

Table of Contents

I.	Patentability Requirements	1
A.	Inventorship/Invention and Priority Dates.....	1
1.	Priority from Previous Applications	1
a.	Published Applications Under AIA	1
B.	Prior Art Invalidity.....	1
1.	Reference Disclosure	1
a.	Incorporation.....	1
i.	Incorporated Standards	1
b.	Disclosure to POSITA	1
i.	Expert Testimony.....	1
ii.	Substantial Evidence of Disclosure	1
c.	Measurements/Scale in Patent Drawings or Figures	2
2.	Anticipation (§ 102).....	2
a.	Exception for AIA Patents.....	2
b.	Summary Judgment/JMOL.....	2
i.	Despite Expert Testimony.....	2
3.	Obviousness (§ 103)	3
a.	Analogous Prior Art.....	3
i.	Reasonably Pertinent to Problem.....	3
b.	Teaching Away	3
C.	Invalidity Based on § 112	3
1.	Enablement (¶ 1).....	3
a.	Impact of Ordinary Skill in the Art and Corresponding Knowledge.....	3
b.	Complexity and Unpredictability of the Art	3
c.	Claimed Use in Humans Based on Non-Human Experiments	3
d.	Specification Errors and Inoperative Embodiments	4
2.	Written Description (¶ 1)	4
a.	Species Disclosure Supporting Genus Claim	4
i.	Functionally-Defined Genus.....	4
b.	Four Corners v. Expert/Fact Testimony.....	4
3.	Indefiniteness (¶ 2).....	4
a.	Valid.....	4
i.	Limitation-Specific Analysis	4
D.	Section 101.....	4
1.	Abstract Idea Exclusion	4
a.	Not Directed to Abstract Idea	4
b.	Results-Oriented Claim Language.....	5
II.	Other Defenses.....	5
A.	No Ownership/Standing (see also II.C.2)	5
1.	Exclusive Licensee.....	5
III.	Literal Infringement.....	5
A.	Summary Judgment/JMOL.....	5
1.	Arbitrary Portions of Accused Products	5
2.	Without Claim Construction	5

B.	Evidence of Infringement	6
1.	Technical Standards	6
IV.	Relief	6
A.	Attorneys' fees	6
1.	Inadequate Prefiling Investigation/Sanctions (Rule 11)	6
2.	Exceptional Case (§ 285)	6
a.	Against Patentee	6
i.	Frivolous and Unreasonable Positions	6
B.	Entire Market Value Rule/Convoyed Sales	7
1.	Apportionment	7
a.	Comparable Licenses	7
C.	Injunction	7
1.	Preliminary Injunction	7
a.	Irreparable Harm	7
i.	Causal Nexus	7
b.	Likelihood of Success	7
i.	Claim Construction	7
2.	Bond Posted for Improper Injunction	7
D.	Notice/Marking	8
1.	Burdens of Proof	8
E.	Reasonable Royalty	8
1.	Expert Testimony and Methodology	8
a.	Damages JMOL	8
F.	Multiple Claims or Patents	8
V.	Claim Construction	8
A.	Claim Language	8
1.	Preambles	8
a.	All v. Some Portions Are Limiting	8
2.	Plain and Ordinary Meaning	8
a.	Exceptions	8
3.	Section 112(f)	9
a.	When Applied	9
i.	Software Limitations	9
ii.	Specific Nonce Terms	9
4.	Effect of Other Limitations in Claim	9
a.	No Surplusage	9
b.	Construction of Repeated Term	10
5.	Effect of Other Claims	10
a.	Relationship Between Independent and Dependent Claims	10
B.	Written Description	10
1.	Lexicography	10
a.	Definition by Intrinsic Use	10
2.	Interchangeable Use of Terms	11
3.	Advantages/Goals/Purposes/Problems Addressed	11
C.	Extrinsic Evidence	11
1.	Industry Practice	11

2.	Prototype or Marketed Version of Invention	11
3.	Party Admissions/Marking/Expert Testimony/Marketing.....	11
D.	Timing of Construction and Parties' Positions	11
1.	Post Trial Claim Constructions	11
E.	Limited, Technical, and Ordinary Meaning Constructions	12
1.	Impermissibly Vague Construction	12
VI.	Procedural Law	12
A.	Applicable Circuit Law	12
1.	Request for New Judge on Remand.....	12
B.	Preclusion.....	12
1.	Claim Preclusion - Res Judicata	12
C.	JMOL (Rule 50) / Summary Judgment (Rule 56)	12
1.	Irrelevant Evidence not Legally Sufficient	12
2.	Applying Ordinary Meaning Constructions.....	12
D.	Pleadings/Parties.....	13
1.	12(b)(6) Dismissals	13
a.	Legal Conclusions.....	13
2.	Rule 19 Indispensable Parties	13
E.	Discovery/Evidence	13
1.	Exclusion for Discovery Failures (Rule 37)	13
VII.	Federal Circuit Appeals	14
A.	Forfeited, Waived or Inadequate Appeal Arguments	14
1.	District Court/ITC Appeals.....	14
a.	Claim Construction Forfeiture/Wiaver	14
i.	Jury Arguments and Instructions	14
ii.	Small v. Large Difference.....	14
b.	Arguments Not in Granted/Denied Motion on Appeal.....	14
i.	JMOL	14
2.	PTO Appeals.....	14
a.	Inadequately Presented Appeal Arguments	14
3.	New Issue Raised in Oral Argument	15
B.	Appellate Jurisdiction	15
1.	Mootness	15
a.	Possible Future Impact.....	15
2.	Requirements and Timing for Notice of Appeal.....	15
3.	Rule 54(b) Judgments	15
C.	Mootness of Appealed Rulings.....	15
1.	Addressing Correctness of Moot Rulings.....	15
D.	Standards of Review and Record/Appendix on Appeal	16
1.	Review Judgments not Opinions	16
E.	Harmless Error	16
1.	Unless Prejudice Established	16
2.	Subset of Evidence Supporting Finding	16
3.	Flawed Claim Construction	16
F.	Remand Determination	16
1.	Remand for Sufficient Reasoning to Review.....	16

