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6 Cases For Patent Attys To Watch In The Second Half Of 2025

By **Dani Kass**

Law360 (July 17, 2025, 6:33 PM EDT) -- The Federal Circuit is considering major questions about when delays in prosecuting patents become bad faith and whether the acting U.S. Patent and Trademark Office director is legally allowed to apply new rules retroactively. Here's what you need to know about these cases and others that attorneys are keeping an eye on for the rest of the year.

Google v. Sonos

The Federal Circuit heard oral arguments July 10 in one of the cases that attorneys say they are watching most closely, featuring a high-stakes decision on prosecution laches.

In Google v. Sonos, the appeals court is reviewing a California federal judge's holding that Sonos strategically delayed prosecuting continuation patents for the speaker technology it has accused Google of infringing, making them unenforceable.

The judge based his decision on the doctrine of prosecution laches, which faults patent owners for slow-walking applications. Attorneys expressed concerns that the undefined limits of prosecution laches could affect the practice of filing continuation patents.

"It's been a trend for defendants to just throw in that [defense] more and more in district court litigation," said McDermott Will & Emery LLP partner Mandy Kim.

How to review prosecution laches has become particularly relevant as pharmaceutical and high-tech companies have patents that have been "branching out into all sorts of continuations," Kim added.

"We often can't get every claim that we'd like in the first application," said Saul Ewing LLP partner Brian Landry. "There's often a lot of very compelling, very routine reasons why you would have multiple patent applications resulting in multiple patents, and why it may take several years for claims to be presented. In the absence of something more nefarious, this would seem to create a good amount of risk for patentees."

Crowell & Moring LLP counsel Hugham Chan likewise raised concern about how to toe that line.

"There's not clarity in the law as to where the line is drawn between abusive continuation practice and permissible continuation practice," he said.

Ideally, the Federal Circuit will be able to provide guidance about what activity during prosecution is considered improper and what is safe, Chan told Law360 prior to oral arguments in the case.

However, during those arguments, the Federal Circuit focused more on related issues of written description than on laches, which may mean attorneys won't get the type of closure they'd hoped for on the matter.

The case is Sonos Inc. v. Google LLC, case number 24-1097, in the U.S. Court of Appeals for the Federal Circuit.

In re: SAP and In re: Motorola

The acting USPTO director has been massively changing how the agency evaluates discretionary denials for Patent Trial and Appeal Board petitions.

One of the most significant changes was to withdraw the prior administration's memo interpreting the agency's Fintiv precedent, which considers the timing of parallel litigation to determine if a challenge is a good use of agency resources.

Former Director Kathi Vidal had made it more difficult for patent owners to invoke Fintiv in her memo; acting Director Coke Morgan Stewart took away that added level of difficulty, and applied the new Fintiv interpretation to pending petitions.

SAP America Inc. and Motorola Solutions Inc. are two of the companies whose existing petitions were denied based on Stewart's controversial new policies. They've filed mandamus petitions at the Federal Circuit claiming due process violations.

"It's not taking issue [with the policies] per se, but more the fact that they're being applied to petitions that had already been filed at the time of the changes," said Honigman LLP partner Sarah Waidelich.

Those in favor of Stewart's decisions have told the Federal Circuit she is acting within the limits of the director's broad discretionary powers.

Stewart's changes in discretionary denials include rejecting applications when the patent has been in force for more than a few years and rejecting a petition where the inventors are challenging one of their own patents. The latter happens largely when the patent is assigned to a former employer and is part of a doctrine that the Federal Circuit has explicitly found does not apply to PTAB challenges.

The acting director's policies are being explained piece by piece through the discretionary denial orders she releases, rather than on a larger announced policy, which is leaving attorneys frustrated.

"What is the through line to all of this other than, 'We don't want to institute?'" asked Haynes Boone partner Stephanie Sivinski. "It seems like every wave of decisions has another reason to not institute, and at some point it's going to be hard to connect all of the dots to a cohesive policy other than just, 'We don't want to use board resources to look at the validity of patents anymore.'"

Petitioners don't have the right to challenge Stewart's institution decisions, as they're "final and unappealable," but the due process question may be able to overcome that limit, attorneys say.

"If they are going to weigh in on discretionary denials at all, I think this is probably the most likely context," Waidelich said.

Jen Tempesta, deputy chair of the intellectual property practice at Baker Botts LLP, likewise said "it could shed some light on whether the Federal Circuit wants to get into providing any opinions on these issues."

How other parties come to challenge the discretionary denial evolution is also something attorneys are keeping their eyes on.

