Federal Circuit Patent Updates - August 2014

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Planet Bingo, LLC v. VKGS LLC **(No. 2013-1663, 8/26/14) (Taranto, Bryson, Hughes)**

August 26, 2014 10:30 AM

Hughes, J. Affirming summary judgment of invalidity under 35 U.S.C. § 101. Under "a straightforward application of the Supreme Court's recent holding in *Alice Corp. v. CLS Bank International*," method and system claims for "managing a game of Bingo" were directed to unpatentable abstract ideas.

A full version of the text is available in PDF form.

American Radio LLC v. Qualcomm Incorporated **(No. 2013-1641, 8/22/14) (Lourie, O'Malley, Chen)**

August 22, 2014 2:15 PM

Lourie, J. Affirming judgment of noninfringement following a stipulation after the district court's claim construction. "The patent thus consistently uses the analog signal limitations to refer to the analog signal at the carrier frequency and uses digitized signal to refer to the digitized version of that analog signal. The district court thus did not err in construing those limitations accordingly."

WilmerHale represented the appellee Intel Corporation and argued for all appellees.

A full version of the text is available in PDF form.

Mformation Technologies, Inc. v. Research in Motion, Ltd. **(No. 2012-1679, 8/22/14) (Prost, Schall, Hughes)**

August 22, 2014 4:40 PM

Prost, C. J. Affirming JMOL of no infringement after a $147 million jury verdict. Method claims were properly construed to have an order-of-steps requirement.

A full version of the text is available in PDF form.

Ferring B.V. v. Watson Laboratories, Inc. **(No. 2014-1416, 8/22/14) (Lourie, Dyk, Reyna)**

August 22, 2014 9:10 AM

Lourie, J. Affirming judgment of nonobviousness but reversing judgment of infringement by a generic drug. "The filing [of an ANDA] only constituted a technical act of infringement for jurisdictional purposes…. As we have explained, once jurisdiction is established, the ultimate infringement inquiry provoked by such filing is focused on a comparison of the asserted patent claims against the product that is likely to be sold following ANDA approval and determined by traditional patent law principles." Here, the ANDA specification alone did not resolve the question of infringement, and there was insufficient evidence to prove that the "finished, coated commercial tablets" met the limitations of the claims.

A full version of the text is available in PDF form.

Ferring B.V. v. Watson Laboratories, Inc.. **(No. 2014-1377, 8/22/14) (Lourie, Dyk, Reyna)**

August 22, 2014 8:05 AM

Dyk, J. Affirming dismissal of infringement claims against an ANDA as moot where the ANDA was amended to render it noninfringing. "There is no support for the proposition that the question of infringement must be addressed solely based on the initial ANDA filing, given that the statute contemplates that the ANDA will be amended as a matter of course." "A district court may reconsider its own finding of infringement in light of an amended ANDA or other information. Only when the district court has entered a judgment finding that the operative ANDA infringes must it enter a § 271(e)(4) resetting order. We do not suggest that a district court must always consider any ANDA amendment. Allowing an amendment is within the discretion of the district court, guided by principles of fairness and prejudice to the patent-holder."

A full version of the text is available in PDF form.

Abbvie Inc. v. Kennedy Inst. of Rheumatology **(No. 2013-1545, 8/21/14) (Dyk, Wallach, Chen)**

August 21, 2014 11:45 AM

Dyk, J. Affirming judgment of invalidity under doctrine of obviousness-type double patenting. "Although this court has recognized that the doctrine of obviousness-type double patenting is less significant in post-URAA patent disputes, we have also recognized its continued importance." "We now make explicit what was implicit in Gilead: the doctrine of obviousness-type double patenting continues to apply where two patents that claim the same invention have different expiration dates." "To be sure, obviousness is not demonstrated merely by showing that an earlier expiring patent dominates a later expiring patent.… But not every species of a patented genus is separately patentable…. [S]pecies are unpatentable when prior art disclosures describe the genus containing those species such that a person of ordinary skill in the art would be able to envision every member of the class." "It is true that a reference patent's specification cannot be used as prior art in an

obviousness-type double patenting analysis…. But, it is also well settled that we may look to a reference patent's disclosures of utility to determine the question of obviousness."

A full version of the text is available in PDF form.

Apotex Inc. v. UCB, Inc. **(No. 2013-1674, 8/15/14) (Reyna, Wallach, Hughes)**

August 15, 2014 4:40 PM

Reyna, J. Affirming finding of unenforceability due to inequitable conduct.

A full version of the text is available in PDF form.

State of Vermont v. MPHJ Technology Investments **(No. 2014-137, 8/11/14) (Prost, Newman, Hughes)**

August 11, 2014 1:20 PM

Newman, J. Granting the State of Vermont's motion to dismiss. Patent owner sent letters to Vermont businesses "requesting the recipient to confirm that it was not infringing" or "to purchase a license." The State of Vermont subsequently filed suit against the patent owner in Vermont state court alleging unfair and deceptive trade practices. The case was removed to federal court and then subsequently remanded back to state court due to lack of subject matter jurisdiction. The patent owner then appealed the remand to state court and filed a petition for a writ of mandamus. The Court dismissed that petition.

A full version of the text is available in PDF form.

Tyco Healthcare Group v. Mutual Pharmaceutical Co. **(No. 2013-1386, 8/6/14) (Newman, Bryson, Moore)**

August 6, 2014 9:10 AM

Bryson, J. Affirming judgment that patent owner's assertion of validity was not a sham with respect to defendant's Walker Process fraud claim. "Given the presumption of patent validity and the burden on the patent challenger to prove invalidity by clear and convincing evidence, it will be a rare case in which a patentee's assertion of its patent in the face of a claim of invalidity will be so unreasonable as to support a claim that the patentee has engaged in sham litigation." Also vacating summary judgment that infringement claims were not a sham and remanding. Also vacating summary judgment that patent owner's citizen petition to the FDA was not a sham and remanding. Newman, J. dissented.

A full version of the text is available in PDF form.

Scriptpro, LLC v. Innovation Associates **(No. 2013-1561, 8/6/14) (Taranto, Bryson, Hughes)**

August 6, 2014 3:40 PM

Taranto, J. Reversing summary judgment of invalidity of patent related to collating unit for

prescription containers. The district court granted summary judgment of invalidity due to lack of an adequate written description finding that the “specification describes a machine containing ‘sensors,’ whereas the claims at issue claim a machine that does not need to have ‘sensors.’” The specification stated that the “collating unit of the present invention broadly includes” several components, including sensors. The Court found that the “term ‘broadly’ qualifies the assertion of inclusion. Like ‘generally,’ the qualifier ‘broadly’ suggests that exceptions are allowed to the assertion of what occurs most (perhaps even almost all) of the time."

A full version of the text is available in PDF form.

Amdocs Limited v. Openet Telecom, Inc. **(No. 2013-1212, 8/1/14) (Newman, Clevenger, Reyna)**

August 1, 2014 10:25 AM

Reyna, J. With respect to patents directed to accounting and billing issues faced by network service providers, reversing summary judgment of non-infringement on three patents because disputed issue of fact existed over how accused products worked and reversing summary judgment of non-infringement of fourth patent based on faulty claim construction. Newman, J. dissented in part.

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