

IP Cases: The Year in Review

David R. Todd

February 21, 2020



Supreme Court IP Cases Decided / Pending Since 2019 IP Summit

1. ***Fourth Estate v. Wall-Street.com*** (copyright)
2. ***Rimini Street v. Oracle*** (copyright)
3. ***Mission Product Holdings v. Tempnology*** (trademark)
4. ***Return Mail v. U.S. Postal Service*** (patent)
5. ***Iancu v. Brunetti*** (trademark)
6. ***Peter v. Nantkwest*** (patent)
7. ***Allen v. Cooper*** (copyright)
8. ***Georgia v. Public.Resource.Org*** (copyright)
9. ***Thryv v. Click-To-Call Technologies*** (patent)
10. ***Lucky Brand Dungarees v. Marcel Fashion*** (trademark)
11. ***Romag Fasteners v. Fossil*** (trademark)
12. ***USPTO v. Booking.com*** (trademark)
13. ***Google v. Oracle*** (copyright)
14. ***Jan. 13 Cert. Denials in § 101 Cases*** (patent)

Top Circuit Court IP Cases Decided Since 2019 IP Summit

Panel Decisions

1. *Regents of the Univ. of Minnesota v. LSI* (Fed. Cir.) (patent)
2. *Celgene v. Peter* (Fed. Cir.) (patent)
3. *American Axle & Mfg. v. Neapco* (Fed. Cir.) (patent)
4. *Arthrex v. Smith & Nephew* (Fed. Cir.) (patent)
5. *Syngenta Crop Protection v. Willowood* (Fed. Cir.) (patent)

Fourth Estate v. Wall-Street.com

139 S.Ct. 881 (March 4, 2019)

- **Facts**

- Wall-street.com continued displaying Fourth Estate’s articles on its website after cancelling subscription
- Fourth Estate applied for registration of copyrights but filed infringement action (seeking an injunction) before Office had acted on application
- 17 U.S.C. 411(a): “[N]o civil action for infringement of the copyright...shall be instituted **until...registration of the copyright claim has been made**.... [H]owever, where...registration has been refused, the applicant is entitled to institute a civil action....”
- 17 USC 410(d): “The effective date of a copyright registration is the day on which an application, deposit, and fee, which are later determined by the Register of Copyrights...to be acceptable for registration, have all been received in the Copyright Office.”

- **Circuit Split:** whether submission of application is sufficient or whether Office must have acted on application

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Fourth Estate v. Wall-Street.com

139 S.Ct. 881 (March 4, 2019)

- **Unanimous Opinion (Ginsburg, J.)**

- Copyright Office must have acted on the application in order to institute a civil action for infringement
- Part of the analysis: “If application alone sufficed . . . , § 411(a)’s second sentence—allowing suit upon refusal of registration—would be superfluous.”
- What about increased registration processing times (average seven months)?
 - Delays “are attributable, in large measure, to staffing and budgetary shortages that Congress can alleviate, but courts cannot cure.”
 - “Unfortunate as the current administrative lag may be, that factor does not allow us to revise [the] congressionally composed text.”

Rimini Street v. Oracle

139 S.Ct. 873 (March 4, 2019)

- **Question Presented**

- Whether the Copyright Act’s allowance of “**full costs**” (17 U.S.C. § 505) to a prevailing party is limited to “taxable costs” under 28 U.S.C. §§ 1920 and 1821, as the Eighth and Eleventh Circuits have held, or also authorizes non-taxable costs, as the Ninth Circuit holds.

- **Facts**

- Jury awarded \$35.6M in damages for copyright infringement
- District court awarded Oracle \$28.5M in attorney fees, \$4.9M in taxable costs, and **\$12.7M in expert witness fees** (non-taxable costs) as part of “full costs”
- 9th Circuit affirmed

Rimini Street v. Oracle

139 S.Ct. 873 (March 4, 2019)

- **Unanimous Opinion (Kavanaugh, J.)**

- “In copyright cases, § 505's authorization for the award of ‘full costs’ ...covers only the six categories specified in the general costs statute, codified at §§ 1821 and 1920.”
- “The term ‘full’ is a term of quantity or amount; it does not expand the categories or kinds of expenses that may be awarded as ‘costs’ under the general costs statute.”

