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## Federal Circuit Patent Updates - January 2018

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***Core Wireless Licensing v. LG Electronics, Inc.* (No. 2016-2684, 2017-1922, 1/25/18) (Moore, O'Malley, Wallach)**

January 25, 2018 3:18 PM

Moore, J. Affirming judgment that patent claims directed to improved display interfaces for electronic devices were infringed and were not invalid. In particular, the Court held that the asserted claims were not invalid under 35 U.S.C. § 101 because the claims were “directed to an improved user interface for computing devices, not to the abstract idea of an index.” Wallach, J. concurred-in-part and dissented-in-part.

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

***MaxLinear, Inc. v. CF Crespe LLC* (No. 2017-1039, 1/25/18) (Dyk, Schall, Reyna)**

January 25, 2018 11:41 AM

Dyk, J. Vacating and remanding the PTAB's determination of invalidity regarding dependent patent claims because “the Board did not address arguments concerning patentability of the dependent claims separately” from the independent claims.

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

***Arthrex, Inc. v. Smith & Nephew, Inc.* (No. 2017-1239, 1/24/18) (Newman, Dyk, O'Malley)**

January 24, 2018 9:51 AM

Dyk, J. Affirming the PTAB's determination that 37 C.F.R. § 42.73(b) “permit[s] the Board to construe a statutory disclaimer of all challenged claims as a request for adverse judgment, even when the disclaimer occurs before the Board has entered a decision on institution” of an *inter partes* review. O'Malley, J. concurred and Newman, J. dissented.

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

***In re Janssen Biotech, Inc.* (No. 2017-1257, 1/23/18) (Prost, Reyna, Wallach)**

January 23, 2018 2:27 PM

Prost, C.J. Affirming the PTAB's decision in an *ex parte* reexamination rejecting patent claims as unpatentable under the doctrine of obviousness-type double patenting. Regarding the 35 U.S.C. § 121 safe-harbor against a double patenting rejections, the Court stated: "This case presents the question of whether, several years after a challenged patent issues on a [continuation-in-part] application, a patent owner can retroactively bring the challenged patent within the scope of the § 121 safe harbor by amending the [continuation-in-part] application during a reexamination proceeding to redesignate it as a divisional application." The Court held that a patent application is only eligible for the safe harbor if it is "properly designated as a divisional application, at the very latest, by the time the challenged patent issues on that application."

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

***Flexuspine, Inc. v. Globus Medical, Inc.* (No. 2017-1188, -1189, 1/19/18) (Prost, Clevenger, Dyk)**

January 19, 2018 3:08 PM

Prost, C.J. Affirming judgment of non-infringement where plaintiff did not present evidence showing infringement under the parties' agreed claim construction and affirming the district court's dismissal without prejudice of defendant's invalidity counterclaims that were not submitted to the jury under the parties' agreed jury verdict form.

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

***Click-to-Call Technologies v. Oracle Corp.* (No. 2015-1242, 1/19/18) (O'Malley, Taranto, Stark)**

January 19, 2018 12:45 PM

Per Curiam. Granting rehearing regarding whether the PTAB erred in determining that the *Inter Partes* Review proceeding was not barred by 35 U.S.C. § 315(b) in light of the Court's *en banc* opinion in *WiFi One, LLC v. Broadcom Corp.*, --- F.3d ---, 2018 WL 313065 (Fed. Cir. Jan. 8, 2018) (*en banc*).

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

***Cap Export, LLC v. Zinus, Inc.* (No. 2017-1540, 1/18/18) (Moore, Bryson, Hughes)**

January 18, 2018 10:17 AM

Bryson, J. Vacating and remanding summary judgment of patent invalidity because the district court entered summary judgment without notice to the plaintiff and there was a genuine dispute of fact regarding the date of the asserted prior art.

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

***Liqwd, Inc. v. L'Oreal USA, Inc.* (No. 2017-2295, 1/16/18) (Dyk, Reyna, Taranto)**

January 16, 2018 11:38 AM

Taranto, J. Vacating the denial of a preliminary injunction and remanding for further proceedings because the denial of preliminary injunction was based on an incorrect construction of the claim term “hair coloring agent.”

