUAL CONFUSION



CONCURRENT USE
WITHOUT CONFUSION



VARIETY OF GOODS UNDER PRIOR MARK
MARKET INTERFACE BETWEEN PARTIES



RIGHT TO EXCLUDE OTHERS
EXTENT OF POTENTIAL CONFUSION



ANY OTHER PROBATIVE FACTS



DuPont Factor 5

Fuente Mktg. Ltd. v. Vaporous Techs., LLC, No. 2024-1460 (Fed. Cir. Apr. 8, 2026)

- **Legal Issue**

- Whether the TTAB properly concluded that there was no **likelihood of confusion** where consumers would perceive the Vaporous mark as a stick figure rather than as the letter “X,” notwithstanding overlapping channels of trade

- **Federal Circuit Decision (Apr. 8, 2026)**

- Affirmed the TTAB’s dismissal of Fuente’s opposition
- Confirmed that **a single *Dupont* factor can be dispositive**
- Here, the 1st factor (dissimilarity of the marks) was dispositive – consumers would perceive the Vaporous mark as a stick figure, producing a distinct commercial impression
- As for the 5th factor, Fuente’s X marks have **strong conceptual strength** (*i.e.*, arbitrary as applied to cigars) but **weak commercial strength** because consumers would not independently consider the letter “X,” standing alone, as a source indicator for Fuente

- **Practical Pointers**

- Dissimilarity of marks can trump other *DuPont* factors that favor the opposer
- Conceptual strength alone does not entitle a mark to greater protection where commercial evidence indicates that the mark is not a standalone source identifier

Pa. State Univ. v. Vintage Brand LLC (3d Cir.) (pending)

- **Background**

- Penn State sued Vintage Brand for selling t-shirts, hats, and other merchandise bearing Penn State word marks and logos.
- Vintage Brand admits it digitally copied the logos from vintage Penn State merchandise and applied them to blank goods without a license.



Pa. State Univ. v. Vintage Brand LLC (3d Cir.) (pending)

- **District Court Decision (M.D. Pa., Case No. 4:21-cv-01091)**
 - District Court granted Defendants summary judgment on counterfeiting and dilution-by-blurring; infringement claim went to jury.
 - Nov. 2024: jury found willful infringement.
- Cross-appeals to the Third Circuit.
 - Penn State appeals dismissal of its counterfeiting and dilution claims (allegedly costing \$60M+ in statutory damages and mandatory fees)
 - Vintage Brand cross-appeals infringement.

Pa. State Univ. v. Vintage Brand — Issues Presented & Penn State's Arguments

- **Issues on Penn State's Appeal**
 - Whether the District Court improperly limited “counterfeit” to confusion as to manufacturing origin, rather than sponsorship or approval.
 - Whether the court misapplied the Trademark Dilution Revision Act of 2006 by treating mark similarity as a threshold (“essentially the same”) requirement rather than one factor in a holistic analysis.
- **Penn State's Main Arguments (Appellant)**
 - The Lanham Act merely asks whether the defendant's mark is identical or substantially indistinguishable from the original when determining counterfeiting.
 - The TDRA expressly abrogated any “essentially the same” similarity threshold for blurring; consumer association with two sources is exactly what the statute targets.

Pa. State Univ. v. Vintage Brand — Cross-Appeal

- **Vintage Brand's Cross-Appeal (Appellees)**
 - Aesthetic functionality: consumers want to express affinity with Penn State, not using name or images as a source indicator, so the name and images are functional and unprotectable.
 - Seeks to reinstate a prior Third Circuit decision on the issue — *University of Pittsburgh v. Champion Products Inc.*, 686 F.2d 1040 (3d Cir. 1982) — which was settled in such a way that it led to a consent decree vacating that decision.

Pa. State Univ. v. Vintage Brand — Amici

- **Amici**

- Supporting Penn State: SPLiCE (Society of Product Licensors) — the District Court’s narrow counterfeiting test would cripple CBP enforcement.
 - The gist: CBP agents can’t do a deep dive on manufacturing origins, they have to just rely on a visual inspection of the mark itself.
- Supporting Penn State: Intellectual Property Owners Association (IPO) — no reason to prohibit licensors from asserting counterfeiting; the dilution standard requires consideration of similarity as just one factor, not a dispositive threshold.
- Supporting Vintage Brand: 25 Trademark Law Professors (Stanford Juelsgaard IP Clinic) — university-merchandise consumers are engaged in expressive use; courts should adopt a framework drawn from nominative fair use and aesthetic functionality, not the standard *Lapp* factors.