Mission Product Holdings v. Tempnology

139 S.Ct. 1652 (May 20, 2019)

- **Facts**

- Tempnology and Mission entered into Distribution Agmt
 - Mission received non-exclusive license to use Tempnology's **trademarks**
 - Either party could terminate, triggering two-year wind-down period during which the licenses would remain in effect
- Tempnology declared bankruptcy
- Trustee rejected the Distribution Agmt
 - 11 U.S.C. § 365(a): “the trustee . . . may assume or reject any executory contract of the debtor”
 - 11 U.S.C. § 365(g): “the rejection of an executory contract...constitutes a breach of such contract” (so that other party can have claim against bankruptcy estate for breach of contract)
 - 11 U.S.C. § 365(n): if trustee rejects executory contract which licenses **patent** rights, licensee may elect to treat contract as terminated or may retain its license rights

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Mission Product Holdings v. Tempnology

139 S.Ct. 1652 (May 20, 2019)

- **Issue**

- Parties disagreed whether Mission’s license under **trademark** rights continues after trustee’s rejection of the Distribution Agreement
 - Congress omitted trademark rights when enacting § 365(n) because of difficult questions about burden of licensor’s continuing duty to police marks after bankruptcy
 - Mission argues that because § 365(g) treats the trustee’s rejection as a “breach,” it has whatever rights it would have had under the Agreement if Tempnology had breached (including wind-down license rights)

- **Supreme Court (8-1) (Kagan, J.)**

- “A rejection breaches a contract but does not rescind it. And that means all the rights that would ordinarily survive a contract breach, including those conveyed here, remain in place.”

Return Mail v. U.S. Postal Service

139 S.Ct. 1853 (June 10, 2019)

- **Facts**

- USPS used Return Mail’s invention without a license
- Return Mail sued in Court of Federal Claims
- USPS petitioned for CBM review at PTAB
- Return Mail challenged PTAB’s jurisdiction; PTAB held it had jurisdiction and found unpatentability under § 101
- Federal Circuit affirmed in 2-1 decision, holding that USPS/government is “person” charged with “infringement” and therefore may challenge validity in CBM proceedings even though it would not be estopped in Court of Federal Claims by a finding of patentability

- **Question Presented**

- Whether the government is a “person” who may petition to institute review proceedings under the AIA.

Return Mail v. U.S. Postal Service

139 S.Ct. 1853 (June 10, 2019)

- **Supreme Court (6-3) (Sotomayor, J.)**

- A federal agency is not a “person” able to seek review in a CBM (or IPR) proceeding
- “In the absence of an express statutory definition, the Court applies a ‘longstanding interpretive presumption that “person” does not include the sovereign,’ and thus excludes a federal agency like the Postal Service.”
- Presumption is not rebutted here.

Iancu v. Brunetti

139 S.Ct. 2294 (June 24, 2019)

- **Facts**

- 15 U.S.C. 1052(a): the PTO may refuse to register a trademark that “[c]onsists of or comprises immoral...or scandalous matter”
- Brunetti applied to register mark “FUCT”
- PTO rejected registration as “immoral...or scandalous”
- PTO asked whether a “substantial composite of the general public” would find the mark “shocking to the sense of truth, decency, or propriety”; “giving offense to the conscience or moral feelings”; “calling out for condemnation”; “disgraceful”; “offensive”; “disreputable”; or “vulgar.”

Iancu v. Brunetti

139 S.Ct. 2294 (June 24, 2019)

- **Supreme Court (6-3) (Kagan, J.)**

- If a trademark registration bar is viewpoint-based, it is unconstitutional per *Matal v. Tam*

- This bar is viewpoint-based.

- “Immoral” bar “permits registration of marks that champion society’s sense of rectitude and morality, but not marks that denigrate those concepts.”

- “Scandalous” bar “allows registration of marks when their messages accord with, but not when their messages defy society’s sense of decency or propriety.”

- Statute cannot permissibly be interpreted to merely bar marks that are “vulgar,” which would not be viewpoint-based

- **Alito, concurring:** “Our decision does not prevent Congress from adopting a more carefully focused statute that precludes the registration of marks containing vulgar terms...”

