
Federal Circuit Patent Updates - March 2015

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***Exela Pharma Sciences, LLC v. Lee* (No. 2013-1206, 3/26/15) (Newman, Dyk)**

March 26, 2015 10:10 AM

Per Curiam. Affirming dismissal of a lawsuit seeking to challenge, by way of the Administrative Procedure Act (APA), a ruling of the Patent and Trademark Office reviving a patent application that had become abandoned by failure to meet a filing schedule established by the Patent Cooperation Treaty and its implementing statute. “PTO revival rulings are not subject to third party collateral challenge.” Newman, J., concurred. Dyk, J., concurred.

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

***Kennametal, Inc. v. Ingersoll Cutting Tool Company* (No. 2014-1350, 3/25/15) (Prost, Newman, Linn)**

March 25, 2015 2:20 PM

Linn, J. Affirming Board determinations of anticipation and obviousness in a reexamination. “[A] reference can anticipate a claim even if it “d[oes] not expressly spell out” all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would “at once envisage” the claimed arrangement or combination. In re Petering, 301 F.2d 676, 681 (C.C.P.A. 1962).” “While references that anticipate an invention can, theoretically, still not make it obvious, see *Cohesive Techs., Inc. v. Waters Corp.*, 543 F.3d 1351, 1364 n.2 (Fed. Cir. 2008), that is the rare case.” “[T]he offered secondary consideration actually results from something other than what is both claimed and *novel* in the claim, [so] there is no nexus to the merits of the claimed invention.” *In re Huai-Hung Kao*, 639 F.3d 1057, 1068 (Fed. Cir. 2011).”

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

***Halo Electronics, Inc. v. Pulse Electronics Corporation* (No. 2013-1472, 3/23/15) (en banc)**

March 12 2015 11:40 AM

Per Curiam. Precedential order denying rehearing en banc of a case involving the enhanced-damages provision of the Patent Act, 35 U.S.C. § 284. Taranto and Reyna, JJ., concurred, and O'Malley and Hughes, JJ., dissented from the denial of rehearing en banc.

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

***Cadence Pharmaceuticals Inc. v. Exela Pharma Sciences LLC* (No. 2014-1184, 3/23/15) (Reyna, Linn, Wallach)**

March 23, 2015 3:15 PM

Linn, J. Affirming judgments of infringement and validity. An accused process that deoxygenated a solution before instead of after addition of the active ingredient as claimed still infringed under the doctrine of equivalents. “Exela challenges that determination and contends that deoxygenating after adding the active ingredient is the “antithesis” of deoxygenating before adding the active ingredient and that because such a substitution would “vitiate” the claimed limitation, there can be no finding of equivalence.” “Characterizing an element of an accused product as the “antithesis” of a claimed element is also a conclusion that should not be used to overlook the factual analysis required to establish whether the differences between a claimed limitation and an accused structure or step are substantial vel non. The determination of equivalence depends not on labels like “vitiation” and “antithesis” but on the proper assessment of the language of the claimed limitation and the substantiality of whatever relevant differences may exist in the accused structure.” Regarding secondary considerations of nonobviousness, sales of a commercial product that met the claims by equivalence but not literally were still relevant, and the fact that the patent had been separately licensed “is also evidence of a belief that the ’218 patent was valid.”

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

***Senju Pharmaceutical Co. v. Lupin Limited* (No. 2013-1630, 3/20/15) (Newman, Plager, Moore)**

March 20, 2015 1:50 PM

Plager, J. Affirming judgment of invalidity for obviousness. Newman, J., dissented.

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

***Two-Way Media LLC v. AT&T, Inc.* (No. 2014-1302, 3/19/15) (Dyk, O'Malley, Wallach)**

March 19, 2015 9:30 AM

O'Malley, J. Affirming district court refusal to extend or reopen the appeal period following an adverse judgment after an untimely notice of appeal. “In this era of electronic filing ... we find no abuse of discretion in a district court’s decision to impose an obligation to monitor an electronic docket for entry of an order which a party and its counsel already have in their possession and know that the clerk at least attempted to enter.” Dyk, J., dissented.