Patent Cases

Hikma Pharms. USA Inc. v. Amarin Pharma, Inc., No. 24-889 (U.S. Cert. Granted)

- **Update from Last Year’s “Skinny Label” Decision**

- Federal Circuit found Hikma’s carved-out “skinny label” in addition to its public statements, press releases, pricing strategies, and public references to the sales market of Amarin’s brand drug, Vascepa®, sufficient to constitute active, **induced infringement** of its generic form of the drug for patented uses (*i.e.*, treatment of SH and other CV conditions)

- **Where Things Currently Stand**

- Supreme Court granted certiorari to review Federal Circuit’s standard for induced infringement liability in the Hatch-Waxman “skinny label” context on January 16, 2026
- Oral arguments held on April 29, 2026
- The United States filed amicus brief in support of Hikma
- Final decision expected by June 2026



Hikma Pharms. USA Inc. v. Amarin Pharma, Inc., No. 24-889 (U.S. Cert. Granted)

- **Legal Questions Presented for Review**

- 1) When a generic drug label fully carves out a patented use, are allegations that the generic manufacturer calls its product a “generic version” and cites public information about the branded drug (e.g., sales) enough to plead **induced infringement** of the patented use under 35 U.S.C. § 271(b)?
- 2) Does a complaint state a claim for induced infringement of a patented method if it does not allege any instruction or other statement by the defendant that **encourages**, or even mentions, the patented use?

- **Lasting Impacts of Supreme Court Decision**

- This case will have substantial implications for pharmaceutical IP, influencing how generic drug manufacturers use skinny labels and the ANDA Section VIII pathway to carve-out patented indications
- Generic manufacturers may face liability for induced patent infringement under 35 U.S.C. § 271(b) if their public marketing contradicts their FDA-approved label

Range of Motion Prods., LLC v. Armaid Co. Inc., No. 2023-2427 (Fed. Cir. Feb. 2, 2026)

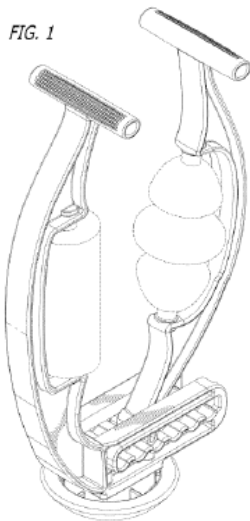
- **Background**

- Range of Motion Products (“RoM”) owns U.S. Design Patent D802,155 (“155 Patent”), titled “Body Massaging Apparatus,” covering its Rolflex device.
- Armaid Company markets the competing Armaid2 massage device.
- Core issue: whether certain features of the claimed design are functional or ornamental, and how that distinction affects claim scope for purposes of infringement.
- On Aug. 28, 2023, district court granted summary judgment of non-infringement, construing the design to exclude functional features.
- RoM appealed.

Range of Motion Prods., LLC v. Armaid Co. Inc., No. 2023-2427 (Fed. Cir. Feb. 2, 2026)

- **Legal Issue**

- Whether the district court erred by excluding the shape of the arms as functional in construing the claimed design.



Range of Motion Prods., LLC v. Armaid Co. Inc., No. 2023-2427 (Fed. Cir. Feb. 2, 2026)

- **Federal Circuit Decision (Feb. 2, 2026)**
 - 2-1 decision affirmed summary judgment of non-infringement.
 - The shape of the arms is functional, not ornamental, based on evidence showing the shape functions to manipulate the amount of pressure. It was therefore properly excluded from claim scope.
 - Solid lines in drawings need not be considered purely ornamental, and dashed lines need not be considered purely functional.
 - **Chief Judge Moore dissented**
 - would have allowed jury to decide infringement.
 - courts have wrongly started to focus on whether designs are “sufficiently distinct” or “plainly dissimilar,” rather than “substantially similar.”
- RoM petition for *en banc* review is pending, with support from several amici.
- **Practical Pointers**
 - Design patent drafting: explicitly distinguish ornamental from functional features to preserve enforcement scope.
 - Litigating: focus on similarities, not differences.

GoTV Streaming, LLC v. Netflix, Inc., Nos. 2024-1669, 2024-1744 (Fed. Cir. Feb. 9, 2026)

- **Background**

- GoTV owns three U.S. patents directed to methods and systems for delivering and tailoring server content for streaming on wireless devices based on device capability (*i.e.*, screen size, resolution, processing power)
- GoTV sued Netflix, asserting direct and induced patent infringement
- Netflix moved for judgment on the pleadings, arguing that the asserted GoTV patents were directed to **ineligible subject matter** and invalid under 35 U.S.C. § 101 for reciting claims directed to abstract ideas

- **Procedural History**

- GoTV's induced infringement claims dismissed for Netflix's lack of pre-suit knowledge
- The district court construed the disputed claim phrase "discrete low level rendering command" in Netflix's favor, finding the term indefinite under § 112(b) and all asserted claims of one of the three GoTV patents invalid
- The jury found Netflix liable for direct infringement of the remaining two GoTV patents, awarding \$2.5M in damages