2.	Remand for Required Claim Construction	16
3.	Scope of Mandate	17
VIII.	Patent Office Proceedings.....	17
A.	Interpretation of Statutes and Regulations.....	17
1.	For Language on Patent	17
a.	Standing to Challenge	17

I. Patentability Requirements

A. Inventorship/Invention and Priority Dates

1. Priority from Previous Applications

a. Published Applications Under AIA

Where the challenged patent’s priority date is before the filing date of published U.S. application (Published App) but after that of a referenced provisional, “to establish [Published App] as prior art to the [challenged] patent, [petitioner] must show that [Published App]’s provisional application provides written description support for at least one claim of [Published App].” *Dental Monitoring SAS v. Align Tech., Inc.*, 2025-1752, 8/10/26.

B. Prior Art Invalidity

1. Reference Disclosure

a. Incorporation

i. Incorporated Standards

“The Board then turned to Ellsberry’s disclosure that its memory modules are compatible with Joint Electron Device Engineering Council (“JEDEC”) standards.” “The Board’s reliance on Ellsberry’s teachings, as supported by the JEDEC standards, constitutes substantial evidence that Ellsberry teaches enabling data paths in accordance with a latency parameter.” *Netlist, Inc. v. Micron Tech., Inc.*, 2024-1707, 9/2/26.

b. Disclosure to POSITA

i. Expert Testimony

“BSC’s uncontradicted expert testimony was that a relevant artisan would understand Song to disclose a composition that has varying rates of drug release. UT undisputedly offered no evidence to the contrary and has, even by lawyer’s argument, provided no reason to doubt the testimony of BSC’s expert.” *Board of Regents v. Boston Scientific Corp.*, 2024-2062, 7/27/26.

ii. Substantial Evidence of Disclosure

“Slingshot states that the figure did not disclose any bondpads. However, the location of the bondpad was a finding that rested on multiple, factually supported grounds. The Board relied on Benjamin144, Benjamin703, and expert testimony to determine a skilled artisan would understand the bondpad would be located at the edge of the heater chip.” *Slingshot Printing LLC v. Canon U.S.A., Inc.*, 2025-1032, 7/16/26 (nonprecedential) (citation omitted).

c. Measurements/Scale in Patent Drawings or Figures

“[O]ur case law does not prohibit a basic visual examination of patent figures or drawings. The Board compared general relative distances among components in the figure—it did not rely on the figure to extract “precise proportions” or “particular sizes.” Substantial evidence supports the Board’s findings on how a skilled artisan would understand the figures.” *Slingshot Printing LLC v. Canon U.S.A., Inc.*, 2025-1032, 7/16/26 (nonprecedential) (citation omitted).

2. Anticipation (§ 102)

a. Exception for AIA Patents

“We need not go further than *Sanho* to determine that no reasonable jury could have found that the sale of the AirLock to Tundra was a public disclosure. As in *Sanho*, the AirLock was privately sold to a single party (Tundra). As in *Sanho*, there is no evidence that AirLocks were widely distributed or placed where the public could examine them. Instead, NCS’s CEO testified that, even when sold to Tundra, the AirLock was delivered in a sealed black tube that would have to be cut open.” *NCS Multistage Inc. v. Nine Energy Serv., Inc.*, 2025-1000, 9/14/26 (citation omitted).

b. Summary Judgment/JMOL

i. Despite Expert Testimony

Patentee’s expert “testified that the polymer fibers in Song release the agent upon being deformed by a user chewing on them, whereas the ’296 patent addresses usefulness in applications involving tissue engineering or stents. For multiple reasons, this testimony cannot reasonably support a finding that Song does not teach the biodegradable polymer fiber element of the claims at issue here.” “Song clearly teaches degradation from exposure to a solvent, such as at the open ends or sides of a fiber, even apart from fiber deformation (which can help expose more agent to the solvent).” *Board of Regents v. Boston Scientific Corp.*, 2024-2062, 7/27/26.

