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## **I. Patentability Requirements**

### **A. Prior Art Invalidity**

#### **1. Reference Disclosure**

##### **a. Disclosure to POSITA**

###### **i. Not Express**

Despite using the terms “suggests” and “strongly suggests” the Board was not adopting an obviousness modification and instead was finding express disclosure to a POSITA of the clima limitation. *Int’l Bus. Machs. Corp. v. Zillow Group, Inc.*, 2024-1170, 12/9/25.

##### **b. Disclosure of Optional Feature Enough**

“The claims merely require retreatment, and a disclosure that retreatment will occur sometimes is enough to show anticipation.” *Merck Serono S.A. v. Hopewell Pharma Ventures, Inc.*, 2025-1210, 10/30/25.

#### **2. Anticipation (§ 102)**

##### **a. Published/Issued Application Under 102(e)**

###### **i. By Another Requirement**

“Whether a reference is a work “by another” for purposes of prior art is a question of law reviewed de novo, based on underlying facts reviewed for substantial evidence.” *Merck Serono S.A. v. Hopewell Pharma Ventures, Inc.*, 2025-1210, 10/30/25.

“[W]hen the patented invention is the result of the work of joint inventors, the portions of the reference disclosure relied upon must reflect the collective work of the same inventive entity identified in the patent to be excluded as prior art. That showing may be made by fewer than all the inventors but nonetheless must evince the joint work of them all to avoid being considered a work “by another” under the statute.” *Merck Serono S.A. v. Hopewell Pharma Ventures, Inc.*, 2025-1210, 10/30/25.

#### **3. Obviousness (§ 103)**

##### **a. Differences Between the Prior Art and the Claims at Issue**

###### **i. Only one Embodiment Rendered Obvious**

“Even if sometimes retreatment would not occur because of safety concerns or temporary disease remission, that does not undermine the disclosure of this limitation.” *Merck Serono S.A. v. Hopewell Pharma Ventures, Inc.*, 2025-1210, 10/30/25.

## **B. Invalidity Based on § 112**

### **1. Enablement (¶ 1)**

#### **a. Inventor Attempts**

“The inventors’ testimony confirms that the inventors did not create any working examples of non-carbon-block filters, i.e., the inventors failed to create any filters besides carbon block that achieved the claimed FRAP factor.” Brita LP v. Int’l Trade Comm’n, 2024-1098, 10/15/25.

#### **b. Expert Testimony**

“Brita’s reliance on Dr. Freeman’s testimony that one could use the same “starting materials” and reach the claimed invention essentially places the entire inventive effort on one of ordinary skill in the art. This violates the very quid pro quo central to the enablement requirement.” Brita LP v. Int’l Trade Comm’n, 2024-1098, 10/15/25.

#### **c. Summary Judgment/JMOL**

“Therefore, just as in *Amgen*, a skilled artisan would be left to perform far-ranging “trial-and-error discovery” to make and use the ADCs within the scope of the ’039 patent.” “Thus, the jury did not have substantial evidence to conclude that the ’039 patent was enabled.” Seagen Inc. v. Daichii Sankyo Co., 2023-2424, 12/2/25 (quoting *Amgen v. Sanofi*, 598 U.S. 594, 610, 612 (2023)).

### **2. Written Description (¶ 1)**

#### **a. Standard on Appeal**

##### **i. Denied JMOL of Invalidity**

“Because . . . no reasonable juror could have found that Sandoz failed to prove, by clear and convincing evidence, that claim 30 lacks adequate written description, we reverse the district court’s judgment.” Duke University v. Sandoz, Inc., 2024-1078, 11/18/25.

#### **b. Aspirational Claims**

“Merely pronouncing that the “nature of the filter meeting” the FRAP factor is independent of the exact embodiment does not make it so, particularly in light of the patent’s testing results that demonstrate otherwise.” Brita LP v. Int’l Trade Comm’n, 2024-1098, 10/15/25.

#### **c. Genus Disclosure Supporting Sub-Genus or Species Claim**

“Accordingly, just with respect to tetrapeptides, over 47 million different tetrapeptide units (i.e., 83<sup>4</sup>) are encompassed in the 2004 application. But such evidence is insufficient to support the jury’s finding of adequate written description in the 2004 application. As we have consistently held, a patent’s disclosure of a “broad genus,” without more, is

inadequate to satisfy the written description requirement for claims directed to a “particular subgenus or species contained therein.” “And although the 81 claimed Gly/Phe-tetrapeptides are “encompassed” within those 47 million, they are merely an infinitesimal fraction of those peptide units generally included.” *Seagen Inc. v. Daichii Sankyo Co.*, 2023-2424, 12/2/25 (citations omitted) (quoting *Novozymes A/S v. DuPont Nutrition Biosciences APS*, 723 F.3d 1336, 1346 (Fed. Cir. 2013)).

“The specification of the ’270 patent calls out five of its 13 options for C1 as either “prefer[red]” or “more prefer[red].” Notably, however, those five do not include C(O)NHR3, which is the option a skilled artisan would need to choose to reach the claimed invention. This means that the “preferred” and “more preferred” blaze marks direct a skilled artisan away from, rather than toward, the claimed subgenus, which would again lead the artisan to conclude the inventors did not actually possess what they claimed.” *Duke University v. Sandoz, Inc.*, 2024-1078, 11/18/25 (citation omitted).

