

IQE PLC v. NEWPORT FAB, LLC, Appeal No. 2024-1124 (Fed. Cir. October 15, 2025).  
Before Hughes, Stark, and Wang. Appealed from the C.D. Cal. (Judge Carney).

Background:

Plaintiff (“Tower”) filed several patent applications based on technology that was allegedly developed by IQE. IQE sued Tower in the Central District of California asserting two federal law claims, (1) violation of the Defend Trade Secrets Act and (2) correction of inventorship under 35 U.S.C. §256, and five claims arising under California state law, such as trade secret misappropriation and breach of contract. Tower moved to dismiss IQE’s complaint for failure to state a claim under Rule 12(b)(6), and Tower simultaneously filed, under California law, an anti-SLAPP motion to strike the claims arising under state law.<sup>1</sup> The district court denied the anti-SLAPP motion to strike. Tower appealed.

Issues/Holdings:

Does the Federal Circuit have jurisdiction over an appeal from a district court’s denial of an anti-SLAPP motion to strike, under California law, before entry of a final judgment? Yes. Was the district court’s denial of the anti-SLAPP motion to strike proper? No, vacated and remanded.

Discussion:

The Federal Circuit first noted that it had subject matter jurisdiction over the appeal because the claim under 35 U.S.C. §256 for correction of inventorship arises under federal patent law. The main issue was appellate jurisdiction. Although the district court’s denial of the anti-SLAPP motion to strike was not a final decision, the Federal Circuit held that an interlocutory appeal of this order was proper under the collateral order doctrine. Applying a three-part test, the Federal Circuit held (1) that the denial of the motion to strike conclusively determined the disputed issue; (2) that the motion to strike resolves an important issue separate from the merits of the case; and (3) that denial of the motion is effectively unreviewable on appeal from a final judgment. This was mainly because the anti-SLAPP motion is intended to quickly cut short certain litigations that involve free speech rights or petitioning activities.

On the merits of the anti-SLAPP motion, California law applies a two-part test: first, is defendant’s action in furtherance of their rights of petition or free speech? Second, is the plaintiff likely to succeed on the merits?

The Federal Circuit held that under the first step, Tower’s conduct in question, filing patent applications, was an activity in furtherance of its rights to petition the government, as the Ninth Circuit had previously held that filing a trademark application implicated these rights. The district court thus erred in ruling that Tower’s rights were not implicated under the first step. The district court did not properly evaluate the second step of the analysis, so the Federal Circuit remanded the case to consider “the possibility of trade secret misappropriation by Tower only at step two of its analysis.”

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<sup>1</sup> A Strategic Lawsuit Against Public Participation (SLAPP) is one in which the plaintiff’s alleged injury results from petitioning or free speech activities by a defendant that are protected by the federal or state constitutions.

NON-FEDERAL CIRCUIT HIGHLIGHT FOR NOVEMBER 5, 2025

I. Miscellaneous

- A. The USPTO recently launched a new “Streamlined Claim Set Pilot Program.” Starting October 27, 2025, the USPTO will begin accepting petitions to make special in certain unexamined utility patent applications satisfying the requirements of this program. Each Technology Center will accept approximately 200 petitions. Applications accepted into the pilot program will be granted special status until a first Office Action is issued. Applications must have been filed before October 27, 2025. The application must contain no more than one independent claim, no more than 10 total claims, and no multiple dependent claims. The USPTO has also specified certain claim dependency requirements as outlined below: the dependent claims must be directed to the same “type” of invention as the independent claim. An applicant may meet the claim requirements of the pilot program by filing a preliminary amendment. National stage application under §371 will not be accepted in this program. Please see the Federal Register Notice for a complete listing of program requirements. Overall, this pilot program appears to be an experiment to test whether examination can be accelerated by limiting the number and scope of claims per application even further than what is currently permitted.

Regarding the claim dependency requirements, the USPTO provided the examples below. Consider a claim set having independent claim 1, which recites “A widget comprising A and B,” and claim 2.

- If claim 2 recites “The widget of claim 1 further comprising C,” the claim would comply with the dependency format for the pilot program.
- If claim 2 recites “A fastener for use in securing the widget of claim 1,” the claim would not comply with the dependency format for the pilot program because it does not include all of the limitations of the previous claim.
- If claim 2 recites “A device comprising the widget of claim 1 fastened to a gadget,” the claim would not comply with the dependency format for the pilot program because the reference to the previous claim does not appear in the preamble.
- If claim 2 recites “A method of producing the widget of claim 1,” the claim would not comply with the dependency format for the pilot program because claim 2 is not directed to the same statutory class of invention as the independent claim.