“Because UT’s expert testimony about the mechanism of release of the drug does not address a claim requirement, it does not provide sufficient evidence for a reasonable jury to find that Song’s noncontiguous phases of active agent do not anticipate the ’296 patent’s “discrete drug-containing regions.”” *Board of Regents v. Boston Scientific Corp.*, 2024-2062, 7/27/26.

3. Obviousness (§ 103)

a. Analogous Prior Art

i. Reasonably Pertinent to Problem

“The problems confronting an inventor are not limited to those expressly identified in a patent, and a patent may be directed to multiple problems.” *The Nielsen Company (US), LLC v. TVision Insights, Inc.*, 2025-1371, 8/14/26.

b. Teaching Away

“Although Salah states that deep learning is “not preferred,” it explicitly states that deep learning “c[ould] also be used.” That is not the type of criticism, discreditation, or discouragement that constitutes a “teaching away.”” *Dental Monitoring SAS v. Align Tech., Inc.*, 2025-1879, 7/21/26 (nonprecedential) (citations omitted).

C. Invalidity Based on § 112

1. Enablement (§ 1)

a. Impact of Ordinary Skill in the Art and Corresponding Knowledge

“While the knowledge of one of ordinary skill may play an important role in enablement, it may not provide the only means to enable these specific claim limitations. That is what a specification of a patent must provide.” *Wyeth LLC v. Astrazeneca Pharms. LP*, 2024-2325, 7/9/26 (citation omitted).

b. Complexity and Unpredictability of the Art

“[T]he specification itself demonstrates that determining the claimed “unit dosage” is a complex and highly individualized task, while at the same time failing to provide the information and guidance necessary for a skilled artisan to perform that task without undue experimentation. And where, as here, the prior art is complex and unpredictable, the specification must provide correspondingly greater guidance.” *Wyeth LLC v. Astrazeneca Pharms. LP*, 2024-2325, 7/9/26.

c. Claimed Use in Humans Based on Non-Human Experiments

“[T]he compounds, described as preferred embodiments, cannot be administered to a patient on a daily basis across the full scope of the dosage ranges disclosed.” “While the fact that inoperative embodiments are disclosed is not necessarily dispositive, this evidence weighs heavily in favor of non-enablement.” *Wyeth LLC v. Astrazeneca Pharms. LP*, 2024-2325, 7/9/26.

d. Specification Errors and Inoperative Embodiments

JMOL of invalidity affirmed. “Here, as discussed, without teaching how to distinguish operative from inoperative embodiments, the specification leaves that task to the skilled artisan. That is precisely the type of undue experimentation that the enablement requirement forbids.” *Wyeth LLC v. Astrazeneca Pharms. LP*, 2024-2325, 7/9/26.

2. Written Description (§ 1)

a. Species Disclosure Supporting Genus Claim

i. Functionally-Defined Genus

“[W]e see no clear error in the district court’s finding that disclosing the chemical name and formula of cabozantinib (L)-malate salt, as well as that the structure of the salt is crystalline, is an identification of the structural features possessed by members of the genus.” “[M]ultiple of the factors laid out in *Ariad* are met here (i.e., structure, formula, chemical name), and the district court’s findings are not clearly erroneous.” *Exelixis, Inc. v. MSN Labs. Private Ltd.*, 2025-1236, 8/31/26.

b. Four Corners v. Expert/Fact Testimony

“Dr. Laneman referred to disclosures describing “index[es]” utilized by prior art to demonstrate a skilled artisan would be well aware of representing a large value, e.g., a preamble, as an index. This usage is in accord with our precedent.” *Evolved Wireless, LLC v. Samsung Electronics America, Inc.*, 2024-2234, 8/31/26 (citation omitted) (nonprecedential).

3. Indefiniteness (§ 2)

a. Valid

i. Limitation-Specific Analysis

“It is possible under Otsuka’s construction that a party could find a combination of salt-to-salt or even salt-to-freebase that falls outside the scope of the weight-to-weight ratio limitation while remaining within the other claim limitations. That possibility, however, does not lead to indefiniteness.” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

D. Section 101

1. Abstract Idea Exclusion

a. Not Directed to Abstract Idea

“[C]laim 21 in its entirety is directed to solving a particular technological problem—overcoming capacity constraints to improve coding gains—using a particular technological

solution—specific, non-uniform constellations with overlapping constellation point locations.” Constellation Designs, LLC v. LG Elecs. Inc., 2024-1822, 8/31/26.

b. Results-Oriented Claim Language

“The claim itself does not recite how to achieve a constellation “optimized” for PD capacity. Rather, this important and distinguishing element of the claim is described in a result-oriented way. “[W]e conclude that claim 17 is ineligible because it is an abstract, result-oriented claim directed to all ways of achieving a recited result.” “It is undisputed that this claim element is the distinguishing feature in claim 17.” Constellation Designs, LLC v. LG Elecs. Inc., 2024-1822, 8/31/26.

