United States Court of Appeals for the Federal Circuit

US INVENTOR, INC., INVENTOR'S ASSOCIATION OF SOUTH CENTRAL KANSAS, INVENTORS NETWORK OF MINNESOTA, SAN DIEGO INVENTORS FORUM, INC., MERCEXCHANGE, L.L.C., PAUL MORINVILLE,
Plaintiffs-Appellants

v.

JOHN A. SQUIRES, UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE, UNITED STATES PATENT AND TRADEMARK OFFICE,
Defendants-Appellees

2024-2378

Appeal from the United States District Court for the Eastern District of Virginia in No. 1:24-cv-00708-PTG-LRV, Judge Patricia T. Giles.

Decided: August 21, 2026

AMANDA L'ESPERANCE, Prince Lobel Tye LLP, Boston, MA, argued for plaintiffs-appellants. Also represented by STEVEN R. DANIELS, Austin, TX.

WEILI J. SHAW, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, argued for defendants-appellees. Also represented by YAAKOV ROTH; MICHAEL S. FORMAN, FAHD H. PATEL, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA.

Before MOORE, *Chief Judge*, CUNNINGHAM, *Circuit Judge*, and KOVNER, *District Judge*.[1]

KOVNER, *District Judge*.

Inventor-advocacy groups sued the Patent and Trademark Office ("PTO"), contending that certain language on the cover of patents issued to inventors is misleading. We decide whether they have standing to bring their claims. They do not.

I

The Constitution empowers Congress to authorize patents. "To promote the Progress of Science and useful Arts," Congress may "secur[e] for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. CONST. art. I § 8, cl. 8. The First Congress evidently agreed with James Madison that the "utility" of this system could "scarcely be questioned," *see* The Federalist No. 43, at 271 (Clinton Rossiter ed., 1961), as it passed the first patent act within a year of ratification, *see* Act of Apr. 10, 1790, ch. 7, 1 Stat. 109.

In its current form, the Patent Act requires patents to contain "a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for

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[1] Honorable Rachel P. Kovner, District Judge, United States District Court for the Eastern District of New York, sitting by designation.

sale, or selling the invention throughout the United States or importing the invention into the United States." 35 U.S.C. § 154(a)(1).

Tracking the statute, the PTO states on the cover of every newly issued patent that the patent

> grants to the person(s) having title to this patent the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States of America or importing the invention into the United States of America . . .

Compl. ¶ 28.

Several patent-related non-profits and patent-holders sued the PTO and its acting director, challenging that language as misleading. The three plaintiffs whose standing appellants continue to defend on appeal are inventor-advocacy groups. Appellant US Inventor is a non-profit that "advocates for and educates independent inventors, small businesses, and startups on patent-related matters." *Id.* ¶ 5. It "publishes commentary on topics relevant to its members' patent interests and petitions for rulemaking on behalf of its members." *Ibid.* Appellant Inventor's Association of South Central Kansas is a non-profit that "supports and educates inventors in developing and protecting their inventions." *Id.* ¶ 10. And Appellant Inventors Network of Minnesota is a non-profit that "aims to help early-stage product developers and inventors" "through the process of bringing their ideas to market." *Id.* ¶ 11. For convenience, those groups are referred to herein as "appellants." (Three additional plaintiffs make no arguments to defend their standing at this stage.)

Appellants' core claim is that the patent cover language "assur[ing] the patent owner [of] the 'right to exclude,'" *id.* ¶ 30, is inaccurate as a result of the Supreme Court's decision in *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388

(2006). Before *eBay*, the "general rule" in the Federal Circuit was that the holder of a valid patent would automatically obtain a permanent injunction against infringers, absent "sufficiently exceptional" circumstances that suggested an injunction would not be in the public interest. *MercExchange, LLC v. eBay, Inc.*, 401 F.3d 1323, 1338–39 (Fed. Cir. 2005), *vacated and remanded sub nom. eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006). After *eBay*, that is no longer the case. Now, courts use the "four-factor test historically employed by courts of equity" to determine if a patent-holder is entitled to a permanent injunction. 547 U.S. at 390. That test requires a plaintiff to demonstrate "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *Id.* at 391.

