

Federal Circuit Patent Updates - April 2007

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Microsoft Corp. AT&T Corp. (No. 05-1056)

April 30, 2007 10:03 AM

(Ginsburg) The Court held that copies of Microsoft software made outside the US from a master disk or electronic transmissions dispatched from the US and then installed in computers outside the US did not infringe a US patent under 35 USC 271(f). The Court did not give the statute "an expansive interpretation" but left to Congress the scope of patent protection sought by the patentee. However, a copy of the Microsoft software was a "component" under the statute. Three justices concurred in substantial part-- <http://supct.law.cornell.edu/supct/html/05-1056.ZC.html>. Stevens dissented--<http://supct.law.cornell.edu/supct/html/05-1056.ZD.html>. WilmerHale represented the Respondent.

A full version of the opinion is available [here](#).

KSR Int'l Co. v. Teleflex Inc. (No. 04-1350)

April 30, 2007 10:01 AM

(Kennedy) The Court reversed the Federal Circuit and held a patent invalid as obvious under 35 USC 103. As was the law before, the Court held that "a patent composed of several elements is not proved obvious merely by demonstrating that each of the its elements was, independently, known in the prior art." However, the Federal Circuit's requirement to prove obviousness of the patented invention that there be a "teaching, suggestion, or motivation" to combine those elements, although "captur[ing] a helpful insight", should not be "a rigid rule that limits the obviousness inquiry" and was erroneously applied in this case. The Court discussed "an expansive and flexible approach" to the question of obviousness.

A full version of the opinion is available [here](#).

Pods, Inc. v. Porta Stor, Inc., et al. (No. 2006-1504) (Lourie, Dyk, O'Malley [of the N.D. Ohio, sitting

by designation])

April 27, 2007 10:17 AM

(Dyk) Reversing judgment of infringement because of erroneous claim construction and argument-based prosecution history estoppel, vacating judgment of copyright infringement, and affirming other judgments. Limiting claim term to the disclosed embodiments.

***In re Omeprazole Patent Litigation* (No. 04-1562) (Newman, Rader, Bryson)**

April 23, 2007 10:15 AM

(Rader) Affirming judgments that patent was infringed and enforceable but also invalid. Newman concurs in part but dissents on question of validity including inherent anticipation.

***Advanced Technology Materials, Inc. v. Praxair, Inc.* (No. No. 2006-1540) (Mayer, Rader, Prost)**

April 19, 2007 10:32 AM

(Prost) Affirming summary judgment of obviousness. An expert's declaration did not create an issue of fact; "where a prior art reference plainly discloses a claim limitation, the court may recognize and apply that teaching on summary judgment."

***Intamin, LTD. v. Magnetar Technologies, Corp.* (No. 05-1546) (Rader, Plager, Prost)**

April 18, 2007 10:13 AM

(Rader) Vacating summary judgment of noninfringement because of erroneous claim construction and affirming district court decision to vacate Rule 11 sanctions. "[T]his court has acknowledged that a claim need not cover all embodiments. ...A patentee may draft different claims to cover different embodiments."

***Acumed LLC v. Stryker Corporation, et al.* (2006-1260, -1437) (Gajarsa, Linn, Moore)**

April 12, 2007 10:25 AM

(Gajarsa) Affirming finding of willful literal infringement of patent directed to orthopedic device and vacating permanent injunction and remanding for reconsideration in light of Supreme Court's decision in *eBay v. MercExchange*. District court did not apply the traditional four factor test for injunctions. Moore dissents as to the finding of literal infringement saying the proper construction of "transverse holes" requires the holes to be perpendicular to an axis.

***Bass Pro Trademarks v. Cabela's* (2006-1276) (Newman, Clevenger, Dyk)**

April 6, 2007 10:20 AM

(Newman) Vacating contempt order and sanctions relating to infringement of patent on vest garment with pivotable seat. District court erred in holding that the term "vest" was not a material limitation of the claim.

Central Admixture Pharmacy Services, Inc., et al. v. Advanced Cardiac Solutions, P.C., et al.
(No. 06-1307) (Schall, Gajarsa, Prost)

April 3, 2007 1:27 PM

(Gajarsa) Reversing summary judgment that patent directed to a chemical solution for use during heart surgery was infringed in light of invalid certificate of correction and remanding for determination of infringement under uncorrected claims. The certificate sought to change "osmolarity" with the word "osmolality," a term with a subtly different meaning. Also affirming summary judgment dismissing invalidity claim and claims for false marking and false advertisement.