II. Other Defenses

A. No Ownership/Standing (see also II.C.2)

1. Exclusive Licensee

“While, the “all substantial rights” inquiry in this case is a close call,” all substantial rights transferred to exclusive licensee even when patentee “retained the right to practice the patents for “research and education”; the sole right to bring infringement actions against Marvell; the right to join certain infringement actions; the right to approve assignment of the Agreement; and the right to terminate the Agreement based on [exclusive licensee]’s failure to achieve milestones.” TexasLDPC Inc. v. Broadcom Inc., 2025-1074, 9/14/26.

III. Literal Infringement

A. Summary Judgment/JMOL

1. Arbitrary Portions of Accused Products

“It is not reasonable to characterize that artificially separated section of the stent coating as a “thread-like” structure. It is not a structure that ever had or would have independent existence.” “One cannot reasonably say that a uniform sheet of paper contains a narrow strip simply because one can cut such a strip from it.” Board of Regents v. Boston Scientific Corp., 2024-2062, 7/27/26.

2. Without Claim Construction

“[J]ury was entitled to credit” expert who “explained his plain-and-ordinary-meaning interpretation, as known to a person of ordinary skill in the art, of the [unconstrued term].” Moskowitz Family LLC v. Globus Med., Inc., 2024-1696, 9/11/26.

B. Evidence of Infringement

1. Technical Standards

CAFC cases “logically permit a plaintiff to prove satisfaction of a claim limitation based on an industry standard if: (1) the relevant portion of the standard is sufficiently specific to show that practicing it would always result in practicing that limitation, and (2) the relevant portion of the standard is mandatory, or, if it is optional, there is evidence showing that the accused device implements that portion of the standard.” *Constellation Designs, LLC v. LG Elecs. Inc.*, 2024-1822, 8/31/26.

IV. Relief

A. Attorneys’ fees

1. Inadequate Prefiling Investigation/Sanctions (Rule 11)

“These facts, taken together, created a compelling concern over the validity of the claims before this litigation was brought. In such circumstances, it does not suffice for Epic Tech or its counsel to rely only on the presumption of validity when faced with multiple indicators that these claims were unpatentable under § 101.” *Epic Tech, LLC v. Pen-Tech Assocs., Inc.*, 2025-1624, 9/30/26.

“The court’s reliance on Epic Tech’s and Baker Donelson’s presuit *infringement* investigation, however, does not explain why sanctions were unjustified under Pen-Tech’s notice theory centered on *validity*.” *Epic Tech, LLC v. Pen-Tech Assocs., Inc.*, 2025-1624, 9/30/26 (emphasis in original).

2. Exceptional Case (§ 285)

a. Against Patentee

i. Frivolous and Unreasonable Positions

“[The district] court reasonably determined that “[m]any of the positions VDPP took were frivolous and objectively unreasonable,” including seeking future damages and an injunction on an expired patent, seeking past damages despite an inability to allege patent marking, failing to disclose relevant settlement agreements, and prolonging litigation with false statements about the settlement agreements.” *VDPP, LLC v. Volkswagen Group of America, Inc.*, 2024-2226, 8/19/26.

B. Entire Market Value Rule/Convoyed Sales

1. Apportionment

a. Comparable Licenses

“Because evidence supports that the Zenith licenses were sufficiently comparable, Dr. Sullivan had a sufficient basis for relying on a built-in apportionment theory.” *Constellation Designs, LLC v. LG Elecs. Inc.*, 2024-1822, 8/31/26.

C. Injunction

1. Preliminary Injunction

a. Irreparable Harm

“After *eBay*, we confirmed the presumption of irreparable harm was abolished as it applied to determining injunctive relief. Although *eBay* and *Bosch* involved permanent injunctions, we see no reason to depart from their holdings in the preliminary injunction context.” *Socket Sols., LLC v. Imp. Glob., LLC*, 2025-1121, 8/4/26 (citation omitted).

i. Causal Nexus

“[W]hile Ridge alleged that it had been forced to sell its doors at reduced prices because of the alleged infringement by the KNL defendants, it failed to show that there was any causal nexus between sales of the accused doors and the prices Ridge set for its own doors.” *Ridge Corp. v. Kirk National Lease Co.*, 2025-1254, 7/13/26.

b. Likelihood of Success

i. Claim Construction

“Because there is a substantial question whether the accused door can meet three separate claim limitations, we conclude that the district court erred in determining that the Ridge plaintiffs had established a likelihood of success on the merits of their infringement action.” *Ridge Corp. v. Kirk National Lease Co.*, 2025-1254, 7/13/26.

2. Bond Posted for Improper Injunction

“According to Federal Rule of Civil Procedure 65(c), a court “may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Exceptions are determined under regional circuit law. *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

D. Notice/Marking

1. Burdens of Proof

“Because VDPP sought pre-suit damages, VDPP had a burden to plead compliance with the notice provision of 35 U.S.C. § 287(a), including compliance by VDPP’s licensees.” VDPP, LLC v. Volkswagen Group of America, Inc., 2024-2226, 8/19/26.

