
Federal Circuit Patent Updates - January/February 2015

FEBRUARY 26, 2015

[View previous updates...](#)

***Gilead Sciences, Inc. v. Lee* (No. 2014-1159, 2/26/15) (Dyk, Wallach, Hughes)**

February 26, 2015 1:15 PM

Wallach, J. Affirming summary judgment that patent term adjustment had been properly calculated. Late filing of IDS contrary to PTO regulations was appropriately subtracted from calculation of patent term extension whether or not it caused actual delay in prosecution.

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

***Pacing Technologies, LLC v. Garmin International, Inc.* (No. 2014-1396, 2/18/15) (Lourie, Moore, Reyna)**

February 18, 2015 3:40 PM

Re, J. Affirming summary judgment of non-infringement of patents directed to exercise device. A clear and unmistakable statement of disclaimer was found in the summary of invention of the patent specification.

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

***United States Technologies v. CenturyTel Broadband Services* (No. 2014-1347, 2/12/15) (Newman, Bryson, O'Malley)**

February 12, 2015 9:30 AM

Bryson, J. Reversing judgment of collateral estoppel by a general jury verdict in a prior action. "It is well established that a general jury verdict can give rise to collateral estoppel only if it is clear that the jury necessarily decided a particular issue in the course of reaching its verdict. ... When there are several possible grounds on which a jury could have based its general verdict and the record does not make clear which ground the jury relied on, collateral estoppel does not attach to any of the possible theories." And "it was error to apply collateral estoppel to a general jury verdict that could have rested on multiple grounds, simply because the first court held, in its

JMOL ruling, that the evidence would have been sufficient to support the jury's verdict on either theory of liability presented to it."

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

***Soverain Software LLC v. Victoria's Secret* (No. 2012-1649, 2/12/15) (Dyk, Taranto, Hughes)**

February 12, 2015 3:20 PM

Dyk, J. reversing judgment of infringement because the asserted claims were invalid by reason of issue preclusion from a judgment in another case. "[I]ssue preclusion applies even though the precluding judgment ... comes into existence while the case as to which preclusion is sought (this case) is on appeal." Rejecting the contentions that the patentee did not have a full and fair opportunity to litigate the issue in the other case.

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

***Fenner Investments, Ltd. v. Cellco Partnership* (No. 2013-1640, 2/12/15) (Newman, Schall, Hughes)**

February 12, 2015 12:20 PM

Newman, J. Affirming summary judgment of noninfringement. "Fenner argues that the[] purportedly limiting statements he made during prosecution do not limit the claims, arguing that the statements and the limitations discussed were not the basis for grant of the patent. However, the interested public has the right to rely on the inventor's statements made during prosecution, without attempting to decipher whether the examiner relied on them, or how much weight they were given."

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

***Helferich Patent Licensing v. The New York Times* (No. 2014-1196, 2/10/15) (Taranto, Bryson, Chen)**

February 10, 2015 11:45 AM

Taranto, J. Reversing summary judgment of noninfringement under the doctrine of patent exhaustion. The district court "held that, by granting handset manufacturers patent licenses conferring broad authority to sell the handsets, Helferich had exhausted its ability to enforce its patents not only against acquirers of the handsets but also against the defendant content providers who use presumptively distinct inventions to manage content and deliver it to handset users. We reverse, concluding that patent exhaustion has not reached that far and should not be newly extended to do so in these cases." "The doctrine [of patent exhaustion] has never applied unless, at a minimum, the patentee's allegations of infringement, whether direct or indirect, entail infringement of the asserted claims by authorized acquirers— either because they are parties accused of infringement or because they are the ones allegedly committing the direct infringement required by the indirect infringement charged against other parties. Here ..., that is not so, because infringement of the content claims has not been asserted or shown to require that handset

acquirers are practicing those claims.”

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

***Lexington Luminance LLC v. Amazon.com Inc.* (No. 2014-1384, 2/9/15) (Lourie, Chen, Hughes)**

February 9, 2015 5:10 PM

Lourie, J. Vacating judgment on the pleadings that the asserted claim was invalid as indefinite. An “open *Markush* group” in the claim of “said substrate is *selected from the group comprising* group IIIV, group IV, group II-VI elements and alloys, ZnO, spinel and sapphire” did not render the claim indefinite; “the reasonably ascertainable meaning of the contested claim language is that the substrate must contain one or more of the enumerated members of the claimed group.” Also, a claim term of “*the* extended lattice defects” that had no antecedent in the claim did not render the claim indefinite.