GoTV Streaming, LLC v. Netflix, Inc., Nos. 2024-1669, 2024-1744 (Fed. Cir. Feb. 9, 2026)

- **Legal Issue**

- Whether claims directed to server-implemented tailoring of content delivery to wireless device capabilities are patent-eligible under 35 U.S.C. § 101

- **Federal Circuit Decision (Feb. 9, 2026)**

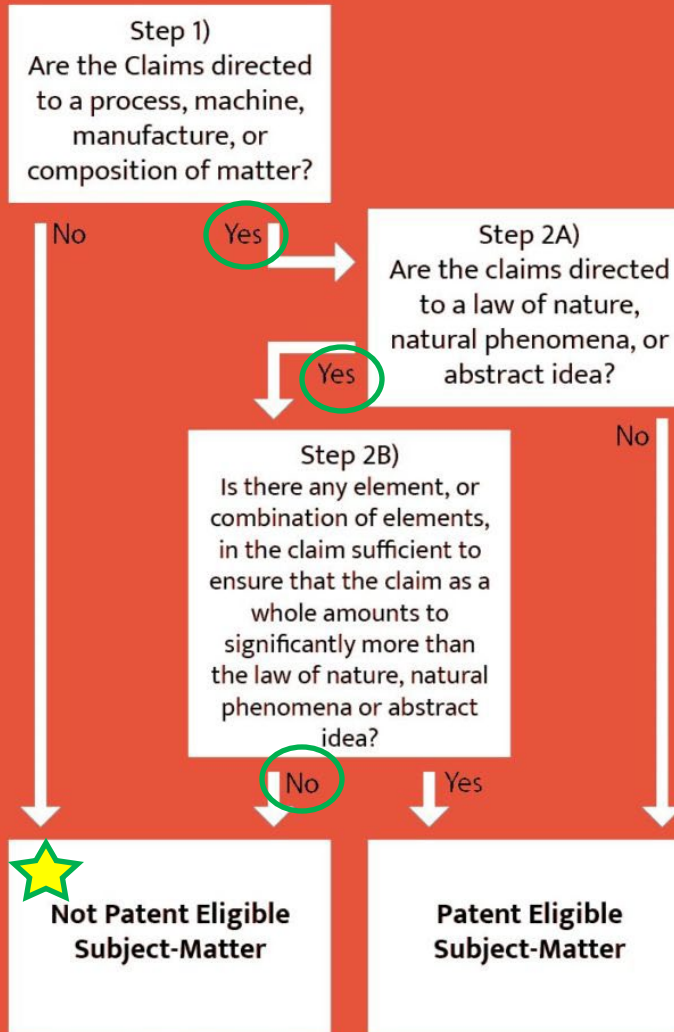
- Applying the § 101 analysis under *Alice*, the Court reversed on patentability, finding the claims of all asserted GoTV patents directed to patent ineligible subject matter
- *Alice* step 1: claims directed to an **abstract idea** – a template set of specifications that can be tailored for final production of a specified product to fit a user's constraints
- *Alice* step 2: claims **lack an inventive concept** because they require ordinary computer/network functions but do not recite any concrete, technical improvement in how computers/networks perform their functions to sufficiently transform the claims

- **Practical Pointers**

- To survive § 101, draft claims to recite concrete, technical improvements (e.g., specific structures, algorithms, or data-structure) in how computers perform a set of functions
- Claims using computers as tools in their ordinary capacity cannot transform an abstract idea into patent-eligible subject matter



Alice Two-Part Test



Source: https://www.uspto.gov/sites/default/files/documents/2014_eligibility_uspd1

Enviro Tech Chemical Services, Inc. v. Safe Foods Corp., No. 2024-2160 (Fed. Cir. May 4, 2026)

- **Background**

- Enviro Tech owns U.S. Patent No. 10,912,321, directed to methods for treating poultry carcasses with peracetic acid to increase poultry weight during processing.
- Representative claim 1 recites altering the pH of the peracetic-acid-containing water to a "pH of ***about*** 7.6 to ***about*** 10."
- During prosecution, Enviro Tech amended the lower boundary from "about 7.3" to "about 7.6" to overcome prior art disclosing a pH at 7.0.

- **Procedural History**

- The district court held all asserted claims invalid for indefiniteness due to the "about" inclusion.
- Enviro Tech appealed.