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Peter v. NantKwest

140 S.Ct. 365 (Dec. 11, 2019)

- **Facts**

- Examiner/PTAB rejected application for obviousness
- Nantkwest appealed to *district court* under 35 U.S.C. § 145
- 35 USC § 145 (since 1839): “All the *expenses* of the proceedings shall be paid by the applicant”
- PTO recently began arguing that “expenses” includes portions of the salaries of its attorneys and paralegals on the case

- **Supreme Court Unanimous Opinion (Sotomayor, J.)**

- “American Rule” presumption applies to all alleged fee-shifting statutes, including this one
- “American Rule” presumption against fee-shifting only overcome by “specific and explicit” indication of Congress’s intent to do so
- The statute here is not sufficiently “specific and explicit”

Allen v. Cooper

(S.Ct., argued Nov. 5, 2019)

- **Facts**

- Allen has copyright in video/images of shipwreck off the coast of North Carolina, which North Carolina used without permission
- Allen sued North Carolina for copyright infringement, arguing that Congress abrogated state's sovereign immunity

- **Question Presented**

- Is Congress's attempt to abrogate sovereign immunity for copyright infringement justified by Article I Patent/Copyright Clause and/or by 14th Amendment?

Allen v. Cooper

(S.Ct., argued Nov. 5, 2019)

- **Significant Precedents**

- *Seminole Tribe* (1996): Congress could not abrogate immunity under Article I's Indian Commerce Clause (dicta: or any Article I power)
- *Florida Prepaid* (1999): Congress could not abrogate immunity from patent infringement under Article I's Patent/Copyright Clause, given *Seminole Tribe* (unbriefed/two sentences), and insufficient record to rely on 14th Amendment for abrogation
- *Katz* (2006): Congress could (and did) abrogate immunity under Article I's Bankruptcy Clause, and statement in *Seminole Tribe* to the contrary was dicta

Georgia v. Public.Resource.Org

(S.Ct., argued Dec. 2, 2019)

- **Facts**

- Georgia has a contract with Lexis to create “annotations” such as descriptions of decisions interpreting Georgia’s state code. Since it is a “work for hire,” Georgia owns the copyright.
- Those annotations are included along with the state code in the “Official Code of Georgia Annotated” (OCGA), “published under the authority of the State of Georgia”
- Public.Resource scanned the OCGA and posted it online
- Georgia sued for copyright infringement

- **Question Presented**

- Does Georgia have (and can it enforce) copyright in the annotations?

Georgia v. Public.Resource.Org

(S.Ct., argued Dec. 2, 2019)

- **Significant Precedents**

- *Wheaton v. Peters* (1834): no copyright in **court’s opinions**
- *Banks v. Manchester* (1888): no copyright in **the products of the labor done by judicial officers in the discharge of their judicial duties**, including opinions, headnotes, and summaries
- *Callaghan v. Myers* (1888): “there is no ground of public policy on which a reporter who prepares a volume of law reports...can...be debarred from obtaining a copyright for the volume, which will cover **the matter which is the result of his intellectual labor.**”

Thryv, Inc. v. Click-to-Call Techs.

(S.Ct., argued Dec. 9, 2019)

- **Facts**

- Click-to-Call’s predecessor’s exclusive licensee served a complaint on Thryv’s predecessor for infringement of the ’836 patent in 2001
- The case was voluntarily dismissed “without prejudice” in 2003
- Click-to-Call acquired the ’836 patent and sued Thryv’s predecessor for infringement in May 2012
- Thryv’s predecessor filed an IPR petition in May 2013
- Click-to-Call argued that the IPR petition was barred by 35 U.S.C. § 315(b) and the 2001 complaint: “An inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.”
- Board ruled that 2001 complaint did not trigger the § 315(b) bar because it was dismissed “without prejudice”

Thryv, Inc. v. Click-to-Call Techs.

(S.Ct., argued Dec. 9, 2019)

- **Federal Circuit**

- Based on en banc decision in *Wi-Fi One*, Board’s decision about § 315(b) bar is reviewable despite § 314(d): “The determination by the Director whether to institute an inter partes review under this section shall be final and nonappealable.”
- *Wi-Fi One*: “Whether a petitioner has complied with § 315(b) is not the determination identified in § 314(d) or ‘closely tied’ to it, as it has nothing to do with the patentability merits or discretion not to institute”
- The 2001 complaint does trigger the § 315(b) bar
- “Here, the text of § 315(b) clearly...considers only the date on which the petitioner...was properly served with a complaint.”
- Cases treating case dismissed “without prejudice” as if it had never been brought “are inapplicable”

- **Supreme Court Question Presented**

- *Wi-Fi One* issue: Is the Board’s decision about the § 315(b) bar reviewable despite § 314(d)?