#### **d. Alternative Species**

No reasonable jury could deny lack of written description where “claim 30 is limited to roughly 1,620 of these potential compounds.” *Duke University v. Sandoz, Inc.*, 2024-1078, 11/18/25.

#### **e. Species Disclosure Supporting Genus Claim**

##### **i. Functionally-Defined Genus**

Claims with a filter performance requirement, but broad as to the filter composition, were not supported when “the written description [lacked] support as to any filter media meeting the claimed FRAP factor other than carbon-block filters.” “[T]he specification itself amply supports the conclusion that the ’141 patent only discloses carbon-block filters as being unique in their ability to meet the claimed FRAP factor.” *Brita LP v. Int’l Trade Comm’n*, 2024-1098, 10/15/25.

“[T]he ’141 patent does not explain what common characteristics its carbon-block filters would share with non-carbon-block filters that might make them effective for meeting the claimed FRAP factor.” *Brita LP v. Int’l Trade Comm’n*, 2024-1098, 10/15/25.

#### **f. Four Corners v. Expert/Fact Testimony**

“But that [expert] testimony dooms Seagen’s case. That which one must leap to is obviously not there. It is thus axiomatic that a skilled artisan need not make a “leap” to “a [tetra]peptide that’s all G and F” if the skilled artisan were to understand that the 2004 application itself disclosed such a peptide. That testimony is accordingly self-defeating.” *Seagen Inc. v. Daichii Sankyo Co.*, 2023-2424, 12/2/25 (citation omitted).

**g. Full Scope of the Claim**

**i. Coverage of Additional Elements by Comprising Claim**

“Likewise, here, nothing in the intrinsic evidence of the ’650 patent precludes a shuttle from being used in a product covered by claim 6, which, as discussed above, uses “comprising” language.” *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 2024-1072, 10/2/25.

**3. Indefiniteness (¶ 2)**

**a. Claims with Relative Terms**

“[T]he district court [held] that the claims containing the “optimal”/“best” claim limitations were invalid . . . for indefiniteness.” “The language at issue here plainly is language of degree with a facially discretionary standard.” “MediaPointe’s own proposed claim construction before the district court illuminated the open-endedness of the inquiry.” “Those lawyer assertions do not erase the specification’s suggestion that latency and hops may diverge, so do not solve the indefiniteness problem.” *Akamai Techs., Inc. v. MediaPointe, Inc.*, 2024-1571, 11/25/25.

**II. Other Defenses**

**A. Lack of Subject Matter Jurisdiction**

**1. Standing (see also II.H)**

**a. Constitutional Standing**

“And similarly, in *Schwendimann*, although we said that allegations sufficed to establish standing, we were referring to a party’s contention that the failure of the district court to dismiss the action for lack of standing was erroneous.” *Causam Enters., Inc. v. Int’l Trade Comm’n*, 2023-1769, 10/15/25.

“[A]ppellants lack associational standing because they fail to show that at least one of their members would have standing to sue. Specifically, they do not show that any of their members suffers a non-speculative injury in fact from the PTO’s denial of appellants’ petition for rulemaking.” “Even taking the well-pled factual allegations in appellants’ operative complaint as true, one or more of the links in this chain are speculative, so they lack standing.” “The first required event in the chain is that a *third party* must file a petition challenging the patentability of a patent owned by a member of appellants’ organizations. This step is especially speculative because it is entirely within a third party’s control.” *US Inventor, Inc. v. U.S. Pat. & Trademark Off.*, 2024-1396, 10/3/25 (citations omitted) (emphasis in original).

## **B. No Ownership/Standing (see also II.C.2)**

### **1. Assignment**

An assignment does not cover patents on related inventions where it specifies CIPs and the patent does not result from a CIP. *University of W. Va. v. Vanvoorhies*, 02-1533, 9/3/03 (interpreted in *Causam Enters., Inc. v. Int’l Trade Comm’n*, 2023-1769, 10/15/25 (“The quoted language from *VanVoorhies* must be understood as using the term “second generation” not as describing the number of filing steps in the chain from the primary application, but as referring to different stages of development of the underlying technology.”)).

#### **a. Scope of Continuing Applications Covered**

“Under the operative language of the 2007 assignment, the crux of the matter is whether to interpret the assignment of the “[i]nvention” of the ’909 application and “all divisions, reissues, continuations and extensions thereof” to include the ’761 continuation-in-part application. We agree with Causam that the answer is no—so that Mr. Forbes retained ownership of the ’761 application and could assign it to Causam in 2014.” “[B]ecause continuations and continuations-in-part are so widely understood to be different.” *Causam Enters., Inc. v. Int’l Trade Comm’n*, 2023-1769, 10/15/25.

## **III. Literal Infringement**

### **A. Summary Judgment/JMOL**

#### **1. Role of Claim Construction**

“When a claim limitation, like the one at issue here, is not expressly construed, a jury is entitled to give that limitation any *reasonable* meaning in determining, as a factual matter, what comes within its scope.” *Akamai Techs., Inc. v. MediaPointe, Inc.*, 2024-1571, 11/25/25 (emphasis in original).

