
Federal Circuit Patent Updates - July 2011

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***IN RE LOVIN* (2010-1499, 7/22/11) (Bryson, Mayer, Dyk)**

July 22, 2011 1:20 PM

Dyk, J. Affirming Board decision of obviousness. Patentee failed to adequately argue for the separate patentability of claims appealed to the Board. “In sum, we hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”

A full version of the text is available [here](#).

***DURAMED PHARMA v. PADDOCK LABS* (2010-1419, 7/21/11) (Lourie, Gajarsa, Dyk)**

July 21, 2011 12:59 PM

Lourie, J. Affirming summary judgment of non-infringement. Prosecution history estoppel precluded infringement under the doctrine of equivalents. “And even if the [prior art disclosure] indicates that [polyvinyl alcohol] is less than ideal in some pharmaceutical uses as an [moisture barrier coating], it is still disclosed to be useful as such, and that renders it foreseeable for purposes of prosecution history estoppel. Foreseeability does not require flawless perfection to create an estoppel.”

A full version of the text is available [here](#).

***IN RE CHICCO USA, INC.* [ORDER] (Miscellaneous Docket No. 977, 7/12/11) (Rader, Lourie, O'Malley)**

July 12, 2011 1:40 PM

Rader, J. Denying, without prejudice to renewal, petition for writ of mandamus. The district court stayed the litigation pending reexamination of some of the claims at issue. Patentee sought, but

the Court did not grant, a writ of mandamus directing the district court to vacate the stay order. “We note, however, that the court’s failure to provide any explanation for granting the stay, despite the fact that not all of the claims in suit are in reexamination, and long delay in ruling on [patentee’s] motions to lift the stay might tip the balance in favor of mandamus relief upon reapplication in the future.”

A full version of the text is available [here](#).