
Federal Circuit Patent Updates - March 2014

MARCH 31, 2014

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***Senju Pharmaceutical Co. v. Apotex, Inc.* (No. 2013-1027, 3/31/14) (Newman, Plager, O'Malley)**

March 31, 2014 11:12 AM

Plager, J. Claim preclusion (res judicata) barred action on claims amended during reexamination where prior action against same product described in ANDA had resulted in a judgment of invalidity of the claims of the original patent. O'Malley, J. dissented.

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

***Endo Pharmaceuticals Inc. v. Actavis, Inc.* (No. 2013-1658, 3/31/14) (Newman, Dyk, Moore)**

March 31, 2014 3:44 PM

Moore, J. Vacating and remanding denial of a preliminary injunction. Defendant did not have implied license to later issued patents where patents were not continuations or related to licensed patents and license expressly disclaimed any implied licenses. Dyk, J. dissented.

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

***Shire Development, LLC v. Watson Pharmaceuticals, Inc.* (No. 2013-1409, 3/28/14) (Rader, Prost, Hughes)**

March 28, 2014 7:19 AM

Hughes, J. In Hatch Waxman case, reversing and remanding infringement finding based on incorrect claim construction.

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

***StoneEagle Services, Inc. v. Gillman* (No. 2013-1248, 3/26/14) (Rader, Moore, Reyna)**

March 26, 2014 6:55 PM

Rader, J. Vacating preliminary injunction and dismissing case for lack of subject matter jurisdiction where complaint failed to allege a sufficient controversy concerning inventorship (as opposed to ownership, a question of state law).

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

***Brain Life, LLC v. Elekta Inc.* (No. 2013-1239, 3/24/14) (O'Malley, Bryson, Wallach)**

March 24, 2014 1:39 PM

O'Malley, J. The district court granted summary judgment based on res judicata grounds. The Federal Circuit agreed with appellant that neither claim nor issue preclusion was applicable but held the Kessler Doctrine (Kessler v. Eldred, 206 U.S. 285 (1907)) precluded the majority of the plaintiff's claims. In the first case, non-infringement of apparatus claims was found, while method claims had been dismissed without prejudice. Plaintiff sought to pursue the method claims in the second case against acts of infringement occurring after the judgment in the first. Claim preclusion wasn't applicable against post-judgment acts, while issue preclusion wasn't applicable because method claims had not been litigated in first action. Under the Kessler Doctrine, however, "when an alleged infringer prevails in demonstrating noninfringement, the specific accused device(s) acquires the status of a "non-infringing device" vis-à-vis the asserted patent claims."

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

***Energy Recovery, Inc. v. Hauge* (No. 2013-1515, 3/20/14) (Rader, Reyna, Wallach)**

March 20, 2014 10:18 AM

Wallach, J. Reversing holding of contempt and finding that defendant had not violated the terms of the injunction.

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

***Alcon Research, LTD. v. Barr Laboratories, Inc.* (No. 2013-1340, -1341, 3/18/14) (Newman, Lourie, Bryson)**

March 18, 2014 2:10 PM

Lourie, J. Affirming finding that plaintiff failed to prove infringement of method claims by product described in ANDA, but reversing finding of invalidity for lack of enablement and written description. Also affirming district court's denial of JMOL for non-infringement of claims that were not tried where defendant had not filed declaratory judgment of non-infringement and plaintiff had advised defendant that it had decided to drop the claims prior to trial.

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

***Bose Corporation v. SDI Technologies, Inc.* (No. 2013-1347, 3/14/14) (Chen, Clevenger, Hughes)**

March 14, 2014 4:27 PM

Clevenger, J. Affirming in part and reversing in part summary judgment of noninfringement. Reversing summary judgment of no indirect infringement because of a factual dispute as to lack of intent to induce infringement. "Where the record reveals no basis for a good-faith belief sufficient to thwart liability, summary judgment of no liability cannot stand. Whether SDI had such a good-faith belief prior to receiving the opinion of counsel is a triable issue for the jury to consider." In addition, "[a] party seeking to show lack of the requisite intent to infringe, based on receipt of a competent counsel opinion of noninfringement or of invalidity, must also show that it "had exercised reasonable and good-faith adherence to the analysis and advice therein." ... Without proof of good-faith reliance, possession of the opinion alone is hardly dispositive of the state of mind necessary to avoid liability." "Whether the Patent Office subsequently rejected the claims on the same grounds identified in the opinion of counsel (as it so happened) does not prove that SDI relied on the action of the Patent Office to show its good-faith."

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

***Vedderi, LLC v. Google, Inc.* (No. 2013-1057, 3/14/14) (Rader, Dyk, Taranto)**

March 14, 2014 12:58 PM

Rader, C. J. Reversing grant of summary judgment of noninfringement because of erroneous claim construction. "By effectively reading "substantially" out the claims, the district court erred."

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

***Therasense, Inc. v. Becton, Dickinson and Company* (No. 2012-1504, 3/12/14) (Rader, Newman, Dyk)**

March 12, 2014 7:22 PM

Rader, C. J. Affirming denial of award of certain fees to the defendants in an exceptional case; the defendants were "not entitled to fees on fees, pre-judgment interest, and post-judgment fees calculated specifically from the date the district court deemed the case exceptional." Dyk, J., dissents in part.

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

***Danisco US Inc. v. Novozymes A/S* (No. 2013-1214, 3/11/14) (Lourie, Prost, O'Malley)**

March 11, 2014 1:44 PM

Lourie, J. Reversing dismissal of a declaratory judgment action for lack of subject matter jurisdiction; "the totality of the circumstances establishes a justiciable controversy." "Article III does not mandate that the declaratory judgment defendant have threatened litigation or otherwise taken action to enforce its rights before a justiciable controversy can arise, and the Supreme Court has repeatedly found the existence of an actual case or controversy even in situations in which there was no indication that the declaratory judgment defendant was preparing to enforce its legal rights."

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

