

Federal Circuit Patent Updates - June 2014

JUNE 27, 2014

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***Hill-Rom Services, Inc. v. Stryker Corporation* (No. 2013-1450, 6/27/14) (Moore, Schall, Reyna)**

June 27, 2014 3:40 PM

Moore, J. Reversing summary judgment of non-infringement for patents related to remote monitoring of hospital beds and remanding. The district court had construed “datalink” to require a wired connection and the Court expanded the construction to include wireless connections. “This disclosed embodiment undisputedly uses a cable to convey data, and the patent does not disclose an alternative embodiment that uses a wireless datalink. However, absent some language in the specification or prosecution history suggesting that the wired connection is important, essential, necessary, or the ‘present invention,’ there is no basis to narrow the plain and ordinary meaning of the term datalink to one type of datalink—a cable. There are no magic words that must be used, but to deviate from the plain and ordinary meaning of a claim term to one of skill in the art, the patentee must, with some language, indicate a clear intent to do so in the patent... Enablement concerns do not justify departing from the plain and ordinary meaning of ‘datalink.’ Where the meaning of a claim term is clear, as it is here, we do not rewrite the claim to preserve its validity.” Reyna, J. dissented.

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

***In re: Nintendo of America, Inc.* (No. 2014-132, 6/25/14) (Newman, Rader, Hughes)**

June 25, 2014 12:20 PM

Vacating order denying motion to sever, transfer and stay and directing district court to grant defendant’s motion. “Since [manufacturer’s] liability is predicate to recovery from any of the defendants, the case against [manufacturer] must proceed first, in any forum. The benefits of trying the case against [manufacturer] in [its home forum] are indisputable. We conclude that the district court should have exercised its discretion to grant the petition.”

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

***Ceats, Inc. v. Continental Airlines, Inc.* (No. 2013-1529, 6/24/14) (Prost, Rader, O’Malley)**

June 24, 2014 10:05 AM

O'Malley, J. Affirming denial of Rule 60(b) motion for relief from judgment. "Because, on balance, we find that the Liljeberg factors do not justify relief in this case, we hold that the district court correctly denied [patent owner] relief from judgment under Rule 60(b)(6), despite what we deem to be a failure of the mediator's disclosure obligations."

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

***Augme Technologies, Inc. v. Yahoo! Inc.* (No. 2013-1121, -1195, 6/20/14) (Moore, Schall, Reyna)**

June 20, 2014 6:10 PM

Moore, J. Affirming summary judgment of non-infringement of claims and that claims were indefinite with respect to one patent, while affirming judgment of infringement and finding that claims were not indefinite with respect to second patent. On the doctrine of equivalents, embedded code is the opposite of retrieved code and therefore the difference between the two cannot be insubstantial. On indefiniteness, "simply disclosing a black box that performs the recited function is not a sufficient explanation of the algorithm required to render the means-plus-function term definite."

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

***Gemalto S.A. v. HTC Corporation* (No. 2013-1397, 6/19/14) (Newman, Rader, Dyk)**

June 19, 2014 12:15 PM

Dyk, J. Affirming summary judgment of non-infringement based on claim construction of patents directed to resource-constrained devices to run software programs. With respect to the doctrine of equivalents, the plaintiff failed to provide "particularized testimony and linking argument to show the equivalents' are insubstantial."

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

***Alice Corp. v. CLS Bank Int'l* (No. 13-298, 6/19/14)**

June 19, 2014 4:25 PM

Thomas, J. Claims not directed to patentable subject matter under Section 101 where they covered (1) a method for exchanging financial obligations, (2) a computer system configured to carry out the method for exchanging obligations, and (3) a computer-readable medium containing program code for performing the method of exchanging obligation.

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

***Triton Tech of Texas, LLC v. Nintendo of America, Inc.* (No. 2013-1476, 6/13/14) (Moore, Reyna, Hughes)**

June 13, 2014 10:12 AM

Moore, J. Affirming finding that means-plus-function claims were invalid as indefinite. Disclosure of a class of algorithms for performing the claimed function insufficient to make claims definite.

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

***Bristol-Myers Squibb Company v. Teva Pharmaceuticals USA, Inc.* (No. 2013-1306, 6/12/14)
(Prost, Plager, Chen)**

June 12, 2014 9:45 AM

Chen, J. Affirming trial court's finding that compound patent was invalid as obvious. "Unexpected results do not per se defeat, or prevent, the finding that a modification to a lead compound will yield expected, beneficial properties."

WilmerHale represented the Plaintiff-Appellant.

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

***In Re: Dinsmore* (No. 2013-1637, 6/10/14) (Taranto, Bryson, Hughes)**

June 10, 2014 6:05 PM

Taranto, J. Applicant could not withdraw a terminal disclaimer by reissue based on alleged mistake about common ownership.

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

***Allergan, Inc. v. Apotex, Inc.* (No. 2013-1249, 6/10/14) (Prost, Reyna, Chen)**

June 10, 2014 2:30 PM

Prost, J. Reversing finding of non-obviousness of two patents directed to hair loss treatment. General unpredictability in the art was not relevant. The question with respect to one of the patents was whether there was anything unpredictable about use of a compound within the class of compounds shown in the prior art to treat hair loss. With respect to a second patent, the plaintiff failed to antedate prior art because its date of invention was not sufficiently corroborated, and plaintiff further failed in its effort to show that the prior art was derived from the named inventor. Chen, J., dissented in part.

