
Federal Circuit Patent Updates - June 2009

JUNE 30, 2009

[View previous month...](#)

***Garber v. Chicago Mercantile Exchange* (2009-1047,-1384) (Michel, Lourie, Prost)**

June 26, 2009 2:57 PM

(Lourie) Reversing district court's denial of a Rule 60(b)(4) motion. In prior litigation, all parties signed a stipulation dismissing all claims without prejudice and the district court subsequently entered an order dismissing the case with prejudice. Over three years later, the patentee filed motions requesting relief from the order that dismissed the case with prejudice. The Court found that the stipulation dismissing all claims, which was signed by all parties, was filed pursuant to Rule 41(a)(1), once the stipulation was filed the district court was divested of subject matter jurisdiction, and the district court's order dismissing the case with prejudice was void ab initio.

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

Patent cases in which petitions for certiorari have been granted, are pending or have recently been denied

See http://www.wilmerhale.com/patents_certiorari_petitions/

***Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories, Inc.* (No. 2008-1600) (Mayer, Dyk, Moore)**

June 10, 2009 10:54 AM

(Moore) Affirming-in-part and reversing-in-part a \$1.3 million award of costs under Fourth Circuit law.

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

***Univ. of Pittsburgh v. Varian Medical Systems, Inc.* (No. 2008-1441) (Gajarsa, Clevenger, Dyk)**

June 9, 2009 10:48 AM

(Gajarsa) Reversing district court's dismissal of a claim with prejudice" for lack of standing. The dismissal should have been without prejudice.

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

***Ecolab, Inc. v. FMC Corp.* (No. 2008-1228) (Rader, Gajarsa, Dyk)**

June 9, 2009 10:35 AM

(Gajarsa) Resolving numerous issues on JMOL with respect to patents directed to the use of a chemical in food processing, the Federal Circuit (i) affirmed a finding of infringement, finding no prosecution history disclaimer (ii) reversed a finding that claims were not anticipated because the prior art was not enabling (iii) affirmed a finding of obviousness (iv) affirmed a finding of no-induced infringement where the defendant reasonably believed that its product did not infringe (v) remanded a denial of a permanent injunction where the district court did not adequately consider the Ebay factors and (vi) reversed the district court's failure to award prejudgment interest.

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

***Larson v. Correct Craft, Inc.* (No. 2008-1208) (Gajarsa, Moore, Arterton)**

June 5, 2009 10:18 AM

(Arterton) Dismissing claim for lack of subject matter jurisdiction. A plaintiff with no ownership rights or reputational interest in a patent lacked standing to correct inventorship under Section 256 until he obtained ownership rights under state law.

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

***Agilent Tech., Inc. v. Affymetrix, Inc.* (No. 2008-1466) (Mayer, Rader, Posner)**

June 4, 2009 10:09 AM

(Rader) In interference involving microarray hybridization, the Court reversed the district court's claim construction and its holding that the claim's were adequately supported by the written description.

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

***Titan Tire Corp. v. Case New Holland, Inc.* (No. 2008-1078) (Newman, Plager, Gajarsa)**

June 3, 2009 9:56 AM

(Plager) Affirming denial of preliminary injunction after clarifying standard for granting preliminary

injunctions. "[W]hen analyzing the likelihood of success factor, the trial court, after considering all the evidence available at this early state of the litigation, must determine whether it is more likely than not that the challenger will be able to prove at trial, by clear and convincing evidence, that the patent is invalid."

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

***PureChoice, Inc. v. Honeywell International, Inc.* (No. 2008-1482) (Mayer, Gajarsa, Linn)**

June 1, 2009 10:00 AM

(Per curiam) Affirming judgment of indefiniteness where claim terms were insolubly ambiguous.

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

***Depuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.* (No. 2008-1240) (Newman, Bryson, Linn)**

June 1, 2009 9:53 AM

(Linn) Affirming denial of prior art ensnarement defense and judgment of no willfulness and award of lost profits, but reducing the damages awarded and reversing award of attorney fees and sanctions. Whether an assertion of the doctrine of equivalents would ensnare the prior art is a question of law for the court, not a jury. "Although predictability is a touchstone of obviousness, the 'predictable result' discussed in KSR refers not only to the expectation that prior art elements are capable of being physically combined, but also that the combination would have worked for its intended purpose." Regarding lost profit damages, "the focus on particular features corresponding to individual claim limitations is unnecessary when considering whether demand exists for a patented product under the first Panduit factor. Rather, the elimination or substitution of particular features corresponding to one or more claim limitations goes to the availability of acceptable noninfringing substitutes under the second Panduit factor" Lost profits were not available on sales of "pull-through" products that neither competed nor functioned with the patented products but were sold by virtue of business relationships.

WilmerHale represented the defendants on appeal.

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