Federal Circuit Patent Updates - July 2010

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Becton, Dickinson and Co v. Tyco Healthcare Group, LP **(2009-1053, -1111, 7/29/10) (Gajarsa, Linn, Mayer)**

July 29, 2010 1:22 PM

(Mayer) Reversing denial of motion for JMOL. The district court incorrectly construed the "spring means" limitation of claims related to a safety needle designed to prevent accidental needle stick injuries. "Simply put, a claim construction that does not require a spring member in addition to the hinged arm structure renders the spring means limitation functionally meaningless." Gajarsa dissented stating, "In the absence of evidence requiring two structures, the claim language must be interpreted broadly to read upon an accused product containing the two claim terms, regardless of whether those elements are encompassed in one or two structures."

WilmerHale represented the plaintiff-cross appellant, Becton, Dickinson and Company.

A full version of the text is available here.

Novo Nordisk A/S v. Caraco Pharmaceutical Laboratories, LTD., **[en banc order] (2010-1001, 7/29/10)**

July 29, 2010 1:12 PM

(Per Curiam) Denying petitions for rehearing and for rehearing en banc. Gajarsa, J. and Dyk, J. dissented arguing that the majority decision renders 21 U.S.C. § 355(j)(2)(A)(viii) (a "carve-out" provision of the Hatch Waxman Act) "a virtual nullity."

A full version of the text is available here.

Sun Pharmaceutical Ind., Ltd., v. Eli Lilly and Co. **(2010-1105, 7/28/10) (Bryson, Gajarsa, Prost)**

July 28, 2010 12:58 PM

(Prost) Affirming finding of invalidity due to obviousness-type double patenting.

A full version of the text is available here.

***Wyers v. Master Lock Co.* (Lourie, Linn, Dyk)**

July 22, 2010 1:41 PM

(Dyk) Reversing judgment of nonobviousness because claims (to trailer hitch pin locks) were obvious as a matter of law. KSR "directs us to construe the scope of analogous art broadly." "[E]xpert testimony concerning motivation to combine may be unnecessary and, even if present, will not necessarily create a genuine issue of material fact." "[T]he legal determination of obviousness may include recourse to logic, judgment, and common sense in lieu of expert testimony." "[O]ne is not estopped from asserting the invalidity of a patent by the fact that one has previously made an attempt to procure a patent for substantially the same invention." "Not every competing product that arguably falls within the scope of a patent is evidence of copying ….Our case law holds that copying requires evidence of efforts to replicate a specific product …." Linn, concurred.

A full version of the text is available here.

***Avid Identification Sys. v. Crystal Import Corp.* (No. 2009-1216, 7/16/10) (en banc)**

July 16, 2010 1:19 PM

(Per Curiam) Order denying rehearing en banc and motion to stay mandate of the case pending en banc disposition of *Therasense Inc. v. Becton, Dickinson and co.*

A full version of the text is available here.

***Telcordia Technologies v. CISCO Systems* (Rader, Lourie, Prost)**

July 12, 2010 12:12 PM

(Rader) Three patents directed to data networks were at issue. With respect to one patent, the Court affirmed summary judgment of non-infringement after reviewing the district court's claim construction, but remanded for consideration of anticipation based on reversal of one aspect of the claim construction. With respect to a second patent, there was an adequate disclosure of the structure of a device necessary to carry out the claimed function of a means plus function element and therefore the claim was not indefinite. The district court was within its discretion to interpret the jury's lump sum damages award as an award only for past infringement and as not including prejudgment interest. The Court also affirmed the district court's order that the parties negotiate a post-verdict royalty award which, if the parties could not agree, could be calculated by the district court. Prost dissented on the issue of indefiniteness.

A full version of the text is available here.

***In Re Giacomini* (Rader, Gajarsa, Dyk)**

July 12, 2010 10:52 AM

(Rader) Affirming Board holding that earlier patent was prior art under Section 102(e) because it

was entitled to the earlier filing date of a provisional patent application.

A full version of the text is available here.

In re Zimmer Holdings **[order] (Rader, Friedman, Gajarsa)**

July 2, 2010 1:47 PM

(Gajarsa) Granting petition for writ of mandamus and ordering case transferred from the Eastern District of Texas to the Northern District of Indiana.

A full version of the text is available here.

Lincoln Nat'l Life Ins. v. Transamerica Life Ins. **(Mayer, Clevenger, Moore)**

July 2, 2010 1:44 PM

(Moore) Reversing denial of JMOL of non-infringement and vacating permanent injunction. Defendant did not infringe claim directed to computerized method because defendant performed one of the claimed steps manually. In light of the Court's determination regarding infringement, there was no remaining case or controversy regarding denial of leave to amend to assert invalidity under 35 U.S.C. § 101. Clevenger concurred.

A full version of the text is available here.

Encyclopaedia Britannica v. Alpine Electronics of America **(Bryson, Gajarsa, Moore)**

July 2, 2010 1:41 PM

(Moore) Affirming summary judgment of invalidity of patents related to multimedia database search system. The patents in suit, which resulted from a chain of continuation applications, were not entitled to their claimed priority date because an intermediate application in the chain was filed without its first page and without a reference to the earlier filed application. In a case of first impression, the Court concluded "that § 120 requires each application in the chain of priority to refer to the prior applications. Because [an intermediate] application failed to specifically reference the earlier filed [parent] application, it is not entitled to the priority date of the [parent] application under § 120. Because the [intermediate] application did not claim priority to the [parent] application, the patents in suit cannot claim priority to the [parent] application through the [intermediate] application."

A full version of the text is available here.

Wordtech Systems v. Integrated Networks Solutions **(Mayer, Gajarsa, Linn)**

July 2, 2010 1:31 PM

(Linn) Reversing denial of defendants' motion for new trial and remanding for new trial on damages because "the verdict was 'clearly not supported by the evidence' and 'based only on speculation or guesswork'" and affirming denial of defendants' motion for leave to amend their

answer to allege invalidity defenses. Also remanding for new trial on liability of individual defendants due to errors in jury instructions.

A full version of the text is available here.