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First Impressions: (1) The determination of whether newly alleged infringement claims relate back to the original complaint is governed by Federal Circuit law; (2) Federal Circuit will review decisions regarding whether an amended pleading relates back to the date of the original pleading under a de novo standard—with any factual issues reviewed under the clear error rule; (3) In determining whether newly alleged causes of action and patents in an amended

complaint relate back to the date of the original complaint, Federal Circuit will consider the (a) overlap of the parties; (b) overlap in the accused products; (c) underlying science and technology; (d) time periods; and (e) any additional factors that might suggest a commonality or lack of commonality between two sets of causes of action—but at the bottom, the question remains whether the general factual situation or the aggregate of operative facts underlying the original claim for relief gives notice to defendant of the nature of the allegations the defendant was being called upon to answer.

- § 12:2 Board of Regents of the University of Texas System v. Boston Scientific Corp. 329
State sovereign immunity principles do not grant right to bring suit in an otherwise improper venue.
- § 12:3 Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc. 331
Under Micron, a district court may find venue waiver outside the context of Rule 12, for example, waiver based on litigation conduct.
- § 12:4 Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc. 333
A “few lines of mistaken expert testimony” held insufficient to warrant a new trial.
- § 12:5 Dr. Falk Pharma GmbH v. Generico, LLC 335
Broad engagement letter and outside counsel guidelines result in firm disqualification after two attorneys, having represented an adverse party, join that firm. Federal Circuit “ducks” question whether ethical violation alone is sufficient for disqualification, or whether other factors should be considered.
- § 12:6 General Electric Co. v. United Technologies Corp..... 340
Federal Circuit rejects General Electric’s arguments for Article III standing based on: (1) competitive harm; (2) economic losses; and (3) estoppel under section 315(e).

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	<i>Engaging in licensing and sending a cease and desist letter leads to personal and subject matter jurisdiction over foreign entities.</i>	
§ 12:8	Inspired Development Group, LLC v. Inspired Products Group, LLC	347
	<i>Federal Circuit, applying four-part test of Gunn, concludes that district court lacks federal question jurisdiction.</i>	
§ 12:9	Intellectual Ventures I LLC v. Capital One Financial Corp.	351
	<i>Under Fourth Circuit law, as well as under the Restatement (Second) of Judgments, “where the court in the prior suit has determined two issues, either of which could independently support the result, then neither determination is considered essential to the judgment. Thus, collateral estoppel will not obtain as to either determination.” Federal Circuit applies exception that if “the first action, even though decided on alternative grounds, necessarily adjudicated the issue’ in dispute in the second action, the determination in the first action would be conclusive in the second.” Federal Circuit discusses “offensive” vs. “defensive” use of collateral estoppel a/k/a issue preclusion. Federal Circuit, alternatively, concludes that Fourth Circuit would adopt treatise rationale suggesting that preclusion should be available “so long as each and any of the findings that were independently sufficient to dispose of the first action would also be independently sufficient to dispose of the second action.”</i>	
§ 12:10	Omega Patents, LLC v. CalAmp Corp.	363
	<i>District court abused its discretion in excluding or limiting certain testimony regarding the defendant’s state of mind in relation to a charge of willful infringement.</i>	
§ 12:11	Sanofi-Aventis U.S., LLC v. Fresenius Kabi USA, LLC	366
	<i>A statutory disclaimer of claims moots any controversy.</i>	

§ 12:12 TCL Communication Technology Holdings Ltd. v. Telefonaktiebolaget LM Ericsson..... 368
Party has right to a jury trial on “release payment” term in court-ordered FRAND rate license.

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IPR petitioner has Article III standing despite that the FDA will not approve its ANDA until expiration (or a finding of invalidity) of the subject patent.

§ 13:2 Arthrex, Inc. v. Smith & Nephew, Inc. 374
Federal Circuit concludes that appointment of administrative patent judges violates appointments clause, U.S. Const., Art. II, § 2, Cl. 2, and offers “fix.”

§ 13:3 AVX Corp. v. Presidio Components, Inc. 377
Federal Circuit declines to consider whether section 315(e) estoppel provision would have estoppel effect when IPR petitioner lacked Article III standing to appeal. Federal Circuit explains that “competitor standing” is limited to instances where the IPR petitioner is engaged in, or has non-speculative plans to engage in, infringing conduct. General counsel declaration attached to IPR petitioner’s opening brief outlining “competitive injury” held insufficient to accord Article III standing. But Federal Circuit provides examples of declaration allegations that potentially “might” be persuasive on Article III standing.

§ 13:4 BioDelivery Sciences International, Inc. v. Aquestive Therapeutics, Inc. 383
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	<i>In general, Federal Circuit returns to time-honored precedent. Federal Circuit panel majority applies traditional In re Wands factors and concludes claims lack enablement. Federal Circuit panel majority concludes that district court should also have granted JMOL that claims lack written description support. Regarding “written description,” Federal Circuit returns to traditional Ruschig (1967) “blaze marks” metaphor.</i>	
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§ 13:12 Samsung Electronics Co., Ltd. v. Infobridge Pte. Ltd. 402
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§ 13:13 TQ Delta, LLC v. DISH Network LLC..... 403
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§ 13:14 VirnetX Inc. v. Apple Inc. 405
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§ 15:3	Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc.	430
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§ 15:4 Curver Luxembourg, SARL v. Home Expressions Inc. 433

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§ 16:3 Trading Technologies International, Inc. v. IBG LLC 442

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