#### **2. Lack of Expert Testimony**

Appellant challenged JMOL grant because “even if no testimony at trial suggested the product page was the “defined UI object,” we should still reverse because “[t]he jury did not need expert testimony to understand the disputed fact that they needed to decide” and could rely on the product pages themselves. We disagree.” *Shopify Inc. v. Express Mobile, Inc.*, 2024-1977, 12/8/25 (nonprecedential) (quoting *Centricut, LLC v. Esab Grp., Inc.*, 390 F.3d 1361, 1370 (Fed. Cir. 2004)).

### **B. Design Patents**

#### **1. Expert Testimony**

“It seems logical that these same principles will apply in a design patent context—such that expert witnesses may possess knowledge beyond that of ordinary observers yet still testify

as to the perspective of an ordinary observer, provided the expert can establish familiarity with that perspective.” Smarttrend Mfg. Grp. (SMG), Inc. v. OptiLuxx Inc., 2024-1616, 11/13/25.

### **C. Functional and Means plus Function Language**

#### **1. Indirectly Performing the Function**

Where a claim is a comprising claim, “[a]s such, claim 6 does not exclude additional elements, like a shuttle. Claim 6 here does not, for example, state that the lower portion *directly* causes the staple pusher to move a staple.” Rex Med., L.P. v. Intuitive Surgical, Inc., 2024-1072, 10/2/25 (emphasis in original).

### **D. Evidence of Infringement**

#### **1. Intent of Accused Product Designer**

It is immaterial whether the designers of the accused devices intended [a function], because what matters is that the devices actually do the function. Rex Med., L.P. v. Intuitive Surgical, Inc., 2024-1072, 10/2/25.

#### **2. Comparison with Patent Embodiments**

“Evenflo’s argument fails, however, because substantial evidence supports the jury’s finding that the claimed “backrest” is met by the headrests of the accused products. For example, the ’951 patent describes a backrest as a structure that “a child can lie on or lean against” and discloses an embodiment including a “headrest portion.” Thus, a jury could reasonably find the term “backrest,” as used in claim 1, was met by the headrests of Evenflo’s accused products because a child could lean back against them.” Wonderland Switzerland AG v. Evenflo Co., 2023-2043, 12/17/25 (citation omitted).

## **IV. DOE Infringement**

### **A. Substantial Equivalence**

#### **1. Claim Element Components**

“The locking mechanism limitation requires the selective detachability components to be on the seat back rather than the seat assembly. It is thus insufficient, under DOE, to argue the “overall . . . mechanism” is the same or that a different claim element (i.e., the seat assembly) contains the locking mechanism for selectively detachably connecting.” Wonderland Switzerland AG v. Evenflo Co., 2023-2043, 12/17/25.

## **V. Relief**

### **A. Attorneys' fees**

#### **1. Exceptional Case (§ 285)**

##### **a. Against Patentee**

###### **i. Pre-suit Infringement Investigation**

“An attorney’s obligation to zealously advocate for a client is not a license to ignore other duties, such as conducting an adequate pre-suit investigation and refraining from filing frivolous motions.” *EscapeX IP, LLC v. Google LLC*, 2024-1201, 11/25/25.

##### **b. Bad Faith Litigation/Litigation Misconduct**

###### **i. Failing to Respond to Communications**

“EscapeX argues the district court improperly placed weight in its analysis on correspondence between the parties, and EscapeX’s general non-responsiveness to Google’s efforts to meet and confer.” “Google’s exchanges with EscapeX, therefore, provide a data point the district court was permitted to consider as part of its evaluation of the totality of circumstances.” *EscapeX IP, LLC v. Google LLC*, 2024-1201, 11/25/25.

###### **ii. Frivolous Filings**

“An attorney’s obligation to zealously advocate for a client is not a license to ignore other duties, such as conducting an adequate pre-suit investigation and refraining from filing frivolous motions.” *EscapeX IP, LLC v. Google LLC*, 2024-1201, 11/25/25.

### **B. Entire Market Value Rule/Convoyed Sales**

#### **1. Apportionment**

##### **a. Comparable Licenses**

###### **i. Included Unasserted Patents**

“That the ’650 and ’892 patents were the only ones asserted against Covidien and Intuitive proves little to nothing about the relative value of foreign patents, which cannot be asserted in the U.S.” *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 2024-1072, 10/2/25.

## **C. Reasonable Royalty**

### **1. Minimum Measure of Damages**

#### **a. No Damages**

“Accordingly, although the district court said it was “remit[ting] the damages award to nominal damages of \$1,” we, like Rex, view the district court’s decision here as a grant of JMOL of no damages, not a remittitur.” *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 2024-1072, 10/2/25.

“Although the record contains evidence about Intuitive’s market opportunity and sales, these very large numbers were never broken down or explained and do not help the jury apportion the Covidien license amount or infer an appropriate damages number.” *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 2024-1072, 10/2/25.

“The outcome here is fact-specific. Had Rex (or Intuitive) put forth other evidence from which a jury could reasonably determine damages for infringement of the ’650 patent without speculation, JMOL of no damages would be inappropriate and a new trial might be appropriate. But the parties did not, and it was Rex’s burden to do so. Because, on this record, awarding damages between ~\$1 and \$10 million for a license to the ’650 patent would require improper guesswork, we affirm the JMOL of no damages.” *Rex Med., L.P. v. Intuitive Surgical, Inc.*, 2024-1072, 10/2/25.

