
Federal Circuit Patent Updates - June 2006

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***Bruckelmyer v. Ground Heaters, Inc., et al.* (No. 05-1412)**

June 26, 2006 3:22 PM

Order denying en banc review. Newman and Linn would have granted en banc review to consider whether "two drawings that were stored in the unpublished archive of an unrelated Canadian patent application by a different inventor" were prior art under 102(a) or (b).

***AGFA Corp. v. CREO Products, Inc., et al.* (No. 05-1079)(Newman, Lourie, Rader)**

June 26, 2006 8:54 AM

(Rader) Affirming judgment of unenforceability of six patents because of inequitable conduct, an award of attorney fees, and the trial court's decision to hold an inequitable conduct trial before the court prior to a jury trial on other issues. Newman dissents, saying that there is right to trial by jury on issues of materiality and intent. WilmerHale represented the defendants-appellees.

***Honeywell International, Inc., et al. v. ITT Industries, Inc., et al.* (No. 05-1407)(Mayer, Lourie, Dyk)**

June 22, 2006 8:51 AM

(Lourie) Affirming summary judgment of noninfringement. Limiting claim term to a particular component based upon statements in the specification, notwithstanding arguably contrary, broadening statements in prosecution. "Where, as here, the written description clearly identifies what his invention is, an expression by a patentee during prosecution that he intends his claims to cover more than what his specification discloses is entitled to little weight." Also finding a disavowal of subject matter based upon the specification's identification of a material and denigration of that material's applicability to the claimed invention.

***Smithkline Beecham Corp., et al. v. Apotex Corp., et al.* [order] (No. 2004-1522)**

June 22, 2006 8:50 AM

Precedential order denying rehearing and rehearing en banc. Newman, Rader and Gajarsa dissent, saying that the court should hear the case en banc to address the interpretation of product-by-process claims.

***Gemmy Industries Corp. v. Chrisha Creations Limited, et al.* (No. 05-1110)(Newman, Mayer, Schall)**

June 22, 2006 8:48 AM

(Newman) Vacating summary judgment of invalidity because of an on-sale bar and preliminary injunction. The contradiction by a witness with credible supporting evidence of a prior sworn statement created a genuine issue of fact as to whether the product on sale was ready for patenting.

***Abbott Laboratories v. Andrx Pharmaceuticals, Inc., et al.* (No. 05-1433)(Newman, Gajarsa, Prost)**

June 22, 2006 8:44 AM

(Prost) Vacating preliminary injunction because of substantial questions as to invalidity because of obviousness. Newman dissents.

***Primos, Inc. v. Hunter's Specialties, Inc., et al.* (Newman, Lourie, Prost)**

June 16, 2006 8:43 AM

(Lourie) Affirming claim construction and jury verdict of infringement. The patentee successfully rebutted the presumption that a claim amendment was made for reasons of patentability and the all elements rule was inapplicable. Also affirming exclusion of evidence related to prior art belatedly disclosed by defendant.

***Panduit Corp. v. Hellermannntyton Corp.* (Michel, Gajarsa, Linn)**

June 16, 2006 8:40 AM

(Linn) Summary judgment affirmed that defendant did not breach settlement agreement prohibiting infringement of claims. There was no infringement under the doctrine of equivalents based on the all elements rule.

***Xerox Corp. v. 3Com Corp., et al.* (Newman, Rader, Bryson)**

June 16, 2006 8:36 AM

(Bryson) Reversing summary judgment of anticipation and obviousness of patent related to handwriting recognition because of genuine issue of fact over what the prior art disclosed. Also reversing summary judgment that claims were indefinite. WilmerHale represented the appellee 3Com.

***Liquid Dynamics Corp. v. Vaughan Company, Inc.* (Gajarsa, Dyk, Prost)**

June 16, 2006 8:34 AM

(Gajarsa) Affirming judgment, based on a jury verdict, of willful infringement and validity (best mode and enablement) of patent directed to slurry tanks. Also affirming district court judgment of no inequitable conduct.

Pactive Corp. v. Dow Chemical Company (Michel, Bryson, Dyk)

June 16, 2006 8:32 AM

(Dyk) Affirming summary judgment that declaratory judgment action was precluded by res judicata. Applying Second Circuit law, the court held that a settlement agreement and judgment did not reserve the right to litigate any claims that would otherwise be barred by res judicata, nor had the plaintiff been deprived a fair opportunity to litigate invalidity claims because of an allegedly fraudulent expert report.