
Federal Circuit Patent Updates - February 2014

FEBRUARY 28, 2014

[View previous updates...](#)

***Ancora Technologies, Inc. v. Apple Inc.* (No. 2013-1378, -1414, 3/3/14) (Rader, Taranto, Chen)**

March 3, 2014 9:27 AM

Taranto, J. Reversing construction of “program,” in patent related to verifying whether programs on a computer are licensed, and remanding. The district court erred by limiting “program” to only “application programs.” Also affirming decision that terms “volatile memory” and “non-volatile memory” are not indefinite.

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

***In re: Apple Inc.* (Miscellaneous Docket No. 156, 2/27/14) (Newman, Prost, Reyna)**

February 27, 2014 5:58 PM

Reyna, J. Denying petition for writ of mandamus to transfer case from the Eastern District of Texas to the Northern District of California. Newman, J. dissented.

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

***In re: Barnes & Noble, Inc.* (Miscellaneous Docket No. 162, 2/27/14) (Newman, Prost, Reyna)**

February 27, 2014 4:50 PM

Reyna, J. Denying petition for writ of mandamus to transfer case from the Western District of Tennessee to the Northern District of California. Newman, J. dissented.

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

***Elcommerce.com v. SAP AG* (No. 2011-1369, 2/24/14) (Newman, Plager, Wallach)**

February 24, 2014 11:19 AM

Newman, J. Affirming claim construction and judgment of non-infringement of patent related to

supply chain monitoring. Also vacating summary judgment of indefiniteness. “We conclude that the district court erred in granting summary judgment without a proper evidentiary basis for its conclusion. The burden was on [defendant] to prove its case, and in the absence of evidence provided by technical experts who meet the Daubert criteria there is a failure of proof. Attorney argument is not evidence. We vacate the district court’s rulings on the system claims, and remand for application of appropriate evidentiary standards and judicial procedures.” Wallach, J. dissented in part and would have affirmed the holding of indefiniteness.

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

***Starhome GmbH v. AT&T Mobility LLC* (No. 2012-1694, 2/24/14) (Moore, Schall, Reyna)**

February 24, 2014 12:30 PM

Schall, J. Affirming claim construction and judgment of non-infringement of patent related to roaming cellular telephone services.

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

***GlaxoSmithKline LLC v. Banner Pharmacaps, Inc.* (No. 2013-1593, -1594, -1595, -1598, 2/24/14) (O'Malley, Wallach, Taranto)**

February 24, 2014 10:14 AM

Taranto, J. Affirming judgment that claims related to Avodart®, Jalyn™ and other pharmaceuticals containing dutasteride comply with the written description requirement of 112(a). Under either the district court’s construction of “solvate” or the defendant’s proposed narrower construction, the specification described the claimed solvates.

WilmerHale represented plaintiff-appellee, GlaxoSmithKline LLC

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

***Lighting Ballast Control LLC v. Philips Electronics North Amer* (No. 2012-1014, 2/21/14) (Rader, Newman, Lourie, Dyk, Prost, Moore, O'Malley, Reyna, Wallach, Taranto)**

February 21, 2014 2:29 PM

Newman, J. We “apply the principles of stare decisis, and confirm the Cybor standard of de novo review of claim construction, whereby the scope of the patent grant is reviewed as a matter of law. After fifteen years of experience with Cybor, we conclude that the court should retain plenary review of claim construction, thereby providing national uniformity, consistency, and finality to the meaning and scope of patent claims. The totality of experience has confirmed that Cybor is an effective implementation of Markman II, and that the criteria for departure from stare decisis are not met.” Judges Lourie, Dyk, Prost, Moore and Taranto joined the majority opinion. Judge Lourie also wrote a separate concurrence. Judge O'Malley dissented and Judges Rader, Reyna and Wallach joined the dissent.

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

***Frans Nooren Afdichingssystemen v. Stopaq Amcorr Inc.* (No. 2013-1200, 2/21/14) (Rader, Taranto, Chen)**

February 21, 2014 8:49 AM

Taranto, J. Vacating summary judgment of non-infringement of patent related to coating material for protecting “from corrosion, water ingress, and mechanical stresses” and remanding.

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

***Takeda Pharmaceutical Co. v. Zydus Pharmaceuticals USA* (No. 2013-1406, 2/20/14) (Prost, Plager, Chen)**

February 20, 2014 3:12 PM

Prost, J. Reversing judgment of infringement of patent related to Prevacid® SoluTab™ for treatment of acid reflux. For the construction of “fine granules having an average particle diameter of 400 µm or less,” the Court rejected a ±10% deviation and required the average particle diameter to be “precisely 400 µm or less” and under that construction there was no infringement. Also affirming judgment of no invalidity.

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

***Ring & Pinion Service Inc. v. Arb Corporation LTD* (No. 2013-1238, 2/19/14) (Moore, Clevenger, Reyna)**

February 19, 2014 12:54 PM

Moore, J. Reversing summary judgment of non-infringement and remanding with instructions to grant summary judgment of infringement. The parties stipulated “should the Court hold . . . that foreseeability at the time of application does not prevent use of the doctrine of equivalents, . . . the accused [product] would infringe under the doctrine of equivalents.” The Court held that there “is not, nor has there ever been, a foreseeability limitation on the application of the doctrine of equivalents. . . . We conclude that the foreseeability of an equivalent at the time of patenting is not a bar to a finding of infringement under the doctrine of equivalents.”

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

***Butamax(TM) Advanced Biofuels LLC v. Gevo, Inc.* (No. 2013-1342, 2/18/14) (Rader, Linn, Wallach)**

February 18, 2014 12:52 PM

Linn, J. Reversing summary judgment of non-infringement based on unduly narrow claim construction of claims direct to host cell that produces isobutanol. Also reversing finding of invalidity under written description requirement based on disputed issue of fact.

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

Solvay S.A. v. Honeywell International Inc. (No. 2012-1660, 2/12/14) (Rader, Newman, Dyk)

February 12, 2014 9:13 AM

Dyk, J. Affirming district court finding that claim was invalid as anticipated by invention conceived abroad but reduced to practice in the United States. Reduction to practice in the United States inured to benefit of prior Russian inventor even though inventor did not expressly request the United States scientists to reduce the invention to practice. The Court also rejected a narrow claim construction as waived and on the merits. Newman, J. dissented.

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

Tempo Lighting, Inc. v. Tivoli, LLC (No. 2013-1140, 2/10/14) (Rader, Moore, Wallach)

February 10, 2014 3:11 PM

Rader, J. Reversing and remanding Board decision in inter partes reexamination reversing Examiner's rejections. Although the Board was correct to reject the Examiner's claim construction, it erred in sustaining the Examiner's factual findings based on that erroneous construction. The Board also erred in finding that certain arguments had been waived for failure to cross-appeal issues before the Board.

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

Pfizer Inc. v. Teva Pharmaceuticals USA (No. 2012-1576, -1601, -1602, -1603, -1604, -1605, -1607, 2/6/14) (Rader, Prost, Moore)

February 6, 2014 5:33 PM

Prost, J. Affirming district court judgment that claim directed to compound without limitation to its stereochemical form was infringed and valid. The district court properly construed the claim not to be limited to the racemic version of the compound and found that the claim was not invalid for lack of enablement, written description or obviousness.

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