
Federal Circuit Patent Updates - June 2007

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***Hyatt v. Dudas* (No. 06-1171) (Michel, Archer, Dyk)**

June 28, 2007 8:47 AM

(Michel) Affirming PTO procedure shifting burden to applicant to show that claims were supported by written description.

***Takeda Chemical Industries, LTD., et al. v. Alphapharm PTY., LTD., et al.* (No. 06-1329) (Lourie, Bryson, Dyk)**

June 28, 2007 8:43 AM

(Lourie) After KSR, affirming non-obviousness of claims directed to compounds for treatment of diabetes. "In cases involving new chemical compounds, it remains necessary to identify some reason that would have led a chemist to modify a known compound in a particular manner to establish prima facie obviousness of a new claimed compound." "This case fails to present the type of situation contemplated by the [Supreme] Court when it stated that an invention may be deemed obvious if it was 'obvious to try.'" Evidence did not show that it would have been obvious to select closest prior art compound as lead compound or that it was obvious to make modifications to that compound to arrive at the claimed invention. Dyk concurred in judgment with respect to species claim, but would have held generic claims obvious.

***Leggett & Platt, Incorporated, et al. v. VUTEk, Inc.* [order] (No. 07-1189no.)**

June 27, 2007 9:07 AM

(Linn) Failure of district court to enter judgment on declaratory judgment claim for non-infringement rendered decision that patent was invalid not ripe for appeal, notwithstanding district court's denial of a rule 54(b) motion on the grounds that all claims had been ruled on and the issue of infringement was moot.

***Young v. Lumenis, Inc.* (No. 06-1455) (Lourie, Prost, Moore)**

June 27, 2007 8:55 AM

(Lourie) Reversing summary judgment of indefiniteness (the word "near") and inequitable conduct with respect to patent direct to surgical method. Any failure to disclose was cured by applicant later providing information to PTO.

The Saunders Group, Inc. v. ComforTrac, Inc., et al. (No. 06-1576) (Michel, Bryson, Dyk)

June 27, 2007 8:49 AM

(Bryson) In a lengthy opinion touching on many issues of claim construction, reversing claim construction and summary judgment of non-infringement of patent directed to cervical traction device. Among other things, the court relied on a petition to make special that accused products lacking the element that the district court had identified as required by the claim. "While we reverse the district court on the issue of claim construction, we do not suggest that the resolution of the claim construction issue presented in this case, or in other similar cases, is easy or that the outcome is dictated by the straightforward application of patent law principles."

In re Star Scientific, Inc. [order] (No. M853no) (Newman, Friedman, Mayer)

June 25, 2007 8:56 AM

(Newman) Rejecting petition for mandamus to direct the district court to decide issue of inequitable conduct that was tried in early 2005.

Bender v. Dudas (No. 06-1243) (Rader, Plager, Linn)

June 21, 2007 9:00 AM

(Linn) Upholding PTO's exclusion of attorney from practicing before the PTO.

Biomedino, LLC v. Waters Technologies Corporation, et al. (No. 06-1350) (Rader, Archer, Gajarsa)

June 18, 2007 9:03 AM

(Archer) Affirming finding of indefiniteness of means-plus-function claim where there was no disclosure of corresponding structure.

Entegris, Inc. (formerly known as Mykrolis Corporation) v. Pall Corporation (No. 2004-1440)

June 13, 2007 9:05 AM

(Moore) Affirming dissolution of preliminary injunction because of a newly-raised invalidity challenge but dismissing appeal of finding of contempt for lack of jurisdiction. A finding of contempt of a preliminary injunction was not appealable as an interlocutory order under 28 USC 1292 or 1295 or pendent jurisdiction. An argument that an injunction should be dissolved because the accused infringer had stopped infringing was "illogical. If [defendant] has, as it claims, ceased making and selling infringing products, it would not be harmed by the preliminary injunction, and,

therefore, the district court would have no impetus for dissolving the injunction. Moreover, if a court was to dissolve a preliminary injunction solely on the ground that the defendant was no longer producing an infringing product, there would be no prohibition against the defendant reverting to the production of the originally enjoined products. The patentee would be forced to move again for an injunction on a product that the court already determined in likely to infringe. That approach would waste judicial resources and put unnecessary burden on the patentee."

NMT Medical, Inc., et al. v. Cardia, Inc. (No. 2006-1645)(Michel, Mayer, Gajarsa)

June 6, 2007 9:11 AM

(Gajarsa) Vacating summary judgment of noninfringement. The question of the substantiality of differences between the accused product structure and that disclosed in the patent specification corresponding to a 35 USC 112, 6 limitation was "a factual determination that cannot be resolved as a matter of law." The claim term "connected" included an "indirect" connection.