In appellants' view, this test "has eliminated the patent owner's 'right to exclude,'" Compl. ¶ 40, which is "no longer a guarantee or an absolute right of the patent owner," *id.* ¶ 37. As a result, appellants argue, the language on patent cover letters "does not comport with the current law." *Id.* ¶¶ 41–43.

To remedy this, appellants filed a lawsuit against the PTO and its acting director seeking declaratory and injunctive relief under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* They allege that the PTO unlawfully withheld or unreasonably delayed rulemaking by failing to amend the patent cover language in light of *eBay*, "despite rulemaking petitions alerting the Director to the injurious results of this inaction." Compl. ¶¶ 51–56 (Count I). They further allege that the PTO's continued use of the existing cover language constitutes arbitrary and capricious agency action, *id.* ¶¶ 57–62 (Count II), and action exceeding the agency's statutory jurisdiction, authority, or limitations, *id.* ¶¶ 63–68 (Count III). As relief, they ask the court to compel the PTO to engage in notice-and-comment rulemaking to change the cover language and to enjoin the PTO from "making representations of an unequivocal right to exclude on the cover of a granted patent." *Id.* at 16. They also ask the court to declare the current language unlawful. *Ibid.*

On appellees' motion, the district court dismissed the complaint for lack of standing. The court also concluded that any attempt to amend the complaint would be futile, so it declined to grant leave to amend. Appellants timely appealed.

II

This Court applies regional circuit law to its "review of a dismissal of a complaint for lack of standing unless the issue is unique to patent law and therefore exclusively assigned to the Federal Circuit." *Univ. of S. Fla. Rsch. Found., Inc. v. Fujifilm Med. Sys. U.S.A., Inc.*, 19 F.4th 1315, 1323 (Fed. Cir. 2021). Both this Circuit and the regional circuit here—the Fourth—review dismissals for lack of standing de novo. *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274, 1284 (Fed. Cir. 2022); *Kenny v. Wilson*, 885 F.3d 280, 287 (4th Cir. 2018).

The law of the regional circuit governs review of a district court's denial of leave to amend. *Simio, LLC v. FlexSim Software Prods., Inc.*, 983 F.3d 1353, 1358 (Fed. Cir. 2020). The Fourth Circuit reviews a denial of leave to amend for abuse of discretion. *United States ex rel. Nicholson v. MedCom Carolinas, Inc.*, 42 F.4th 185, 197 (4th Cir. 2022).

III

Appellants have not adequately pleaded a threat of future injury from the conduct that they challenge. They have therefore failed to establish standing to seek injunctive and declaratory relief.

Article III of the Constitution limits the jurisdiction of federal courts to "Cases" and "Controversies." This limitation ensures that federal courts only review "executive actions when necessary 'to redress or prevent actual or imminently threatened injury to persons caused by . . . official violation of law.'" *Murthy v. Missouri*, 603 U.S. 43, 56–57 (2024) (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 492 (2009)). "Except when necessary in the execution of that function, courts have no charter to review and revise . . . executive action." *Summers*, 555 U.S. at 492. These principles prevent the judicial power from being converted "into 'no more than a vehicle for the vindication of the value interests of concerned bystanders.'" *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982) (quoting *United States v. SCRAP*, 412 U.S. 669, 687 (1973)).

When a plaintiff seeks injunctive relief, he "must show that he is under threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." *Summers*, 555 U.S. at 493 (citing *Friends of Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.,* 528 U.S. 167, 180–181 (2000)). Declaratory relief likewise requires a "case or controversy of 'sufficient immediacy and reality.'" *City of L.A. v. Lyons*, 461 U.S. 95, 104 (1983) (quoting *Golden v. Zwickler*, 394 U.S. 103, 109 (1969)); *see California v. Texas*, 593 U.S. 659, 672–73 (2021).

"Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief [] if unaccompanied by any continuing, present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974). A plaintiff who fails to allege "a real and immediate threat" of future harm lacks standing to seek injunctive relief. *Lyons*, 461 U.S. at 105. Instead, a plaintiff must show "a sufficient likelihood that he will again be wronged in a similar way" as before. *Id.* at 111; *accord Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024).

For an organization, "the standing requirements of Article III can be satisfied in two ways." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). *First*, "the organization can claim that it suffered an injury in its own right." *Ibid. Second*, even if the organization itself suffered no injury, it can nonetheless "assert standing solely as the representative of its members." *Ibid.* (internal quotation marks and citation omitted). This second avenue is known as associational standing. When assessing associational standing, the question is "whether an association has standing to invoke the court's remedial powers on behalf of its members." *Warth v. Seldin*, 422 U.S. 490, 515 (1975). The answer is yes where (a) the association's "members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); *accord Students for Fair Admissions*, 600 U.S. at 199.

Appellants maintain that they have established standing under both theories: organizational standing and associational standing. Neither works.

A.

Appellants have not established organizational standing to seek injunctive relief because they have not adequately pleaded a risk of future injury to the appellant organizations.

Under the organizational-standing doctrine, organizations may "sue on their own behalf for injuries they have sustained." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982) (citing *Warth*, 422 U.S. at 511). Like individuals, organizations "must satisfy the usual standards for injury in fact, causation, and redressability," *All. for Hippocratic Med.*, 602 U.S. at 393–94, including the requirement, when seeking injunctive relief, that the litigant demonstrate a concrete threat of future injury. So "an organization may not establish standing simply based on the intensity of the litigant's interest or because of strong opposition to the government's conduct, no matter how longstanding the interest and no matter how qualified the organization." *Id.* at 394 (internal quotation marks and citations omitted).

As a corollary, *FDA v. Alliance for Hippocratic Medicine* makes clear that an organization cannot parlay strong views into standing through its own expenditures. In that case, a group of organizations argued that they had standing to challenge certain FDA actions because they "forced" the organizations to "expend considerable time, energy, and resources" on advocacy and education. 602 U.S. at 394. The Supreme Court disagreed, reasoning that an organization "cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action." *Ibid.* It is "incorrect," the Court concluded, to suggest that "standing exists when an organization diverts its resources in response to a defendant's actions." *Id.* at 395. Were it otherwise, "all the organizations in America would have standing to challenge almost every federal policy that they dislike, provided they spend a single dollar opposing those policies." *Ibid.*

Appellants fail to establish organizational standing because they rely on diversion-of-resources theories that *Alliance for Hippocratic Medicine* foreclosed. US Inventor's claimed injury is that misleading language on patent covers leads the organization to "spend time and resources developing its own guidance for its members," Compl. ¶ 7, and "force[s] the organization to partake in activities outside of its normal expenditures," *id.* ¶ 8. Inventor's

Association of South Central Kansas strikes a similar chord: it "has been forced to divert its resources outside of the typical scope of its activities as a means to protect its members." *Id.* ¶ 10. Same goes for Inventors Network of Minnesota: it has had to "spend time and resources on this issue." *Id.* ¶ 11. In other words, to quote their brief, "Organizational Appellants had to divert resources to educate their members about the misrepresentations, impairing their ability to fulfill their missions." Apps.' Br. 8. *Alliance for Hippocratic Medicine* made clear that "[a]n organization cannot manufacture its own standing in that way." 602 U.S. at 394.