E. Reasonable Royalty

1. Expert Testimony and Methodology

a. Damages JMOL

“LG asserts that Dr. Sullivan had no basis for relying on a built-in apportionment theory because he relied on third-party Zenith licenses that are not sufficiently comparable because they cover different patents, technologies, and product types.” “LG’s challenge is not properly directed to JMOL and the sufficiency of the evidence presented to the jury on damages.” Constellation Designs, LLC v. LG Elecs. Inc., 2024-1822, 8/31/26.

F. Multiple Claims or Patents

“During oral argument, LG argued for the first time that if we determine—as we do here—that some asserted claims are patent ineligible, we should vacate the damages award. This argument was foreseeable and should have been raised in LG’s opening brief.” Constellation Designs, LLC v. LG Elecs. Inc., n.4, 2024-1822, 8/31/26 (citation omitted).

V. Claim Construction

A. Claim Language

1. Preambles

a. All v. Some Portions Are Limiting

“Universal” use in preamble to describe “spacer” found to be limiting where the preamble also describes the “spacer” as including a “cage” and “[t]he claim’s limitations, in describing “the intervertebral cage” and “the” first and second integral screw guides, depend on the preamble for antecedent basis—those terms are first introduced in the preamble.” Moskowitz Family LLC v. Globus Med., Inc., 2024-1696, 9/11/26.

2. Plain and Ordinary Meaning

a. Exceptions

“In the few places that the specification mentions size, the language is permissive.” “This language is insufficient to support lexicography or disavowal.” NCS Multistage Inc. v. Nine Energy Serv., Inc., 2025-1000, 9/14/26.

3. Section 112(f)

a. When Applied

“Whether the non-function term (here, “executable program code”) identifies sufficient structure has two aspects that are of particular importance for the present case. First: We have often asked whether the non-function term would be understood by relevant artisans to name something identified by structural (not just functional) properties at all (a necessary predicate to being a structure that suffices for the claimed function(s)).” “Second: Not just extra-patent usage in the field on its own, but, consistent with the importance of context to claim construction generally, the claim language may suffice to make clear whether certain claim words name sufficient structure in the understanding of the relevant artisan.” *TrackTime, LLC v. Amazon.com Services LLC*, 2024-1102, 7/2/26.

i. Software Limitations

“It is true, as the district court said, that a “definition of ‘executable program’” to mean a “‘program that is ready to run on a given computer’ . . . gives no indication that ‘executable program code’ is a specific code with definite structure.” It is also true that even if the “executable program code” limitations refer to “logic,” the term “logic” “[b]y itself” is similarly unstructured and generic.” *TrackTime, LLC v. Amazon.com Services LLC*, 2024-1102, 7/2/26.

ii. Specific Nonce Terms

“One way to establish that condition is to show that the phrase “refers only to a general category of whatever may perform specified functions,” as when the relevant non-function term in the phrase is as devoid of specificity of structure as the word “means” (hence is, in that way, a “nonce” term)—as can be true of, e.g., “module,” “mechanism,” “element,” or “device” if viewed in isolation.” *TrackTime, LLC v. Amazon.com Services LLC*, 2024-1102, 7/2/26 (citations omitted).

4. Effect of Other Limitations in Claim

a. No Surplusage

“We do not find this argument persuasive. By its plain terms, the relevant claim language contains two separate requirements . . . The Ridge plaintiffs’ proposed interpretation reads the first requirement out of the claims.” *Ridge Corp. v. Kirk National Lease Co.*, 2025-1254, 7/13/26.

“[Patentee] fails to appreciate and give meaning to other relevant claim terms—namely, that the claimed “unit dosage” must be “administer[ed] daily” to a human “patient.” Each of those terms should be afforded meaning.” *Wyeth LLC v. Astrazeneca Pharms. LP*, 2024-2325, 7/9/26 (citation omitted).

b. Construction of Repeated Term

“[T]he prosecution history statements, like the specification and claim language, are consistent with a definition of “internal diameter” that includes only a measured diameter. Because the intrinsic record was not clear that “internal diameter” should carry different meanings in different portions of the claims of the ’445 patent, the district court erred by holding that the term “can refer to both an inner surface and a measured diameter.”” *NCS Multistage Inc. v. Nine Energy Serv., Inc.*, 2025-1000, 9/14/26.

5. Effect of Other Claims

a. Relationship Between Independent and Dependent Claims

“On appeal, the Ridge plaintiffs attempt to bring the accused door within the scope of claim 1 by pointing to the language of unasserted dependent claim 9, which adds to the insulated overhead door of claim 1 [the element of the accused product]. According to the Ridge plaintiffs, [the element of the accused product] falls within the scope of claim 1 because dependent claim 9 recites [that element]. “[H]owever, “the language of a dependent claim cannot change the scope of an independent claim whose meaning is clear on its face.” We have no warrant, at this juncture, to address whether unasserted dependent claim 9 is invalid.” *Ridge Corp. v. Kirk National Lease Co.*, 2025-1254, 7/13/26 (citing *Multilayer Stretch Cling Film Holdings, Inc. v. Berry Plastics Corp.*, 831 F.3d 1350, 1360 (Fed. Cir. 2016)) (addition citation omitted).