"We're going to see a lot of creative mandamus petitions," Sivinski said.

The cases are In re: SAP America Inc., case number 25-132, and In re: Motorola Solutions Inc., case number 25-134, in the U.S. Court of Appeals for the Federal Circuit.

Hikma v. Amarin

The U.S. Supreme Court doesn't have any active patent cases on its docket, but it recently expressed interest in one petition.

On June 23, the justices asked the solicitor general to weigh in on an appeal from Hikma Pharmaceuticals over so-called skinny labels. When drugs still have some patent-protected uses but are otherwise off patent, generic companies can launch their own versions, leaving those patented uses off the label.

Amarin Pharma's infringement suit claims Hikma induced doctors to infringe active patents on Amarin's blockbuster cardiovascular drug Vascepa by advertising its limited-use version of the drug as an unqualified generic and citing Amarin sales figures that don't carve out the allegedly infringing use.

"The question here is not one that you typically see in the space," said Skadden Arps Slate Meagher & Flom LLP partner Leslie Demers. "It's not whether the skinny label is skinny enough; it's about the generic company's marketing statements about generic equivalence, and if that gives rise to liability."

A Delaware federal judge had dismissed the suit at the pleadings stage, but the Federal Circuit revived it. The Supreme Court petition is still an appeal from the pleadings.

"The procedural posture of this case is very important," Demers said. "Let's imagine a world where we leave the Federal Circuit ruling intact. To my mind, that provides a road map for branded-drug companies to draft a complaint against the skinny label generic that they can have pretty high confidence will get them into discovery. If I were a branded company, I'd be feeling quite emboldened by the Federal Circuit opinion."

On the other hand, she said, "there's no dispute" that Hikma's label complies with U.S. Food and Drug Administration requirements.

"Under the current state of the law today, it does not take much more than what we typically see from generic companies to state a claim for inducement," she said. "Here, the claim turned on statements that a drug is a generic version of a brand and then also references to a brand's full sales numbers. These are factual statements."

The Supreme Court made the same request from the solicitor general in 2022 when Teva Pharmaceuticals brought its own appeal over skinny labels. In that case, Teva was likewise faulted for advertising its drug as a full generic, among related language.

The solicitor general said Teva's petition should be granted, but the justices ultimately denied it.

The case is Hikma Pharmaceuticals USA Inc. et al. v. Amarin Pharma Inc. et al., case number 24-889, in the Supreme Court of the United States.

Range of Motion v. Armaid

For attorneys focused on design patents, a major case is playing out at the Federal Circuit.

Following in the footsteps of a May 2024 en banc decision, the Federal Circuit is considering how much overlap there should be between design and utility patents.

In LKQ Corp. et al. v. GM Global Technology Operations LLC, the full court decided design patents should use the same standard of obviousness as utility patents. Now, a panel is considering whether claim construction should get the same treatment in a dispute where Range of Motion Products LLC lost its infringement suit against Armaid Co. Inc. at the claim construction stage.

According to Vera Suarez, another partner at Haynes Boone, a Maine federal judge had said the massage device designs at issue were plainly dissimilar, but his logic was based on how the devices functioned, not the ornamental design. Design patents must focus only on the latter.

"The issue is, how do you decide, and how do you articulate the claim scope when it's a picture, and did the district court do it correctly?" Suarez said.

The appeals court heard oral arguments in February.

The case is Range of Motion Products LLC v. Armaid Company Inc., case number 23-2427, in the U.S. Court of Appeals for the Federal Circuit.

Newman v. Moore

It's been more than two years since the Federal Circuit Judicial Council suspended U.S. Circuit Judge Pauline Newman, and the now-98-year-old is still fighting to be reinstated. Judge Newman's suit challenging her suspension is currently at the D.C. Circuit, which heard oral arguments in late April.

The Federal Circuit's active judges have suspended her for not consenting to a medical evaluation by a doctor of their choosing, saying her resistance constitutes "serious misconduct."

Judge Newman claims that her colleagues overstepped into impeachment territory limited to Congress and argues that, at the very least, a different circuit should have handled any investigation. The latter seemed to resonate at oral arguments.

"She's obviously a very esteemed jurist who spent a very long time on the bench, so watching this stage of her judicial career is important to people in the patent world," said Skadden's Demers.

The case is Pauline Newman v. Kimberly Moore, et al., case number 24-5173, in the U.S. Court of Appeals for the District of Columbia.

--Editing by Alanna Weissman and Emily Kokoll.
