
Federal Circuit Patent Updates - November 2018

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***Maxchief Investments Limited v. Wok & Pan, Ind., Inc.* (No. 2018-1121, 11/29/18) (Dyk, Reyna, Hughes)**

Dyk, J. Manufacturer lacked personal jurisdiction over patentee to sustain declaratory judgment in Tennessee. Fact that patentee sought an injunction in a separate California action which might have effect on behavior of non-party Tennessee distributor was too attenuated to satisfy minimum contacts. Personal jurisdiction was also lacking over tortious interference claim. Sending a letter to an entity in the forum state might be sufficient to create personal jurisdiction over a tortious interference claim. However, here, the receiving entity was not located in Tennessee even if its lawyer was.

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

***Enplas Display Device Corpora v. Seoul Semiconductor Company* (No. 2016-2599, 11/19/18) (Newman, Hughes, Stoll)**

Stoll, J. Affirming the district court's judgment that the asserted patent claims directed to backlighting display panels were infringed and not invalid. The Court explained that the jury's findings regarding infringement and validity were supported by substantial evidence. The Court also concluded that the district court correctly granted summary judgment that one of the asserted prior art references did not anticipate the challenged claims because the evidence showed that the prior art reference would need to be modified to meet the claims. However, the Court vacated the damages award as not supported by substantial evidence on the ground that the damages calculation was based in part on sales of non-accused products. The Court remanded for further proceedings. Judge Newman concurred in the portion of the judgment concerning infringement and validity but dissented regarding the damages issue.

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***Hamilton Beach Brands, Inc. v. F'Real Foods, LLC* (No. 2018-1274, 11/16/18) (Reyna, Wallach, Taranto)**

Reyna, J. Affirming the PTAB's decision upholding a claim directed to a drink mixer with a splash shield that is rinsed by a pre-positioned nozzle as not obvious under 35 U.S.C. § 103. The Court held that the prior art did not teach or suggest the nozzle element of the claim, which the PTAB had correctly construed to require a nozzle that is pre-positioned to point at the splash shield. The Court also declined to consider the patent owner's argument that the IPR petition was time barred, because the patent owner did not raise the argument in a cross-appeal. The Court explained that a cross-appeal was required because the time-bar argument was not an alternate basis to support affirmance, but rather would have required vacatur of the PTAB's decision.

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***Ancora Technologies, Inc. v. HTC America, Inc.* (No. 2018-1401, 11/16/18) (Dyk, Wallach, Taranto)**

Taranto, J. Reversing the district court's judgment that the asserted patent claims were invalid for lack of patentable subject matter under 35 U.S.C. § 101. The patent claims are directed to methods of restricting the operation of software on a particular computer using information stored in that computer's BIOS memory. The Court held that the asserted patent claims were not directed to patent ineligible subject matter because the claims were directed to "a concrete assignment of specified functions among a computer's components to improve computer security."

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***Arcelormittal Atlantique v. AK Steel Corporation* (No. 2017-1637, 11/14/18) (Reyna, Wallach, Hughes)**

Reyna, J. Vacating the district court's grant of summary judgment, which applied collateral estoppel to patent infringement claims regarding hot-stamped boron steel sheets. The Court held that the plaintiff's claims were not collaterally estopped because there was evidence of a material difference between the defendant's accused "ULTRALUME" steel product in this case and the defendant's accused "AXN" steel product in a prior case. The Court explained that the evidence indicates a material difference between the ULTRALUME and the AXN products with respect to a claim limitation requiring "a very high mechanical resistance in excess of 1500 MPa after thermal treatment." The Court remanded for further proceedings.

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

***Arista Networks, Inc. v. Cisco Systems, Inc.* (No. 2017-1525, -1577, 11/9/18) (Prost, Schall, Chen)**

Prost, C.J. Reversing the PTAB's decision with respect to the petitioner Arista's appeal regarding claim construction and affirming the PTAB's decision with respect to patent owner Cisco's cross-appeal regarding assignor estoppel. In Arista's appeal, the Court agreed that the PTAB incorrectly construed "broadcast" as "a transmission of a message simultaneously to all destinations in a network." The Court explained that the PTAB's construction would incorrectly exclude the patent's preferred embodiment, which disclosed a "multicast" transmission that does not require transmission to all network devices. The Court then construed "broadcast" in the context of the challenged patent to mean "a transmission to one or more devices using a multicast address," and

remanded for the PTAB to reconsider the patentability of the upheld claims in light of that construction. In Cisco's cross-appeal, the Court rejected Cisco's argument that assignor estoppel precluded Arista's IPR. The Court held that assignor estoppel does not apply in IPR proceedings because the plain language of 35 U.S.C. § 311(a) provides that "a person who is not the owner of a patent" may file an IPR petition challenging the patent, and that this language must be interpreted to allow an assignor of a patent, who is no longer the owner of the patent, to file an IPR petition as to that patent.

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

***Acceleration Bay, LLC v. Activision Blizzard Inc.* (No. 2017-2084, -2085, -2095, -2096, -2097, -2098, -2099, -2117, -2118, 11/6/18) (Prost, Moore, Reyna)**

Moore, J. Affirming the PTAB's decisions in consolidated appeals of twelve IPR proceedings holding unpatentable certain claims and upholding certain claims of three patents directed to a broadcast technique for a point-to-point communications network. The patent owner appealed and the petitioner cross-appealed. With respect to the appeal, the Court rejected the patent owner's arguments that the PTAB had incorrectly construed the claims, explaining that patent owner's proposed constructions were not supported by the claims or the specification. With respect to the cross-appeal, the Court concluded that substantial evidence supported the PTAB's finding that one of the prior art references cited in the petition was not publicly accessible prior art under 35 U.S.C. § 102(a) because it had not been catalogued or indexed such that an interested artisan exercising reasonable diligence would have found it. Finally, the Court concluded that the PTAB did not err in determining that certain claims and substitute claims of the challenged patents were patentable over the prior art.

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***GoPro, Inc. v. Contour IP Holding LLC* (No. 2017-1894, -1936, 11/1/18) (Reyna, Wallach, Hughes)**

Reyna, J. Following rehearing, vacating Board decision in IPRs related to action sport video cameras and remanding. The instituted grounds used a sales catalog as prior art. During the IPR, the patent owner challenged the prior art status of the sales catalog because the trade show at which it was distributed was "open to dealers but not the public." In its final written decisions, the Board concluded that the petitioner "had not met its burden to show that the [catalog] was disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art and exercising reasonable diligence could have located it." The Court disagreed finding that the sales catalog qualified as prior art. "When direct availability to an ordinarily skilled artisan is no longer viewed as dispositive, the undisputed record evidence compels a conclusion that the [catalog] is a printed publication as a matter of law... Although the trade show was only open to dealers, there is no evidence or indication that any of the material disseminated or the products at the trade show excluded [action cameras], or information related to such cameras. This is especially true in light of evidence that the [trade organization is] directed to action sports vehicles and accessories related thereto... Based on [petitioner's] testimony regarding the [trade show], and the evidence of the [distributor's] website, we conclude that

[petitioner] met its burden to show that its catalog is a printed publication under § 102(b).”

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