## **VI. Claim Construction**

### **A. Special Constructions**

#### **1. Reasonable Meanings of Unconstrued Terms**

“[A] relevant artisan could not reasonably have understood the claim language, considered in the context of the patent, to refer to anything other than a computer message. The claimed “request for media content” must be “received by a management center.” ’195 patent, col. 17, lines 44–45. This is unmistakably language about messages, which are what are sent (or entered) and received.” *Akamai Techs., Inc. v. MediaPointe, Inc.*, 2024-1571, 11/25/25.

#### **2. Design Patent Claim Construction**

Where the patent’s “description then expressly narrows, stating the D930 patent’s “oblique shading lines visible in the front and perspective views denote transparency.” The claims, here, are limited to surfaces that possess transparency. Transparency is not synonymous with translucency and does not mean both transparent and translucent.” *Smartrend Mfg. Grp. (SMG), Inc. v. OptiLuxx Inc.*, 2024-1616, 11/13/25 (citation omitted).

## **B. Claim Language**

### **1. Open/Closed Claims, Generic and Negative Limitations**

#### **a. Conjoined or Additional Elements**

“Becton did not address whether two structural elements can be considered connected to each other when they are distinct yet formed on the same underlying structure. Becton simply concluded two distinct claim elements connected to each other could not both refer to the entirety of a single structure because this would make them “one and the same.”” *Wonderland Switzerland AG v. Evenflo Co.*, 2023-2043, 12/17/25 (citation omitted).

“[T]he specification uses “connected to” broadly to encompass the connection of distinct portions of a backrest that are integrally formed.” “[W]e find this to be strong evidence that “connected to” in claim 1 encompasses connections between two distinct portions (i.e., a pulling member and a connecting member) of a single integrally formed plastic component.” *Wonderland Switzerland AG v. Evenflo Co.*, 2023-2043, 12/17/25.

### **2. Typographical/Drafting Errors**

“We now reverse, concluding that it is evident that the claim contains an error and that a relevant artisan would recognize that there is only one correction that is reasonable given the intrinsic evidence.” “The phrase at issue plainly requires an antecedent (“the connection profile of the second part”), but no “connection profile of the second part” has previously been mentioned in the claim.” *Canatex Completion Solutions, Inc. v. Wellmatics, LLC*, 2024-1466, 11/12/25.

Correction using claim construction appropriate despite PTO denial of correction. “Canatex sought correction of the disputed language from the PTO. . . [t]he PTO denied Canatex’s proposed correction.” *Canatex Completion Solutions, Inc. v. Wellmatics, LLC*, n.1, 2024-1466, 11/12/25.

## **C. Written Description**

### **1. Disclosed Embodiment(s)**

#### **a. Presumption of Claim Coverage**

##### **i. Multiple Embodiments**

“EBS’s position would read out this embodiment from the claim scope . . . we only do so amidst clear disclaimer or disavowal.” *Ethanol Boosting Sys., LLC v. Ford Motor Co.*, 2024-1381, 12/23/25.

### **2. Interchangeable Use of Terms**

“A patent’s consistent and clear interchangeable use of two terms can result in a definition equating the two terms.” “[W]hen discussing structure 416 in the dual-frame transcatheter

valve embodiment and structure 216 in the dual-frame endograft device embodiment, the specification refers to these structures as an “outer frame,” a “self-expanding frame,” and a “self-expanding outer frame” several times. Thus, this disclosure clearly indicates that structures 216 and 416 are outer frames that must self-expand.” *Aortic Innovations LLC v. Edwards Lifesciences Corp.*, 2024-1145, 10/27/25 (citations omitted).

### **3. Summary of the Invention**

“The summary section of the specification provides that “[a]ccording to another aspect [of the disclosure], a transcatheter valve is disclosed.” It then says that “[t]he transcatheter valve includes a frame component having a balloon-expandable frame . . . and a self-expanding frame secured to the balloon expandable frame.” In the paragraphs immediately following this statement, the specification notes that “[i]n some embodiments,” other features may be present, but it never limits the presence of a self-expanding frame to only “some embodiments.” **The contrast in the language** indicates that a transcatheter valve must have a self-expanding frame and a balloon-expanding frame, whether it be configured as a serial-frame or a dual-frame.” *Aortic Innovations LLC v. Edwards Lifesciences Corp.*, 2024-1145, 10/27/25 (citations omitted) (emphasis added).

#### **D. Extrinsic Evidence**

##### **1. Party Admissions/Marking/Expert Testimony/Marketing**

“On remand, it will be appropriate for the district court to determine whether such an art-specific meaning of the term has been established such that the jury should be instructed as to such a meaning. But in this respect, we caution that “conclusory” testimony by experts unsupported by reliable extrinsic material—such as special-purpose dictionaries or other objective evidence—is insufficient.” *Smartrend Mfg. Grp. (SMG), Inc. v. OptiLuxx Inc.*, 2024-1616, 11/13/25.

