

4 Patent Cases To Watch In The Second Half Of 2026

By **Ryan Davis**

Law360 (July 20, 2026, 2:36 PM EDT) -- New limits on the ability to challenge patents tied to when they were issued, the invalidity standards for antibody patents and the test for design patent infringement are all at issue in cases patent attorneys will be monitoring for the rest of the year.

Google v. VirtaMove

The U.S. Patent and Trademark Office has imposed numerous policies over the past year that have made it more difficult to challenge patents, and this U.S. Supreme Court case takes aim at one of the most contentious: the office's practice of denying review based on the patent's age.

Google's April **high court petition** contends that by enacting the so-called "settled expectations" policy, which has generally been used to shield patents that are more than 6 years old from inter partes review, the USPTO is "conjuring from whole cloth a limitations period that Congress deliberately withheld."

The patent office waived the right to respond to Google's petition, but the justices requested a response, which is due July 13, meaning the high court will likely consider whether to take the case in the fall.

Beginning in **June 2025**, USPTO leaders began invoking the age of patents as a reason to reject review requests, stating that once a patent has been in force for some time — six years in most cases — the owner has settled expectations that it won't be challenged.

Following the denial of its challenge to a 14-year-old VirtaMove software patent it has been accused of infringing, Google filed a mandamus petition at the Federal Circuit targeting the USPTO policy. The court **denied it** on the grounds that the office's decisions on whether to institute patent reviews are not appealable.

Google, backed by many **amicus briefs**, told the Supreme Court that the America Invents Act did not limit the availability of reviews based on a patent's age. The USPTO thus had no authority to create the policy, and the Federal Circuit's refusal to intervene is an "abdication of judicial review" that "flies in the face" of the principle that courts, not agencies, must decide the bounds of agency discretion, the tech giant said.

Google's petition presents an "important question to answer: how absolute can the authority be for the USPTO to exercise its powers?" said Jayashree Mitra of Carlton Fields. "I think that is, at the heart, the fundamental question that I would like to have the answer to."

Molly Kocalski of Holland & Hart LLP, who was director of the USPTO's regional office in Denver until last year, said she will be interested to read the office's response brief and how it explains the legal basis for the policy.

"There's nothing in the patent statute that would suggest that you get a heightened presumption of validity and enforceability after a period of time for a patent," she said. "Your presumption of validity attaches when the patent issues. Where is this heightened presumption coming from?"

The current policy provides a "meaningful guidepost" for patent owners by limiting challenges after six years, said Kevin Schubert of McKool Smith, "so I think if this goes away, it certainly presents uncertainty for patent owners that would be asserting patents older than six years."

He noted, though, that courts have typically been deferential to the patent office, and even losing the current policy "could have a minimal effect," since there are other reasons USPTO leaders can deny reviews and the office has stopped providing explanations for most denials.

The case is Google LLC v. VirtaMove Corp. et al., case number 25-1230, in the Supreme Court of the United States.

Teva v. Eli Lilly

Eli Lilly has told the full Federal Circuit that the panel decision in this case reinstating a \$177 million jury verdict against it for infringing Teva headache drug patents "opens a truck-sized hole" in patent validity law.

While a district judge threw out the verdict and found that Teva's patents are invalid for not providing an adequate written description of the humanized antibodies found in the patents and for not enabling a skilled person to make and use the invention, a Federal Circuit panel **overturned** that ruling in April.

The panel said it did so because the patents don't cover the antibodies themselves, but ways to use them to treat migraines. Eli Lilly told the full court in a June en banc **rehearing petition** that the holding is "nonsensical."

Eli Lilly said the U.S. Supreme Court's **Amgen v. Sanofi** decision **held in 2023** that antibody patents cannot simply provide a "research plan" for going through a vast number of potential antibodies to find the ones that are potentially useful, so it "cannot be right" that patents on potential uses of the antibodies don't have to meet the same requirements.

The panel's "ruling threatens innovation and gives method-of-use claims special status," the company said.

Andrew Cohen of Patterson Belknap Webb & Tyler LLP said the issue presented in the case is "a super hot topic: I think everybody in the pharmaceutical industry in particular is watching this, because it is highly unusual."

The panel decision "seems to conflict with where the Supreme Court was going. It seems to create a distinction between composition claims and method claims that doesn't really fit well" with the statute, he added.

The case is Teva Pharmaceuticals International GmbH v. Eli Lilly & Co., case number 24-1094, in the U.S. Court of Appeals for the Federal Circuit.

Range of Motion v. Armaid

Range of Motion asked the full Federal Circuit **in April** to review a **panel decision** clearing Armaid of infringing a massage device design patent, arguing that the appeals court has for years used a design patent infringement standard that is at odds with U.S. Supreme Court precedent.

The pending petition for en banc rehearing claims that since the Federal Circuit's 2008 **Egyptian Goddess v. Swisa** ruling, which set rules on design patent infringement, the court has wrongly made decisions by looking at whether two designs are "plainly dissimilar," despite a 19th century Supreme Court decision saying the standard is whether they are "substantially the same."

"Without citing any authority, this court inserted a rigid threshold step that inverts" high court precedent, Range of Motion said. It contended that the Federal Circuit's approach means courts never consider whether designs are substantially the same unless they first decide that they are not plainly dissimilar.

Range of Motion's argument echoes concerns raised in an impassioned **dissent** from the panel decision by Federal Circuit Chief Judge Kimberly Moore, who said the Federal Circuit's test amounts to "linguistic sleight of hand" and maintained that "focusing on differences makes those differences

more significant and causes you to lose sight of the overall similarity."

Judge Moore's observation on that point "could very well be an issue later on in a subsequent appeal," said David Kim of Friedland Cianfrani LLP, since it raises the question of whether Federal Circuit decisions have "led the case law astray" from Supreme Court's precedent on design patent infringement.

If the full court agrees to take the case and recalibrates the test, it could have widespread implications, said Alex Yap of Morrison Foerster LLP, since the question that divided the panel of whether the focus should be on similarities or differences in evaluating design patent infringement will impact every case involving such patents.

"It seems like design patents should be easy, but they're not," he said. "I think the struggle that we are seeing from the Federal Circuit is a struggle that a lot of practitioners have."

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

NWSEO v. Trump

Two unions representing USPTO employees have **sued** the Trump administration for stripping collective bargaining rights from many unionized workers at the office, and the legality of that decision could impact whether other USPTO changes the administration has enacted will stand.

A federal district judge in December stayed the cases brought by the National Weather Service Employees Organization and Patent Office Professional Association to await D.C. rulings in similar cases by other unions. The patent office unions argue that contrary to the administration's position, patent examiners don't have "national security missions" that warrant excluding the workers from union protection.

"Classifying every patent examiner as a national security employee is a very bold move. Let's just put it that way," said Kocialski of Holland & Hart.

The outcome could be significant not just for USPTO workers, but patent practitioners as well, she said, because without a union representing the employees, the office has implemented several changes to how examiners work that would otherwise require bargaining.

That includes restrictions on telework and a **revised** performance appraisal plan that impacts how much work the examiners need to perform to be deemed successful, which attorneys have said has led to fewer examiner interviews and increased focus on new patent applications, rather than other types of filings.

If the unions prevail in their lawsuit, those changes made by the office "would all have to be turned back," Kocialski said. "They would have to negotiate with the union over any changes that they wanted to make to the examiners' performance agreements."

"Watching what will happen from the fallout of the union case is really interesting," she added.

The case is National Weather Service Employees Organization et al. v. Trump et al., case number 1:25-cv-02947, in the U.S. District Court for the District of Columbia.

--Editing by Michael Watanabe.