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## Federal Circuit Patent Update

2008-06-01

### Precedential Opinions

1. *Helmsderfer v. Bobrick Washroom Equipment Inc.* (2008-1027, 6/4/08) (Mayer, Friedman, Moore)

(Moore) Affirming judgment of non-infringement of patent directed to diaper changing stations. The “district court was correct in construing the term ‘partially hidden from view’ to mean ‘hidden from view to some extent but not totally hidden from view.’”

2. *Burandt v. Director, USPTO* (2007-1504, 6/10/08) (Newman, Lourie, Bryson)

(Lourie) Affirming summary judgment in favor of the PTO’s Director. The Director’s denial of patentee’s request to reinstate patent after failure to pay maintenance fee was “neither arbitrary or capricious, nor an abuse of discretion.”

3. *Innovation Technologies v. Splash! Medical Devices* (2007-1424, 6/16/08) (Mayer, Friedman, Moore)

(Friedman) Vacating order awarding attorney fees and remanding.

4. *Innovation Technologies v. Splash! Medical Devices* (No. 2007-1424, 6/16/08) (Mayer, Friedman, Moore)

(Friedman) Vacating holding of exceptional case and award of attorney fees because of inadequate findings on the issue.

5. *Nilssen v. Osram Sylvania* (No. 2007-1198, 6/17/08) (Newman, Mayer, Lourie)

(Lourie) Affirming award of attorney fees to the defendant and denial of expert fees to the plaintiff. Inequitable conduct and litigation misconduct supported an exceptional case holding and award of attorney fees to the defendant (and denial of expert fees to the

plaintiff). Newman dissents.

6. *TIP Systems v. Phillips & Brooks/Gladwin* (No. 2007-1241, 6/18/08) (Michel, Prost, Pogue [of the C.I.T., sitting by designation])

(Prost) Affirming summary judgment of noninfringement. The doctrine of equivalents did not apply because of the all elements rule.

7. *Scanner Tech. Corp. v. Icos Vision Systems Corp. N.V.* (No. 2007-1399, 6/19/08) (Michel, Clevenger, Gajarsa)

(Clevenger) Affirming judgment of noninfringement and invalidity for obviousness but reversing holding of inequitable conduct. Statements in a petition to make special were not false or misleading.

### **Nonprecedential Opinions of Note**

1. *Pellegrini v. Analog Devices Inc.* (2008-1091, 6/5/08) (Bryson, Prost, Zagel [of the N.D. of Illinois, sitting by designation])

Per Curiam. Affirming grant of defendant's motion for Rule 11 sanctions. Patentee accused defendant of inducing infringement without "[conducting] a sufficiently reasonable pre-filing inquiry" as to direct infringement by defendant's customers. Also denying patentee's requests for sanctions and to amend the complaint.

WilmerHale represented the defendant-appellee, Analog Devices, Inc.

2. *Beam v. Roller Derby Skate Corp.* (2007-1368, 6/6/08) (Newman, Gajarsa, Ward [of the E.D. of Texas, sitting by designation])

Per Curiam. Affirming grant of motion to dismiss with prejudice pursuant to Rule 12(b)(6). "[C]laim preclusion now bars this action."

3. *ADC Telecommunications v. Switchcraft* (No. 2007-1423, 6/16/08) (Schall, Prost, Ward [of the E.D. Tex., sitting by designation])

(Schall) Affirming jury verdict of infringement. A dispute over the proper testing method to use to determine infringement was a factual question properly submitted to the jury.

4. *Fargo Electronics Inc. v. Iris, Ltd.* (No. 2007-1523, 6/27/08) (Newman, Prost, Moore)

(Prost) Affirming judgment of indefiniteness. A claim phrase that lacked an object was indefinite and could not be corrected by the district court where the correct meaning was subject to reasonable debate.