#### **E. Timing of Construction and Parties’ Positions**

##### **1. Waiver**

###### **a. Judicial Estoppel Between PTAB and Court**

“[W]e agree, that Aortic forfeited its judicial estoppel argument by not raising it before the district court. Aortic’s responsive claim construction brief at the district court noted the position Edwards took at the Board and maintained that “Edwards should not be heard to argue differently here.” However, that brief did not otherwise develop any argument for application of judicial estoppel.” *Aortic Innovations LLC v. Edwards Lifesciences Corp.*, 2024-1145, 10/27/25 (citation omitted).

## **2. Agreed and Proposed Constructions**

### **a. Judicial Estoppel**

“[T]he district court determined Evenflo was judicially estopped from arguing each receptacle must be defined by a bounded space because Evenflo abandoned this argument when it accepted the court’s construction.” “We see no error by the district court. The court resolved the claim construction dispute by adopting a construction that did not include Evenflo’s proposed “bounded” language, and the parties stipulated to this construction.” *Wonderland Switzerland AG v. Evenflo Co.*, 2023-2043, 12/17/25.

## **F. Limited, Technical, and Ordinary Meaning Constructions**

### **1. Requirement to Construe Disputed Terms**

“The district court, however, adopted the plain and ordinary meaning of engagement, noting Evenflo’s proposed construction was too narrow.” “It is clear from this record the district court considered and resolved the dispute over whether claim 1’s attachment arms must interlock with or attach to the seat assembly.” *Wonderland Switzerland AG v. Evenflo Co.*, 2023-2043, 12/17/25.

### **2. Questions of Fact in Applying Constructions**

“The district court did not err by adopting a claim construction agreed upon by the parties and leaving the factual question of infringement to the jury.” *Wonderland Switzerland AG v. Evenflo Co.*, 2023-2043, 12/17/25.

## **VII. Procedural Law**

### **A. Applicable Circuit Law**

#### **1. State Law Within a Circuit’s Region**

“While a regional circuit court’s interpretation of the law of states within their borders does not serve as binding precedent upon this court, it is entitled to weight as the court “‘better schooled in’ the law of the particular State involved.” *Coda Development s.r.o. v. Goodyear Tire & Rubber Co.*, n.3, 2023-1880, 12/8/25 (quoting *Whitewater W. Indus., Ltd. v. Alleshouse*, 981 F.3d 1045, 1051 (Fed. Cir. 2020)).

#### **2. Preclusion (collateral estoppel and res judicata)**

“And while we also review a district court’s application of general principles of issue preclusion (a.k.a. collateral estoppel) under the law of the regional circuit, Federal Circuit law applies when substantive patent-law issues are implicated.” *Inland Diamond Prods. Co. v. Cherry Optical Inc.*, 2024-1106, 10/15/25.

### **3. Interaction of Anti-SLAPP Laws and Federal Rules of Civil Procedure**

“[S]ome circuit courts have rejected the applicability of anti-SLAPP statutes, holding that they conflict with the Federal Rules of Civil Procedure. This is neither a jurisdictional question nor one unique to patent law; thus, we defer to the Ninth Circuit’s caselaw on this matter.” *IQE PLC v. Newport Fab, LLC*, 2024-1124, 10/15/25 (citation omitted).

#### **B. Circumstances for Modifying Law of the Case/Patent**

“[O]ur law-of-the-case doctrine—which relates very closely to the mandate rule—does not apply across different cases.” *Ethanol Boosting Sys., LLC v. Ford Motor Co.*, 2024-1381, 12/23/25.

##### **1. Limits of Mandate Rule**

“[O]ur law-of-the-case doctrine—which relates very closely to the mandate rule—does not apply across different cases.” *Ethanol Boosting Sys., LLC v. Ford Motor Co.*, 2024-1381, 12/23/25.

#### **C. Preclusion**

##### **1. Issue Preclusion - Collateral Estoppel**

###### **a. Courts, Agencies and Commissions**

“*ParkerVision* and *Kroy* both stand for the principle that the Board’s fact findings under a lower standard of proof (preponderance) do not have issue-preclusive effect in district-court invalidity proceedings, where facts must be proven under a higher standard of proof (clear and convincing).” *Inland Diamond Prods. Co. v. Cherry Optical Inc.*, 2024-1106, 10/15/25.

#### **D. Jury Issues**

##### **1. Right to a Jury Trial**

###### **a. Remittitur**

“This is important, of course, as “a court must afford a plaintiff the option of a new trial when it attempts to reduce a jury award because it believes the amount of the verdict is not supported by the evidence. These reductions are frequently referred to as conditional remittiturs.”” *Rex Med., L.P. v. Intuitive Surgical, Inc.*, n.3, 2024-1072, 10/2/25 (quoting *Cortez v. Trans Union, LLC*, 617 F.3d 688, 716 (3d Cir. 2010)).

## **E. Pleadings/Parties**

### **1. 12(b)(6) Dismissals**

#### **a. Claim Construction**

“[T]he only way Meta could win dismissal based on lack of plausibility would be to obtain a claim construction rendering Adnexus’ “delivery method preferences” allegations implausible. That is, Meta needs a claim construction that determines “contact information” and “delivery method preferences,” as those terms are used in claim 1 of the ’101 patent, to be so distinct that the former cannot indicate anything meaningful about the latter.” *Adnexus, Inc. v. Meta Platforms, Inc.*, 2024-1551, 12/5/25.