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

***Q. I. Press Controls v. Lee* (No. 2012-1630, 6/9/14) (Lourie, Bryson, Hughes)**

June 9, 2014 3:10 PM

Lourie, J. Affirming in part and vacating in part rejections and confirmations of claims in inter partes reexamination. "We do not hold that the Board should always apply references that are before it affecting some claims to every other claim on appeal, but we do find that in this instance, in which

nearly identical claims were found both valid and invalid due to similar combinations of prior art resulting in a Board opinion that was seemingly inconsistent, the Board erred by not considering the combination of Sainio and Ross as a new ground for rejection of claims 1–60.”

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

***STC.UNM v. Intel Corporation* (No. 2013-1241, 6/6/14) (Newman, Rader, Dyk)**

June 6, 2014 11:40 AM

Rader, J. Affirming dismissal of infringement suit for lack of standing because a co-owner of the patent would not and could not be joined as a co-plaintiff. “[T]his court holds that the right of a patent co-owner to impede an infringement suit brought by another co-owner is a substantive right that trumps the procedural rule for involuntary joinder under Rule 19(a).” Newman, J., dissents.

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

***Source Vagabond Systems v. Hydrapak, Inc.* (No. 2013-1270, 6/5/14) (Moore, Reyna, Wallach)**

June 5, 2014 6:10 PM

Wallach, J. Affirming Rule 11 sanctions against plaintiff’s counsel for bringing a frivolous patent infringement suit. “The district court properly determined that “claim construction is a function of the words of the claim not the ‘purpose’ of the invention,” and that Source’s construction “violates nearly every tenet of claim construction and amounts to a wholesale judicial rewriting of the claim.” And the infringement claim “lacked evidentiary support no matter how the claim was construed.”

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

***Consumer Watchdog v. Wisconsin Alumni Research* (No. 2013-1377, 6/4/14) (Prost, Rader, Hughes)**

June 4, 2014 2:15 PM

Rader, J. Dismissing appeal from an unsuccessful reexamination (of claims generally directed to human embryonic stem cell cultures) because the appellant “has not established an injury in fact sufficient to confer Article III standing,” “Consumer Watchdog does not identify any alleged injury aside from the Board denying Consumer Watchdog the particular outcome it desired in the reexamination, i.e., canceling the claims of the ’913 patent.” “While Consumer Watchdog is sharply opposed to the Board’s decision and the existence of the ’913 patent, that is not enough to make this dispute justiciable.”

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

***In re: Rambus, Inc.* (No. 2013-1192, 6/4/14) (Rader, Moore, Reyna)**

June 4, 2014 3:45 PM

Reyna, J. Reversing Board determination of anticipation in an inter partes reexamination. “Claims

are generally given their “broadest reasonable interpretation” consistent with the specification during reexamination. ... If, as is the case here, a reexamination involves claims of an expired patent, a patentee is unable to make claim amendments and the PTO applies the claim construction principles outlined by this court in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).”

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

***Krauser v. BioHorizons, Inc.* (No. 2013-1461, 6/4/14) (Lourie, Clevenger, Dyk)**

June 4, 2014 10:10 AM

Dyk, J. Transferring appeal to the Eleventh Circuit because of lack of jurisdiction. “Here, the Eleventh Circuit has transferred this case to us, and accordingly, the Eleventh Circuit’s decision should normally be the law of the case. ... We conclude, however, that there is no “plausible” basis for this court’s jurisdiction.” “We have repeatedly held that an amendment to the complaint that dismisses the patent law claims without prejudice, as here, deprives this court of jurisdiction over the case.” “A claim of ownership does not necessarily require consideration of patent law inventorship.”

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

***Nautilus, Inc. v. Biosig Instruments, Inc.* (No. 13-369, 6/2/14)**

June 2, 2014 3:15 PM

Ginsburg, J. Vacating judgment that patent claims were not invalid for indefiniteness. “[W]e hold that a patent is invalid for indefiniteness if its claims, read in light of the specification delineating the patent, and the prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.” The Federal Circuit’s test that “a patent claim passes the §112, ¶2 threshold so long as the claim is “amenable to construction,” and the claim, as construed, is not “insolubly ambiguous,” “does not satisfy the statute’s definiteness requirement.”

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

***Limelight Networks, Inc. v. Akamai Technologies, Inc.* (No. 12-786, 6/2/14)**

June 2, 2014 12:50 PM

Alito, J. Reversing judgment of inducement of infringement where no one person had committed direct infringement. “[T]he Federal Circuit erred in holding that a defendant may be held liable for inducing patent infringement under 35 U. S. C. §271(b) even though no one has committed direct infringement under §271(a).” “Muniauction (which ... we assume to be correct) instructs that a method patent is not directly infringed—and the patentee’s interest is thus not violated—unless a single actor can be held responsible for the performance of all steps of the patent. Because Limelight did not undertake all steps of the ’703 patent and cannot otherwise be held responsible for all those steps, respondents’ rights have not been violated.”

WilmerHale represented the respondents.

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