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Supreme Court Starts 2015 Off with Focus on Facts Shaping Intellectual Property Disputes

The U.S. Supreme Court kicked 2015 off with an intellectual property bang, issuing two important rulings earlier this week. Both decisions focus on the facts underpinning intellectual property disputes—who decides them and what it means when those rulings are appealed:

PATENTS

Parties' ability to rely on a district court's claim construction ruling just got a little bit stronger.

- The Supreme Court rejected the Federal Circuit's long-standing practice of reviewing all trial court patent claim construction rulings anew on appeal. Since 1998, the Federal Circuit has analyzed all claim constructions on appeal *de novo*, giving no deference to the decision of the lower court. Now, when claim construction rulings involve factual findings, the Federal Circuit will review those factual findings for clear error, giving deference to the trial judge. It is important to note that the *de novo* standard still applies when the claim construction ruling does not depend on findings of fact. For example, when a district court issues a claim construction ruling that only looks at the patent itself without looking at evidence outside the patent, the Federal Circuit will still review the claim construction ruling *de novo*. However, when the trial judge looks at scientific materials outside the patent to determine what claim language meant at a given time, those factual determinations will be given deference.
[Teva Pharmaceuticals USA, Inc., et al. v. Sandoz, Inc., et al., 574 U.S. \(2015\).](#)

TRADEMARKS

Juries will now decide whether a new mark is close enough to an older version to have the earlier priority date apply.

- In [Hana Financial, Inc. v. Hana Bank, 574 U.S. \(2015\)](#), the Supreme Court held that this "trademark tacking" issue is a factual question appropriate for a jury to decide. The Court said, "We hold only that, when a jury trial has been requested and when the facts do not warrant entry of summary judgment or judgment as a matter of law, the question whether tacking is warranted must be decided by a jury." The Court did not address the related issue of whether "likelihood of confusion" is a factual or legal question, an issue on which the Circuit Courts of Appeal are split.

If you have any questions about how these rulings might affect your business, please contact one of the members of Robinson+Cole's [Intellectual Property Litigation Team](#):

[Nuala E. Droney](#) | [Craig A. Raabe](#) | [Brian E. Moran](#)

[Benjamin C. Jensen](#) | [Brett J. Boskiewicz](#) | [James R. Nault](#)

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