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## Federal Circuit Patent Updates - July 2015

JULY 31, 2015

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### ***Circuit Check Inc. v. QXQ Inc.* (No. 2015-1155, 7/28/15) (Lourie, Dyk, Moore)**

July 28, 2015 3:45 PM

Moore, J. Reversing judgment of invalidity for obviousness. Among other things, the prior art at issue was not analogous. “An alleged infringer should not be able to transform all systems and methods within the common knowledge into analogous prior art simply by stating that anyone would have known of such a system or method. The question is not whether simple concepts ... are within the knowledge of lay people or even within the knowledge of a person of ordinary skill in the art. Rather, the question is whether an inventor would look to this particular art to solve the particular problem at hand.” Even though an inventor may be aware of rock carvings, it is not surprising that the inventor would not have looked to rock carvings to improve the process of painting small dots on interface plates for expensive circuit board testers.”

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

### ***In re POSCO* (No. 2015-112, 7/21/15) (Newman, Dyk, Hughes)**

July 22, 2015 5:05 PM

Dyk, J. Granting petition for mandamus and vacating an order modifying a protective order to allow for use of discovery in foreign proceedings. 28 U.S.C. “§ 1782 may not directly govern requests to modify a protective order to make material available in a foreign proceeding—as opposed to direct requests for evidentiary material for use in foreign proceedings pursuant to § 1782.” But “we think that § 1782 still has a role to play when a party seeks to modify a protective order to use previously discovered documents in a foreign proceeding.” “[W]hile § 1782 may not govern instances in which a party seeks to modify a protective order to allow use of discovered materials in a foreign proceeding, we think that the considerations articulated under § 1782 and *Intel [Corp. v. Advanced Micro Devices, Inc.]*, 542 U.S. 241 (2004)] are relevant to that issue and must be considered together with other considerations pertinent under Federal Rule of Civil Procedure 26....” Hughes, J., concurred.

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

***Amgen Inc. v. Sandoz Inc.* (No. 2015-1499, 7/21/15) (Newman, Lourie, Chen)**

July 21, 2015 4:22 PM

Lourie, J. Affirming in part, vacating in part, and remanding case of first impression involving the Biologics Price Competition and Innovation Act (BPCIA). Affirming dismissal of state law claims for alleged violation of the BPCIA because “when a subsection (k) applicant fails the disclosure requirement, 42 U.S.C. § 262(l)(9)(C) and 35 U.S.C. § 271(e) expressly provide the only remedies as those being based on a claim of patent infringement.” Also holding that “a subsection (k) applicant may only give effective notice of commercial marketing after the FDA has licensed its product” and “where, as here, a subsection (k) applicant completely fails to provide its aBLA and the required manufacturing information to the RPS by the statutory deadline, the requirement of paragraph (l)(8)(A) is mandatory. Sandoz therefore may not market Zarxio before 180 days from March 6, 2015, i.e., September 2, 2015” and extending an injunction pending appeal accordingly. Newman, J., concurred in part and dissented in part. Chen, J., dissented in part.

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

***Addiction and Detoxification v. Carpenter* (No. 2014-1797, 7/21/15) (Moore, Bryson, Chen)**

July 21, 2015 11:30 AM

Moore, J. Affirming dismissal of a patent infringement complaint under Federal Rule of Civil Procedure 12(b)(6) because the complaint failed to satisfy the notice requirements of Federal Rule of Civil Procedure 8. Regarding direct infringement, “[i]t is not enough to say “you infringe my patent.” There must be some allegation of specific services or products of the defendants which are being accused.” Regarding indirect infringement, “[t]o state a claim for induced infringement, a plaintiff must allege that the defendant knew of the patent and that the induced acts constitute patent infringement.” Bryson, J., dissented.

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

***Airbus S.A.S. v. Firepass Corporation* (No. 2014-1808, 7/17/15) (Lourie, Dyk, Moore)**

July 17, 2015 10:12 AM

Lourie, J. Vacating Board decision in an *inter partes* reexamination and remanding. Once the Director has ordered *inter partes* reexamination, § 1.948(a) governs the limitations on the submission of new prior art, not a determination of a substantial new question of patentability.

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

***Versata Development Group v. Lee* (No. 2014-1145, 7/13/15) (Newman, Plager, Hughes)**

July 13, 2015 1:44 PM

Plager, J. Affirming dismissal due to lack of subject matter jurisdiction. Patent owner sued the PTO in district court seeking to set aside the PTAB's decision to institute CBM review. The "district court was correct in barring judicial review pursuant to subsection 324(e)." Hughes, J. concurred.

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

***SFA Systems, LLC v. Newegg Inc.* (No. 2014-1712, 7/10/15) (O'Malley, Clevenger, Hughes)**

July 10, 2015 4:11 PM

O'Malley, J. Affirming denial of attorney's fees. "Importantly, we do not hold that the district court cannot consider a patentee's pattern of prior litigation in determining whether a case is exceptional. Indeed, our § 285 cases that address litigation misconduct, which were not overruled by *Octane Fitness*, make clear that a district court should consider a patentee's pattern of litigation where adequate evidence of an abusive pattern is presented."