“District courts have discretion to require parties opposing motions to dismiss on the grounds that claim construction is necessary to provide their formal proposed construction and to articulate how its adoption materially impacts resolution of the motion.” *Adnexus, Inc. v. Meta Platforms, Inc.*, n.4, 2024-1551, 12/5/25.

“[T]he district court’s discretion did not include the option of implicitly construing the disputed claim term *against* Adnexus, the non-moving party, without first giving Adnexus the opportunity it requested to be heard on the issue of the proper construction of this term.” *Adnexus, Inc. v. Meta Platforms, Inc.*, 2024-1551, 12/5/25 (emphasis in original).

## **F. Discovery/Evidence**

### **1. Expert Testimony**

#### **a. Forfeited Objections**

“Mr. York had described his proposed testimony in his expert report.” “When Smartrend moved to admit Mr. York as an expert witness, Opti-Luxx did not object. Because Opti-Luxx had knowledge of Mr. York’s anticipated testimony on the ordinary observer’s perspective, if Opti-Luxx wished to prevent the testimony, it was required to object that Mr. York was not qualified to testify to that perspective before the district court ruled.” *Smartrend Mfg. Grp. (SMG), Inc. v. OptiLuxx Inc.*, 2024-1616, 11/13/25.

### **2. Prejudicial Evidence**

“We agree the district court abused its discretion by excluding certain portions of the email chain and reverse the district court’s denial of a new trial on willful infringement.” “As for the danger of unfair prejudice and confusion, we conclude the district court abused its discretion by excluding the email chain rather than managing any existing risk through limiting instructions or redaction.” *Wonderland Switzerland AG v. Evenflo Co.*, 2023-2043, 12/17/25.

## **G. Transfer to New Judge or Venue**

### **1. Recusal of Judge for Financial or Other Interest**

“5 C.F.R. § 2640.202(a) affirmatively states that “[a]n employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee” of securities issued by entities affected by the matter if the securities are publicly traded and the “aggregate market value of the holdings of the employee . . . in the securities of all entities does not exceed \$15,000.” See also 5 C.F.R. § 2640.202(b) (setting a \$25,000 de minimis exception for matters affecting nonparties).” “Thus, on their face, 5 C.F.R. §§ 2635.501 and 2635.502 do not cover an employee’s own financial holdings. Instead, §§ 2635.402 and 2640.202 address this situation. Because APJ McNamara at all times complied with those regulations, he did not violate the executive branch ethics rules.” *Centripetal Networks LLC v. Palo Alto Networks, Inc.*, 2023-2027, 10/22/25.

#### **a. Waiver**

“[T]he unique setup of the Board heightens the need to raise conflicts at the first opportunity.” “[T]he Board did not abuse its discretion in holding that the circumstances of this case would make the grant of a recusal motion inequitable and untimely.” *Centripetal Networks LLC v. Palo Alto Networks, Inc.*, 2023-2027, 10/22/25.

#### **b. Due Process**

“Centripetal provides no support for the proposition that the statutory ethics rules for Article III judges are coextensive with constitutional due process.” “We are aware of no due process principle that prohibits an agency from imposing stricter procedural rules that only apply prospectively.” *Centripetal Networks LLC v. Palo Alto Networks, Inc.*, 2023-2027, 10/22/25.

## **H. Staying Case**

### **1. Copending IPR/CBMR/EPR**

Federal Circuit denied petition for writ of mandamus to overturn denial of stay, issued six weeks before scheduled trial, in view of final rejection of asserted claims in ex parte reexamination. “[T]he magistrate judge concluded that a stay would not be the most efficient way to resolve the litigation. Given (1) the proximity to the trial date and the substantial investment of resources by the court and the parties and (2) the fact that the EPR proceedings are only final at the examiner level, we are not prepared to disturb that finding.” *In re Aylo Holdings S.à r.l.*, 2026-103, 11/3/25 (nonprecedential).

## **VIII. Federal Circuit Appeals**

### **A. Mischaracterizations of Reviewed Decision**

#### **1. PTAB**

“EBS misreads Ford’s petition and the Board’s findings.” *Ethanol Boosting Sys., LLC v. Ford Motor Co.*, 2024-1381, 12/23/25.

### **B. Appellate Jurisdiction**

#### **1. Section 1295(a)(1) Jurisdiction**

##### **a. Inventorship Challenges**

“[T]he Ninth Circuit determined that “[t]he Federal Circuit has exclusive [subject matter] jurisdiction over [this] appeal[]” because “IQE’s well-pleaded complaint contains a claim for correction of inventorship under 35 U.S.C. § 256,” which is “a claim created by federal patent law.” It accordingly concluded that transfer to this court was “in the interest of justice” because Tower “raise[d] non-frivolous merits questions” and there was “no evidence of wrongdoing.” We agree with the Ninth Circuit that subject matter jurisdiction properly lies in our court, for the reasons identified by our sister circuit.” *IQE PLC v. Newport Fab, LLC*, 2024-1124, 10/15/25 (citations omitted).

#### **2. Final Decision/Judgment**

##### **a. Imposing Bond Requirement**

“Here, there has been no final judgment, as the *Bond Decision* only denied motions to dismiss and imposed a bond; it did not end the case on the merits.” *Micron Tech., Inc. v. Longhorn IP LLC*, 2023-2007, 12/18/25 (emphasis in original).