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

***In re Cuozzo Speed Technologies, LLC* (No. 2014-1301, 2/4/15) (Newman, Clevenger, Dyk)**

February 4, 2015 1:50 PM

Dyk, J. Affirming Board determination in an inter partes review (IPR). “[W]e hold that we lack jurisdiction to review the PTO’s decision to institute IPR. We affirm the Board’s final determination, finding no error in the Board’s claim construction under the broadest reasonable interpretation standard, the Board’s obviousness determination, and the Board’s denial of Cuozzo’s motion to amend.” “We conclude that § 314(d) prohibits review of the decision to institute IPR even after a final decision.” “We conclude that Congress implicitly adopted the broadest reasonable interpretation standard in enacting the AIA.” “Even if the broadest reasonable interpretation standard were not incorporated into the IPR provisions of the statute, the standard was properly adopted by PTO regulation.” Newman, J., dissented.

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

***Papst Licensing v. Fujifilm Corporation* (No. 2014-1110, 2/2/15) (Taranto, Schall, Chen)**

February 2, 2015 11:03 AM

Taranto, J. Vacating summary judgment of non-infringement of patents relating to transferring data between an input/output device and a computer, and remanding. “In the district court, [patent owner] opposed the construction it now opposes, and it was not required to state its opposition twice. [Patent owner] could not have given the district court the impression that it suddenly supported the construction when, in seeking a modification, it limited its request to a manifest error resting on a plain misapprehension of the record, rather than rehashing the broader arguments on claim construction that the court had fully considered. [Patent owner’s] limited approach in seeking a modification was, indeed, commendably consistent with the general anti-repetition principle governing requests for reconsideration.”

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

***In re Imes* (No. 2014-1206, 1/29/15) (Lourie, Moore, Chen)**

January 29, 2015 10:14 AM

Moore, J. Reversing Board's finding of invalidity of claims related to communicating digital images and video over a network and remanding. "The Patent Office's construction of 'wireless' to include communications along metal contacts of the removable memory card and the computer system is inconsistent with the broadest reasonable interpretation in view of the specification." The Court also found that sending "a series of e-mails with attached still images is not the same as streaming video."

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

***Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.* (No. 13-854, 1/20/15)**

January 20, 2015 1:09 PM

Breyer, J. Vacating judgment of indefiniteness and remanding. Although claim construction is reviewed *de novo*, a trial judge's resolution of underlying factual disputes should be reviewed under a "clear error" standard. "[W]hen the district court reviews only evidence intrinsic to the patent (the patent claims and specifications, along with the patent's prosecution history), the judge's determination will amount solely to a determination of law, and the Court of Appeals will review that construction *de novo*... In some cases, however, the district court will need to look beyond the patent's intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period... In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence... Accordingly, the question we have answered here concerns review of the district court's resolution of a subsidiary factual dispute that helps that court determine the proper interpretation of the written patent claim. The district judge, after deciding the factual dispute, will then interpret the patent claim in light of the facts as he has found them. This ultimate interpretation is a legal conclusion. The appellate court can still review the district court's ultimate construction of the claim *de novo*. But, to overturn the judge's resolution of an underlying factual dispute, the Court of Appeals must find that the judge, in respect to those factual findings, has made a clear error. Fed. Rule Civ. Proc. 52(a)(6)." Justices Thomas and Alito dissented.

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

***NeuroRepair, Inc. v. Nath Law Group* (No. 2013-1073, 1/15/15) (Wallach, Chen, Hughes)**

January 15, 2015 10:22 AM

Wallach, J. Reversing district court and holding state law malpractice claim involving patent law representation improperly removed to federal court.

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

***Bard Peripheral Vascular v. W.L. Gore & Associates* (No. 2014-1114, 1/13/15) (Prost, Newman, Hughes)**

January 13, 2015 3:40 PM

Prost, J. Affirming finding of willful infringement of patent related to vascular grafts. Inventorship defense was not objectively reasonable even though member of a prior appellate panel had dissented on the issue. Also rejecting a standing defense. Hughes, J. concurred, but urged en banc review. Newman, J. dissented.

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

***Delano Farms Company v. California Table Grape Comm.* (No. 2014-1030, 1/9/15) (Prost, Bryson, Hughes)**

January 9, 2015 4:10 PM

Bryson, J. Affirming judgment that unauthorized planting of plant varieties did not constitute a public use invalidating patents directed to table grapes.

WilmerHale represented the appellant California Table Grape Commission.

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