The law of the Fourth Circuit supports the same conclusion. More than a decade before *Alliance*, that court held that an organization cannot establish standing by pointing to a "diversion of resources." *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012). "[A]n organization that decides to spend its money on educating members, responding to member inquiries, or undertaking litigation in response to legislation" does not suffer "a cognizable injury." *Ibid.* Otherwise, "organizations with merely 'abstract concerns with a subject that could be affected by an adjudication'" would have standing. *Ibid.* (quoting *Simon v. E. Ky. Welfare Rights Org.,* 426 U.S. 26, 40 (1976) (brackets adopted)). Treating such harms as cognizable injuries "would not comport with the case or controversy requirement of Article III of the Constitution." *Ibid.*

Appellants focus their standing arguments on an earlier case, *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), but the Supreme Court made clear in *Alliance* that *Havens Realty* is a narrow decision that does not support diversion-of-resource standing theories. In *Havens Realty*, a plaintiff organization known as HOME sued the owner and operator of several apartment complexes, alleging that the business "had provided HOME's black employees false information about apartment availability—a practice known as racial steering." *Alliance*, 602 U.S. at 395 (citing

Havens, 602 U.S. at 366 & n.1). The organization alleged that these deceptive practices harmed its ability to provide counseling and referral services to home-seekers. *Havens*, 602 U.S. at 369. The Court accepted this claim of injury for standing purposes, finding it sufficient that the racial steering practices "perceptibly impaired" the organization's "ability to provide counseling and referral services." *Id.* at 379.

Importantly, the Supreme Court clarified *Havens* in *Alliance*, where it held that *Havens* did not permit plaintiffs to establish standing based on diversion of organizational resources. The Court explained that the conduct in *Havens* had "directly affected and interfered with HOME's core business activities." *Alliance*, 602 U.S. at 395; *see ibid.* (deeming it critical that "HOME . . . operated a housing counseling service"). After all, a non-profit service can hardly provide effective counseling or referrals to home-seekers if its employees receive false information about what apartments are available. The Court added that the conduct HOME alleged resembled a traditional tort, in that it was "not dissimilar to a retailer who sues a manufacturer for selling defective goods to the retailer." *Alliance*, 602 U.S. at 395. It indicated these factors were essential to the case's holding, stating that "*Havens* was an unusual case" that the Court "has been careful not to extend . . . beyond its context." *Id.* at 396.

Appellants' theory lacks the critical ingredients of *Havens*. First, the future injury that appellants allege is not one that "*directly* affect[s]" the appellants. *Alliance*, 602 U.S. at 395 (emphasis added) (characterizing *Havens*). While the plaintiff counseling service in *Havens* could plausibly claim that the organization itself would be misinformed by the defendant landlord's false information about housing availability, the appellant organizations here can make no comparable claim about the information on patent covers. After all, they acknowledge they are aware of the *eBay* decision—the decision with which they allege that the cover language is inconsistent. They instead assert only indirect injury on the theory that third parties— unidentified inventors—will be misinformed by defendants, and the appellant organizations will have to divert resources to help them as a result. Compl. ¶¶ 7, 10, 11. This is not the type of direct injury alleged in *Havens*, but rather the type of diversion-of-resource theory that *Alliance* forecloses.

Tied to this, appellants have not alleged an injury that resembles a traditional tort like the one in *Havens*. *See Alliance*, 602 U.S. at 395. Appellants are not similar to "a retailer who sues a manufacturer for selling defective goods to the retailer," *ibid.*, because in such a case, the manufacturer is providing the retailer with a defective good that the retailer would foreseeably pass on to consumers, harming the retailer's business and reputation. Appellants have not suggested that they would pass on the alleged misinformation on patent covers to others; to the contrary, they suggest that they provide advice to disabuse inventors of the information on the covers. Compl. ¶¶ 7, 10, 11.

Finally, appellants have not plausibly claimed the information appellees provide on patent covers impedes their "core business activities," *Alliance*, 602 U.S. at 395. Appellants assert the patent covers have diverted them from their core activities, by causing them to take on advice-giving responsibilities they would not otherwise perform. Compl. ¶ 7 ("Providing business advice for each independent inventor or small business containing inventors is outside the usual practice of US Inventors. Nonetheless, because of the USPTO's failure to provide an accurate representation of a patent owner's rights on the cover of an issued patent . . . US Inventor has had to spend time and resources developing its own guidance for its members on how to handle investment, research, and business decisions . . ."); *see id.* ¶ 10 (stating that the Inventor's Association of South Central Kansas, which "provides patent application guidance and networking opportunities for inventors . . . has been forced to divert its resources outside of the typical scope of its activities as a means to protect its members"); *id.* ¶ 11 (stating that Inventors Network of Minnesota "focuses on assisting inventors through the process of bringing their ideas to market" and that the organization "has been injured by having to spend time and resources" on the topic of the scope of patent protections).