#### **3. Appeal from Injunction under Section 1292**

##### **a. Bond Imposition**

“The bond is not an injunction.” “Thus, the imposition of the bond is more akin to a conditional stay until it is paid or waived.” *Micron Tech., Inc. v. Longhorn IP LLC*, 2023-2007, 12/18/25.

#### **4. Requirements and Timing for Notice of Appeal**

““When an appellant challenges an order ruling on a motion governed by Appellate Rule 4(a)(4)(B)(ii), a new or amended notice of appeal is necessary even if the issue raised in the motion and sought to be challenged could also have been challenged in an appeal from the final judgment. Without an amended or additional notice of appeal addressing the new trial motion, we lack jurisdiction to consider it.” *Inventist, Inc. v. Ninebot Inc. (USA)*,

2024-1010, 11/14/25 (nonprecedential) (quoting *Husky Ventures, Inc. v. B55 Invs., Ltd.*, 911 F.3d 1000, 1010 (10th Cir. 2018)).

## **5. Collateral Order Doctrine**

“Regarding the first collateral order factor, . . . the district court’s denial of Tower’s anti-SLAPP motion to strike conclusively determined the disputed issue below—that the anti-SLAPP statute did not apply to the claims Tower challenged.” “Regarding the second collateral order factor, the antiSLAPP motion to strike resolves an important issue separate from the merits of the action.” “Regarding the third collateral order factor, . . . [i]f Tower’s conduct challenged by IQE is in fact protected by California antiSLAPP law, forcing Tower to defend its conduct in court would deprive it of the protections provided by the antiSLAPP statute. Thus, the denial of the motion to strike would be effectively unreviewable on appeal after final judgment has been entered, since Tower will already have had to litigate the case.” “We thus conclude that denial of an anti-SLAPP motion to strike under California law is immediately appealable under the collateral order doctrine as a matter of Federal Circuit law.” IQE PLC v. Newport Fab, LLC, 2024-1124, 10/15/25.

### **C. Standards of Review and Record/Appendix on Appeal**

“We reject EscapeX’s suggestion that the degree of deference given to a district court is somehow related to the amount of time the district court presided over a case.” EscapeX IP, LLC v. Google LLC, 2024-1201, 11/25/25.

#### **1. Abuse of Discretion**

##### **a. Factual Errors**

“This kind of speculative testimony is not sufficient to establish irreparable reputational harm to Graco and certainly fails to show how such reputational harm flows to Wonderland.” Wonderland Switzerland AG v. Evenflo Co., 2023-2043, 12/17/25.

##### **b. Granting Permanent Injunction**

“[I]t is an abuse of discretion to grant such an extraordinary remedy when a party did not request it.” Wonderland Switzerland AG v. Evenflo Co., 2023-2043, 12/17/25.

“This kind of speculative testimony is not sufficient to establish irreparable reputational harm to Graco and certainly fails to show how such reputational harm flows to Wonderland.” Wonderland Switzerland AG v. Evenflo Co., 2023-2043, 12/17/25.

##### **c. Excluding Evidence**

“We agree the district court abused its discretion by excluding certain portions of the email chain and reverse the district court’s denial of a new trial on willful infringement.” Wonderland Switzerland AG v. Evenflo Co., 2023-2043, 12/17/25.

## **D. Precedent**

### **1. MPEP**

A prior Federal Circuit case “controls the legal definition of “by others” or “by another” in §§ 102(a), (e). Merck thus cannot claim a lack of knowledge of the rule of law based on some arguably contrary language in the MPEP.” Merck Serono S.A. v. Hopewell Pharma Ventures, Inc., 2025-1210, 10/30/25.

## **IX. Patent Office Proceedings**

### **A. Reexamination**

#### **1. CAFC Appellate Jurisdiction**

##### **a. Expired Patents**

“[T]he reasoning we applied for IPRs applies here. A patent owner maintains some rights after the patent expires, including the right to sue for past damages, which can create a live case or controversy that can be resolved by an *ex parte* reexamination.” In re Gesture Tech. Partners, LLC, 2025-1075, 12/1/25.

### **B. Inter Partes Review**

#### **1. Constitutionality**

##### **a. Standing to Assert**

“The right to assert that due process violation, however, does not belong to Causam, but to whoever might be the claimed true owner of the ’268 patent.” “Causam, far from being aligned with the person whose right to notice was assertedly violated, is actually adversarial to that person: Causam claims that it, not anyone else, is the sole owner of the patent.” Causam Enters., Inc. v. ecobee Techs. ULC, 2024-1958, 10/15/25.

#### **2. Institution**

##### **a. Appeals and Petitions for Writ**

###### **i. Reconsideration of Institution**

“Section 314(d)’s bar on reviewability thus applies, and bars EBS’s challenge to the Board’s reconsideration of institution. EBS instead characterizes its challenge as an attack on the Board’s purportedly ultra vires “stay”—which consequently tainted its institution decision—rather than on the institution decision itself. We find that unpersuasive.” Ethanol Boosting Sys., LLC v. Ford Motor Co., 2024-1381, 12/23/25.