Enviro Tech v. Safe Foods — Decision & Practical Pointers

- **Federal Circuit Decision (May 4, 2026)**

- Affirmed. "About" rendered the asserted claims indefinite.
- Words of approximation can be OK to avoid a strict numerical boundary but must be reasonably certain considering the facts.
- Specification: "muddled" and conflicting. Some experiments indicated "about" means within 0.3 of the target, but one showed deviations of 0.35–0.5, undermining claim that 0.3 defined "about."
- Prior art: claim was amended to avoid prior art at pH 7.0, heightening the need for clarity that the vague term could not provide.

- **Practical Pointers**

- "About" / "approximately" remain permissible but must give § 112(b) a hook.
- Internal inconsistency between the specification's experiments and the claimed range can be fatal.
- Include a dependent claim with fixed parameters as a fallback.
 - Litigators can always rely on doctrine of equivalents!

Gramm v. Deere & Co., No. 2024-1598 (Fed. Cir. Mar. 11, 2026)

- **Background**

- Gramm owns U.S. Patent No. 6,202,395 covering an apparatus for maintaining the header of a crop harvester at a desired height above the ground as the harvester traverses a field
- Reaper (exclusive licensee of the '395 Patent) and Gramm sued Deere in 2014, alleging infringement by certain Deere header sensor kits
- After Deere's IPR challenge and subsequent appellate review, only independent claim 12 (and certain dependent claims) remained asserted at the district court

- **Procedural History**

- During claim construction, the district court construed the following **means-plus-function** limitation recited in claim 12
 - “control means ... for raising or lowering the header in accordance with said first signal in maintaining the header a designated height above the soil.”
- S.D. Iowa found the “control means” limitation indefinite under **35 U.S.C. §112(f)**
 - Excluded Dial-A-Matic Version #1 as a corresponding structure because it was incapable of performing lateral movement/positioning of the header
 - Dial-A-Matic Versions #2 and #3 provided sufficient structure, but because the patent fails to disclose an algorithm as part of the computer/microprocessor structure, the limitation was held indefinite

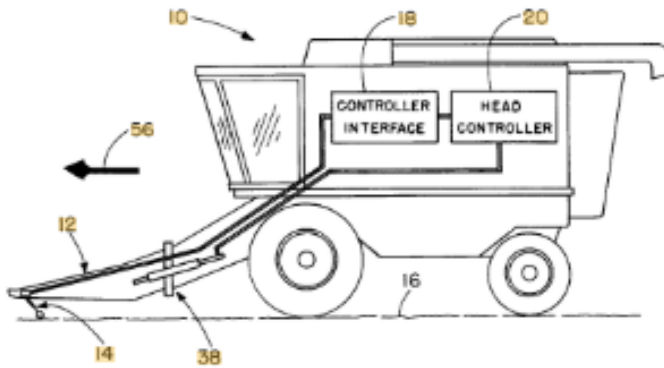


FIG. 1

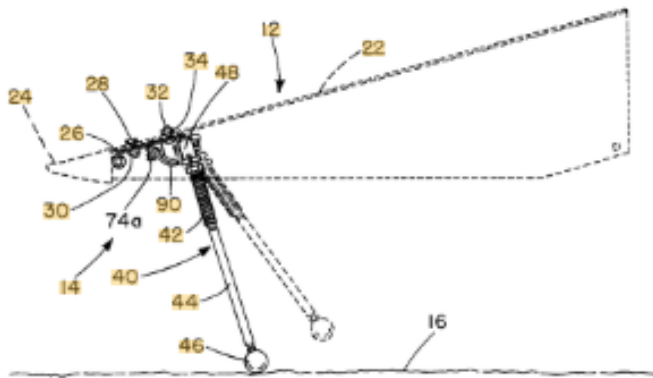
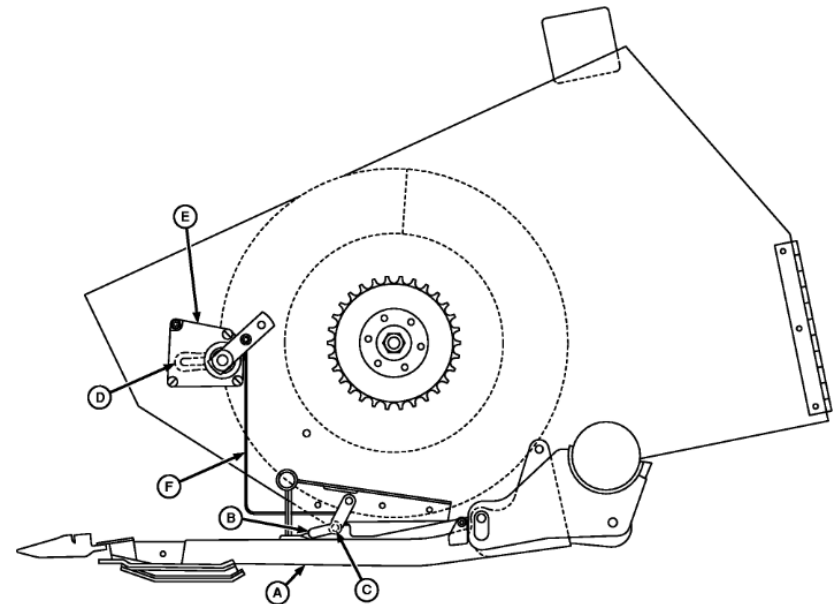


