
Federal Circuit Patent Updates - April 2015

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***Biosig Instruments, Inc. v. Nautilus, Inc.* (No. 2012-1289, 4/27/15) (Newman, Schall, Wallach)**

April 27, 2015 11:12 AM

Wallach, J. On remand from the Supreme Court, reversing district court summary judgment decision on indefiniteness. "We conclude the 'spaced relationship' phrase 'inform[s] those skilled in the art about the scope of the invention with reasonable certainty.'" "[A]n ordinarily skilled artisan would be able to determine this language requires the spaced relationship to be neither infinitesimally small nor greater than the width of a user's hands."

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

***Info-Hold, Inc. v. Muzak LLC* (No. 2014-1167, 4/24/15) (Reyna, Wallach, Taranto)**

April 24, 2015 4:33 PM

Reyna, J. Affirming striking of patentee's damages report, which relied upon the entire market value rule without evidence that the patented features drove customer demand and also relied on the 25-percent rule, which the Court "discredited in *Uniloc USA, Inc. v. Microsoft Corp.*" Also reversing summary judgment of no damages "because there was no evidence of record supporting a zero royalty and the evidence of record which could be used to determine a non-zero royalty was ignored." Also vacating summary judgment of no induced infringement and remanding for further consideration of willful blindness. Also affirming claim construction of the term "when a caller is placed on hold."

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

***Info-Hold, Inc. v. Applied Media Tech. Corp.* (No. 2013-1528, 4/24/15) (Reyna, Wallach, Taranto)**

April 24, 2015 1:40 PM

Reyna, J. Reversing claim construction for patent related to music playback and remanding.

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

***Belden Inc. v. Berk-Tek LLC* (No. 2014-1676, 2014-1677, 4/17/15) (Lourie, Reyna, Chen)**

April 17, 2015 12:50 PM

Lourie, J. Affirming Board decision in IPRs invalidating claims related to electrical data cables.

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

***Ineos USA LLC v. Berry Plastics Corporation* (No. 2014-1540, 4/16/15) (Dyk, Moore, O'Malley)**

April 16, 2015 10:30 AM

Moore, J. Affirming summary judgment of anticipation of patent related to polyethylene-based compositions. When “the prior art discloses a range, rather than a point, the court must evaluate whether the patentee has established that the claimed range is critical to the operability of the claimed invention.” Also, a limitation that required “0 to 0.15% by weight of a subsidiary lubricant” was met by a reference that disclosed “only one lubricating agent—the primary lubricant—and zero subsidiary lubricant... Because the [prior art reference] discloses 0% of subsidiary lubricant” the prior art taught the “0 to 0.15%” limitation.

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

***Lexmark International v. Impression Products* (No. 2014-1617, 2014-1619, 4/14/15) (Prost, Newman, Lourie, Dyk, Moore, O'Malley, Reyna, Wallach, Taranto, Chen, Hughes)**

April 10, 2015 2:10 PM

Per Curiam. Ordering sua sponte rehearing en banc and briefing on: (a) In light of the Supreme Court’s opinion in *Kirtsaeng v. John Wiley & Sons, Inc.*, should the Court overrule *Jazz Photo Corp. v. International Trade Commission*, to the extent it ruled that a sale of a patented item outside the United States never gives rise to United States patent exhaustion and (b) In light of the Supreme Court’s opinion in *Quanta Computer, Inc. v. LG Electronics, Inc.*, should the Court overrule *Mallinckrodt, Inc. v. Medipart, Inc.*, to the extent it ruled that a sale of a patented article, when the sale is made under a restriction that is otherwise lawful and within the scope of the patent grant, does not give rise to patent exhaustion? The Court will entertain briefs of amici curiae.

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

***Oplus Technologies, LTD. v. Vizio, Inc.* (No. 2014-1297, 4/10/15) (Prost, Moore, O'Malley)**

April 10, 2015 4:33 PM

Moore, J. The district court abused its discretion in denying attorneys and expert witness fees where it found litigation misconduct and that case was exceptional.

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

***Automated Merchandising v. Lee* (No. 2014-1728, 4/10/15) (Prost, Taranto, Fogel)**

April 10, 2015 2:10 PM

Taranto, J. The PTO's refusal to terminate inter partes reexamination after entry of consent judgment in district court was not a final agency action subject to review.

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

***Insite Vision Incorporated v. Sandoz, Inc.* (No. 2014-1065, 4/9/15) (Prost, Newman, Linn)**

April 9, 2015 12:40 PM

Linn, J. Affirming judgment that patents directed to treatment of eye infections were not obvious.

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

***AstraZeneca AB v. Apotex Corp.* (No. 2014-1221, 4/7/15) (O'Malley, Clevenger, Bryson)**

April 7, 2015 1:50 PM

Bryson, J. Affirming reasonable royalty award of 50% of defendant's gross margin based on the sale of infringing drug formulation. Although the Court declined to hold that entire market value rule was per se inapplicable in the pharmaceutical context, the rule was inapplicable where the claim covered all the ingredients in the drug. Further, although a court is required to evaluate relative value of the "conventional" and "unconventional" elements in the claim, "it is not the case that the value of all conventional elements must be subtracted from the value of the patented invention as a whole when assessing damages." The district court's finding that the formulation substantially created the value of the patent was supported by the evidence. However, the district court erred in awarding a reasonable royalty based on the sale of products during pediatric exclusivity because those sales were not acts of patent infringement.

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

***Vasudevan Software, Inc. v. TIBCO Software, Inc.* (No. 2014-1094, -1096 4/3/15) (Chen, Linn, Hughes)**

April 3, 2015 9:22 AM

Linn, J. With respect to patent directed to online analytical processing of data, affirming claim construction order and resulting judgment of non-infringement, but reversing summary judgment of non-enablement and written description based on disputed issues of fact.

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

***Intellectual Ventures II LLC v. JPMorgan Chase & Co.* (No. 2014-1724, 4/1/15) (O'Malley, Bryson, Hughes)**

April 1, 2015 3:12 PM

O'Malley, J. Dismissing appeal over whether district court erred in refusing to grant stay of case pending resolution of petitions seeking covered business method review where petitions had been filed but not acted on by the PTO. Hughes, J., dissented.

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

***Apotex Inc. v. Daiichi Sankyo, Inc.* (No. 2014-1282, 2014-1291, 3/31/15) (Taranto, Mayer, Clevenger)**

March 31, 2015 4:40 PM

Taranto, J. In Hatch-Waxman case, declaratory judgment jurisdiction existed over disclaimed patent because a judgment of non-infringement would allow second generic filer earlier entry onto market.

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