WILMERHALE

Federal Circuit Patent Updates - May 2007

MAY 31, 2007

View previous month...

Motionless Keyboard Company v. Microsoft Corporation, et al. **(2004-1497) (Rader, Dyk, Moore)**

May 29, 2007 9:54 AM

(Rader) Affirming summary judgment of non-infringement and reversing summary judgment of invalidity of patent directed to an ergonomic keyboard. Disclosures of a prototype embodying the invention more than three years before the critical date were not a public use of the invention.

Honeywell v. Universal Avionics **(-5-1112, -1151, -1152) (Rader, Gajarsa, Dyk)**

May 25, 2007 9:50 AM

(Rader) Vacating summary judgment of non-infringement of patents directed to aircraft collision warning system and remanding for new determination of infringement and validity under revised claim construction. Also affirming district court's retention of jurisdiction over claims patentee attempted to withdraw, affirming decision that patentee did not commit inequitable conduct and affirming decision that claims were not barred by patentee's public use or sales. Patentee's pre critical date activity was experimental.

Monsanto Co. v. McFarling **(05-1570, -1598) (Lourie, Rader, Bryson)**

May 24, 2007 9:39 AM

(Bryson) Affirming damage award and refusal to modify injunction for patents directed to genetically modified crops. The royalty determined by the jury of $40 per bag was reasonable even though the out of pocket cost paid by licensed farmers was no more than $28.50 per bag. Also affirming denial of patent misuse and antitrust defenses. WilmerHale represented the plaintiff cross-appellant Monsanto.

Pfizer, Inc. v. Apotex, Inc. **(formerly known as TorPharm, Inc.) [order] (No. 2006-1261)**

May 21, 2007 9:35 AM

Order denying petition for rehearing and rehearing en banc. Newman, Lourie and Rader dissent.

McKesson Information Solutions, Inc. v. Bridge Medical, Inc. **(No. 06-1517) (Newman, Clevenger, Bryson)**

May 18, 2007 9:33 AM

(Clevenger) Affirming judgment of inequitable conduct during prosecution of claims directed to a system for medical patient identification.

Wechsler v. Macke International Trade, Inc., et al. **(No. 05/1242) (Mayer, Gajarsa, Prost)**

May 18, 2007 9:31 AM

(Prost) Reversing judgment that individual was personally liable for inducement of corporate infringement, reversing award of lost profits, and affirming judgment that corporate defendant was not alter ego of individual defendant. The issue of personal liability required the resolution of purportedly inconsistent jury verdicts. The question of whether lost profits are recoverable is a question of law for the Court. The evidence showed that the plaintiff was not capable of making a product during the period of infringement. Mayer dissented in part on the lost profits issue.

General Mills, Inc. v. Kraft Foods Global, Inc. **(No. 06-1569) (Bryson, Clevenger, Linn)**

May 16, 2007 9:30 AM

(Linn) Affirming judgment that claim was barred by covenant-not-to-sue given to defendant's predecessor-in-interest. Also affirming district court's judgment that counterclaim to an original complaint was abandoned after filing of amended complaint. The time to file an answer to the amended complaint was not tolled by motion to dismiss.

Brand, et al. v. Miller, et al. **(No. 06-1419) (Michel, Archer, Dyk)**

May 14, 2007 9:28 AM

(Dyk) Reversing Board determination that one inventor derived invention from another. "We therefore hold that, in the context of a contested case, it is impermissible for the Board to base its factual findings on its expertise, rather than on evidence in the record, although the Board's expertise appropriately plays a role in interpreting record evidence."

Henkel Corporation v. The Procter & Gamble Company **(No. 06/1542)(Gajarsa, Linn, Moore)**

May 11, 2007 9:25 AM

(Linn) In interference directed to detergent tablets, finding reduction to practice after inventor appreciated faster dissolution rate of tablets even though there was no explicit calculation or rates. The prior invention was also sufficiently corroborated.

Leapfrog Enterprises, Inc. v. Fisher-Price, Inc., et al. **(No. 06-1402) (Mayer, Lourie, Dyk)**

May 9, 2007 9:22 AM

(Lourie) In the Court's first precedential opinion following KSR, affirming district court's judgment that claims directed to "an interactive learning device" were obvious. –“Common sense … demonstrates why some combinations would have been obvious….” –“Accommodating a prior art mechanical device ... to modern electronics would have been reasonably obvious….” –“The combination is thus the adaptation of an old idea or invention using newer technology that is commonly available and understood in the art.” "–Leapfrog presents no evidence that the inclusion [of an element missing in the two prior art references] was uniquely challenging or difficult.”

Syngenta Seeds v. Monsanto Company, et al. **(No. 06-1203) (Mayer, Schall, Bryson)**

May 3, 2007 9:56 AM

(Bryson) Issued after and citing Supreme Court's opinion in KSR, the Court affirmed a jury verdict of obviousness after applying its "obvious to try, reasonable expectation of success" test. Also finding claim construction argument that was argued for the first time on appeal had been waived.

Foremost in Packaging Systems (Doing Business as Envirocooler) v. Cold Chain Technologies **(No. 06-1582) (Newman, Friedman, Prost)**

May 2, 2007 9:19 AM

(Friedman) Affirming claim construction and judgment of non-infringement of claims directed to insulated shipping containers. Apparently applying all-elements rule, the Court also held that infringement under the doctrine of equivalents could not be established.