Lucky Brand Dungarees v. Marcel Fashion

(S.Ct., argued Jan. 13, 2020)

- **Facts**

- Lucky Brand and Marcel are competitors in the apparel business
- 2001 Action
 - Marcel sued Lucky Brand for infringing its “Get Lucky” TM
 - Settlement: Lucky Brand agreed to stop using “Get Lucky” and Marcel agreed to a release
- 2005 Action
 - Marcel sued Lucky Brand for use of “Get Lucky” & “Lucky Brands”
 - Lucky Brand answer: 2001 release bars counterclaim
 - Lucky Brand never raised the release defense again
 - Judgment in favor of Marcel on counterclaim
- 2011 Action
 - Marcel sued Lucky Brand for use of “Lucky Brands”
 - Lucky Brand argued that claims barred by 2001 release
 - 2d Circuit: Lucky Brand precluded from raising 2001 release by “claim preclusion” because defense could have been raised in 2005 action

Lucky Brand Dungarees v. Marcel Fashion

(S.Ct., argued Jan. 13, 2020)

- **Question Presented**

- Does “defense preclusion” bar defenses not previously litigated when a plaintiff asserts new claims?

- **Supreme Court Briefs / Argument**

- Marcel’s briefs argue that 2011 Action is for “same *cause of action*” as 2005 Action but is a different *claim*
 - Violation of “exact same legal rights” and “continuation of same accused conduct”
 - Marcel argues that “claim preclusion” does not apply to it because claim now was not available earlier in time
- Lucky Brand’s briefs argue that 2011 Action is a *different* “cause of action” *and* “claim” than 2005 Action
- At oral argument, Marcel conceded that accused conduct is not completely same because Lucky Brand is not using “Get Lucky” mark

Romag Fasteners v. Fossil

(S.Ct., argued Jan. 14, 2020)

- **Facts**

- Fossil sells handbags
- Romag sells magnetic snap fasteners under ROMAG mark
- Fossil agreed to instruct its Chinese manufacturer to purchase Romag fasteners for its handbags
- Fossil’s Chinese manufacturer bought counterfeit fasteners and used them in Fossil’s handbags
- Romag sued Fossil for trademark infringement
- Jury found infringement and that Romag had acted with “callous disregard” of Romag’s rights but was not “willful”

Romag Fasteners v. Fossil

(S.Ct., argued Jan. 14, 2020)

- **Statute**

- 15 USC 1117(a) says that defendant's profits are available for a violation of section 1125(a)
- Congress later added that defendant's profits are available for "a *willful* violation under section 1125(c) [dilution]"
- Both are "subject to the principles of equity"

- **Question Presented**

- Is willfulness a requirement to be awarded a defendant's profits as a remedy for trademark infringement under 15 USC 1125(a)?
- There is a 6-6 circuit split on this issue

USPTO v. Booking.com

(S.Ct., to be argued Mar. 23, 2020)

- **Facts**

- Booking.com operates a website that allows customers to book travel and hotel accommodations
- USPTO refused to register booking.com as “generic”
- 4th Circuit reversed (tension with 9th Cir. / Fed. Cir.)
- Supreme Court has granted USPTO’s cert. petition

- **Question(s) Presented**

- USPTO: “Whether the addition by an online business of a generic top-level domain (“.com”) to an otherwise generic term can create a protectable trademark.”
- BOOKING.COM: Is genericness a factual question of the “primary significance” of a term among consumers, and did the USPTO prove genericness?

Google v. Oracle

(S.Ct., to be argued Mar. 24, 2020)

- **Facts**

- Sun developed the Java “platform” for computer programming and released it in 1996.

- Oracle acquired Sun in 2010.

- Java has a number of ready-to-use programs to perform common computer functions, which are organized into groups called “packages.” These packages allow programmers to use the prewritten code to build certain functions into their own programs, rather than write their own code to perform those functions from scratch.