“Because the dependent claims include administration of those compounds in salt form, the references to “dextromethorphan” and “quinidine” in the independent claim from which those claims depend must also be understood to include the salt forms of the two compounds.” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

“That outcome would be contrary to the basic principle that a dependent claim may not be broader than the claim from which it depends.” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

B. Written Description

1. Lexicography

a. Definition by Intrinsic Use

Construction based on term’s use in definition of another term. “Here, the written description explicitly defines “cover” thickness in relation to the “backplate.”” *Socket Sols., LLC v. Imp. Glob., LLC*, 2025-1121, 8/4/26.

Written description “specifically defines the active ingredients as including not only the free base forms of dextromethorphan and quinidine, but also their salt forms” when it “state[s], with respect to all 16 embodiments, that “the quinidine includes quinidine sulfate and the dextromethorphan includes dextromethorphan hydrobromide.”” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

2. Interchangeable Use of Terms

“In discussing a series of clinical studies conducted to test the performance of the claimed formulations, the specification uses the terms “dextromethorphan” and “quinidine” to refer to both the free base and the salt forms of those compounds, and frequently as a shorthand for the respective salt forms of the compounds.” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

3. Advantages/Goals/Purposes/Problems Addressed

“Together, these disclosures support the interpretation that the claimed “unit dosage” contemplates a dosage regimen tailored for practical administration to a human patient, not merely any concentration capable of producing anti-cancer effects in vitro.” *Wyeth LLC v. Astrazeneca Pharms. LP*, 2024-2325, 7/9/26.

C. Extrinsic Evidence

1. Industry Practice

“The use of the terms “dextromethorphan” and “quinidine” in the European label as a shorthand for the active moiety in the administered drugs does not speak to the proper construction of the terms “dextromethorphan” and “quinidine” in the ’282 patent.” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

2. Prototype or Marketed Version of Invention

“It is highly improbable that Avanir would have drafted or amended the ’282 patent claims in a manner that would exclude the very product that the patent was intended to protect.” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

3. Party Admissions/Marking/Expert Testimony/Marketing

Problem with expert’s “construction is that it requires that the [disputed] terms [] be understood to refer to [construction], a conclusion that is inconsistent with much of the specification and pertinent portions of the prosecution history, as discussed above. [The expert]’s report thus constitutes extrinsic evidence that is at odds with the intrinsic evidence in this case; as such, we give greater weight to the intrinsic evidence.” *Otsuka Am. Pharm., Inc. v. Hetero Labs Ltd.*, 2025-2016, 7/1/26.

D. Timing of Construction and Parties’ Positions

1. Post Trial Claim Constructions

“the court simply reinforced its prior construction of the claims, explaining that they require the administration of a unit dosage “calculated to produce the desired therapeutic effect” in a patient. That the court, in part, framed the bounds of this limitation in terms of “toxicity” concerns simply reflects a recognition that the requirement of “administering daily to the patient” must have some operative meaning, i.e., a repeatable dosing regimen

in human patients.” “The district court’s “elaboration” on its construction of “unit dosage” post-verdict was permissible to “clarif[y] what was inherent in the construction.”” Wyeth LLC v. Astrazeneca Pharms. LP, 2024-2325, 7/9/26.

E. Limited, Technical, and Ordinary Meaning Constructions

1. Impermissibly Vague Construction

Reversing construction with which district court “did not define the scope of the ’445 patent but instead hinted to the jury how to resolve the factual question.” NCS Multistage Inc. v. Nine Energy Serv., Inc., 2025-1000, 9/14/26.

VI. Procedural Law

A. Applicable Circuit Law

1. Request for New Judge on Remand

“Finally, we address ParkerVision’s request that on remand this case be reassigned to a different judge. Our review is governed by the law of the applicable regional circuit” ParkerVision, Inc. v. Qualcomm Inc., 2026-1033, 9/30/26.

B. Preclusion

1. Claim Preclusion - Res Judicata

“The statute equates the cause of action with the patent as a whole, and not with each individual claim of a patent.” “These statutory provisions and these cases support our view that, in most if not all instances, each patent can be the basis for a *single* cause of action for patent infringement, but not more.” ParkerVision, Inc. v. Qualcomm Inc., 2026-1033, 9/30/26 (emphasis in original).

C. JMOL (Rule 50) / Summary Judgment (Rule 56)

1. Irrelevant Evidence not Legally Sufficient

JMOL affirmed where patentee identified evidence, “[b]ut that evidence does not answer the relevant question.” Wyeth LLC v. Astrazeneca Pharms. LP, 2024-2325, 7/9/26.

2. Applying Ordinary Meaning Constructions

“[T]he jury could reasonably find that LiveNote’s express disclosure of an interface operable with a tablet pen comes within the ordinary meaning of “touch-sensitive input interface.”” TrackTime, LLC v. Amazon.com Services LLC, 2024-1102, 7/2/26.