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

MobileMedia Ideas LLC v. Apple Inc. (No. 2014-1060, 3/17/15) (Taranto, Bryson, Chen)

March 17, 2015 5:22 PM

Chen, J. Affirming in part, reversing in part, and vacating various judgments, and remanding. “The scope of a means-plus-function limitation is outlined not by what the specification and prosecution history *do not say*, but rather by what they *do say*. As we noted in *Medtronic, Inc. v. Advanced Cardiovascular Systems, Inc.*, the fact that “a structure may perform two functions and that a function may be performed by two structures” is “*irrelevant* in the context of a § 112, paragraph 6 analysis without a clear link or association between the function or functions recited in the means-plus-function limitation and the structure or structures disclosed in the specification for carrying out those functions.” 248 F.3d 1303, 1313 (Fed. Cir. 2001) (emphasis added).”

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

Enzo Biochem Inc. v. Applera Corp. (No. 2014-1321, 3/16/15) (Prost, Newman, Linn)

March 16, 2015 4:10 PM

Prost, J. Reversing claim construction of patent related to DNA sequencing, vacating judgment of infringement and remanding. The district court’s construction covered “both direct and indirect detection of a signaling moiety.” The claim requires that “‘A’ be attached ... through a linkage group that ‘does not substantially interfere with formation of the signalling moiety.’ [citation omitted] The plain reading of this phrase is that ‘A’ cannot be the whole signalling moiety, as the claimed compound does not include a *formed* signalling moiety. In other words, if ‘A’ alone could be the signalling moiety, as the district court found, the requirement that ‘A’ not interfere with the formation of the signalling moiety would be read out of the claim, as the signalling moiety would be formed by the sole presence of ‘A.’” Newman, J. dissented.

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

Vicor Corporation v. SynQor, Inc. (No. 2014-1578, 3/13/15) (Taranto, Mayer, Clevenger)

March 13, 2015 10:22 AM

Clevenger, J. Reversing Board decision in an inter partes reexamination of a patent related to a power converter. A combined prior art reference, i.e., a first patent and another patent incorporated by reference into the first patent, anticipated a claim. Having found anticipation of one claim, the Court vacated the Board’s obviousness rejections and remanded. The requester “should have the opportunity to argue that [patent owner’s] evidence of commercial success is attributable not to the claimed invention, but to the prior art converter taught by the combined [prior art] references.”

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

Eidos Display, LLC v. AU Optronics Corporation (No. 2014-1254, 3/10/15) (Wallach, Taranto, Chen)

March 10, 2015 3:40 PM

Chen, J. Reversing summary judgment of indefiniteness for a patent related to manufacturing liquid crystal displays and remanding. The Court found that one of ordinary skill in the art would understand that “a contact hole for source wiring and gate wiring connection terminals” is formed by etching contact holes for the source wiring connection terminals and separate contact holes for the gate wiring connection terminals.

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

Warsaw Orthopedic, Inc. v. NuVasive, Inc. (No. 2013-1576, 2013-1577, 3/2/15) (Lourie, Dyk, Reyna)

March 2, 2015 12:15 PM

Dyk, J. Affirming finding of validity and infringement but remanding on damages. The plaintiff Warsaw licensed the patent to a related, but non-named manufacturing entity which sold the product to plaintiff MSD and paid royalties to Warsaw. Warsaw sought damages on convoyed sales which it sold MSD, a royalty received from the manufacturing entity and inter-company transfer payments between MSD and Warsaw. The Court held 1) the convoyed sales were not properly part of the damages award because they failed the functional relationship test in the absence of evidence that they had no function independent of the patented product, 2) the royalty payments from the manufacturing entity could not be recovered as a species of lost profits because Warsaw did not practice the patent and 3) the inter-company transfer payments were not recoverable because they were not clearly tied to transactions involving the patented products.

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