- Packages (166)

e.g., java.lang

- Classes

e.g., math

- Methods

e.g., max

- » **Declaring Code**

e.g., **public static int max(int x, int y)**

- » Implementing Code

Google v. Oracle

(S.Ct., to be argued Mar. 24, 2020)

- **Facts**

- Google developed the Android platform
- Google used the **declaring source code** for 37 of Java's 166 packages. Google believed that developers would want the same 37 sets of functionalities as found in Java, callable by the same names.
- Google copied the declaring source code (11,500 lines of code) from the 37 Java packages verbatim
- In doing so, Google copied the organization/taxonomy of all the names of methods, classes, and packages
- Google wrote its own implementing code; therefore, only 3% of the total code is the same as Java
- Google designed Android to be incompatible with the Java platform, so that apps written for one will not work on the other.

Google v. Oracle

(S.Ct., to be argued Mar. 24, 2020)

- **Procedure**

- In first trial, hung jury on the issue of “fair use”
- District court granted JMOL on copyrightability
 - declaring code in the 37 packages was not copyrightable under “merger doctrine” because “there is only one way to write it” and remain interoperable with Java
 - overall structure, sequence, and organization (“taxonomy”) is “a system or method of operation” and therefore not copyrightable under 17 USC 102(b)
- Federal Circuit reversed on copyrightability and remanded for new trial on “fair use”
- Google filed petition for certiorari on issue of copyrightability. Court asked for views of solicitor general, who recommended denying certiorari. Certiorari was denied.
- In second trial, jury found “fair use”
- Federal Circuit reversed, finding no “fair use” as MOL
- Cert. granted on both copyrightability and fair use

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Google v. Oracle

(S.Ct., to be argued Mar. 24, 2020)

- **Google Questions Presented**

1. Whether copyright protection extends to a software interface.
2. Whether, as the jury found, petitioner's use of a software interface in the context of creating a new computer program constitutes fair use.

- **Oracle Questions Presented**

1. Does the Copyright Act protect Oracle's computer source code that Google concedes was original and creative and that Oracle could have written in any number of ways to perform the same function?
2. Was the Court of Appeals correct in holding that it is not fair use as a matter of law for Google to copy Oracle's code into a competing commercial platform for the purpose of appealing to Oracle's fanbase, where Google could have written its own software platform without copying, and Google's copying substantially harmed the actual and potential markets for Oracle's copyrighted works?

Cert. Denials in § 101 Cases

(S.Ct., cert. denied Jan. 13, 2020)

- **Cert. Denied**

- *Hikma v. Vanda* (methods of treatment)

- CVSG Mar. 18, 2019
- SG: Don't take this case, but take *Athena*
- Cert. denied Jan. 13, 2020

- *HP v. Berkheimer* (eligibility question of law or fact)

- CVSG Jan. 7, 2019
- SG: Don't take this case, but take *Athena*
- Cert. denied Jan. 13, 2020

- *Athena v. Mayo* (diagnostic methods)

- Seven CAFC judges believed *Mayo* required ineligibility but questioned that result, asking for S.Ct. guidance
- Five CAFC judges believed court was misinterpreting *Mayo*, asking for S.Ct. guidance
- Cert. denied Jan. 13, 2020

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Regents of the Univ. of Minnesota v. LSI

926 F.3d 1327 (Fed. Cir. June 14, 2019)

- **Facts**

- University of Minnesota sued LSI for patent infringement
- LSI petitioned for IPR
- University moved to dismiss based on sovereign immunity
- PTAB expanded panel decided that state sovereign immunity applied in IPR proceedings but was waived when University filed suit

- **Federal Circuit**

- Previously decided that tribal sovereign immunity does not preclude IPR in *Saint Regis Mohawk Tribe*.
 - IPR is more like agency enforcement action than civil suit by private party (e.g., Director decides whether to proceed with IPR, not private party)
- State sovereign immunity “do[es] not differ in a way that is material”

Celgene Corp. v. Peter

931 F.3d 1342 (Fed. Cir. July 30, 2019)

- **Facts**

- Coalition for Affordable Drugs petitioned for IPR
- Celgene patents challenged were issued before AIA
- PTAB held all challenged claims invalid for obviousness
- Celgene argues that retroactive application of IPRs to pre-AIA patents is an unconstitutional taking

- **Federal Circuit**

- “IPRs do not differ significantly enough from preexisting PTO mechanisms for reevaluating the validity of issued patents to constitute a Fifth Amendment taking.”

