CLIENT ALERT

PATENT MARKING · SEPTEMBER 2026

Antheros

A New Reason to Look at Your Patent License and Settlement Agreements

VDPP, LLC v. Volkswagen Group of America, Inc., No. 24-2226 (Fed. Cir. Aug. 19, 2026)

By Kristin Havranek · September 2, 2026

ON AUGUST 19, 2026, the Federal Circuit decided *VDPP, LLC v. Volkswagen Group of America, Inc.*, No. 24-2226, and it's a case every life sciences, medtech, and software company with a licensing or settlement history should know about.

01

Facts

VDPP, a non-practicing entity with no products of its own, sued Volkswagen for infringement of a patent that had already expired. Because the patent had expired, VDPP's only possible recovery was pre-suit damages, which required proving that Volkswagen had actual or constructive notice of the patent before expiration. VDPP had previously resolved eleven infringement disputes over the same patent through settlement licenses.

02

Holding

The court held that a patent owner's licensees must comply with the marking statute (35 U.S.C. § 287), and that the patent owner must make reasonable efforts to ensure compliance and be able to plead them as the source of the constructive notice. VDPP's complaint said nothing about whether any of its eleven licensees marked or were ever required to mark, so the case was dismissed.

03

Why This Reaches Beyond Automotive

Life sciences and medtech companies routinely resolve patent disputes through licenses, settlements, freedom-to-operate clearances, cross-licenses, and NPE resolutions. This decision means those agreements need explicit, enforceable marking provisions, not just royalty and release terms.

Consider this scenario: Company A settles a patent claim brought by Company B and takes a license to Company B's patent, but Company B doesn't practice that patent in its own products. Years later, Company B wants to assert the same patent against Company C. If the settlement never required Company A, Company B's licensee, to mark its product with the patent number, and Company A never did, Company B may have no way to establish Company C's constructive notice for the years before suit.

The damages exposure quietly disappears, and with it, much of the settlement leverage.

04

What Should You Do Now?

Audit which patents actually cover your products, and confirm that those products are marked, either physically or through "virtual marking" (a notice directing to a public webpage listing the applicable patents).

If you've licensed your patent to resolve an infringement claim but don't practice it yourself, make sure the settlement agreement explicitly requires the licensee to mark its own product. Without that, you may lose the ability to assert the patent against a different party later.

If you've licensed another's patent (or settled someone else's claim against you), check whether the agreement addresses marking at all. If you might want to assert that patent against others down the road, add it to your public marking page. If the licensor wants to preserve its own enforcement rights, that may be worth negotiating.

If you'd like us to review your patent licenses, settlements, or marking practices in light of this decision, reach out to our IP team. We're happy to help you assess your exposure.

> A NOTE FOR SOFTWARE COMPANIES
>
> Patents with only method claims carry no marking obligation because there's nothing to mark for a process rather than a product. But most software patents regularly combine system/apparatus claims with method claims, and where that's the case, marking is required. If your portfolio blends both claim types, the safer course is a marking page that captures both. Narrowing to method patents alone in litigation can help address a marking defect, but it isn't a substitute for a clean marking program from the outset.

RELATED CONTACTS

Kristin Havranek
kristin@antheros.legal

Current as of September 2, 2026 • Version 1.0