## **ii. Shenanigans**

“We thus refused to treat an allegation of exceeding statutory jurisdiction directly bearing on statutes related to the Patent Office’s decision to initiate IPR, without more, as a “shenanigan” exempt from § 314(d)’s bar on reviewability.” *Ethanol Boosting Sys., LLC v. Ford Motor Co.*, 2024-1381, 12/23/25.

## **3. Appeal**

### **a. Sufficient Reasoning to Review**

“[T]he Board expressly adopted Ford’s rationales. Under the circumstances here, where the Board also provided a full explanation for why it rejected EBS’s multiple counter-arguments, the Board’s reasoning is readily discernible, and therefore, it satisfied its obligation to adequately explain its motivation finding.” *Ethanol Boosting Sys., LLC v. Ford Motor Co.*, 2024-1381, 12/23/25.

### **b. 314(d) Review Bar**

#### **i. Petition Adequacy**

“IBM does not seek to “undo” institution—rather, it simply asks to ensure the Board’s final written decision stayed within the confines of Rakuten’s petition.” “Section 314(d) accordingly does not bar us from reviewing IBM’s challenge.” *Int’l Bus. Machs. Corp. v. Zillow Group, Inc.*, 2024-1170, 12/9/25.

#### **ii. Conflict of Interest**

“Centripetal’s recusal challenge does not turn on the “interpretation of statutes related to the Patent Office’s decision to initiate inter partes review.” Instead, it turns on the interpretation of ethics rules that are “not limited to the institution stage,” and a constitutional challenge relevant to the entire proceeding. Thus, it fits neatly into the categories of cases over which we have exercised jurisdiction. Indeed, this case is not the first time we have encountered, and exercised jurisdiction over, a conflict-of-interest challenge to Board institution procedures.” *Centripetal Networks LLC v. Palo Alto Networks, Inc.*, 2023-2027, 10/22/25.

### **c. Jurisdiction Over Appeals Challenging PTAB Decisions**

#### **i. Patentee Appeals of Final Written Decision**

“The record evidence meets the governing standard. Causam is the assignee of record for the ’268 patent. Causam “unequivocally identifie[d]” itself to the Board as the owner of the ’268 patent.” “No contrary evidence of record concerning ownership has been presented or pointed out to us. The evidence, if unanswered (as it is), would entitle Causam to a determination on summary judgment that it is the patent owner.” *Causam Enters., Inc. v. ecobee Techs. ULC*, 2024-1958, 10/15/25 (citation omitted).

#### **4. Obviousness Rulings**

##### **a. Consideration of Secondary Considerations**

“The Board did not have to go searching throughout the entire litigation record to find the evidence of copying, but it had an obligation to consider the specific evidence that was put before it.” *Centripetal Networks LLC v. Palo Alto Networks, Inc.*, 2023-2027, 10/22/25.

#### **5. Scope of Estoppel**

##### **a. Estoppel Against Ex Parte Reexamination**

“The statute provides that “[t]he *petitioner* in an [IPR] of a claim of a patent . . . *may not request or maintain* a proceeding before the Office” on certain grounds after the IPR decision issues. A petitioner requests a reexamination and a petitioner may file a reply if the patent owner chooses to file a statement, but the petitioner does not maintain the proceeding. Rather, the Patent Office does. We thus conclude that the estoppel provision of 35 U.S.C. § 315(e)(1) is inapplicable against the Patent Office to ongoing *ex parte* reexamination proceedings.” *In re Gesture Tech. Partners, LLC*, 2025-1075, 12/1/25 (citations omitted) (emphasis in original).

#### **6. Board Final Written Decision**

##### **a. Addressing Parties’ Arguments**

###### **i. Claim Construction**

“Here, where neither party asked the Board to undertake a claim construction analysis of the DI Fuel terms nor explained why the district court’s construction as to the antiknock agent was correct on the merits, we find no reversible error. The Board did not abuse its discretion by not evaluating a claim construction argument that neither party raised.” *Ethanol Boosting Sys., LLC v. Ford Motor Co.*, 2024-1381, 12/23/25.

#### **7. Due Process and APA Violations**

““Motorola has not shown its identified property right—entitlement to “consideration of its petitions on the merits without risking discretionary denial based on parallel district court proceedings,”—is protected under the Due Process Clause.” *In re Motorola Solutions, Inc.*, 2025-134, 11/6/25 (citation omitted).

“Motorola here relies on nothing more than its own unilateral expectation based on the prior interim procedural guidance—not any separate property interest—to support its due process claim.” *In re Motorola Solutions, Inc.*, 2025-134, 11/6/25.

“[O]ur precedent distinguishes between applications for discretionary benefits and those for non-discretionary benefits in which a particular outcome is mandated.” *In re Motorola Solutions, Inc.*, 2025-134, 11/6/25.

No mandamus for “a change in law or policy that required notice-and-comment rulemaking [because] on that issue, there appears to be no dispute that an APA action in federal district court affords [petitioner] an available avenue to raise this same challenge.” In re Motorola Solutions, Inc., 2025-134, 11/6/25.

“[T]he Acting Director act[ing] arbitrarily and capriciously . . . are the kinds of arguments that we have said are not reviewable in light of § 314(d).” In re Motorola Solutions, Inc., 2025-134, 11/6/25.