

NEWS & INSIGHTS

What we're watching in IP law this year

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We're only a couple of weeks into the new year, but it's already shaping up to be an important one when it comes to intellectual property case law.

Dozens of cases are already on the docket to be heard by courts across the country that could have long-lasting effects on how IP is regulated, from artificial intelligence to social media to pharmaceuticals.

Here are some of the cases we're keeping a close eye on that we'll let you know about throughout the year:

Generative AI vs. human authors

OpenAI and Microsoft, among other large language model (LLM) platforms, have been on the defendant side for multiple class action lawsuits in the hot issue of whether the leading artificial intelligence content generators, such as ChatGPT, and their owners have infringed human content creators' copyright when it ingested the human creator's content for LLM training. There are eight of these types of cases already on the docket in California (four cases), New York (three cases) and Tennessee (one case). It will be interesting to see if any of the cases could survive the motion to dismiss and proceed further.

Chevron deference

Chevron deference will be tested in the U.S. Supreme Court – again. The precedent-setting case in 1984 established a legal test for when U.S. federal courts must defer to a government agency's interpretation of a specific law.

This [latest challenge](#) comes from commercial fishing entities that want to overturn the precedent the original ruling established. The Supreme Court heard an oral argument in the case last week, and it already seems like Chevron deference [could be on its way out](#). While not specific to intellectual property, the decision could have profound consequences for virtually every area of federal law.

Social media content moderation

The Supreme Court will hear two cases in 2024 on the issue of social media companies' content moderation authority and the state law intended to restrict this authority. We should watch how broadly the Court would interpret the First Amendment right when applied to social media platforms.

IP at the Supreme Court

Generic drugs, skinny labels, and induced patent infringement: The generic drug manufacturer Teva Pharmaceuticals has petitioned the Court to reverse a federal circuit decision and agree with Teva that the FDA-approved "skinny label" is sufficient to excuse its liability for inducing users to infringe a name brand drug's patented uses.

Inter partes review (IPR) collateral estoppel scope and the trigger time The Court is asked to clarify whether the scope of IPR estoppel applies even if the petition to institute an IPR was unsuccessful, but the claims "reasonably could have been raised during that (unsuccessful) IPR.

IPR estoppel prevents a petitioner from asserting in district court litigation any ground for invalidating a patent that it raised or reasonably could have raised during the IPR. The solicitor general is invited to file a brief in this case expressing the views of the United States. The Court's appetite and position on the case could potentially impact patent litigation strategies.

Patent eligibility: A petition has been pending on the Supreme Court’s docket waiting for the Court to address the uncertainty surrounding patent eligibility since 2022.

The case presented to the Court the Alice two-step framework and asked for clarification on how each step should be applied to physical, manual and computer processing and the appropriate enablement consideration in each step.

In light of the new wave of innovation fueled by artificial intelligence, 2024 could be a critical time for the Court to visit the patent eligibility issue.

Even with this already-crowded docket that we’ll be watching, there are bound to be additional cases that courts around the country likely will hear that could have massive effects on intellectual property law. To keep up-to-date with the most important IP cases and verdicts, you [can sign up for our e-alerts by clicking here](#) or if you have any questions on IP law, please contact a member of our [Intellectual Property](#) Group.

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