
Federal Circuit Patent Updates - July 2017

JULY 2017

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***Regeneron Pharmaceuticals v. Merus N.V.* (No. 2016-1346, 7/27/17) (Prost, Newman, Wallach)**

July 27, 2017 11:49 AM

Prost, J. Affirming judgement of inequitable conduct. Rather than finding a specific intent to deceive the patent office, the district court sanctioned the patent owner for litigation misconduct by drawing an adverse inference regarding specific intent. The Court determined that the district court did not abuse its discretion by sanctioning the patent owner in that manner. Also, the district court did not clearly err in finding that references withheld from the patent office were but-for material. Newman, J. dissented.

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

***Soft Gel Technologies, Inc. v. Jarrow Formulas, Inc.* (No. 2016-1814, -1815, -1051, 7/26/17) (Prost, Bryson, Hughes)**

July 26, 2017 3:44 PM

Bryson, J. Affirming Board decision in *inter partes* reexamination finding obvious claims related to dissolving CoQ10.

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

***Home Semiconductor Corporation v. Samsung Electronics Co., Ltd.* (No. 2016-2215, 7/25/17) (Lourie, Moore, O'Malley)**

July 25, 2017 4:02 PM

Lourie, J. Reversing Board decision of anticipation in IPR of semiconductor patent because the Board's construction was erroneous. "We conclude that the Board's construction of 'over' as meaning 'above' is unreasonable in light of the claim language in the specification... Although 'over' and 'above' can be interchangeable in certain contexts, they are not coextensive here, and the full scope of 'above,' which is not a claim term, cannot be adopted to give meaning to the actual claim

term 'over' if that adoption would result in an *unreasonable* interpretation of the claim term in context.”

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

***Netlist, Inc. v. Diablo Technologies, Inc.* (No. 2016-1742, -1743, -1744, 7/25/17) (Dyk, Taranto, Hughes)**

July 25, 2017 10:50 AM

Hughes, J. Vacating Board decision of obviousness in two IPRs and remanding because the Board's claim construction was erroneous.

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

***NobelBiz, Inc. v. Global Connect, LLC* (No. 2016-1104, -1105, 7/19/17) (Newman, Dyk, Hughes)**

July 19, 2017 2:47 PM

Hughes, J. Reversing claim construction, vacating judgment of infringement and remanding. The “district court found that [the disputed claim] terms should be given their plain and ordinary meanings. During the jury trial, experts on both sides testified about the meaning of these terms... Allowing the experts to make arguments to the jury about claim scope was erroneous.” Newman, J. dissented..

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

***Millennium Pharmaceuticals v. Sandoz Inc.* (No. 2015-2006, 7/17/17) (Newman, Mayer, O'Malley)**

July 17, 2017 8:09 AM

Newman, J. Reversing and vacating judgments of invalidity for obviousness in consolidated appeals. The claimed invention was a previously unknown compound, and the prior art contained no teaching or suggestion of that compound. The district court erred in holding that the claims were obvious because they were the inherent result of an allegedly obvious process. “[I]nvention is not a matter of what the inventor intended when the experiment was performed; obviousness is measured objectively in light of the prior art, as viewed by a person of ordinary skill in the field of the invention.” “The unexpected properties of an unexpectedly produced new compound, and the ensuing pharmaceutical efficacy and benefit, negate the district court's ruling of obviousness.”

WilmerHale represented the plaintiff-appellant.

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

***Genband US LLC v. Metaswitch Networks Corp.* (No. 2017-1148, 7/10/17) (Lourie, Taranto, Chen)**

July 10, 2017 12:17 PM

Taranto, J. Vacating a denial of a permanent injunction and remanding for reconsideration. The district court “may have relied on too stringent an interpretation of the requirement, for an injunction,

that the allegedly irreparable harm is being caused by the infringement.” “[A] standard of the less demanding variety—as an interpretation of ‘drive demand,’ a standard based on ‘a driver’ as opposed to ‘the driver,’ applied in the multi-consumer, multi-feature context—is the governing one for what suffices to meet the causation component of the requirement of irreparable injury, *i.e.*, that the injury asserted to be irreparable be injury *from the defendant’s use of infringing features*.”

“Where the patentee relies on lost sales to show irreparable injury, it matters what reasons various buyers have for making the purchases lost to the patentee. If all but an insignificant number of purchases from the infringer would have been made even without the infringing feature, the causal connection to the asserted lost-sale-based injury is missing. But this court’s cases have now made clear that, under the causation approach suitable for a multi-feature, multi-purchaser context, the patentee may be able to make the causal connection between infringement and the relevant lost sales through evidence of various kinds, *e.g.*, that the infringing features significantly increased the product’s desirability, that soundly supports an inference of causation of a significant number of purchasers’ decisions.” “The causal-nexus inquiry may have little work to do in an injunction analysis when the infringing product contains no feature relevant to consumers’ purchasing decisions other than what the patent claims. In such a case, causal nexus and consumer demand may be apparent from the simple fact of infringing sales.”

Also, “when a patent owner postpones suit and forgoes a preliminary injunction, there may well be reasons for the patent owner’s actions independent of any implied concession that the infringement-caused injury is not actually irreparable: for example, the competitive threat may initially be small, or the merits may be much better presented through full litigation than through abbreviated preliminary- injunction proceedings.” “However, there is no “per se rule making the patent owner’s choices about when to sue and whether to seek interim relief legally irrelevant.”

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

***IPCom GmbH & Co. v. HTC Corporation* (No. 2016-1474, 7/7/17) (Prost, Clevenger, Chen)**

July 7, 2017 4:48 PM

Chen, J. Affirming in part, vacating in part because of improper claim construction, and remanding a Board decision of obviousness in a reexamination. “[T]he Board here impermissibly treated the means-plus-function limitation in its patentability analysis as if it were a purely functional limitation.”

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

***AdjustaCam, LLC v. Newegg, Inc.* (No. 2016-1524, 7/5/17) (Reyna, Mayer, Hughes)**

July 5, 2017 2:36 PM

Reyna, J. Reversing district court’s refusal to award attorneys fees to defendant. The district court abused its discretion by failing to follow Court’s mandate from prior appeal to evaluate the totality of the circumstances under *Octane*. Factors requiring award of attorneys fees included filing a weak infringement case that became objectively baseless after the district court’s Markman order, unreasonably litigating case by repeatedly serving expert reports and declarations, and a pattern of

low and erratic settlements.

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