Federal Circuit Patent Updates - May 2015

MAY 26, 2015

View previous updates...

Commil USA, LLC v. Cisco Systems, Inc. **(No. 13-896, 5/26/15)**

May 26, 2015 3:20 PM

Kennedy, J. Vacating judgment regarding inducement and remanding. The Court rejected arguments that Global-Tech should be read as requiring that only knowledge of the patent is required for induced infringement. Rather, in addition to knowledge of the patent, to establish inducement "Global-Tech requires … proof that the defendant knew the acts were infringing. And the Court's opinion was clear in rejecting any lesser mental state as the standard." The Court also held that a good faith belief in invalidity is not a defense to a claim of inducement. "[I]nvalidity is not a defense to infringement, it is a defense to liability. And because of that fact, a belief as to invalidity cannot negate the scienter required for induced infringement." Thomas, J. joined a portion of the majority opinion. Scalia, J. filed a dissenting opinion, in which Roberts, C.J., joined.

WilmerHale represented Cisco Systems, Inc.

A full version of the text is available in PDF form.

Allvoice Developments US, LLC v. Microsoft Corp. **(No. 2014-1258, 5/22/15) (Prost, Dyk, O'Malley)**

May 22, 2015 9:50 AM

O'Malley, J. Affirming judgment that claims directed to a speech-recognition "interface" were invalid because they did not claim patentable subject matter.

A full version of the text is available in PDF form.

Apple Inc. Samsung Electronics Co., Ltd. **(No. 2014-1335, 2015-1029, 5/18/15) (Prost, O'Malley, Chen)**

May 18, 2015 4:12 PM

Prost, J. Affirming jury verdict that design patents were infringed, validity of utility patents and damages awarded for those patents, but reversing jury's finding that the asserted trade dresses were protectable. Apportionment of damages was not required for award of defendants' profits for infringement of design patents.

WilmerHale Represented the Plaintiff-Appellee.

A full version of the text is available in PDF form.

Classen Immunotherapies, Inc. Elan Pharmaceuticals, Inc. **(No. 2014-1671, 5/13/15) (Prost, Lourie, Gilstrap)**

May 13, 2015 2:10 PM

Lourie, J. Affirming judgment that post-approval acts relating to developing clinical data and submitting data in a citizen petition and a supplemental new drug application to the FDA were protected by the safe harbor provisions of 271(e)(1), but remanding for consideration of status of acts occurring after the FDA submissions.

A full version of the text is available in PDF form.

Akamai Technologies, Inc. v. Limelight Networks, Inc. **(No. 2009-1372, 2009-1380, 2009-1416, 2009-1417, 5/13/15) (Prost, Linn, Moore)**

May 13, 2015 3:45 PM

Linn, J. On remand from Supreme Court, holding that defendant was not liable for direct infringement under 271(a) because it did not perform all of the steps of the asserted method claims. Moore, J. dissented.

WilmerHale represented the Plaintiffs-Appellants.

A full version of the text is available in PDF form.

Arcelormittal France v. AK Steel Corporation **(No. 2014-1191, 5/12/15) (Dyk, Wallach, Hughes)**

May 12, 2015 1:55 PM

Hughes, J. Affirming summary judgment that reissued claims had been improperly broadened. Record of prosecution during reexamination could not be used to very scope of original claims, the meaning of which had been construed in a prior appeal which was binding on the district court.

A full version of the text is available in PDF form.

Lelo Inc. v. ITC **(No. 2013-1582, 5/11/15) (Moore, Clevenger, Reyna)**

May 11, 2015 3:40 PM

Reyna, J. Reversing the finding of the U.S. International Trade Commission that the domestic industry requirements of § 337 were satisfied, because the ITC's domestic industry analysis and

determination was based on qualitative factors. “The plain text of § 337 requires a quantitative analysis in determining whether a petitioner has demonstrated a “significant investment in plant and equipment” or “significant employment of labor or capital.”

A full version of the text is available in PDF form.

Biogen MA, Inc. v. Japanese Foundation for Cancer Research **(No. 2014-1525, 5/7/15) (Dyk, Schall, Chen)**

May 7, 2015 10:15 AM

Dyk, J. Affirming Board judgment in an interference that an applicant was estopped to continue the interference because he had lost two prior interferences covering the same subject matter. The AIA eliminated district courts’ subject matter jurisdiction under pre-AIA 35 U.S.C. § 146 to review decisions in interference proceedings declared after September 15, 2012.

WilmerHale represented the appellee Japanese Foundation for Cancer Research.

A full version of the text is available in PDF form.

Takeda Pharmaceuticals U.S.A. v. Hikma Americas Inc. **(No. 2015-1139, 5/6/15) (Newman, Dyk, Hughes)**

May 6, 2015 4:30 PM

Dyk, J. Affirming the denial of a preliminary injunction against the marketing of a drug. The patentee lacked a likelihood of success in proving inducement of infringement where the drug label, although allegedly alluding to an infringing use of the drug, did not promote or encourage that use. “This requirement of inducing acts is particularly important in the Hatch-Waxman Act context because the statute was designed to enable the sale of drugs for non-patented uses even though this would result in some off-label infringing uses.” Newman, J., dissented.

A full version of the text is available in PDF form.

Eon Corp. IP Holdings LLC v. AT&T Mobility LLC **(No. 2014-1392, 5/6/15) (Prost, Newman, Bryson)**

May 6, 2015 2:05 PM

Prost, C. J. Affirming summary judgment that claims were invalid as indefinite. The specification failed to disclose an algorithm to provide structure for various computer-implemented means-plus function elements. “A microprocessor or general purpose computer lends sufficient structure only to basic functions of a microprocessor. All other computer-implemented functions require disclosure of an algorithm.

A full version of the text is available in PDF form.

Sukumar v. Nautilus, Inc. **(No. 2014-1205, 5/4/15) (Prost, Newman, Reyna)**

May 4, 2015 12:44 PM

Prost, C. J. Affirming summary judgment dismissing false patent marking and state law claims. The plaintiff had not suffered “competitive injury” necessary to have standing to assert a false marking claim. See 35 U.S.C. § 292(b). “We hold that a potential competitor may suffer competitive injury if it has attempted to enter the market. An attempt is made up of two components: (1) intent to enter the market with a reasonable possibility of success, and (2) an action to enter the market."

A full version of the text is available in PDF form.