

## 6 KEY TAKEAWAYS

# IP Power Play: Recent Developments and Strategies for Success

Kilpatrick's [Ted Davis](#), [Mike Bertelson](#), and [Mitch Stockwell](#) provided an in-depth review of notable recent court decisions focusing on trademark, patent law, and advertising issues at the firm's annual **Kilpatrick Intellectual Property Seminar Series** (KIPSS) in Atlanta. The panel emphasized the implications of these cases for in-house counsel, providing critical insights to help navigate the evolving legal landscape.

Key takeaways from their discussion include:

1

The Supreme Court's pending review in *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112 (2d Cir. 2022), Cert. Granted, No. 24-1016, 2026 WL 1855011 (U.S. June 29, 2026);

2

The Ninth Circuit's latest restrictive approach to the test for likely dilution in *VIP Prods., LLC v. United States*, 185 F.4th 919 (9th Cir. 2026);

3

The continued viability of the *Rogers v. Grimaldi* test for liability in cases not presenting trademark uses by defendants; and

4

The end of consumer standing in Trademark Trial and Appeal Board (TTAB) proceedings and the mass extinction of precedential TTAB opinions.

5

When faced with a U.S. design patent infringement claim:

- Focus non-infringement arguments on the overall appearance of the design;
- Put non-infringement arguments in context of prior art designs and visual aspects that consumers would view as significant; and
- Distinguish between functional and ornamental aspects of the designs to help further emphasize the differences between the patented and accused designs.

6

Bad faith patent assertion acts have been adopted by multiple states:

- They are now being successfully enforced by recipients of patent assertion letters, resulting in successful litigation against patent assertion entities; and
- Recipients should proactively enforce their rights under these state statutes and demand full and appropriate disclosures when faced with vague or otherwise defective patent assertions.

For more information, please contact:

**Ted Davis:** [tdavis@ktslaw.com](mailto:tdavis@ktslaw.com)

**Mike Bertelson:** [mbertelson@ktslaw.com](mailto:mbertelson@ktslaw.com)

**Mitch Stockwell:** [mstockwell@ktslaw.com](mailto:mstockwell@ktslaw.com)

[www.ktslaw.com](http://www.ktslaw.com)