
Federal Circuit Patent Updates - January 2007

JANUARY 31, 2007

[View previous month...](#)

Israel Bio-Engineering Project v. Amgen, Inc., et al. (06-1218) (Bryson, Prost, Saris)

January 29, 2007 2:27 PM

(Saris) Affirming summary judgment of lack of standing because plaintiff did not have sole ownership of patent. A co-inventor was the presumptive co-owner of the patent and had not assigned his rights to the plaintiff.

In Re Seagate Technology (Misc. No. 830)

January 26, 2007 2:59 PM

(Per Curiam) The Court determined sua sponte to address en banc the issues relating to the scope of the waiver of the attorney client privilege and work product immunity addressed in *In re Echostar*, as well the the "duty of care" standard employed in the doctrine of willful infringement.

International Electronic Technology Corp. v. Hughes Aircraft Co., Inc. (No. 2006-1368)(Gajarsa, Moore, Jordan [of the Third Circuit, sitting by designation])

January 26, 2007 2:20 PM

(Gajarsa) Dismissing appeal because of lack of jurisdiction. A summary judgment of noninfringement is not a final, appealable judgment while declaratory judgment counterclaims of invalidity remain pending, absent a Rule 54(b) determination. Threatening in the future to cite or sanction counsel who fail to determine finality of the judgment before filing an appeal.

Andersen Corp. v. Fiber Composites, LLC (No. 05-1434)(Bryson, Prost, Saris [D.J. of the D. Mass., sitting by designation])

January 26, 2007 2:15 PM

(Bryson) Affirming summary judgment of noninfringement of some patents and reversing summary judgment of infringement of other patents. Although claims did not on their face contain a limitation,

the specifications made clear that the claims must be so limited, even where other claims contained the limitation expressly. Product claims were limited to products made by the process described in the specification.

***Hydril Company, LP, et al. v. Grant Prideco LP, et al.* (No. 2006-1188)(Mayer, Friedman, Bryson)**

January 25, 2007 2:13 PM

(Friedman) Reversing dismissal of complaint for failure to state a claim upon which relief may be granted. "[A] valid Walker Process claim may be based upon enforcement activity directed against the plaintiff's customers." Mayer dissents, saying the plaintiff had no antitrust standing because it and its customers did not compete with the defendant in the United States.

***MBO Laboratories, Inc. v. Becton, Dickinson & Company* (No. 2006-1062)(Bryson, Clevenger, Gajarsa)**

January 24, 2007 2:09 PM

(Gajarsa) Reversing summary judgment of noninfringement because of erroneous claim constructions of certain claim terms. "[V]alidity construction should be used as a last resort, not a first principle ..."

***VAS-CATH, Inc. v. Curators of the University of Missouri, et al.* (No. 06-1100)(Newman, Lourie, Rader)**

January 23, 2007 2:05 PM

(Newman) Reversing dismissal on Eleventh Amendment grounds of an appeal from an interference. "By requesting and participating in the interference proceeding in the PTO, the University waived its constitutional immunity not only in that proceeding but also in the appeal taken by the losing party."

***Ortho-McNeil Pharmaceutical, Inc. v. Caraco Pharmaceutical Laboratories, Ltd.* (No. 06-1102) (Schall, Gajarsa, McKinney [C.J. of the S.D. Ind., sitting by designation])**

January 19, 2007 9:55 AM

(McKinney) Affirming summary judgment of noninfringement. Construing claim term "about" narrowly in reference to a numerical limitation.

***Transclean Corporation et al. v. Jiffy Lube International, Inc., et al* (No. 06-1077)(Michel, Plager, Bryson)**

January 18, 2007 9:52 AM

(Plager) Dismissing infringement suit against a manufacturer's customers on grounds of claim preclusion where the patentee had already obtained a judgment against the manufacturer with whom the patentee admitted the customers were in privity.

E-Pass Technologies, Inc. v. 3Com Corporation (also known as 3Com, Inc.), et al. (2006-1356, 1357, 1358) (Michel, Linn, Prost)

January 12, 2007 9:20 AM

(Linn) Affirming summary judgment of non-infringement of patent directed to a multifunction card. Patent owner failed to establish direct infringement by defendants or their customers and therefore also failed to prove liability for induced or contributory infringement. Defendant taught its customers steps of the claimed method in isolation and did not teach the steps together or in the order required by the claim.

Shanghai Meihao Electric v. Leviton (2006-1272, 1488) (Newman, Clevenger, Dyk)

January 10, 2007 2:45 PM

(Clevenger) Affirming summary judgment of non-infringement of patents directed to ground fault circuit interrupter. Reversing entry of a permanent injunction preventing patent owner from asserting the patents again. The protracted and contentious nature of the litigation did not by itself warrant issuance of a permanent injunction.

Abbott Laboratories v. Andrx Pharmaceuticals, Inc., et al. (06-1101) (Michel, Prost, Ellis)

January 5, 2007 9:16 AM

(Prost) Affirming grant of preliminary injunction against Andrx for patents directed to extended release formulations of a pharmaceutical. For each asserted claim, another defendant avoided a preliminary injunction in a parallel proceeding by establishing a substantial question as to whether the claim was invalid or unenforceable. However, since the issues of invalidity and unenforceability were not firmly and finally resolved, collateral estoppel did not prevent the patent owner from obtaining preliminary injunction against Andrx.

Propat International Corp., et al. v. RPost, Inc., et al. (2006-1222, 1223, 1270) (Newman, Mayer, Bryson)

January 4, 2007 3:32 PM

(Bryson) Affirming decision that a transferee lacked standing to sue for infringement even with the patent owner added as an additional party. Also affirming denial of award of attorney fees and costs. A "right to sue" clause in a contract with the patent owner did not convey sufficient rights to the transferee to allow the transferee to sue in its own name. Transferee could not cure its lack of standing by joining the patentee as a party.

Desa IP, LLC v. EML Technologies, LLC, et al. (No. 06-1168) (Michel, Plager, Rader)

January 4, 2007 2:34 PM

(Michel) Vacating stipulated judgment of non-infringement of patent directed to motion-activated security lights and remanding. Expert testimony on claim construction in conflict with the intrinsic evidence should be accorded no weight.