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

***Versata Development Group v. SAP America, Inc.* (No. 2014-1194, 7/9/15) (Newman, Plager, Hughes)**

July 9, 2015 11:15 AM

Plager, J. Affirming PTAB decision in a CBM proceeding that claims are invalid under § 18. Also addressing several issues about CBM proceedings and concluding "[on] appeal in a § 18 case to this court of a final written decision by the PTAB, as a general principle we may review issues decided during the PTAB review process, regardless of when they first arose in the process, if they are part of or a predicate to the ultimate merits" and "[the] requirements of § 101 of the Patent Act apply in a § 18 review." The Court also approved use of the broadest reasonable interpretation claim construction standard in this CBM proceeding. "As a general rule, we are bound by our own prior precedents, and, though the rules governing IPR matters at issue in *Cuozzo* will not necessarily govern all PGR/CBM matters, we see no basis for distinguishing between the two proceedings for purposes of the PTAB's use of BRI in claim construction here." Also rejecting patent owner's argument that CBMs be limited to patents for products or services from the financial sector. "We agree with the USPTO that, as a matter of statutory construction, the definition of 'covered business method patent' is not limited to products and services of only the financial industry, or to patents owned by or directly affecting the activities of financial institutions such as banks and brokerage houses. The plain text of the statutory definition contained in § 18(d)(1)—'performing . . . operations used in the practice, administration, or management of a financial product or service'—on its face covers a wide range of finance-related activities. The statutory definition makes no reference to financial institutions as such, and does not limit itself only to those institutions." Hughes, J. concurred-in-part and dissented-in-part.

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

***In re Cuozzo Speed Technologies, LLC* (No. 2014-1301, 7/8/15) (Newman, Clevenger, Dyk)**

July 8, 2015 2:02 PM

Dyk, J. Holding that the Court lacked jurisdiction to review the PTO's decision to institute IPR. "We conclude that § 314(d) prohibits review of the decision to institute IPR even after a final decision... There was no bar here to [the Board] finding claims 10 and 14 unpatentable based on [references not used in the petition for those claims]. The failure to cite those references in the petition provides no ground for setting aside the final decision." However, "mandamus may be available to challenge the PTO's decision to grant a petition to institute IPR after the Board's final decision in situations where the PTO has clearly and indisputably exceeded its authority." Also affirming the Board's use of the broadest reasonable interpretation standard and finding that the PTO had the authority to adopt the broadest reasonable interpretation standard in regulations. "We conclude that Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA." Also affirming Board's final determination of obviousness and affirming Board's denial of motion to amend the claims. Newman, J. dissented.

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

***In re Cuozzo Speed Technologies, LLC [Order Denying Pet for En Banc RHG] (No. 2014-1301, 7/8/15) (Prost, Newman, Lourie, Dyk, Moore, O'Malley, Reyna, Wallach, Taranto, Chen, Hughes)***

July 8, 2015 5:10 PM

Per Curiam. Denying petition for rehearing en banc. Concurring opinion filed by Judge Dyk, which was joined by Judges Lourie, Chen and Hughes. Dissenting opinion filed by Judge Prost, which was joined by Judges Newman, Moore, O'Malley and Reyna. Separate dissenting opinion filed by Judge Newman.

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

***Celgard, LLC v. SK Innovation Co., Ltd. (No. 2014-1807, 7/6/15) (Newman, Reyna, Wallach)***

July 6, 2015 3:20 PM

Reyna, J. Affirming lack of personal jurisdiction over defendant under "stream of commerce" theory where defendant that did not make sales directly to North Carolina but only sold to dealers who sold in North Carolina.

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

***Intellectual Ventures I LLC v. Capital One Financial (No. 2014-1506, 7/6/15) (Dyk, Reyna, Chen)***

July 6, 2015 1:12 PM

Dyk, J. Affirming holding that claims directed to internet activities were drawn to ineligible subject matter under Section 101.

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

***Daiichi Sankyo Company v. Lee (No. 2014-1280, 7/2/15) (Moore, Reyna, Taranto)***

July 2, 2015 4:40 PM

Reyna, J. Affirming PTO's calculation of patent term adjustment. The patentee sought judicial review too late to take advantage of a change in the PTO's method of calculation.

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

***WesternGeco LLC v. Ion Geophysical Corp.* (No. 2014-1527, -1121, -1526, -1528, 7/2/15) (Dyk, Wallach, Hughes)**

July 2, 2015 11:44 AM

Dyk, J. Following jury trial, affirming trial court 's ruling on patents directed to oil and gas exploration technologies except for award of lost profits resulting from conduct occurring abroad. The claims were system claims found to infringe under 271(f)(1) and (2). While 271(f) expanded the territorial scope of the patent law to apply to the export of components of patented systems abroad, it does not confer a right to recover "full compensation" for acts occurring outside of the United States. With respect to a conditional cross appeal, the district court did not err in excluding the plaintiff's royalty theory which would have eliminated all profits and revenues of the defendant. Wallach, J. dissented.

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

***The Medicines Company v. Hospira, Inc.* (No. 2014-1469, -1504, 7/2/15) (Dyk, Wallach, Hughes)**

July 2, 2015 9:04 AM

Hughes, J. Reversing judgment that claims were not invalid under on-sale bar. The on-sale bar was applicable to commercial sale of services that resulted in claimed product-by-process formulation.

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