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## Federal Circuit Patent Updates - February 2005

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***Evident Corp., et al. v. Church & Dwight Co., Inc., et al.* (No. 03-1541) (Lourie, Schall, Linn)**

February 22, 2005 10:44 AM

(Lourie) Affirming award of attorneys' fees based on prior holding of inequitable conduct. Standing, raised for the first time in this appeal, existed by reason of the joinder of the patentee with an exclusive licensee in the defendant's declaratory judgment counterclaim. The patentee partnership was jointly liable with the license because of the intertwined relationship between the license, the patentee and the inventors.

***Rates Technology, Inc. v. Nortel Networks Corp.* (No. 04-1212) (Michel, Rader, Linn)**

February 17, 2005 10:43 AM

(Michel) Affirming dismissal of patent case for lack of personal jurisdiction. Where defendant asserted lack of personal jurisdiction as an affirmative defense, the filing of permissive counterclaims was not a waiver of the defense. Also affirming dismissal of plaintiff's "counterclaim-in reply" to the defendant's counterclaim.

***Lisle Corporation v. A.J. Manufacturing Company* (No. 04-1275) (Lourie, Friedman, Bryson)**

February 11, 2005 10:38 AM

(Lourie) Affirming findings of validity and infringement with respect to a patent directed to an automobile repair tool. A jury verdict finding a failure to prove an on-sale bar was affirmed on the basis of the experimental use exception. Indefiniteness and "impossibility" defenses had been waived because they were not preserved in the pre-trial order.

***Mark Thatcher, et al. v. Kohl's Department Stores, Inc., et al.* (No. 04-1397)(Michel, Mayer, Linn)**

February 10, 2005 10:36 AM

(Mayer) Affirming district court finding that plaintiff, a successor-in-interest to a consent judgment,

lacked standing to enforce the judgment. In the absence of express language permitting assignment, the judgment was not assignable.

***Junker v. Eddings* (Newman, Friedman, Bryson) (No. 04-1208)**

February 8, 2005 10:35 AM

(Friedman) Affirming judgment based on jury verdict that design patent was valid and willfully infringed, but reversing award of attorneys' fees. The defendant's motion for JMOL was insufficiently specific about its factual basis to preserve sufficiency of the evidence as a basis of appeal. The Court remanded an award of attorneys' fees because there was insufficient evidence in the record to judge whether the award was reasonable. In a cross appeal, the Court affirmed the district court's refusal to provide relief for the breach of a non-disclosure agreement.