

VDPP, LLC v. VOLKSWAGEN GROUP OF AMERICA, INC., Appeal No. 2024-2226 (Fed. Cir. August 19, 2026). Before Moore, Lourie, and Cunningham. Appealed from S.D. Tex. (Judge Rosenthal).

Background:

VDPP, a non-practicing entity, sued Volkswagen seeking pre-suit damages, an injunction, and future damages for infringement of a patent that expired prior to the suit being filed. Volkswagen moved to dismiss for failure to state a claim. VDPP responded with a request for leave to amend and a proposed amended complaint, even though it had agreed not to amend in exchange for Volkswagen's consent to an extension of time to respond. The proposed amended complaint alleged only that VDPP was a non-practicing entity with no products to mark and that all statutory requirements and conditions precedent to pre-suit damages had been met. The district court dismissed the case with prejudice and denied leave to amend as futile. The court also awarded Volkswagen \$207,543.60 in attorney fees. VDPP appealed both rulings.

Issues/Holdings:

Did the district court abuse its discretion by dismissing the complaint without granting leave to amend? No, affirmed. Did the district court abuse its discretion by awarding attorney fees? No, affirmed.

Discussion:

The Federal Circuit first noted that VDPP's agreement not to amend, followed by its presentation of a proposed amended complaint with no justification, would alone have supported denial of leave to amend. Setting that aside, the court held the proposed amendment was futile because a patentee seeking pre-suit damages must plead compliance with the marking provision, and its licensees must comply as well. Here, VDPP pleaded no facts showing that any of its eleven licensees complied. In addition, one of VDPP's licenses explicitly stated that the licensee need not mark its products.

VDPP argued that the licenses were special because they settled litigation and never admitted infringement. Thus, they argued that the licensee's products are not required to be marked to satisfy the notice requirement for pre-suit damages. VDPP further argued that, even if they believe the products infringe, their opinion should have no bearing on whether the products actually infringe. The court disagreed and held that there was no way for VDPP to amend its complaint and plausibly allege it made reasonable efforts to ensure its licensees complied with the marking requirement.

The court then found that VDPP's positions were frivolous and unreasonable, including seeking future damages and an injunction on an expired patent, seeking past damages despite an inability to allege patent marking, failing to disclose relevant settlement agreements, prolonging litigation with false statements about those agreements, making repeated sloppy errors, and engaging in a pattern of repeat litigation with settlement demands below the cost of defense. The court therefore upheld the district court's award of attorney fees.