

Federal Circuit Patent Updates - July 2007

JULY 31, 2007

[View previous month...](#)

***General Mills, Inc. v. Kraft Foods Global, Inc.* (No. 06-1569p) (Bryson, Clevenger, Linn)**

July 31, 2007 2:43 PM

(Linn) On petition for rehearing, clarifying prior opinion affirming district court's refusal to permit defendant to assert counterclaim after moving to dismiss amended complaint.

***Integra Lifesciences I, LTD., et al. v. Merck KGaA, et al.* (No. 2002-1052)(Newman, Rader, Prost)**

July 27, 2007 8:31 AM

(Newman) On remand from the Supreme Court, reversing judgment of infringement in light of the Supreme Court's expansive reading of 35 USC 271(e)(1). Experimental work that was ultimately not the subject of an FDA submission was still exempt from infringement claims under the statute. The availability of the exemption "does not depend on the success or failure of the experimentation or the actual submission of the experimental results." Rader dissents, saying the decision "eliminate[s] protection for research tool inventions."

***LG Electronics MobileComm U.S.A. v. International Trade Commission* (No. 2007-1392)(Michel, Mayer, Prost)**

July 20, 2007 8:40 AM

(Prost) Dismissing appeals. Exclusion and cease and desist orders entered by the US International Trade Commission in a Section 337 investigation are not appealable during the Presidential review period.

***In re Metoprolol Succinate Patent Litigation, AstraZeneca AB, et al. v. KV Pharmaceutical Company, et al.* (No. 2006-1254)(Mayer, Schall, Gajarsa)**

July 20, 2007 8:29 AM

(Gajarsa) Affirming judgment of invalidity based on obviousness-type double patenting but vacating

holding of inequitable conduct. A claim to a compound that was one of several disclosed in and claimed in an earlier patent with other known elements was invalid for obviousness-type double patenting. The court does not decide whether this invalidity may be avoided by filing a terminal disclaimer during litigation. Regarding inequitable conduct, "the district court erred in equating an incentive with an intent to deceive on summary judgment." Schall dissents in part.

Benitec Australia, LTD. v. Nucleonics, Inc. (No. 06-1122)(Rader, Dyk, Whyte [of the N.D. Cal., sitting by designation])

July 20, 2007 8:26 AM

(Whyte) Affirming dismissal for lack of declaratory judgment (DJ) jurisdiction. Although DJ jurisdiction existed when the case was filed, the patentee subsequently divested the court of jurisdiction by dismissing its infringement claims and acknowledging that it presently had no such claims. Dyk dissents.

Daiichi Sankyo Co. v. Apotex (2006-1564) (Michel, Archer, Dyk)

July 11, 2007 8:38 AM

(Archer) Reversing judgment of validity and finding patent related to treating ear infections obvious. District court erroneously concluded that one of ordinary skill in the relevant art would be a "pediatrician or general practitioner." The Court found that one of ordinary skill in the art is "a person engaged in developing pharmaceutical formulations and treatment methods . . ." To such a person, the invention would have been obvious.

PharmaStem Therapeutics, Inc. v. Viacell, Inc., et al. (05-1490, -1551) (Newman, Bryson, Prost)

July 9, 2007 3:53 PM

(Bryson) Affirming judgment of non-infringement and reversing judgment of validity finding patents related to medical treatments using cord blood obvious. The defendants did not contributorily infringe because they never sold or offered to sell the cord blood. Rather, defendants offered services such as collecting and preserving the cord blood, but never obtained title of the blood. The district court did not abuse "its discretion when it determined, following the trial, that the infringement opinion of [patentee's expert] should have been struck." Patentee's expert based her infringement opinion on defendants' marketing materials, "without ever considering any data regarding the composition of defendants' cord blood units." Also, "[w]hile the inventors may have proved conclusively what was strongly suspected before . . . and while their work may have significantly advanced the state of science . . . [their experiments] and the conclusions drawn from them were not inventive in nature." Newman dissents.

Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., LTD, (also known as SMC Corporation), et al. (05-1492) (Michel, Newman, Dyk)

July 5, 2007 3:50 PM

(Dyk) Affirming judgment of no infringement under the doctrine of equivalents. Defendant's

aluminum sleeve was a foreseeable alternative to the magnetizable sleeve limitation, which was added to the claims by amendment, and prosecution history estoppel therefore applies. “[A]n equivalent is foreseeable if the equivalent was generally known to those skilled in the art at the time of amendment as available in the field of the invention as defined by the pre-amended claim scope.” Also, “the foreseeability requirement does not require the knowledge that the equivalent would satisfy the function/way/result test or the insubstantial differences test.” Newman dissents.

Hutchins v. Zoll Medical Corporation (2006-1539) (Michel, Newman, Dyk)

July 3, 2007 3:31 PM

(Newman) Affirming summary judgment of non-infringement of patent directed to computer-assisted CPR system. The agreed upon construction for “general purpose computer” was not satisfied by a RISC microprocessor in the accused product. Also affirming summary judgment of non-infringement of copyright and denial of Rule 60(b) motion.

Honeywell International, Inc., et al. v. Universal Avionics Systems Corp., et al. (2006-1406, -1435) (Bryson, Plager, Gajarsa)

July 3, 2007 3:16 PM

(Bryson) Affirming jury’s finding of infringement of patent directed to aircraft final approach warning system. District court properly construed “‘heading of the aircraft’ to refer to what would normally be referred to as the aircraft’s ‘bearing,’” even though “heading” and “bearing” mean different things in the art. Plager, J. dissents finding that the specification “falls far short of anything that suggests a clear redefinition of the term ‘heading.’”