- **Supreme Court**

- *Collabo v. Sony* is raising Takings issue at Supreme Court, as well as Due Process issue

American Axle & Mfg v. Neapco

939 F.3d 1355 (Fed. Cir. Oct. 3, 2019)

- **Claim**

A method for manufacturing a shaft assembly of a driveline system..., the method comprising:

providing a hollow shaft member;

tuning [a] liner to attenuate at least two types of vibration transmitted through the shaft member;

positioning the...liner within the shaft member such that the...liner is configured to damp shell mode vibrations in the shaft member [at least a certain amount] and the...liner is also configured to damp bending mode vibrations,

the...liner being tuned to within about $\pm 20\%$ of a bending mode natural frequency of the shaft assembly as installed in the driveline system.

American Axle & Mfg v. Neapco

939 F.3d 1355 (Fed. Cir. Oct. 3, 2019)

- **2-1 Majority (Dyk & Taranto)**

- Prior art: liners not suitable for attenuating two vibration modes simultaneously; perhaps liner not used for bending
- The patent discloses the structure of one example of a tuned liner, but “[n]either the claims nor the specification describes how to achieve such tuning” except to provide a “nonexclusive list of variables that can be altered”
- Ineligible under § 101: These claims are a general instruction to “apply” a natural law (“Hooke’s law, and possibly other natural laws”) / attempt to claim a result without means for achieving it

- **Judge Moore / Petition for Rehearing (7 Amicus Briefs)**

- Majority doesn’t / can’t identify “natural law”
- Majority ignores factual issues at *Mayo* step 2
- Majority’s concerns go to enablement, not § 101

Arthrex v. Smith & Nephew

941 F.3d 1320 (Fed. Cir. Oct. 31, 2019)

- **Appointments Clause**

- Principal Officers: must be appointed by President; confirmed by Senate
- “Inferior Officers”: can be appointed by Department Heads
- Appointments Clause ensures that individuals with significant authority are accountable to President and those directly responsible to him
- Appointments Clause provides structural protection against the President diffusing his accountability and from Congress dispensing power too freely

- **Are PTAB judges “principal officers” or “inferior officers”?**

- **Federal Circuit**

- PTO Director does not have power to review APJ’s IPR decisions
- PTO Director cannot remove APJs except “for such cause as will promote the efficiency of the service”
- “The lack of control over APJ decisions does not allow the President to ensure the laws are faithfully executed because ‘he cannot oversee the faithfulness of the officers who execute them.’”

Arthrex v. Smith & Nephew

941 F.3d 1320 (Fed. Cir. Oct. 31, 2019)

- **Remedy – Severability of Provisions from AIA?**

- Severing three-judge APJ panels from the AIA so that Director could appoint himself to hear or rehear any appeal alone “would be a significant diminution in the procedural protections afforded to patent owners and we do not believe that Congress would have created such a system”
- “[W]e conclude that the appropriate remedy to the constitutional violation is partial invalidation of the statutory [Title 5] limitations on the removal of APJs.” APJs now removable at will, without cause.
- Vacatur and remand for a new panel of APJs to rehear the case because decision made by a panel of APJs that were not constitutionally appointed at time of decision

- **Subsequent Developments**

- Judges Hughes & Wallach have disagreed with ruling and the remedy
- Judges Dyk & Newman have disagreed with remedy
- Panels have held *Arthrex* argument waived because not in opening brief; Judge Newman has disagreed with waiver rulings
- Petitions for rehearing by all parties (incl. govt) still pending

Syngenta Crop Protection v. Willowood

944 F.3d 1344 (Fed. Cir. Dec. 18, 2019)

- **Facts**

- Syngenta owns the '138 patent (method of making azoxystrobin)
- Presume from jury verdict that both steps of process claimed in the '138 patent are performed in China but not by same entity
- Willowood USA imports the azoxystrobin into the United States

- **35 USC 271(g):** “[w]hoever without authority imports into the United States or offers to sell, sells, or uses within the United States a product which is made by a process patented in the United States shall be liable as an infringer.”

- **Federal Circuit:** unlike 271(a), no requirement that a “single entity” perform the method under 271(g). Liability is for importing/selling product, not practicing process.

IP Cases: The Year in Review

David R. Todd

February 21, 2020