FIG. 2



Deere's DIAL-A-MATIC™ Header Height Control

Figs. 1 & 2, U.S. Patent No. 6,202,395

Gramm v. Deere & Co., No. 2024-1598 (Fed. Cir. Mar. 11, 2026)

- **Legal Issue**

- Whether a disclosed structure should be excluded as a corresponding **structure under § 112(f)** if it is capable of performing the claimed function, but incapable of performing any additional, distinct function mentioned in the specification

- **Federal Circuit Decision (Mar. 11, 2026)**

- Reversed the indefiniteness ruling and remanded, finding that the district court clearly erred in excluding the Dial-A-Matic Version #1 as a corresponding structure for the “control means,” irrespective of any lacking disclosure as to an algorithm for the microprocessor-containing Versions #2 and #3
- A structure disclosed in the specification which **performs the *claimed* function** (raising & lowering the header to designated height above soil) but **does not perform *additional function(s)*** disclosed in the specification (lateral positioning) should not be excluded as a corresponding structure for definiteness under § 112(f)
- Unlike Versions #2 and #3, the Dial-A-Matic Version #1 is controlled through circuitry, not a microprocessor, so no explicit algorithm disclosure is required

- **Practical Pointer**

- Practitioners should anchor means-plus-function limitations to exemplary, corresponding structures, even if those structures perform functions beyond those specifically recited

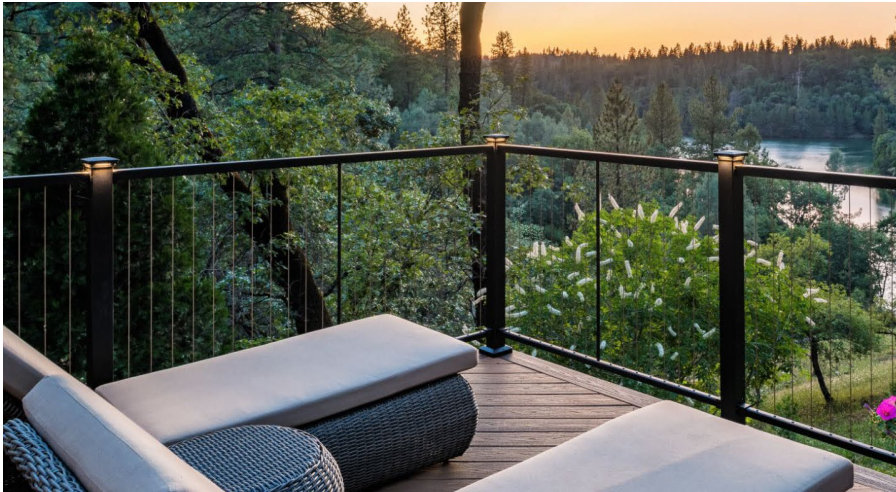
Two Procedural Notes

- **Ascendis Pharma A/S v. BioMarin Pharm. Inc.** (Fed. Cir. Mar. 26, 2026)
 - Holding: The deadline to seek a 28 U.S.C. § 1659(a)(2) mandatory stay (in favor of a parallel ITC proceeding) is not reset by voluntarily dismissing and then refiling the district court action. The "filed" date for § 1659 purposes refers to the **original** action.
 - **Takeaway: ITC respondents in parallel district-court DJ actions should coordinate § 1659 timing carefully.**
- **ironSource Ltd. v. Digital Turbine, Inc.** (Fed. Cir. Apr. 7, 2026)
 - Holding: Dismissed for lack of **Article III standing** — a PTAB petitioner cannot appeal an adverse decision on substitute claims based only on past infringement accusations tied to the original (broader) claims; standing requires concrete evidence linking the petitioner's product to the specific **narrowing limitations** of the amended substitute claims.
 - **Takeaway: Standing to *petition* the PTAB ≠ standing to *appeal*. Build a record at the IPR stage tying product features to the specific amended-claim limitations.**

Fortress Iron, L.P. v. Digger Specialties, Inc., No. 2024-2313 (Fed. Cir. Apr. 2, 2026)

