
Federal Circuit Patent Updates - December 2016

DECEMBER 2016

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***D'Agostino v. Mastercard International* (No. 2016-1592, -1593, 12/22/16) (Taranto, Linn, Stoll)**

November 17, 2016 1:32 PM

Taranto, J. Reversing Board's obviousness and anticipation rulings in IPRs based on incorrect claim construction.

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

***US Water Services, Inc. v. Novozymes A/S* (No. 2015-1950, -1967, 12/15/16) (Wallach, Hughes, Stoll)**

December 15, 2016 3:44 PM

Wallach, J. Vacating summary judgement of anticipation and remanding due to a genuine issue of material fact. Also affirming finding of no inequitable conduct.

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

***United Construction Products v. Tile Tech, Inc.* (No. 2016-1392, 12/15/16) (Moore, Wallach, Stoll)**

December 15, 2016 10:10 AM

Wallach, J. Affirming grant of default judgment and permanent injunction.

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

***Medgraph, Inc. v. Medtronic, Inc.* (No. 2015-2019, 12/13/16) (Lourie, Plager, Taranto)**

December 13, 2016 8:15 AM

Lourie, J. Affirming summary judgment of non-infringement. The Court reviewed the Akamai decisions and stated, "A finding of direct infringement requires that 'all steps of the claim are performed by or attributable to a single entity.' [Citation omitted.] That rule was unaffected by Akamai

V, which reiterated the rule while broadening the circumstances under which attribution may be proper... The district court also correctly concluded that [defendant] was not liable under a theory of indirect infringement, because indirect infringement is predicated on direct infringement. That rule was also unaffected by *Akamai V*, so the outcome would, again, not change if we were to vacate and remand.” The Court also affirmed the district court's construction of the claim term “and.” “Because the written description does not compel a disjunctive construction for 'and,' the claim term should be given its plain and ordinary meaning. [Citation omitted.] We therefore conclude that the district court correctly construed the limitation 'and' to mean 'and,' rather than 'or.'”

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

***Power Integrations, Inc. v. Fairchild Semiconductor Intl.* (No. 2015-1329, -1388, 12/12/16) (Prost, Schall, Chen)**

December 12, 2016 1:22 PM

Chen, J. Affirming-in-part, reversing-in-part, and vacating-in-part final judgment and remanding. The Court vacated a verdict of induced infringement because the jury instruction was improper, but denied JMOL for no inducement. “This instruction left the jury with the incorrect understanding that a party may be liable for induced infringement even where it does not successfully communicate with and induce a third-party direct infringer.” The Court also reversed a verdict of no anticipation and affirmed a verdict that other claims were not obvious. The Court also reversed a verdict of infringement under the doctrine of equivalents because that verdict necessarily vitiated a claim element. The Court also vacated a permanent injunction and remanded.

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

***In Re: NuVasive, Inc.* (No. 2015-1670, 12/7/16) (Moore, Wallach, Taranto)**

December 7, 2016 3:50 PM

Wallach, J. Vacating PTAB decision and remanding “for additional PTAB findings and explanations regarding the PHOSITA's motivation to combine the prior art references.” Petitioner's expert stated that combining two references would have provided “additional information.” The Court found that to be an insufficient explanation of why a PHOSITA would have combined the references.

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

***Asetek Danmark A/S v. CMI USA Inc.* (No. 2016-1026, -1183, 12/6/16) (Prost, Newman, Taranto)**

December 6, 2016 4:08 PM

Taranto, J. Affirming rulings on infringement, invalidity and damages. Also leaving an injunction in place while remanding to “determine the proper reach of the injunction...” The district court granted a motion for injunction against two entities, one of which was not at the time a party to the litigation. The Court rejected the argument that an injunction cannot be maintained against a party previously dismissed from the case. The court affirmed the injunction “except insofar as it reaches [the

dismissed party's] conduct that does not abet new violations by [the defendant]." Prost, J. dissented.

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

***Samsung Electronics Co. v. Apple Inc.* (No. 15-777, 14-1513, -1520, 12/6/16) (Roberts, Kennedy, Thomas, Ginsburg, Breyer, Alito, Sotomayor, Kagan)**

December 6, 2016 11:19 AM

Sotomayor, J. Reversing damages decision for design patent and remanding. "This case involves the infringement of designs for smartphones. The United States Court of Appeals for the Federal Circuit identified the entire smartphone as the only permissible 'article of manufacture' for the purpose of calculating §289 damages because consumers could not separately purchase components of the smartphones. The question before us is whether that reading is consistent with §289. We hold that it is not." The Court ruled that "the term 'article of manufacture' is broad enough to embrace both a product sold to a consumer and a component of that product, whether sold separately or not. Thus, reading 'article of manufacture' in §289 to cover only an end product sold to a consumer gives too narrow a meaning to the phrase." The Court declined to "lay out a test for the first step of the §289 damages inquiry..."

WilmerHale represented Apple Inc.

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