Federal Circuit Patent Updates - March 2010

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Marrin v. Griffin **(Newman, Bryson, Dyk)**

March 23, 2010 9:52 AM

(Dyk, J.) Affirming summary judgment of invalidity of patent directed to a scratch-off label. The words "for permitting" in the preamble did not limit the claim. Newman, J. dissented.

A full version of the text is available here.

Ariad Pharmaceuticals, Inc. v. Eli Lilly and Co. **(en banc)**

March 23, 2010 9:48 AM

(Lourie, J.) Reversing denial of JMOL and holding claims invalid for failure to meet the written description requirement. "We now reaffirm that §112, first paragraph, contains a written description requirement separate from enablement." The written description requirement applies to both original and amended claims. "Thus, although written description and enablement often rise and fall together, requiring a written description of the invention plays a vital role in curtailing claims that do not require undue experimentation to make and use, and thus satisfy enablement, but that have not been invented, and thus cannot be described." Newman, J. filed a separate opinion expressing additional views. Gajarsa, J. concurred. Rader, J. and Linn, J. concurred-in-part and dissented-in-part.

WilmerHale filed an amicus curiae brief on behalf of Abbott Laboratories in support of maintaining a separate written description requirement.

A full version of the text is available here.

Laboratory Corp. of America Holdings v. Metabolite Laboratories, Inc. **(Gajarsa, Dyk, Moore)**

March 23, 2010 9:45 AM

(Gajarsa, J.) Transferring case due to lack of appellate jurisdiction. Prior litigation determined that

plaintiff's use of a test for detecting vitamin deficiencies was infringing. Plaintiff subsequently sought declaratory judgment that outsourcing tests to a third party does not violate a contract with defendants. The Court does not have appellate jurisdiction because the present declaratory judgment case presents no disputed questions of patent law. Dyk, J. dissented.

A full version of the text is available here.

Delaware Valley Floral Group, Inc. v. Shaw Rose Nets, Llc. **(Bryson, Linn, Prost)**

March 23, 2010 9:41 AM

(Prost, J.) Affirming summary judgment of invalidity based on the on-sale bar. The inventor testified at deposition that roses produced using the invention were sold more than a year before the patent application was filed. In response to a motion for sanctions, the inventor executed an errata sheet attempting to alter the deposition testimony. "[The inventor] did not attempt to submit an errata sheet to make substantive changes to his unequivocal testimony until after the thirty days permitted under Rule 30(e) and after Plaintiffs moved for sanctions due to the application of the on-sale bar. Under the circumstances here, [the patentee] has failed to demonstrate that the district court abused its discretion by excluding his errata sheet."

A full version of the text is available here.

I4I v. Microsoft [reissued] **(Schall, Prost, Moore)**

March 23, 2010 9:38 AM

(Prost, J.) The Court reissued its Dec. 22, 2009, opinion adding a section on willfulness explaining that a single sentence in defendant's brief ("[Defendant] is entitled to judgment as a matter of law on the issue of willfulness") failed to challenge the jury's finding of willfulness and, even if it did, the jury's finding was supported by substantial evidence.

A full version of the text is available here.

Richardson v. Stanley Works, Inc. **(Lourie, Dyk, Kendall)**

March 11, 2010 10:23 AM

(Lourie, J.) Affirming judgment of non-infringement of design patent on a hammer. Under 9th Circuit law, a jury demand was untimely.

A full version of the text is available here.

Ajinomoto Co., Inc. v. International Trade Commission **(Newman, Lourie, Linn).**

March 11, 2010 10:06 AM

(Lourie, J.) Affirming finding that patent failed to comply with the best mode requirement and was unenforceable. The inventors failed to disclose best host strains for claimed process for making lysine using a genetically altered *E. coli.*

A full version of the text is available here.

Tivo, Inc. v. Echostar Corp. **(Mayer, Lourie, Rader)**

March 11, 2010 9:54 AM

(Lourie, J.) Affirming finding of contempt based on defendant's violation of a permanent injunction. The defendant's alleged design around was not colorably different from the adjudged infringing devices. Further, the defendant was in contempt for failing to comply with an order to disable features completely from the infringing devices. Lack of intent alone cannot save an infringer from a finding of contempt. Rader, J. dissented.

A full version of the text is available here.

Davis v. Brouse McDowell, L.P.A. **(Newman, Bryson, Moore)**

March 11, 2010 9:52 AM

(Moore, J.) Affirming summary judgment against plaintiff on malpractice claim. The district court and the Federal Circuit had jurisdiction because the "case-within-a-case" required a determination of whether claims presented in an application were patentable.

A full version of the text is available here.

Comaper Corp. v. Antec, Inc. **(Rader, Gajarsa, Dyk)**

March 11, 2010 9:48 AM

(Dyk, J.) Upholding claim construction and finding of infringement, but reversing on issue of obviousness because of an irreconcilably inconsistent jury verdict. The denial of a summary judgment motion is not appealable after a final judgment from a trial has entered. The defendant waived JMOL by not moving before the jury verdict. The inconsistent verdict was a finding that dependent claims, but not independent claim, were obvious. Because the jury verdict of obviousness was supported by substantial evidence, a remand was required.

A full version of the text is available here.

Media Technologies Licensing, Llc. v. The Upper Deck, Co. **(Mayer, Lourie, Rader)**

March 11, 2010 9:41 AM

(Rader, J.) Affirming summary judgment that patents directed to memorabilia card were obvious. Rader, J. dissented, alleging that the opinion betrayed a bias against non-technical arts.

A full version of the text is available here.

Trading Technologies International, Inc. v. eSpeed, Inc. **(Lourie, Rader, Clark)**

March 11, 2010 9:39 AM

(Rader, J.) Affirming various rulings on patents related to software for displaying the market for commodities traded in an electronic exchange. The Court affirmed (1) the district court's claim construction, although recognizing that it "risks reading improperly a preferred embodiment into the claim;" (2) rejection of a doctrine of equivalents argument based on the all-elements rule and prosecution history estoppel; (3) granting JMOL of non-willfulness; (4) rejection of an indefiniteness defense; (5) a jury finding that a provisional application had adequate written description support (5) rejection of an on-sale bar defense because there was no sales transaction; and (6) the district court's finding that alleged non-disclosures did not constitute inequitable conduct because the information was not material.

A full version of the text is available here.

In Re Chapman **(Gajarsa, Clevenger, Dyk)**

March 11, 2010 9:36 AM

Dyk, J. Reversing PTO determination that antibody claims were obvious. The PTO's misreading of a key prior art reference required a remand.

A full version of the text is available here.

Crocs, Inc. v. International Trade Commission **(Lourie, Rader, Prost)**

March 11, 2010 9:34 AM

(Rader, J.) Reversing ITC decision finding utility patent covering Croc shoes obvious. Also reversing Commission's claim construction of design patent and and its application of the ordinary observer test to the issues of infringement and the technical prong of the domestic industry requirement. With respect to the design patent, the district court erred by relying on a detailed verbal claim construction and applying the ordinary observer test by placing undue emphasis on particular details of its written description of the patented design. With respect to the utility patent, the art taught away from the claimed invention Commercial success and other objective indicia also demonstrated non-obviousness.

A full version of the text is available here.