
Federal Circuit Patent Updates - July 2005

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Electromotive Div. of General Motors Corp. v. Transportation Sys. Div. of General Electric Co., et al. (No. 04-1412) (Michel, Plager, Linn)

July 28, 2005 10:20 AM

(Michel) Affirming summary judgment of invalidity because of an on-sale bar under 35 USC 102(b). An extensive discussion of the "experimental" exception to the on-sale bar. Objective evidence, not subjective belief, determines whether a sale was primarily for experimentation. "[C]ontrol and customer awareness [of the purported testing] ordinarily must be proven if experimentation is to be found."

North American Container, Inc. v. Plastipak Packaging, Inc., et al. (No. 04-1306) (Lourie, Bryson, Linn)

July 14, 2005 1:06 PM

(Lourie) Affirming claim construction and summary judgment of non-infringement of patents directed to plastic bottles, although reversing one point of claim construction. The claims of the reissued patent were invalid under the "recapture rule" precluding a party from regaining subject matter that was surrendered in an effort to obtain allowance of the original claims.

Enzo Biochem, Inc. v. Gen-Probe, Inc., et al. (No. 04-1570) (Lourie, Linn, Prost)

July 13, 2005 1:03 PM

(Lourie) Dismissing appeal based on lack of a final judgment where there were pending counterclaims of unenforceability due to inequitable conduct. WilmerHale represented the appellee Gen-Probe Incorporated.

Board of Regents, The University of Texas System, on behalf of the University of Texas at Austin, et al. v. Nippon Telephone and Telegraph Corp. (No. 04-1452) (Schall, Gajarsa, Linn)

July 13, 2005 12:57 PM

(Gajarsa) Dismissing appeal for lack of CAFC jurisdiction because claim for tortious interference did not arise under the patent laws.

AT&T Corp. v. Microsoft Corp. (No. 04-1285) (Mayer, Lourie, Rader)

July 13, 2005 12:46 PM

(Lourie) Affirming judgment that Microsoft was liable for infringement of patent under § 271(f) for copies of the Windows® operating system that had been replicated abroad from a master version sent from the United States. Software may be a "component" of a patented invention under § 271(f). Software replicated abroad from a master version may be deemed "supplied" under §271(f). Rader dissented.

Phillips v. AWH Corporation, et al. (No. 03-1269) (Michel, Newman, Mayer, Lourie, Clevenger, Rader, Schall, Bryson, Gajarsa, Linn, Dyk, Prost)

July 12, 2005 1:08 PM

(Bryson) En banc ruling of Court clarifying rules of claim construction and use of dictionaries.

Sandisk Corp. v. Memorex Products, Inc. (formerly doing business as Memtec Products, Inc.), et al. (No. 04-1422) (Rader, Gajarsa, Dyk)

July 8, 2005 12:44 PM

(Gajarsa) Reversing summary judgment of patents directed to EEproms based on erroneous claim construction. There was no unmistakable surrender of claim scope during prosecution of the patent. Further, judicial estoppel did not foreclose the patentee's claim construction.

Salazar v. Procter & Gamble Company (No. 04-1013) (Rader, Bryson, Gajarsa)

July 8, 2005 12:42 PM

(Rader) Reversing summary judgment of non-infringement of patent directed to toothbrush based on erroneous claim construction. The district court erred in relying on the Examiner's statement of reasons for allowance. There is no presumption that an applicant has disavowed claim scope by not commenting on an Examiner's reason for allowance. Bryson dissented.