
Federal Circuit Patent Updates - January 2008

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Emergis Technologies, Inc. vs. PNM Resources, TNMP, and First Choice Power (2007-1247)
(Gajarsa, Dyk, Moran)

January 31, 2008 10:56 AM

(Moran) Affirming decisions of no infringement and modifying claim construction. "We thus agree with both district courts that the term 'directly' precludes the use of any third party service provider."

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

F & G Research, Inc. vs. Dynapoint (Taiwan) Inc. (2007-1350) (Gajarsa, Linn, Moore)

January 31, 2008 10:52 AM

(Linn) Affirming dismissal for lack of personal jurisdiction, finding appeal frivolous and awarding sanctions of "reasonable attorneys' fees and costs in defending this appeal."

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

TiVo, Inc. vs. Echostar Communications Corporation, Echostar DBS Corporation, Echostar Technologies Corporation, Ecosphere Limited Liability Company, and Echostar Satellite, LLC (2006-1574) (Bryson, Plager, Keeley [N.D. of W. Virginia; designated])

January 31, 2008 9:07 AM

(Bryson) Affirming judgment of infringement of software claims and reversing judgment of literal infringement of hardware claims in patent relating to time-shifting television signals. Also affirming damages award, dissolving stay of injunction and remanding. Entire damages award was affirmed because "the damages calculation at trial was not predicated on the infringement of particular claims, and because we have upheld the jury's verdict that all of the accused devices infringe the software claims." District court did not abuse its discretion by limiting testimony of defendant's invalidity expert to "the Court's claim construction and the prior art" and not permitting "criticism of

[patentee's infringement expert's] report or previous testimony." WilmerHale represented the plaintiff-appellee, TiVo, Inc.

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

Oatey vs. IPS (2007-1214) (Newman, Schall, Linn)

January 30, 2008 2:30 PM

(Newman) Vacating summary judgment of non-infringement and remanding. The district court improperly construed the claim to exclude an embodiment disclosed in the patent.

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

American Seating v. USSC Group (2007-1112, -1135) (Mayer, Bryson, Fogel [of the N.D. of California, sitting by designation])

January 29, 2008 2:22 PM

(Mayer) Affirming orders denying summary judgment of invalidity of patent directed to wheelchair restraint system for use in mass transit vehicles. "[T]he fact that the inventors revealed the prototype to a select group of individuals without a written confidentiality agreement is not dispositive" on the issue of public use. "When access to an invention is clearly limited and controlled by the inventor, depending upon the relationships of the observers and the inventor, an understanding of confidentiality can be implied." Also affirming judgment as a matter of law setting aside portion of jury verdict compensating patentee for conveyed sales. Lost profit damages on sales of unpatented passenger seats were not due "[b]ecause it is clear that no interrelated or functional relationship inheres between the [unpatented] seats and the [patented] tie-down restraint system. . . ." However, patentee was entitled to lost profits damages from sales of non-infringing wheelchair restraints that resulted from offers to sell the infringing wheelchair restraint.

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

TriMed v. Stryker (2007-1327) (Linn, Dyk, Moore)

January 29, 2008 2:10 PM

(Moore) Reversing summary judgment of non-infringement of patent relating to implantable device for fixing bone fractures and remanding. The district court erred in construing a claim limitation that recited the word "means" as a means-plus-function limitation.

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

Halliburton Energy Svcs. v. M-I (No. 07-1149) (Michel, Bryson, Fogel)

January 25, 2008 1:55 PM

(Michel) Affirming finding of indefiniteness. The claim term was "fragile gel" in a claim for a method of drilling. "When a proposed construction requires that an artisan make a separate infringement determination for every set of circumstances in which the composition may be used, and when such determinations are likely to result in differing outcomes (sometimes infringing and sometimes not), that construction is likely to be indefinite."

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

***Monsanto v. Bayer Bioscience* (No. 07-1109) (Bryson, Gajarsa, Dyk)**

January 25, 2008 1:52 PM

(Gajarsa) Affirming finding of inequitable conduct based on failure to disclose notes of what a prior art poster disclosed. Intent was inferred from the failure to offer a credible explanation for the non-disclosure. Three patents no longer in suit were held unenforceable.

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

***Innogenetics v. Abbott Laboratories* (No. 07-1145) (Bryson, Clevenger, Moore)**

January 17, 2008 1:50 PM

(Moore) Vacating judgment that one claim was anticipated, reversing entry of permanent injunction but affirming numerous other rulings. The district court erred in excluding expert testimony on the grounds that the expert was applying an incorrect claim interpretation. It was error to enter a permanent injunction where the verdict clearly reflected an award of a "market entry" fee which compensated the patentee for future infringement. The case was remanded for determination of the amount of a "compulsory license."

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

***Baldwin Graphic Systems v. Siebert* (No. 2007-1262) (Michel, Rader, Moore)**

January 15, 2008 1:45 PM

(Rader) Reversing grant of summary judgment of non-infringement of patents for systems for cleaning a printing press. The district court misconstrued the claims.

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

***SRI International v. Internet Security Systems* (2007-1065) (Mayer, Rader, Moore)**

January 8, 2008 1:21 PM

(Rader) Affirming summary judgment of invalidity of one patent, reversing summary judgment of

invalidity of other patents, vacating and remanding. Evidence was insufficient to show that a paper posted on a publicly accessible FTP site qualified as a printed publication. Moore dissents in part.

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

***Cordis Corp. v. Medtronic* (No. 2006-1393, -1394, -1395, -1396, -1415, -1416) (Bryson, Friedman, Keeley [of the N.D. of West Virginia, sitting by designation])**

January 7, 2008 1:29 PM

(Bryson) Affirming judgments of infringement of patents relating to vascular stents, reversing judgment of invalidity, and remanding. Use of terms “slots” and “half slots” in the specification did not prevent the claim term “slots” from referring to both complete and half slots. The district court properly determined that argument-based estoppel did not bar application of doctrine of equivalents.

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