- **Background**

- Matthew Sherstad (Fortress owner) had an idea for a vertical cable railing system sold as a pre-assembled panel, and Kevin Burt (Fortress employee) sketched the initial design
- Sherstad and Burt worked with Hua-Ping Huang and Alfonso Lin (employees of Fortress's Chinese manufacturing partner) to produce a prototype of the panel
- Huang and Lin suggested changes to address the cable tensioning issue of the prototype, and the final design (embodied in Fortress's '707 and '209 Patents) incorporated Huang's and Lin's proposed modifications
- Fortress's patents direct to the pre-assembled vertical cable railing panels named only Sherstad and Burt as inventors
- Huang's employment with the Chinese manufacturer company ended in 2016, and Huang did not give his contact information to Fortress or his prior employer before leaving



Fortress Vertical Cable Railing

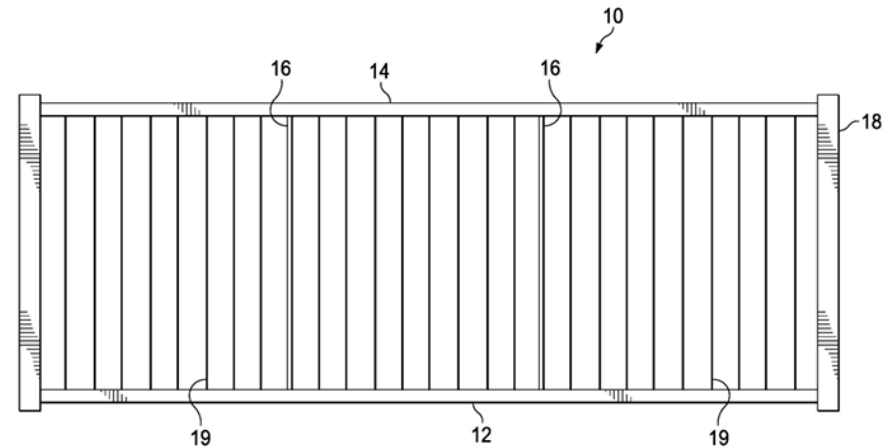


FIG. 1

Fig. 1, U.S. Patent No. 9,790,707

Fortress Iron, L.P. v. Digger Specialties, Inc., No. 2024-2313 (Fed. Cir. Apr. 2, 2026)

- **Procedural History**

- Fortress sued Digger Specialties in January 2021 asserting infringement of the '707 and '209 Patents
- During litigation, Digger learned that Huang and Lin contributed to the invention, the parties agreed that Huang and Lin should be named as co-inventors, and Fortress successfully located and added Lin as an inventor under **35 U.S.C. § 256(a)**
- Unable to locate and, therefore, add Huang as a co-inventor of the asserted patents, Fortress moved for partial summary judgment to add Huang under **35 U.S.C. § 256(b)**
- Digger opposed the motion and moved for summary judgment of invalidity of the '707 and '209 Patents for invalid inventorship
- The district court denied Fortress's motion and granted Digger's motion for summary judgment, holding both patents invalid for omitting inventor Huang



(a) Correction.—Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent, the Director may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error.

(b) Patent Valid if Error Corrected.—The error of omitting inventors or naming persons who are not inventors shall not invalidate the patent in which such error occurred if it can be corrected as provided in this section. The court before which such matter is called in question may order correction of the patent on notice and hearing of all parties concerned and the Director shall issue a certificate accordingly.

35 U.S.C. § 256

Fortress Iron, L.P. v. Digger Specialties, Inc., No. 2024-2313 (Fed. Cir. Apr. 2, 2026)

- **Legal Issue**

- Whether an omitted co-inventor is a “**party concerned**” under 35 U.S.C. § 256(b) who must receive notice & an opportunity to be heard before judicial inventorship correction

- **Federal Circuit Decision (Apr. 2, 2026)**

- Huang – an agreed-upon, omitted co-inventor – is a “party concerned” and must receive **notice and opportunity for hearing** before § 256(b) correction
- Rejected Fortress’s arguments that its inability to contact Huang should not deprive it of a valid patent
- Because Fortress cannot satisfy the notice and hearing prerequisite, it cannot utilize the § 256(b) “**savings provision**” to correct its patents
- “While the statute does not define a ‘party concerned,’ it does not follow that a coinventor of a patent is not a ‘party concerned’ when it comes to adding or removing a coinventor,” noting that inventorship carries “legal, financial, and ownership consequences that an inventor has a right to contest.”
- Because the asserted patents omitted inventor Huang – an error which **cannot be corrected** – they are invalid under 35 U.S.C. § 101

- **Practical Pointer**

- Document inventorship contemporaneously (especially in international collaborations) and collect & maintain contact information for potential inventors

Teva Pharms. Int'l GmbH v. Eli Lilly & Co., No. 2024-1094 (Fed. Cir. Apr. 16, 2026)

- **Background**

- Teva owns patents claiming **methods of using** certain antibodies to treat headache.
- Teva's marketed embodiment is **Ajovy**. Lilly sells **Emgality**.
- The specification disclosed only one antibody in the genus, but recited that such antibodies (and methods of making them) were known in the art.

