
Federal Circuit Patent Updates - June 2018

JUNE 2018

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***Impax Laboratories Inc. v. Lannett Holdings Inc.* (No. 2017-2020, 6/28/18) (Lourie, Dyk, Taranto)**

Lourie, J. Affirming judgment of no invalidity for claims related to nasal spray for treatment of migraine.

A full version of the text is [available in PDF form](#).

***Sirona Dental Systems GmbH v. Institut Straumann AG* (No. 2017-1341, -1403, 6/19/18) (Prost, Moore, Stoll)**

Moore, J. Vacating Board's denial of contingent motion to amend and remanding for reconsideration in light of Aqua Products. "[W]e leave to the Board to determine in the first instance, in light of recent precedent including [SAS Institute] whether it may consider combinations of references not argued by the petitioner in opposing the motion to amend, and, if so, what procedures consistent with the APA are required to do so." Also affirming the Board's decision that some claims were unpatentable and that the petitioner had failed to demonstrate unpatentability of other claims.

A full version of the text is [available in PDF form](#).

***Xitronix Corporation v. KLA-Tencor Corporation* (No. 2016-2746, 6/15/18) (Per Curium)**

Denial of petition for rehearing on banc of panel opinion holding that Federal Circuit did not have jurisdiction of Walker Process antitrust claim based on inequitable conduct. Newman J., dissented with an opinion. Lourie, J., dissented without opinion.

A full version of the text is [available in PDF form](#).

***Stone Basket Innovations, LLC v. Cook Medical LLC* (No. 2017-2330, 6/11/18) (Prost, Wallach, Taranto)**

Wallach, J. Affirming district court's denial of motion for attorneys fees after patent had been held invalid in IPR and case dismissed with prejudice where (1) invalidity contentions did not comply

with local rules and therefore did not give clear notice that patent was invalid (2) inventor's deposition testimony, while suggesting patentee's litigation position was weak, did not show case was exceptional and (3) defendant failed to provide "early, focused and supported notice of its belief that it was being subjected to exceptional litigation behavior" and (4) number of lawsuits and settlements obtained by plaintiff's managers did not rise to level court had previously considered exceptional.

A full version of the text is [available in PDF form](#).

***Medtronic, Inc. v. Barry* (No. 2017-1169, -1170, 6/11/18) (Taranto, Plager, Chen)**

Chen, J. Affirming-in-part and vacating-in part Board's IPR decisions on two patents directed to methods and systems for aligning vertebrae. The Board did not adequately consider whether CD's of videos distributed at several conferences were printed publications.

WilmerHale represented the appellant Medtronic.

A full version of the text is [available in PDF form](#).

***PGS Geophysical AS v. IANCU* (No. 2016-2470, -2472, -2474, 6/7/18) (Wallach, Taranto, Stoll)**

Taranto, J. After Board ruled partly for Petitioner and partly for Patent Owner in IPRs, the case settled and only PTO pursued the appeal of the claims found obvious. Notwithstanding SAS, the Court held that it had jurisdiction to hear the appeal, did not need to *sua sponte* revive non-instituted grounds and otherwise affirmed the Board's obviousness determination.

A full version of the text is [available in PDF form](#).

***In Re Durance* (No. 2017-1486, 6/1/18) (Lourie, Reyna, Chen)**

Reyna, J. Vacating and remanding the PTAB's determination of obviousness. The Court held that the PTAB erred in not considering arguments in the patent applicants' reply brief that were properly made in response to the examiner's answer.

A full version of the text is [available in PDF form](#).

***Zeroclick, LLC v. Apple Inc.* (No. 2017-1267, 6/1/18) (Reyna, Taranto, Hughes)**

Hughes, J. Vacating and remanding the district court's judgment that asserted claims were invalid as indefinite because the claims recited means-plus-function terms for which the specifications did not disclose sufficient structure. The Court held that the district court did not properly support its conclusion that the asserted claims recited means-plus-function terms.

A full version of the text is [available in PDF form](#).