
Federal Circuit Patent Updates - February 2009

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***Eli Lilly and Co. v. Teva Pharmaceuticals, USA* (No. 2009-1071) (Michel, Rader, Prost)**

February 24, 2009 8:56 AM

(Rader) Affirming district court extension of the statutory stay of FDA approval of an ANDA because of the defendant's last-minute alteration of its proposed drug product during litigation and discovery violations. Prost dissents, saying that 'the district court never related [defendant's] conduct to the statutory standard' ["failed to reasonably cooperate in expediting the action"].

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

***Line Rothman v. Target* (2008-1375) (Rader, Friedman, Bryson)**

February 13, 2009 3:32 PM

(Rader) Affirming verdict that claims directed to a nursing garment are obvious, reversing verdict of inequitable conduct, and vacating award of costs. A testifying expert's own inventive feats have "little relevance to whether [the] invention would have been obvious to a hypothetical person of ordinary skill in the field with attributed knowledge of the relevant prior art." Also, regarding inequitable conduct, "[r]eceipt of threatening letters containing vague descriptions of unsubstantiated prior art at the tail end of a souring business relationship does not create an automatic duty of disclosure. Otherwise, every potential patent licensee (and prospective infringer) could subject a patent applicant to the possibility of inequitable conduct sanctions on a whim."

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

***Baden Sports v. Molten USA* (2008-1216, -1246) (Lourie, Rader, Linn)**

February 13, 2009 8:41 AM

(Lourie) Reversing denial of judgment as a matter of law on Lanham Act claims, vacating damages award based on Lanham Act claims, and affirming denial of motion for a modified

injunction.

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

Revolution Eyewear v. Aspex Eyewear (2008-1050)(Newman, Schall, Moore)

February 13, 2009 8:31 AM

(Newman) Reversing dismissal of counterclaims following grant of covenant not to sue. Covenant did not extend to future sales of existing products and thus plaintiff "preserved this controversy at a level of 'sufficient immediacy and reality' to allow [defendant] to pursue its declaratory judgment counterclaims."

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

Ball Aerosol and Specialty Container, Inc. v. Limited Brands, Inc. (No. 08-1333) (Lourie, Clevenger, Linn)

February 9, 2009 3:15 PM

(Lourie) Reversing district court and finding claims to a candle holder were obvious and not infringed as a matter of law. Where claim required particular configuration of device, fact that accused device was merely capable of being put into that configuration was insufficient to demonstrate infringement.

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

Kinetic Concepts, Inc. v. Blue Sky Medical Group, Inc. (No. 07-1340) (Bryson, Dyk, Prost)

February 9, 2009 3:08 PM

(Prost) Affirming jury verdict that patent directed to wound treatment was not infringed and not obvious. Despite broad dictionary definition of "wound," the term was interpreted as limited to skin wounds given that "all examples described in the specification involve skin wounds." The court affirmed the non-obviousness verdict based on sufficient evidence to allow the jury to conclude that the prior art references did not teach one of the limitations in the claims. The district court did not err by failing to conduct its own obviousness analysis. A verdict that the defendant had not induced infringement was sustained based on testimony that the defendant did not intend to infringe the patents because it was practicing the prior art. Dyk dissented on the claim construction issue.

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