- **Procedural History**

- Lilly first attacked Teva's **composition** patents in IPRs (2018), arguing that the antibodies were "well known," "replete" in the prior art, and that humanization was "well-established and routine." PTAB invalidated composition patents but upheld method patents.
- D. Mass.: jury found Lilly willfully infringed and rejected Lilly's written-description and enablement defenses; awarded damages.
- District court granted Lilly JMOL of invalidity on **both** written description and enablement. Teva appealed.

Teva v. Lilly — Legal Issues, Decision & Practical Pointers

- **Legal Issues**

- Whether claims to the **method of using** a known genus of antibodies for a new therapeutic purpose require disclosure of a representative number of species of the genus — the same 112 disclosure required when the claim is to the genus *itself*.
- Whether the "research assignment" framework of *Amgen v. Sanofi*, 598 U.S. 594 (2023), and *Baxalta v. Genentech*, 81 F.4th 1362 (Fed. Cir. 2023) applies when the claimed antibodies are known and humanization is routine.

- **Federal Circuit Decision (Apr. 16, 2026) — Reversed and Remanded**

- The headache claims do not claim antibodies — they claim using known antibodies to treat a new condition. *Amgen* and *Baxalta*, which claimed new antibody **genera**, do not apply.
- When a known genus is used as a building block in a different invention, the patentee need not catalog every species — the disclosure can rely on background knowledge in the art.

- **Practical Pointers**

- *Amgen* targets **genus claims to antibodies themselves**, not method-of-use claims that incorporate a known genus.
- Positions taken in IPR (e.g., "well known") can be turned around at trial to defeat written description and enablement defenses.
- Drafters: tether broad antibody method-of-use claims to known genera and disclose at least one working species.

Copyright Cases

Cox Commc'ns, Inc. v. Sony Music Entm't, No. 24-171 (Mar. 26, 2026)

- **Background**

- Cox Communications is an ISP serving ~ 6M subscribers
- Sony Music and other copyright owners engaged MarkMonitor to track online infringement across the Internet, resulting in a total of 163,148 notices sent over a two-year period identifying specific subscriber IP addresses associated with infringing activity
- Sony sued Cox under a theory of **contributory copyright infringement** and **vicarious liability** for continuing to provide Internet service to subscribers identified as infringing

- **Procedural History**

- The jury found Cox liable for both contributory and vicarious infringement, found infringement “willful,” and awarded \$1B in statutory damages
- Fourth Circuit affirmed on contributory liability but reversed with respect to Cox’s vicarious liability, vacating and remanding for damages reassessment on the contributory theory alone
- Supreme Court granted Cox’s petition for certiorari on the contributory liability issue only, denying Sony’s cross-petition on vicarious liability



Cox Commc'ns, Inc. v. Sony Music Entm't, No. 24-171 (Mar. 26, 2026)

- **Legal Issue**

- Whether knowledge of infringement, alone, is sufficient to establish liability under a theory of **induced or contributory copyright infringement**

- **Supreme Court Decision (Mar. 25, 2026)**

- Cox is not contributorily liable for its subscribers' infringement: "mere knowledge that a service will be used to infringe is insufficient to establish the required intent to infringe"
- Cox did not induce or encourage its users to infringe copyrights, hence **no induced infringement**
- Though Cox provided a service capable of infringement, Cox's Internet service was not specifically tailored to infringement but instead capable of substantial and commercially-significant non-infringing uses, hence **no contributory infringement**
- **Mere knowledge** that a service is being used to infringe is not enough: "[h]olding Cox liable merely for failing to terminate Internet service to infringing accounts would expand secondary copyright liability beyond our precedents"
- Concurring, Sotomayor criticized the majority for foreclosing **common-law aiding-and-abetting** as a potential third theory of secondary liability

- **Practical Pointers**

- Secondary liability claims require proof of active inducement (marketing, promotion, encouragement), or a product/service with no substantial lawful use
- Narrows the scope of potential copyright infringement liability, particularly for ISPs, though Sotomayor leaves the door open to future aiding-and-abetting arguments

Whyte Monkee Prods., LLC v. Netflix, Inc., No. 22-6086 (10th Cir. Apr. 30, 2026) (on rehearing)

- **Background**

- In *Tiger King: Murder, Mayhem and Madness*, Netflix used a 66-second excerpt of cameraman Tim Sepi's "Funeral Video" of Travis Maldonado (Joe Exotic's late husband).
- Sepi / Whyte Monkee sued for copyright infringement; Netflix asserted fair use under 17 U.S.C. § 107.
- W.D. Oklahoma granted Netflix summary judgment on fair use; the original Tenth Circuit panel reversed (101 F.4th 787 (10th Cir. 2024)) — that opinion was vacated on rehearing.