In sum, appellants have not alleged the type of direct interference with core business activities that the Supreme Court found critical to *Havens*, but rather the diversion of resources that the Court deemed inadequate in *Alliance*. Appellants have failed to plausibly allege organizational standing.

B.

Appellants likewise fail to establish associational standing. Recall that an organization may rely on associational standing if "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*, 432 U.S. at 343. Appellants have not adequately pleaded associational standing for any appellant.

1.

As to US Inventor, appellants' attempts to plead associational standing fail because appellants have not identified any group member facing a threat of future injury. US Inventor has submitted declarations from three inventor-members: Schumann Rafizadeh, Venkat Konda, and Paul Hayes. All three state, in substance, that they were "misled by the representations on the cover of issued patents" and "assumed that there would be a right to exclude others from making, using, offering for sale, or selling the invention of [his] issued patent throughout the United States." Compl. Ex. B. ¶¶ 7, 9 (Rafizadeh); *see* Compl. Ex. C. ¶ 6 (Konda); Compl. Ex. D. ¶ 5 (Hayes). But all three acknowledge that they have "now learned that the right to exclude infringers from practicing the patent invention through injunctive relief is not a legal guarantee" in the wake of *eBay*. Compl. Ex. B. ¶ 8; *see* Compl. Ex. C. ¶ 7; Compl. Ex. D. ¶ 6. Now that each of these members knows about the *eBay* decision, there is not "a sufficient likelihood that he will again be wronged" by the cover page language "in a similar way." *Lyons*, 461 U.S. at 111; *see Murthy*, 603 U.S. at 59 (past harm "is relevant only insofar as it is a launching pad for a showing of imminent future injury"). They are thus "no more entitled to an injunction than any other citizen" who holds a patent, "and a federal court may not entertain" such a claim. *Lyons*, 461 U.S. at 111.

2.

Appellants cannot invoke associational standing for the remaining two appellant organizations because those groups did not plead a theory of associational standing at all. Appellants pleaded an associational theory for U.S. Inventor by alleging that the group suffered an "associational injury" on account of harm to its members, Compl. ¶ 9, and attaching supporting member declarations, Compl. Exs. B–D. In contrast, appellants alleged that Inventor's Association of South Central Kansas and Inventors Network of Minnesota each suffered an "organizational injury," in the form of diversion of resources. Compl. ¶¶ 10, 11. The complaint makes no assertions about harms suffered by those groups' members and attaches no declarations from them. In short: nothing in the complaint hints at a theory of associational standing for any party but US Inventor. The district court was therefore correct to consider associational standing for only US Inventor.

IV

The district court did not abuse its discretion in denying appellants leave to amend their complaint. District courts "should freely give leave" to amend a pleading "when justice so requires." Fed. R. Civ. P. 15(a)(2). But leave need not be granted when amendment would be "futile." *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006) (en banc) (citation omitted). Here, the only change appellants have suggested they would make in an amended complaint is clarifying that their associational standing arguments were being advanced on behalf of Inventor's Association of South Central Kansas and Inventors Network of Minnesota, in addition to US Inventor. Appellants' Br. 21–22. But those groups' associational standing arguments would fail for the same reason as US Inventor's—specifically, the absence of plausible allegations of an imminent threat of future injury to any of the group's members. Appellants have never asserted that they could add further factual allegations that would remedy that foundational problem. Accordingly, amendment would be futile.

* * *

We affirm the district court's judgment.

AFFIRMED