D. Pleadings/Parties

1. 12(b)(6) Dismissals

a. Legal Conclusions

“And to the extent VDPP argues the proposed amended complaint should not be dismissed simply because it states “Plaintiff has pled all statutory requirements to obtain presuit damages” and “all conditions precedent to recovery are met,” these statements are bare legal conclusions we need not—and do not—accept as true in view of the proposed amended complaint’s lack of any supporting factual allegations.” VDPP, LLC v. Volkswagen Group of America, Inc., 2024-2226, 8/19/26 (citation omitted).

2. Rule 19 Indispensable Parties

“Because A&M has transferred “all substantial rights” in the asserted patents to TexasLDPC, its absence does not “impair or impede” A&M’s ability to protect its interest, nor does it leave Defendants “subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations.” TexasLDPC Inc. v. Broadcom Inc., 2025-1074, 9/14/26 (citations omitted).

“Defendants and the district court both suggest that TexasLDPC’s reliance upon a damages theory consisting of a reasonable royalty based on a hypothetical negotiation—assessed using the *GeorgiaPacific* factors—has made evidence controlled by A&M essential to the district court’s damages calculation.” “First, Rule 19 is not a discovery tool.” “Second, Defendants’ alleged need for evidence from A&M is undercut by evidence in the record and Defendants’ filings.” TexasLDPC Inc. v. Broadcom Inc., 2025-1074, 9/14/26

E. Discovery/Evidence

1. Exclusion for Discovery Failures (Rule 37)

“We do not conclude that a district court, as a matter of law, abuses its discretion when it strikes as untimely documents disclosed during the fact discovery period but only shortly before the close of that period such that it prevents any meaningful opportunity for the opposing party to prepare how to respond to that newly disclosed discovery.” NCS Multistage Inc. v. Nine Energy Serv., Inc., 2025-1000, 9/14/26.

VII. Federal Circuit Appeals

A. Forfeited, Waived or Inadequate Appeal Arguments

1. District Court/ITC Appeals

a. Claim Construction Forfeiture/Wiaver

i. Jury Arguments and Instructions

“Evolved’s final argument that the district court applied the wrong infringement standard for claims directed to capability, we also find this argument unavailing. “The district court’s jury instruction—to which Evolved failed to object at trial or in a post-trial motion before the district court— echoed the INVT rule.” “Evolved’s legal error argument is too late.” *Exelixis, Inc. v. MSN Labs. Private Ltd.*, 2025-1236, 8/31/26.

ii. Small v. Large Difference

“While Nine’s proposed construction at the district court uses more words than its construction on appeal, the gravamen is the same: In both fora, it has contended that an “internal diameter” is a measured diameter across the width of a casing string and cannot also mean a diameter parallel to the surface of the casing string.” “Accordingly, Nine neither changed its position on this issue between the trial and appellate levels nor forfeited its argument that “internal diameter” is a measured diameter.” *NCS Multistage Inc. v. Nine Energy Serv., Inc.*, 2025-1000, 9/14/26.

b. Arguments Not in Granted/Denied Motion on Appeal

i. JMOL

“TrackTime wholly fails to explain why the jury was not permitted to find that LiveNote discloses performing a data lookup. Moreover, that argument was not presented to the district court, so TrackTime has forfeited it.” *TrackTime, LLC v. Amazon.com Services LLC*, 2024-1102, 7/2/26 (citation omitted).

2. PTO Appeals

a. Inadequately Presented Appeal Arguments

“Netlist includes a two-sentence argument that the Board violated the APA in addressing “most limitations of claim 1 and the vast majority of the challenged claims” by limiting its analysis to “summarizing Samsung’s ‘contentions’ and finding that Netlist ‘does not dispute’ them.” But Netlist does not specify which limitations it challenges or provide any further substantive argument on this point. We therefore find that Netlist failed to properly raise this argument for our consideration.” *Netlist, Inc. v. Micron Tech., Inc.*, 2024-1707, 9/2/26 (citation omitted).

3. New Issue Raised in Oral Argument

“During oral argument, LG argued for the first time that if we determine—as we do here—that some asserted claims are patent ineligible, we should vacate the damages award. This argument was foreseeable and should have been raised in LG’s opening brief.” *Constellation Designs, LLC v. LG Elecs. Inc.*, n.4, 2024-1822, 8/31/26 (citation omitted).

B. Appellate Jurisdiction

1. Mootness

a. Possible Future Impact

“Exelixis, on the other hand, argues that MSN has a continued redressable injury not based on the existence of the ’349 patent itself, but rather by asserting that our holding on the inherency issue could potentially have collateral consequences in another case between Exelixis, MSN, and other defendants, which involves a patent related to the ’349 patent. We are not convinced. These purported collateral consequences are too speculative and hypothetical to confer standing.” *Exelixis, Inc. v. MSN Labs. Private Ltd.*, 2025-1236, 8/31/26.