- **Legal Issues on Rehearing**

- Role of § 107 "preamble" purposes (criticism, comment, news reporting, scholarship, research) in documentary use of film clips, and the impact of *Warhol*.
- Whether the defendant must "target" the original work for fair use to apply.
- Who bears the burden on factor four when the plaintiff has identified no protectible derivative market.

Whyte Monkee Prods., LLC v. Netflix, Inc., No. 22-6086 (10th Cir. Apr. 30, 2026) (on rehearing)

- **Tenth Circuit Decision on Rehearing (Apr. 30, 2026)**
 - Affirmed summary judgment for Netflix; all four fair-use factors favor fair use.
 - 66 seconds ($\approx 2.58\%$ of Episode 5; $< 1\%$ of the series) was insubstantial; commerciality of paywalled streaming did not flip factor one.
- **Practical Pointers — Issues Not Squarely Resolved Before**
 - **Broad vs. narrower justification under *Warhol*:** alignment with § 107 preamble purposes is itself a "broad" justification that supports factor one — no parody-style "narrower" justification is required absent shared purpose with the original.
 - **Targeting not required:** confirms *Warhol* footnote 21 — defendants need not comment on or "target" the copied work for transformative use to apply.
 - **"Use," not "work," is the unit of analysis** (echoing Justice Gorsuch's *Warhol* concurrence) — the same secondary work can be fair use in one context and infringing in another.
 - **Novel factor-four ruling:** *Campbell*'s "silent record" language is a *prediction*, not a *legal requirement*. A defendant need not disprove harm to derivative markets the plaintiff never identified — adopting Restatement of Copyright § 6.12 cmt. p and aligning with the Second Circuit (*Hachette, Leibovitz*).

Trade Secret Case

International Medical Devices, Inc. v. Cornell, Nos. 2025-1580, 2025-1605 (Fed. Cir. Apr. 17, 2026)

- **Background**

- IMD, Menova International, and urologist Dr. James Elist make the Penuma® cosmetic penile implant — the only commercially available product of its kind in 2018.
- After signing an NDA at a March 2018 Penuma surgical training, Dr. Robert Cornell allegedly used Dr. Elist's design ideas to develop a competing implant ("Augmenta") and to file patent applications without naming Dr. Elist as an inventor.
- Plaintiffs asserted four California trade secrets. They also asserted breach of NDA, Lanham Act counterfeiting (advertising as "Penuma®-certified" surgeons), and patent invalidity for incorrect inventorship.

- **Procedural History**

- Jury found for plaintiffs on every claim, including all four trade secrets and willful & malicious misappropriation. After a bench trial on damages, the court awarded a reasonable royalty, exemplary and counterfeiting damages, and a permanent injunction.
- Defendants appealed.

IMD v. Cornell — Legal Issues, Decision & Practical Pointers

- **Main Legal Issues**

- Whether each trade secret was "generally known" and whether the inquiry tracks patent-law obviousness or instead a "less granular" standard.
- Whether Dr. Elist's contributions support a § 116 inventorship claim where they are coextensive with concepts the prior art already disclosed.

- **Federal Circuit Decision (Apr. 17, 2026) — Reversed-in-part**

- Trade secrets: reversed. Each of the four asserted trade secrets was generally known in prior art references, therefore not trade secrets.
- Patent invalidity for incorrect inventorship: reversed — Dr. Elist contributed only generally known concepts, which cannot support inventorship.

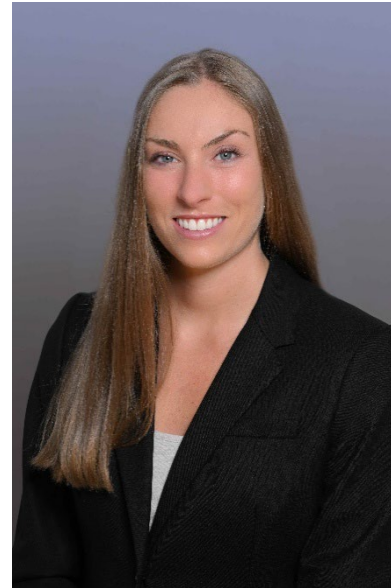
- **Practical Pointers**

- Trade-secret "generally known" inquiry is **not** a patent-law obviousness analysis — there is no scrutiny of motivation to combine or secondary considerations. It's either known or it isn't.
- Inventorship claims dependent on "generally known" contributions fail as a matter of law.

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