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

***Exmark Manufacturing Company v. Briggs & Stratton Power* (No. 2016-2197, 1/12/18) (Wallach, Chen, Stoll)**

January 12, 2018 9:18 AM

Stoll, J. After denying summary judgment of invalidity, a jury found infringement and awarded damages which the district court doubled based on willfulness. The Court held (1) the district court erred by basing its summary judgment of no invalidity solely on the fact that the claims survived multiple reexaminations, (2) the district court erred in denying a new trial on damages because the plaintiff's damages expert failed to provide an adequate explanation as to how she arrived at a 5% royalty rate for the patented feature relative to other conventional features of the accused products, (3) the district court abused its discretion by limiting the evidence relevant to damages to prior art that had been commercialized, and (4) the district court abused its discretion by excluding from the willfulness trial evidence relating to patent validity based on its determination that Briggs' invalidity defenses were objectively unreasonable. The Court affirmed the district court's denial of summary judgment that claim was indefinite, and affirmed its denial of Briggs' laches defense. Regarding damages, apportionment was required even though claim was directed to a “lawn mower” where improvement related to specific feature of mower; however, apportionment could be achieved by adjusting royalty rate as well as base. “Using the accused lawn mower sales as the royalty base is particularly appropriate in this case because the asserted claims is, in fact, directed to the lawn mower as a whole.” However, the expert's royalty rate was insufficiently supported. “It is not enough for an expert to simply assert that a particular royalty rates is reasonable in light of the evidence without tying the propped rate to that evidence.”

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

***Advanced Video Technologies v. HTC Corporation* (No. 2016-2309, -2310, -2311, 1/11/18) (Newman, O'Malley, Reyna)**

January 11, 2018 4:41 PM

Reyna, J. Affirming dismissal for lack of standing based on failure to join co-owner (plaintiff's employee) of patent. The employee's employment agreement stated only that he “will assign” inventions, and no such assignment occurred. O'Malley, J., concurred in result but argued that precedent precluding involuntary joinder of co-owners is wrong. Newman, J., dissented.

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

***Finjan, Inc. v. Blue Coat Systems, Inc.* (No. 2016-2520, 1/10/18) (Dyk, Linn, Hughes)**

January 10, 2018 2:08 PM

Dyk, J. Affirming finding that software claims were directed to patent-eligible subject matter, affirming jury verdict of infringement of two patents, reversing verdict of infringement of a third patent, and remanding on damages where there was a failure to apportion and the awarded reasonable royalty was not supported by substantial evidence. With respect to apportionment, plaintiff's attempt to apportion based on "smallest, identifiable technological component" of larger system was insufficient where component covered features other than the claimed method. Royalty rate of \$8 a unit was unsupported by substantial evidence where based only on conclusory statement of licensing executive. A remand was proper to determine whether Finjan had waived right to damages based on alternative theories.

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

***Wi-Fi One, LLC v. Broadcom Corporation* (No. 2015-1944, -1945, -1946, 1/8/18) (en banc)**

January 8, 2018 12:56 PM

Reyna, J. The PTAB's decision about whether an IPR is time-barred under Section 315(b) is subject to appeal. O'Malley, J., concurred. Hughes, joined by Lourie, Bryson and Dyk, dissented.

WilmerHale represented the appellee Broadcom.

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

***Monsanto Technology LLC v. E.I. DuPont de Nemours* (No. 2017-1032, 1/5/17) (Dyk, Reyna, Wallach)**

January 5, 2018 3:22 PM

Wallach, J. Affirming IPR obviousness and anticipation holding with respect to claims directed to crossing parent soybean lines to make a soybean having a modified fatty acid profile. The word "about" was interpreted by reference to prior art referred to in the specification. The claims were inherently anticipated by some plant progeny that had claimed characteristics even if others might not because the "claims do not require that the desired soybean progeny be produced each and every time."

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