2. Requirements and Timing for Notice of Appeal

“Both notices list only “Plaintiff VDPP, LLC” as an appellant and thus fail to specify Mr. Ramey as a party taking the appeal.” *VDPP, LLC v. Volkswagen Group of America, Inc.*, 2024-2226, 8/19/26.

3. Rule 54(b) Judgments

“It is important to keep in mind this distinction between the two very different uses of “claim” when considering judgments in patent cases that are entered pursuant to Rule 54(b).” *ParkerVision, Inc. v. Qualcomm Inc.*, 2026-1033, 9/30/26.

“The question presented in this case is whether Rule 54(b) permits, under the circumstances of this case, final judgment to be entered with respect to infringement of only some *patent claims* when other *patent claims of the same patent* remain unresolved. As we explain below, our answer is no.” *ParkerVision, Inc. v. Qualcomm Inc.*, 2026-1033, 9/30/26 (emphasis in original).

C. Mootness of Appealed Rulings

1. Addressing Correctness of Moot Rulings

“While our conclusion as to invalidity for anticipation suffices to resolve this appeal and the case in BSC’s favor, we think it worthwhile to address another contention made by BSC on appeal.” *Board of Regents v. Boston Scientific Corp.*, 2024-2062, 7/27/26.

D. Standards of Review and Record/Appendix on Appeal

1. Review Judgments not Opinions

“It is well established that Article III courts review judgments, not opinions.” *Intellectual Pixels Ltd. v. Sony Interactive Ent. LLC*, 2024-2174, 7/10/26.

E. Harmless Error

1. Unless Prejudice Established

“Nielsen concedes that it does not identify any evidence or arguments that it was deprived of the opportunity to present had it been more explicitly put on notice that the Board would consider the reasonably pertinent prong. Because Nielsen has not established prejudice, any error was harmless.” *The Nielsen Company (US), LLC v. TVision Insights, Inc.*, 2025-1371, 8/14/26.

2. Subset of Evidence Supporting Finding

“However, any potential error was harmless because the Board alternatively found that Ellsberry alone, without relying on the ’537 patent, teaches adding one clock cycle to account for propagation delay through its switch ASICs.” *Netlist, Inc. v. Micron Tech., Inc.*, 2024-1707, 9/2/26.

3. Flawed Claim Construction

No harmless error where “the district court’s construction put a thumb on the scale,” and “[a]t a minimum, the jury could have been confused about the effect of the size limitation and its importance.” “Thus, we reject NCS’s contention that Nine failed to demonstrate prejudice from the size limitation being included in the construction of casing string.” *NCS Multistage Inc. v. Nine Energy Serv., Inc.*, 2025-1000, 9/14/26.

F. Remand Determination

1. Remand for Sufficient Reasoning to Review

“Because the court did not sufficiently explain its rationale for rejecting Pen-Tech’s theory of unreasonable conduct based on notice of potential invalidity, we vacate and remand for further proceedings.” *Epic Tech, LLC v. Pen-Tech Assocs., Inc.*, 2025-1624, 9/30/26.

2. Remand for Required Claim Construction

“On remand, the focus of the § 112(f) analysis should be on whether the disputed limitations, read in full and in context, recite enough structure to perform the claimed functions. Here, the relevant claimed functions are annotation and synchronous play (1) on a mobile computing device and (2) integrable with the other functionality described in the claims.” “The parties’ arguments to date have not been focused on whether the claims reveal structure for those precise functions. In light of that fact, and of the foregoing

elaboration of the required § 112(f) analysis, it may be appropriate and helpful to the court for the parties to have a new opportunity to present arguments and evidence directed to the correct questions.” *TrackTime, LLC v. Amazon.com Services LLC*, 2024-1102, 7/2/26 (citation omitted).

3. Scope of Mandate

“A lower tribunal would be bound by any such holdings [by the appellate court on issues not passed on below] under the mandate rule.” *Intellectual Pixels Ltd. v. Sony Interactive Ent. LLC*, n.4, 2024-2174, 7/10/26.

“As to the second Board finding, any fact-finding the Board conducted regarding the compressing limitation during its first final written decision was not within the scope of the Board’s first judgment, which reached only the generating limitation, was not appealable or decided by us, and thus was not within the scope of our mandate.” “Since the Board’s decision as to obviousness was based on the generating limitation, any findings of fact as to the compressing limitation were not subject to appeal, were not decided by us, and were not part of our mandate” *Intellectual Pixels Ltd. v. Sony Interactive Ent. LLC*, 2024-2174, 7/10/26.

VIII. Patent Office Proceedings

A. Interpretation of Statutes and Regulations

1. For Language on Patent

a. Standing to Challenge

Inventor organizations lacked standing to challenge whether language on face of patent correctly described right to exclude. “They instead assert only indirect injury on the theory that third parties— unidentified inventors—will be misinformed by defendants, and the appellant organizations will have to divert resources to help them as a result. This is not the type of direct injury alleged in *Havens*, but rather the type of diversion-of-resource theory that *Alliance* forecloses.” *US Inventor, Inc. v. Squires*, 2024-2378, 8/21/26.